

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

**Criminal Case NO. 73 of 2015**

**PUBLIC PROSECUTOR VS**

**MOANA CARCASSES KALOSIL  
SILAS ROUARD YATAN  
PAUL BARTHELEMY TELUKLUK  
TONY NARI  
SERGE VOHOR  
JOHN AMOS  
ARNOLD PRASAD  
STEVEN KALSAKAU  
TONY WRIGHT  
SEBASTIEN HARRY  
THOMAS LAKEN  
MARCELLINO PIPITE  
JONAS JAMES  
JEAN YVES CHABOD  
WILLY JIMMY TAPANGARARUA  
ROBERT BOHN**

**Hearing:** 7, 8, 9, 10, 11, 14, 15, 16 and 17 September 2015

**Submissions:** 7 October 2015

**Date of Judgment:** 9 October 2015

**Before: Justice Mary Sey**

**Counsel:** Mr. Josaia Naigulevu and Mr. John Timakata for the Public Prosecutor

Mr. John Malcolm for: Moana Carcasses Kalosil

Mr. Gregory Takau for: Tony Nari, John Amos, Sebastien Harry, Thomas Laken,  
Silas Rouard Yatan, Arnold Prasad and Jean Yves Chabot

Mr. Colin Leo for: Serge Vohor, Anthony Wright and Jonas James

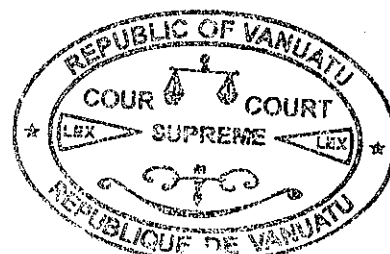
Mr. Robin Kapapa for: Paul Telukluk, Steven Kalsakau and Marcellino Pipite

Mr. Nigel Morrison for: Robert Bohn

## **JUDGMENT AS TO VERDICT**

### **Introduction**

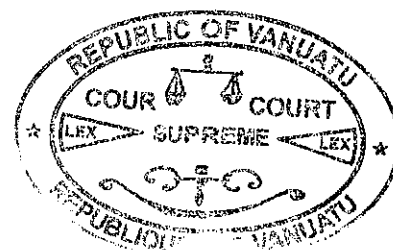
[1] The 16 accused persons in this case are Members of Parliament and Leaders of the Republic of Vanuatu who are individually charged with the following offences:



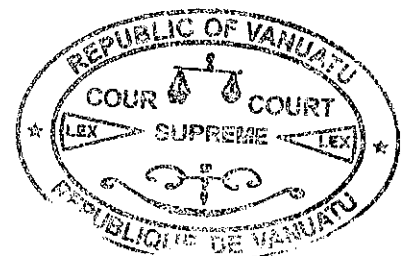
- **Corruption and Bribery of Officials** contrary to section 73 (1) of the Penal Code Act (PCA) [CAP 135];
- **Corruption and Bribery of Officials** contrary to section 73 (2) of the Penal Code Act (PCA) [CAP 135];
- **Bribery** contrary to section 23 of the Leadership Code Act (LCA) [CAP 240]; and
- **Acceptance of Loans** contrary to section 21 of the Leadership Code Act (LCA) [CAP 240].

[2] For convenience, I have tabulated the criminal charges laid against the accused persons under the Leadership Code Act (LCA) and the Penal Code Act (PCA) as shown hereunder:

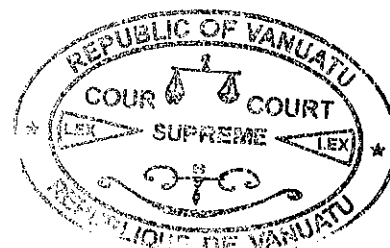
COUNTS	ACCUSED PERSONS	CHARGES
1.	<b>Moana Carcasses Kalosil</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer money to <b>Isaac Hamariliu (MP)</b> .
2.	<b>Moana Carcasses Kalosil</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer a benefit namely a loan to <b>Isaac Hamariliu (MP)</b> .
3.	<b>Moana Carcasses Kalosil</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer money to <b>Richard Mera (MP)</b> .
4.	<b>Moana Carcasses Kalosil</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer a benefit namely a loan to <b>Richard Mera (MP)</b> .
5.	<b>Moana Carcasses Kalosil</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer money to <b>Don Ken (MP)</b> .



