

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 25/740 COA/CRMA
[2025] VUCA 12

BETWEEN: PUBLIC PROSECUTOR
Appellant

AND: MAX TALEO
Respondent

Date of Hearing: 5 May 2025

Coram: Hon. Justice J. Mansfield
Hon. Justice R. Asher
Hon. Justice E. P. Goldsbrough
Hon. Justice V. M. Trief

Counsel: J Aru for the Appellant
JC Malcolm and SMotuliki for the Respondent

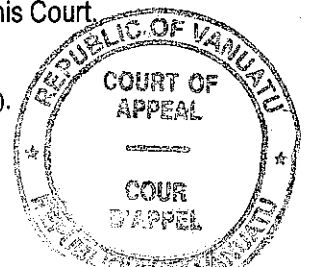
Date of Judgment: 16 May 2025

JUDGMENT OF THE COURT

Introduction

1. This is an appeal from a decision of the Supreme Court dated 18 February 2025.¹ In that judgment the Supreme Court considered an appeal against the sentence imposed on the Max Taleo, the respondent in this appeal, by the senior magistrate on 12 September 2024. Mr Taleo had been sentenced to an end sentence of 15 months imprisonment and a suspended sentence of 14 months for an earlier conviction in 2023.
2. The Supreme Court Judge heard appeals against both conviction and sentence. The Learned Judge decided that the appellant's conviction and sentence was unsafe and quashed the orders made. The appeal was allowed and the case was returned to the Magistrates Court for rearraignment on four counts and trial depending on the pleas entered. It was directed that the requirements of s 133 of the Criminal Procedure Code be adhered to by the Magistrates Court. Bail was extended to Mr Taleo on existing conditions pending the completion of the case.
3. The Public Prosecutor, who had not succeeded in the Supreme Court, has appealed to this Court.

¹ *Taleo v Public Prosecutor* [2025] VUSC 22; Criminal Appeal Case 3013 of 2024 (18 February 2025).



Background

4. Max Taleo was initially charged with eleven counts of domestic violence, alleged to have taken place on 26 December 2023. The alleged acts of violence were against various members of his own family. The charges against Mr Taleo were subsequently amended and reduced to only four charges of domestic violence laid under ss 4 and 10 of the Family Protection Act 2008. It was recorded that Mr Taleo, through his counsel, appeared and entered guilty pleas to three of the four charges. In respect of the fourth he entered a not-guilty plea and the prosecutor entered nolle prosequi under s 29 of the Criminal Procedure Code.
5. It is common ground that the various pleas for Mr Taleo were all entered by his counsel and not as a result of the charges being put to him and him responding in person.
6. Following this entry of pleas the Senior Magistrate activated an existing sentence of 14 months to be served concurrently with a 15-month sentence for the domestic violence offences.
7. Prior to the appeal hearing in the Supreme Court Mr Taleo filed a sworn statement dated 23 September 2024 where he asserted that he had been told by his lawyer to plead guilty to a charge and that he would be dealt with by way of a minor sentence. He had only pleaded guilty to the one charge and did not realise it was a compilation charge, and he did not intend to plead guilty to any other charges. No affidavit in response was filed by the Crown although questions of privilege and waiver arose in the Supreme Court hearing which we will refer to later in this judgment.
8. When the appeal was heard in the Supreme Court there was no dispute about the fact that Mr Taleo had not entered the pleas of guilty personally but that they were entered by a statement from his lawyer, and the Magistrates Court acted on the basis of those pleas.

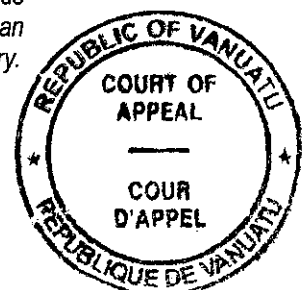
The Supreme Court judgment

9. The Judge rightly regarded s 133 of the Criminal Procedure Code as central to the appeal. The section provides:

(1) *The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.*

10. He also relied on s 133(2) and (5) which provides:

(2) *Subject to subsection (5) if the accused person pleads guilty to or admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.*



...

(5) *Notwithstanding the foregoing provisions of this section upon a plea of guilty or admission of the truth of a charge by an accused person the court may make brief enquiry into the nature of the facts admitted and the effect of such facts in law and if the court has reason to believe that he may not be guilty of the offence charged, it shall substitute a plea of not guilty and proceed to hear the case.*

11. The Judge found that the requirements of s 133(1), (2) and (5) were not observed in the courtroom process in the Magistrate's Court. The defendant through his counsel had entered a plea of guilty. The words on which the plea of guilty were recorded were the words or indication of counsel and not the accused person.
12. The Learned Judge found that this meant there had been a miscarriage of justice and that Mr Taleo had been denied his day in court. He had to be afforded an opportunity of a fair trial. That was his fundamental right under Articles 5(1)(d) and (2) of the Constitution.
13. This is why he proceeded to allow the appeal and quash the conviction and sentence, and direct that the case be returned to the Magistrates Court for rearraignment on all four counts and trial, depending on the pleas.

