

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

**Criminal Case No. 01 of 2014**

**JOHN JAMES**

**V**

**PUBLIC PROSECUTOR**

***Judgment:***            ***4 April 2014***  
***By:***                    ***Justice Stephen Harrop***  
***Distribution:***       ***Less John Napuati for the Appellant***  
                              ***Public Prosecutor's Office for the Respondent***

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**JUDGMENT OF JUSTICE SM HARROP**

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1. On 24 January 2014, Mr James, who faces a charge of intentional homicide, appealed against the committal order made by a Magistrate earlier that day.
2. The appeal essentially asserts that the Magistrate did not comply with his obligation under section 146 of the Criminal Procedure Code [Cap.136]. That section required him to be satisfied that there was some evidence to establish each of the elements of the offence with which Mr James is charged. More particularly, Mr Napuati contends there was no evidence provided by the prosecutor which established that Mr James had caused the death of the deceased.
3. The appeal file was allocated to me and on 4 March 2014 I issued a Minute to Mr Napuati requesting adequate particulars of the grounds for appeal but also raising what appeared to be a fundamental and fatal problem with the appeal namely the jurisdiction for this Court to consider it. I invited Mr Napuati to file submissions and he did so promptly, on 11 March 2014. I have considered his submissions and the authorities to which he refers. In view of the conclusion reached, I have not sought submissions from the Public Prosecutor.
4. Section 200 of the Criminal Procedure Code provides:

*“(1) Any person convicted on a trial held by a Magistrate's Court may appeal to the Supreme Court.*

*(2) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal.*

*(3) The Public Prosecutor may appeal to the Supreme Court on a point of law against any judgment of a Magistrate's Court.*

*(4) The Public Prosecutor may appeal to the Court of Appeal on a point of law against any judgment of the Supreme Court exercising original or appellate jurisdiction.”*

5. It is obvious from section 200 that the only appeals available against a Magistrate's Court decision are by a person convicted on a trial held by a Magistrate's Court or by a Public Prosecutor on a point of law against any judgment of a Magistrate's Court. Clearly then, in respect of a decision *not* to commit defendant for trial the Prosecutor has the right to appeal. By contrast, there is no right of appeal against the decision of a Magistrate *to* commit a defendant for trial.
6. On this basis the appeal is clearly without jurisdiction and must be struck out.
7. While it might at first blush seem odd that a prosecutor may appeal against a committal decision but a defendant may not, this is not surprising. A decision not to commit a defendant for trial prevents the prosecution proceeding, at least in the absence of further evidence or a different charge being selected. But a decision to commit for trial is merely an interim decision as far as a defendant is concerned; it does not finally determine his or her guilt, nor does it impair in the slightest a defendant's right to challenge prosecution evidence, to call evidence or make submissions (including one of no case to answer) at trial in the Supreme Court.
8. In deference to Mr Napuati's submissions, I mention each of the three authorities to which he referred.
9. First, he referred to the Court of Appeal decision in Moti v. Public Prosecutor [1999] VUCA 5. That was a case where the appellant successfully appealed against a Supreme Court decision refusing his application for leave to apply for an order of certiorari to quash the decision of the Senior Magistrate committing him to the Supreme Court for trial. This case confirms that, while there is no appeal available to a defendant under section 200, there certainly is the opportunity for someone in Mr James' position to apply for judicial review seeking an order of certiorari to quash the committal decision. But of course that is not what Mr James has done in this case. An appeal is a very different procedural step from an application to review the decision of a decision-maker.
10. Mr Napuati then referred to Public Prosecutor v. Mereka [1992] VUSC 10. That however was an appeal by the prosecutor against a finding of no case to

answer made by a Senior Magistrate. There is clearly jurisdiction for such an appeal under section 200 (3) of the Criminal Procedure Code. This case therefore is of no assistance in support of Mr Napuati's contention that this Court has jurisdiction to consider this appeal by a defendant.

11. Finally, Mr Napuati referred to Public Prosecutor v. Issachar [1994] VUSC 8. The focus of that case was on whether a Magistrate in exercising his or her committal decision has an obligation to give reasons for the decision. The case is of no assistance in the present context.
12. In summary, the appeal must be dismissed as having been lodged without jurisdiction under section 200. It remains open to Mr James if he wishes to do so to launch an application for judicial review of the committal decision. However, it appears that events have rather overtaken any such possible claim.
13. My understanding is that on 18 March 2014 Mr James appeared before Justice Sey and pleaded not guilty to the count of intentional homicide. His trial is set down for a week before Justice Sey on Monday 28 April 2014.
14. If at the end of the prosecution case at trial Mr Napuati considers there is no case to answer then of course he will have the opportunity to make the appropriate application to Justice Sey. That effectively means that any possible judicial review application now lodged would be moot.
15. For these reasons the appeal is dismissed.

**BY THE COURT**