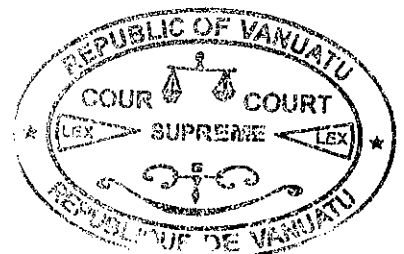
6.	<b>Tony Nari</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give money namely VT500,000 to <b>John Tessei (MP)</b> .
7.	<b>Marcellino Pipite and Paul Telukluk</b>	Bribery contrary to S.23 of the LCA in that the accused did corruptly offer money to <b>John Lum (MP)</b> .
8.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Jean Yves Chabod (MP)</b>
9.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Sebastien Harry (MP)</b>
10.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Jonas James (MP)</b>
11.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Thomas Laken (MP)</b>
12.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Marcellino Pipite (MP)</b>
13.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Anthony Wright (MP)</b>
14.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Tony Nari (MP)</b>



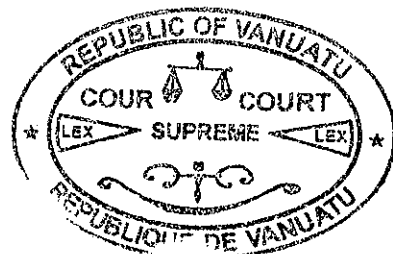
15.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Samson Samsen (MP)</b>
16.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Silas Yatan Rouard (MP)</b>
17.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Willie Jimmy (MP)</b>
18.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Robert Bohn (MP)</b>
19.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Paul Barthelemy Telukluk (MP)</b>
20.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Hosea Nevu (MP)</b>
21.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>John Amos (MP)</b>
22.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Serge Vohor (MP)</b>
23.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give



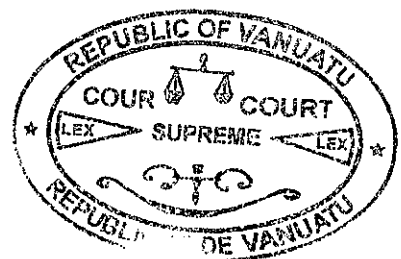
		a bribe namely VT1,000,000 to <b>Arnold Prasad (MP)</b>
24.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Steven Kalsakau (MP)</b>
25.	<b>Moana Carcasses Kalosil</b>	Corruption & Bribery of Officials contrary to S.73 (2) of the PCA in that the accused did corruptly give a bribe namely VT1,000,000 to <b>Kalfau Moli (MP)</b>
26.	<b>Silas Yatan Rouard</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses (MP)
27.	<b>Silas Yatan Rouard</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
28.	<b>Paul Berthelemy Telukluk</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Kalosil Carcasses (MP).
29.	<b>Paul Berthelemy Telukluk</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
30.	<b>Tony Nari</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses (MP)
31.	<b>Tony Nari</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of



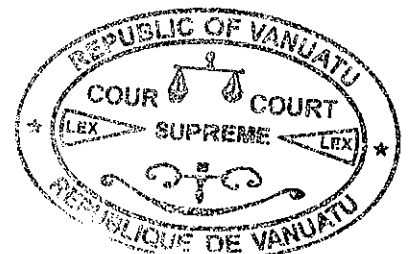
		VT1,000,000 which loan was not on commercial terms.
32.	<b>Serge Vohor</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP).
33.	<b>Serge Vohor</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
34.	<b>John Amos</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
35.	<b>John Amos</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
36.	<b>Arnold Prasad</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
37.	<b>Arnold Prasad</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
38.	<b>Steven Kalsakau</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
39.	<b>Steven Kalsakau</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting



		a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
40.	<b>Anthony Wright</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
41.	<b>Anthony Wright</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
42.	<b>Sebastien Harry</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
43.	<b>Sebastien Harry</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
44.	<b>Thomas Laken</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
45.	<b>Thomas Laken</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
46.	<b>Marcellino Pipite</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
47.	<b>Marcellino Pipite</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused



		did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
48.	<b>Jonas James</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP).
49.	<b>Jonas James</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
50.	<b>Jean Yves Chabod</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
51.	<b>Jean Yves Chabod</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
52.	<b>Willy Jimmy Tapangararua</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP)
53.	<b>Willy Jimmy Tapangararua</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit namely a loan of VT1,000,000 which loan was not on commercial terms.
54.	<b>Robert Bohn</b>	Corruption & Bribery of Officials contrary to S.73 (1) of the PCA in that the accused did corruptly accept a bribe namely VT1,000,000 from Moana Carcasses Kalosil (MP).