Jurisdiction – Leave to Appeal

14. Mr Malcolm, for the appellant Mr Taleo, assisted by Ms Motuleki argued that there was no jurisdiction to hear this appeal. It was submitted that the judgment of the Supreme Court was final. Reliance was placed on s 212 of the Criminal Procedure Code which provides:

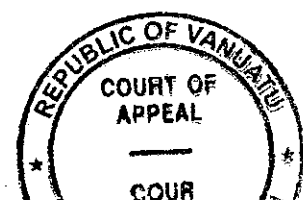
212. Appeals to be final

Every appeal from a trial court to an appeal court shall be final.

15. It was submitted for Mr Taleo that this meant, in effect, that once an appeal had been determined by the Supreme Court, no further appeal could be made.
16. However, this provision must be read with s 30(4) of the Judicial Services and Courts Act which provides:

(4) *The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave.*

17. This provision must be taken as meaning what it says, and there is a right of appeal to this Court on a point of law. Counsel for Mr Taleo did not contest the proposition that the right to appeal on



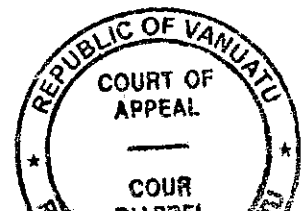
a question of law from the Supreme Court in its appellate jurisdiction existed, if the Court of Appeal granted leave.

18. There is indeed a short point of law that arises in this appeal. That point of law is whether s 133 of the Criminal Procedure Code requires accused persons to be asked personally whether they admit or deny the truth of a charge, and whether in accordance with s 133(2) any admissions be recorded, as nearly as possible, in the words used by the accused person. The argument put forward by Mr Aru on behalf of the Public Prosecutor is that s 133 must be read as permitting counsel to enter a plea on behalf of the accused person. This is strongly contested by Mr Malcom who says that on its plain words s 133 requires the accused person to plead personally and have that recorded. It is clear that the issue exposed is a question of statutory interpretation. It has been determined in the Republic and other Common Law jurisdictions that such a question of statutory interpretation is a point of law.²
19. Accordingly, we grant leave for the point of law to be argued in this Court, being whether s 133 of the Criminal Procedure Code requires accused persons to be asked personally whether they admit or deny the truth of the charge, and whether in accordance with s 133(2) any admissions be recorded, as nearly as possible, in the words used by the accused person, or alternatively whether it should be interpreted as allowing counsel to enter that plea.

Assessment

20. The wording of s 133(1) is on its face mandatory. It states that the substance of the charge or complaint shall be stated or put to the accused person, and that the accused person shall be asked whether the truth of that charge is admitted. It is not possible on a natural reading of s 133(1) to imply into it a provision that a lawyer or agent instead of the accused person, could enter the plea. That would be adding words to the statute that Parliament could have added if that was its intention.
21. This interpretation is reinforced by s 133(2) which provides that the admission of the accused person "shall be recorded as nearly as possible in the words used" by the accused person. Only if this is done does the Court obtain jurisdiction to convict on the basis of a plea. Even then such a plea will only be entered if there appears to be no "sufficient cause to the contrary". If that accused person does not admit the truth of the charge under s 133(3) the Court must proceed to hear the case. There would have been no point in requiring the recording of the words used by the "accused person" if those words could be taken to include that person's lawyer. This subsection therefore re-enforces an interpretation that gives the plain words their natural meaning.
22. The remaining two provisions of s 133 emphasise the importance of a clear plea of guilty or clear admission of the charge. It is stated at ss (4) that if the accused person refuses to plead, the Court

² *Public Prosecutor v Emelee* [2008] VUCA 18. Also see *Shah v Barnet London Borough Council* [1983] 2 AC 309 (HL) applied in *Beavon Investments Ltd v Marlborough District Council* [2012] NZHC 113 at [10] and *K v Immigration and Protection Tribunal* [2014] NZHC 1800. See generally JF Burrows and RI Carter *Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 266.



shall enter a plea of not guilty. Then at s 133(5) it is provided that upon a plea of guilty or admission of the threat of a charge by an accused person, the Court shall make "brief enquiry into the nature of the facts admitted and the effect of such facts in law". If a Court has reason to believe that the accused person may not be guilty of the offence charged, it shall substitute a plea of not guilty and proceed to hear the case. All these provisions support an interpretation that is sympathetic to the rights of accused persons to enter a plea personally where there can be less opportunity for misunderstanding their intention.

