

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

Criminal Appeal  
Case No. 20/3038 SC/CRML

PUBLIC PROSECUTOR

V

NATIONAL HOUSING CORPORATION

Respondent

*Date of Judgment:* 24<sup>th</sup> February 2021  
*Before:* Justice Oliver Saksak  
*In Attendance:* Mr Kevin Nathan for appellant  
Mr Gregory Takau for respondent

---

JUDGMENT

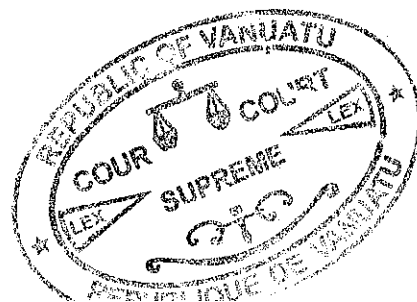
---

**Background**

1. The respondent (the NHC) was charged in the Magistrates Court with 9 counts of failures to pay monthly contributions to its employees through the VNPF. This failure contravened sections 26 (1) and 50(1) of the Vanuatu National Provident Fund Act [CAP.189].
2. A Magistrate in the Court below dismissed the charges against the NHC.
3. This appeal is against that dismissal.

**Grounds**

4. The appeal is founded on 3 grounds that:
  - (a) The Magistrate erred by ruling there was delay warranting the dismissal.
  - (b) The Magistrate erred in dismissing the case without a fair trial.
  - (c) The Magistrate erred in not adjourning the case despite being informed of the unavailability of counsel at the hearing.



## Reliefs

5. The appellant seeks orders that-
  - (a) The appeal be allowed.
  - (b) The Orders of the Magistrates Court be overturned.
  - (c) The case be remitted to the Magistrates Court for fixture and hearing.
  - (d) Costs be paid by the respondent.

## Management of Appeal

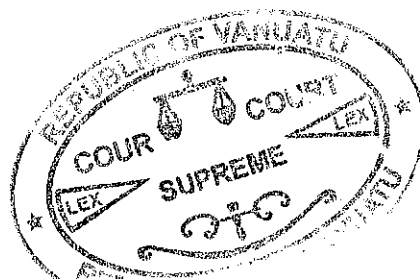
6. On 3<sup>rd</sup> December 2020 the Court called the appeal for review. The respondent was not present due to lack of service and was adjourned to 7<sup>th</sup> December.
7. On 7<sup>th</sup> December 2020 the respondent did not appear despite NHC was served. The Court issued directions requiring the appellant to file Appeal Books with submissions by 22/1/2021. The Court adjourned the hearing to 5<sup>th</sup> February 2021 giving opportunity to NHC to file responses by 31<sup>st</sup> January 2021.
8. On 5<sup>th</sup> February 2021 due to a long criminal plea list counsel agreed to a 14 days adjournment to allow the respondent to file responses and submissions. The Court directed that those submissions be filed by 19<sup>th</sup> February 2021. The Court adjourned the hearing to 24<sup>th</sup> February 2021 at 10:00am.

## Concession

9. Today (24 February 2021) at 10:00am, Mr Takau attended and admitted that NHC had conceded the appeal, thus explaining why NHC has not filed any responses and submissions. Counsel conceded also that the case should be remitted to the Magistrates Court for fixture and hearing.

## Result

10. In light of the concession made by counsel for the respondent, this appeal is allowed.



**Orders**

11. The formal orders are:-

- (a) The appeal is allowed
- (b) The Decision and orders of the Magistrate's Court dated 16<sup>th</sup> October 2020 are hereby quashed.
- (c) The case is remitted to the Magistrates Court for fixture and hearing.
- (d) There is no order as to costs.

**DATED at Port Vila this 24<sup>th</sup> day of February 2021**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