55.	<b>Robert Bohn</b>	Acceptance of loans contrary to S.21 of the LCA in that the accused did commit the offence of accepting a benefit—namely a loan of VT1,000,000 which loan was not on commercial terms.
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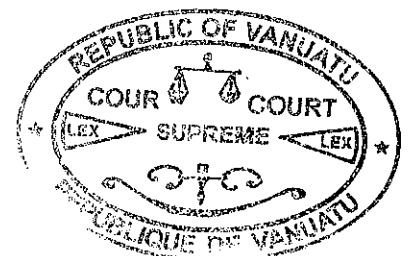
[3] The Particulars of Offence in relation to all the counts are detailed in the Information dated 2<sup>nd</sup> September 2015 and filed pursuant to section 152 Criminal Procedure Code Act [CAP 136].

[4] Mr. Willy Jimmy pleaded guilty to counts 52 and 53 and he was subsequently convicted on 7 September 2015 as charged and he now awaits sentencing.

[5] This present trial is in respect of Mr. Moana Carcasses Kalosil and the 14 other accused persons who have pleaded not guilty to a total of 53 counts preferred against them. The trial formally commenced on 7 September 2015 and the tape recorded Court proceedings run into 840 type written pages.

[6] The accused persons understand their statutory rights under section 81 of the Criminal Procedure Code (CAP.136) which was read aloud and explained to them before the prosecution case was opened. Section 81 provides that:

*"... In this trial you will be presumed to be innocent unless and until the prosecution has proved your guilt beyond reasonable doubt. It is not your task to prove your innocence. If at the end of the trial any reasonable doubt exists as to your guilt, you will be deemed to be innocent of the charge and will be acquitted."*

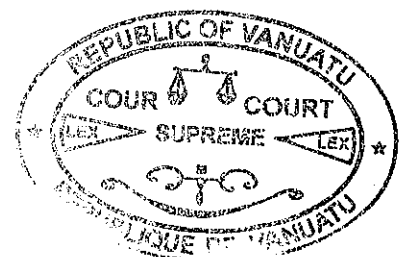


### **General rule as to burden of proof**

[7] Section 8 of the Penal Code Act [CAP 135] states:

- "(1) No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.*
- (2) In determining whether a person has committed a criminal offence, the court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his actions.*
- (3) If the prosecution has not so proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith."*

[8] It is appropriate to state from the onset that it is the State which brings this case and it is for the State to satisfy the Court so that it is sure of the accused persons' guilt. To put it simply, the burden of proving the guilt of the accused persons remains with the prosecution and continues throughout. It never shifts. The onus lies on the prosecution to prove every element of the offences as charged beyond reasonable doubt. The accused persons are not required to prove their innocence. The onus of proof never shifts from the prosecution, regardless of whether an accused gives evidence. If at the end of the trial, there is any reasonable doubt as to the guilt of the accused persons on the charges laid against them, I must interpret that doubt in favour of the accused persons and acquit them accordingly. However, if I believe the prosecution witnesses and I am satisfied beyond reasonable doubt



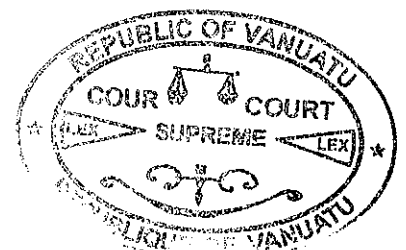
of the guilt of the accused persons I must convict them and find them guilty of the offences charged against them.