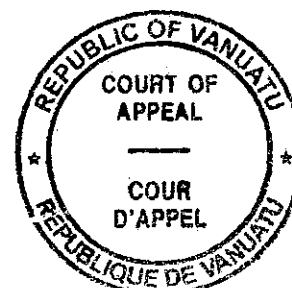
23. The mandatory nature of this language, and the central focus on the plea and the words used by the accused person as distinct from any other person, is further emphasised by the contrasting provision at s 134(2) and (3). That section provides:

(2) *The accused person or his advocate or agent may put questions to each witness produced against him.*

(3) *If the accused person is not represented by an advocate or agent the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.*

24. What is notable is that in these sections the legislature has expressly stated that an advocate or agent may put questions to a witness in contrast to s 133 which makes no reference to an advocate or agent. Section 134 plainly envisages that, on occasions, an accused person will be represented by an advocate or agent who may question a witness on behalf of the accused person. That possibility is expressly allowed for. These provisions make it impossible to imply that the words "accused person" used in s 133 somehow can be taken as including an advocate or agent. Sections 134(2) and (3) show instead that Parliament turned its mind to when a lawyer might carry out acts for the accused. Parliament did not use these broader words in relation to the important matter of entering a plea. The clear implication is that the plea has to be entered personally.
25. Coming back to the natural meaning of the words used in s 133, these other sections reinforce the mandatory nature of the requirement for the accused person to be asked and to enter the pleas. This is because of the repeated use of the word "shall".
26. While "shall" can sometimes in context have a directory meaning, its more natural and immediate meaning is "must". That is a mandatory requirement rather than a directory requirement. It has been held that this is particularly so when the word "shall" is used for the purpose of sustaining or enforcing an existing right.³ It has always been the right of an accused person rather than some other person to enter a plea on that accused person's behalf.
27. It is also relevant to note, as Mr Malcolm submitted, that the relevant statement at s 133 of the Criminal Procedure is part of a "code". We accept the submission that, on the face of it, a codifying

³ See the cases collected in *Words and Phrases Judicially Defined*



Act is presumed to exhaust the subject to which it relates, unless a different interpretation appears on the face of the statute or is an irresistible influence from special circumstances.

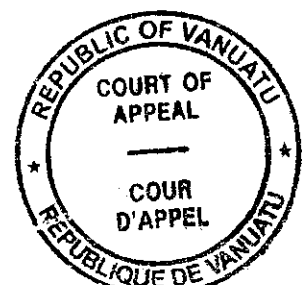
28. Therefore, it is our assessment that the Supreme Court Judge was correct when he determined that s 133 of the Criminal Procedure Code imposed a mandatory obligation for pleas of guilty or the admission of a charge to be provided by the person accused personally and not by that person's counsel.
29. It being common ground that it was Mr Taleo's counsel who entered the pleas on this relevant occasion, the Judge was right to allow the appeal against conviction and sentence and to quash them both. We also agree that the Judge was correct when he determined that the requirements of s 133 of the Criminal Procedure Code must be adhered to.

Practical implications

30. This may mean that in the Magistrates Court at least pleas have been entered in other cases by counsel on behalf of an accused person. However here this appeal succeeded because it was filed in time and none of the obstacles faced by an appeal out of time had to be considered.
31. Moreover, the result as set out by the Supreme Court Judge does not mean that the charges against Mr Taleo are dismissed. He will be given the opportunity to replead in the Magistrate's Court, and if he does plead not guilty to the charges to which his counsel previously pleaded guilty, then there will be a hearing. If the charges are proven beyond reasonable doubt he will be found to be guilty.
32. The decision that Mr Taleo makes as to how he pleads will undoubtedly not be made lightly, particularly given the discounts allowed for guilty pleas. Indeed, it may be that whatever happens in the future the full discount for guilty plea will not be available to Mr Taleo. That, however, will be a matter for any sentencing, if that ultimately arises.

Waiver and privilege

33. It is clear to this Court that Mr Taleo, when he swore an affidavit about his interaction with his counsel, prior to his counsel entering a plea, waived all privilege about the plea related discussions between him and his lawyer. The Public Prosecutor was free to therefore call the lawyer who acted for Mr Taleo to give evidence about the entry of the plea, if it was considered appropriate to do so.
34. In the end no such step was taken by the Public Prosecutor. However, even if it had been, the issue of the accuracy of Mr Taleo's affidavit and his assertions about his instructions are irrelevant to our decision which is based on the uncontested fact that Mr Taleo did not enter his plea personally.



35. We therefore do not need to make a finding on the issue of waiver, although we did receive some argument on the point. That issue is irrelevant to our decision.

Result

36. The appeal is dismissed.

DATED at Port Vila, this 16th day of May, 2025.

BY THE COURT



Hon. Justice John Mansfield

