

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal  
Case No. 18/1415 SC/CRML

**PUBLIC PROSECUTOR**  
v.  
**MOSES IARUBEN  
TANGAP NAKOU  
FRANK CAPTIN  
NIARE TAGAL**

**Coram:** Justice D. V. Fatiaki

**Counsel:** Mrs B. Pakoasongi for the State  
Mr A. Bal for the Defendants

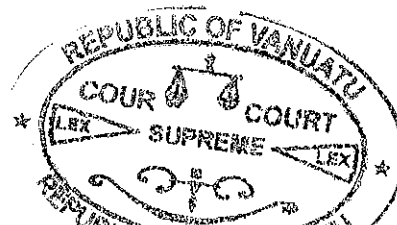
**Date of Ruling:** 19 June 2018

---

**RULING**

---

1. On 5 June 2018 this case was called for plea. Both counsels appeared but there were no defendants present. When questioned about their absence defence counsel who represented the defendants from the start doubted that the defendants knew about their committal on 4 May 2018 to appear before the Supreme Court. No service of the Committal Order is present in the relevant Magistrate's Court committal file.
2. A Memorandum was directed to be filed by the prosecutor. It reveals that the file was originally listed before a junior magistrate in breach of the provisions of Section 143 of the Criminal Procedure Code.
3. After refusing a remand application on 8 February 2018 the case was adjourned to 22 February 2018 presumably for the file to be re-allocated to a senior magistrate to conduct the Preliminary Inquiry. That did not occur and the case was again listed before the junior magistrate on 9 April 2018 and an order made for the file to be "re-allocated for committal".
4. The next entry in the Magistrate's Court file is the formal Committal Order which completely fails to record the presence or attendance of any counsel or the defendants. In the absence of relevant court minutes or entries recording the


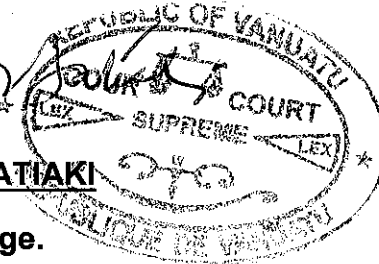


presence of the defendants, I have no reason to doubt defence counsel's claim that the defendants were improperly committed in their absence.

5. In this latter regard counsel's attention is drawn to the observations of this Court in Public Prosecutor v Tiabong [2012] VUSC 136 at paras. 15 to 20 where committals in the absence of the defendants and prosecutor were quashed and the cases returned to the Magistrate's Court to be dealt with in accordance with the law.
6. Similarly in the present case the committal of the defendants is quashed and the case is returned to the Magistrate's Court for a fresh committal to take place in the presence of counsels and the defendants.

**DATED at Port Vila, this 19<sup>th</sup> day of June, 2018.**

**BY THE COURT**

  
  
**D. V. FATIAKI**  
**Judge.**