- [9] In *Woolmington v DPP* [1935] A.C. 462 HL at pp 481-482, Viscount Sankey clearly stated the position of the law as follows:

*"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt [subject to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."*

- [10] The standard is the very high standard of proving the case beyond reasonable doubt. In *Miller v Minister of Pensions* [1947] 2 All ER 372. Denning J. at pp. 373-374 said:

*"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt; nothing short will suffice."*



[11] This Court is particularly mindful of the principle enshrined in *Woolmington* especially since the trial of these 15 accused persons before me is by Judge alone, instead of by Judge and jury as in some other Commonwealth jurisdictions. In *Swanson v Public Prosecutor* [1998] VUCA 9; Criminal Appeal Case 06 & 11 of 1997 (26 June 1998), the Court of Appeal remarked:

*"Vanuatu has opted for a system of trial by Judge-alone in the Supreme Court for all criminal charges heard there. Other Commonwealth countries such as Singapore have a similar system. In other common law countries, such as New Zealand and some Australian jurisdictions, an accused may elect trial by judge-alone instead of trial by jury. Trial by jury or trial by Judge sitting with assessors (as is the case, for example, in Fiji) has the advantage of delivering an answer on guilt or innocence promptly. After the Judge has summed-up on the law to the jury or assessors and after the jury and assessors have deliberated for an appropriate time - usually measured in hours, but sometimes in days, depending on the complexity of the trial, a verdict is announced."*

## **The Law**

[12] In Chapter 10 of the Constitution of the Republic of Vanuatu, Article 66 provides:

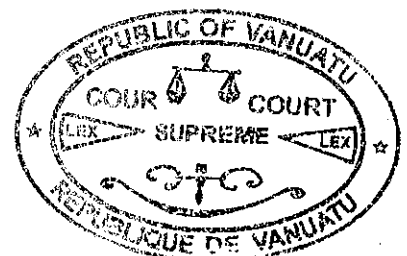
### **Conduct of leaders**

"(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to:

(a) *Place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;*

(b) *demean his office or position;*

(c) *allow his integrity to be called into question; or*



(d) *endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.*

(2) *Article 66 also provides that, in particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article (1)"*

### **"67. Definition of a leader**

*For the purpose of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law."*

[13] Section 3 of the Leadership Code Act states:

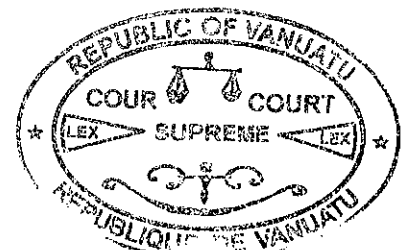
#### **"3. Leader's behaviour**

*A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership."*

[14] In respect of the charge of **Corruption and Bribery of Officials** -

Section 73 of the Penal Code Act [CAP 135] provides:

*"(1) No public officer shall, whether within the Republic or elsewhere, corruptly accept or obtain or agree or offer to accept or attempt to obtain, any bribe for himself or any other person in respect of any act*



*done or omitted, or to be done or omitted, by him in his official capacity.*

*Penalty: Imprisonment for 10 years."*

The Prosecution must prove the following elements:

1. That the accused is a public officer
2. That he did as a public officer corruptly accept or obtain
3. A bribe for himself
4. In respect of an act to be done by him
5. In his official capacity.

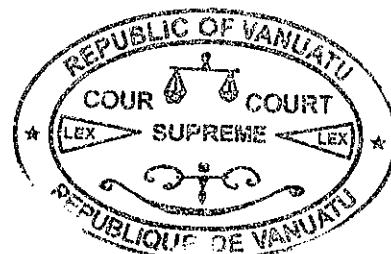
*"(2) No person shall corruptly give or offer or agree to give any bribe to any person with intent to influence any public officer in respect of any act or omission by him in his official capacity.*

*Penalty: Imprisonment for 10 years."*

The elements which the prosecution must prove are:

1. That the accused did corruptly give a bribe to a person
2. The bribe given by the accused was to a person who is a public officer
3. That when the bribe was given it was with intent to influence the public officer
4. In respect of any act or omission by the public officer in his official capacity.

Subsection (3) of section 73 states that "for the purpose of this section, "bribe" means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect, and the expression "public officer"



*means any person in the official service of the Republic (whether that service is honorary or not and whether it is within or outside the Republic) any member or employee of any local authority or public body and includes every police officer and judicial official."*

[15] As regards the offence of bribery under the Leadership Code Act, section 23 provides as follows:

**"23. Bribery**

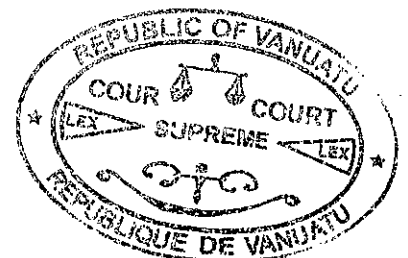
*A leader must not:*

- (a) Corruptly ask for or receive; or*
- (b) Agree to ask for or obtain; or*
- (c) Corruptly offer; any money, property, or other benefit or advantage of any kind, for:*
- (d) Himself or herself, or*
- (e) Another person or body,*

*In exchange for his or her acts or omissions as a leader being influenced in any way, either directly or indirectly."*

The prosecution must prove the following elements:

- That the accused is a leader under the Leadership Code
- That the accused did offer
- Money or other benefit
- For another person
- And that he did so corruptly



[16] The offence relating to acceptance of loans is spelt out under section 21 of the Leadership Code Act [CAP 240] in the following terms:

**"21. Acceptance of loans**

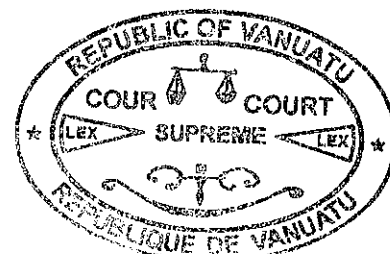
*A leader must not accept a loan (other than on commercial terms from a recognized lending institution and only if the leader satisfies the lending institution's usual business criteria or in accordance with the customary practice of a particular place for or during a traditional ceremony)."*

The prosecution must prove the following elements:

- The accused is a leader
- The accused did accept a loan or other benefit financial or otherwise from a person
- The loan or benefit was not on commercial terms
- The loan, advantage or benefit accepted was not a customary practice of a particular place for or during a traditional ceremony
- And the loan or benefit was not from a recognized lending institution.

[17] This Court's attention has been drawn to a judgment delivered yesterday 8 October 2015 by Fatiaki J. in Constitutional Application No. 5 of 2015 between *Tony Nari & 6 others v The Republic of Vanuatu*. The applicants claim, *inter alia*, that their fundamental rights under Articles 5(1)(d), 5(1)(h), 5(1)(j) and 5(1)(k) of the Constitution have been infringed. Similarly they claim that Article 62(4) has been infringed by the Ombudsman in denying them "*an opportunity to reply to complaints made against them.*"

[18] Fatiaki J. declared as follows: "the Court **hereby declares** that there was a breach of the mandatory provisions of Section 20 (3) and Sections 21 (4)



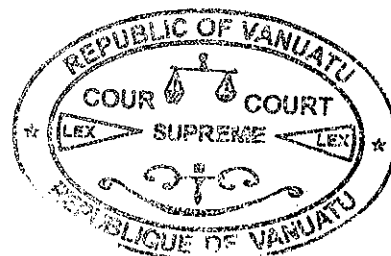


and (5) of the Ombudsman's Act in the enquiry conducted by the Ombudsman against the applicants and culminating in the Special Preliminary Report sent to the Public Prosecutor. The Court **further declares** the Special Preliminary Report null and void and of no effect and I direct that a copy of this judgment be made available to the trial judge in Criminal Case No. 73 of 2015 as a matter of urgency.

[19] It needs to be mentioned that when the Ombudsman's Special Preliminary Report was placed before me on 27 August 2015, I relied on the legal presumption of regularity - "*Omnia praesumitur rite esse acta*"- that the Ombudsman's Special Preliminary Report was valid and compliant with the provisions of the Ombudsman's Act and the Leadership Code Act. Put succinctly, it was not my duty to make enquiry about how the Ombudsman had gone about finalising his Report.

[20] Be that as it may, Fatiaki J.'s judgment is not binding on me since both Courts exercise concurrent, co-ordinate and equal jurisdiction. Nonetheless, *ex abundantia cautela*, i.e. out of the abundance of caution, this Court will refrain from dealing with the charges laid under the Leadership Code Act [CAP 240].

[21] I shall now proceed to consider the evidence adduced in this case in respect of the charges of **Corruption and Bribery of Officials** preferred under the Penal Code Act [CAP 135].



## Summary of the evidence

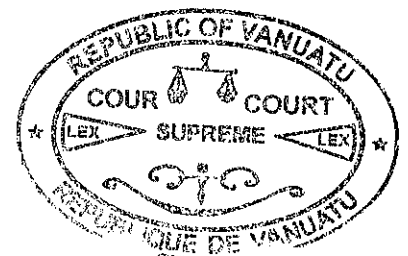
[22] To prove their case, the prosecution called a total of 29 witnesses and tendered 112 documents which were admitted in evidence without any objection from the defence.

### [23] Prosecution Witness #1

Joe Natuman (MP). He testified that he is the complainant in this case and that he remembers that he wrote to the Commissioner of Police reporting allegations that there has been some money being transferred into the country and possibly into bank accounts. He said that after he had written to the Commissioner then later on the police came and took his statement. He said he had got his information from his First Political Advisor who had gone to see him on 21<sup>st</sup> October 2014 to advise him that there it was likely that some money would be coming into the banks and that this money will probably be transferred to some of the bank accounts of MPs.

[24] Mr. Natuman went on to state that on the 31<sup>st</sup> of October 2014 he enquired from the Financial Services and the Financial Intelligence Unit as to whether they were aware that there were some allegations about some big amount of money coming through from overseas and whether they could investigate. He said that later on that same day he was given a list of transactions that occurred showing 16 names on the list and based on that list he wrote to the police to carry out the investigation.

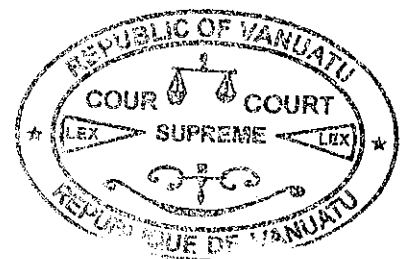
[25] Mr. Natuman said there is a lot of pressure on the Prime Minister. He said that when he became Prime Minister, replacing Hon Moana, he went to the office for the first time and as is normal the former Prime Minister came and did the normal hand over of the office of the Prime Minister. He said it was a very short meeting and that he welcomed him to the Prime Minister's office



and then they had a short chat and that just before he left Mr. Moana said "there is a project which we haven't completed when I was Prime Minister, see if you can complete the project... activate it and complete it". Mr. Natuman went on to say that the project was called "'Real Estate Option' and former MP Moana asked him to continue with that project. He said this involves real estate at Rentapau on a land Mr. Moana probably partly owned. It will be a five star hotel, casino with bungalows and condominiums to be sold to Chinese investors and this will link to the citizenship position. So when you come and buy a plot, you will also be awarded Vanuatu citizenship.

[26] In answer to questions put to the witness under cross-examination, he confirmed that in 2014 he became the Prime Minister and that was after he and his party had organized the vote of no confidence against Mr. Carcasses. The witness also accepted counsel's suggestion that over the last 10 years or so when a party gets into power, motions of no confidence have become the norm. Mr. Natuman also agreed that it seems like automatic. When it was put to the witness that to succeed in a motion of no confidence, the opposition party which is in the minority has got to get to some of the members of the government and get them to change sides, he said "Yes that's right." Mr. Natuman also went on to accept that to get them to change sides or even how to originally form the Government after the first general election is a degree of negotiation as to who gets what.

[27] Counsel then posed this question to Mr. Natuman: "So when you became the Prime Minister you offered deals to other political parties to get a majority in that sense. Were you charged with bribery for that activity"? His response was "No, because we were just discussing, money was never exchanged between the parties. These were just agreements by discussions." He went on to state that "offering an office is a responsibility under the Constitution.



When you elect a Government, you as Prime Minister has the power to appoint Ministers.”

[28] The witness confirmed that they had suspended the MPs from Parliament but the Supreme Court had sent them back. He also confirmed that they had appealed to the Court of Appeal but the Court had upheld the Supreme Court’s decision.

[29] During further cross examination by counsel it was put to Mr. Natuman that during a trip to Noumea he had received VT200,000 from Mr. Carcasses. He responded that he had requested per diem but he was given Vt200,000 by Moana and that he thought that was government money.

[30] The cross examination in respect of Mr. Bohn ran thus:

*“GB - And has Mr Bohn always presented himself as being loyal to one group on parliament?”*

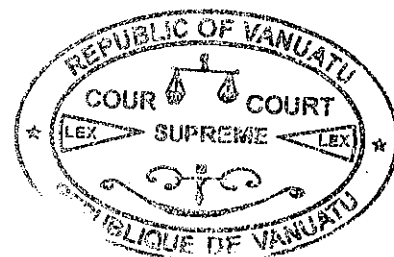
*PW1 -Yes it appears to me his very loyal.*

*GB - Which group is he loyal to?*

*PW1 - Initially he was by himself as an independent.*

*GB - But his been loyal to Mr Carcasses, hasn’t he?*

*PW1 -His been loyal to Mr Carcasses.*



*GB - So I put it to you there is no reason for Mr Carcasses to be buying Mr Bohn's vote is there? Nothing that you have seen in parliament would justify that assertion.*

*PW1 - Judging from what I have previously, yes.*

*GB - So you agree that there is no reason for Mr. Kalosil to seek to buy or bribe Mr. Bohn. Is there?*

*PW1 - Except when I saw the transaction.*

*GB - No sorry, answer my question based on your experience.*

*PW1 - for my experience, I think he is loyal to Moana.*

*GB - Thank you I have no further questions."*

[31] **Prosecution Witness #2**

**Louis Kalnpe** (Clerk of Parliament). He produced and tendered some documents which were admitted as follows:

Confirmation of MPs of 10<sup>th</sup> Legislature of Parliament **Exhibit P1**

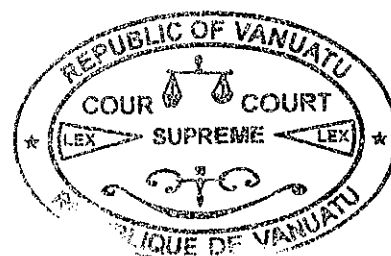
Oath for MP Carcasses Kalosil Moana - **Exhibit P2**

Oath for MP Rouard Silas Yatan - **Exhibit P3**

Oath for MP Paul B. Telukluk - **Exhibit P4**

Oath for MP Tony Nari - **Exhibit P5**

Oath for MP Serge Vohor - **Exhibit P6**



Oath for MP Kalfau Moli - **Exhibit P7**  
Oath for MP John Amos - **Exhibit P8**  
Oath for MP Hosea Nevu - **Exhibit P9**  
Oath for MP Arnold Prasad - **Exhibit P10**  
Oath for MP Steven Kalsakau - **Exhibit P11**  
Oath for MP Samson Samsen - **Exhibit P12**  
Oath for MP Tony Wright - **Exhibit P13**  
Oath for MP Sebastian Harry lauko - **Exhibit P14**  
Oath for MP Thomas Laken - **Exhibit P15**  
Oath for MP Marcellino Pipite - **Exhibit P16**  
Oath for MP Jonas James - **Exhibit P17**  
Oath for MP Jean Yves Chabod - **Exhibit P18**  
Oath for MP Willy Jimmy - **Exhibit P19**  
Oath for MP Robert Bohn - **Exhibit P20**  
Parliamentary Handbook - **Exhibit P21**  
The Standing Orders of Parliament - **Exhibit P22**  
The Constitution of the Republic of Vanuatu - **Exhibit P23**

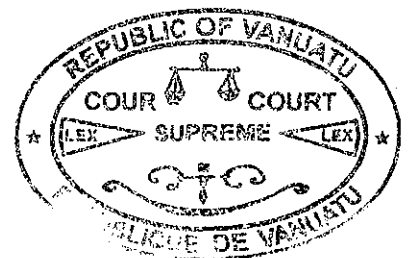
[32] **Prosecution Witness #3**

**Philip Boedoro** (Speaker of Parliament)

This witness produced and tendered the following:

Request for an extra-ordinary session of Parliament admitted as **Exhibit 24**

The notice of motion of No Confidence against the Prime Minister Hon. Joe Natuman admitted as **Exhibit P25**.



Motion of No Confidence dated 29<sup>th</sup> August 2014 admitted as **Exhibit P26**

Letter dated 1<sup>st</sup> September 2014 from Speaker of Parliament Philip Boedoro to Moana Carcasses Kalosil stating that the motion was not in order admitted as **Exhibit 27**.

The letter from Moana Carcasses Kalosil to Speaker of Parliament Philip Boedoro admitted as **Exhibit P28**

The letter from Speaker of Parliament Philip Boedoro to Moana Carcasses Kalosil admitted as **Exhibit P29**

Notice of motion dated 18/11/14 admitted as **Exhibit P30**

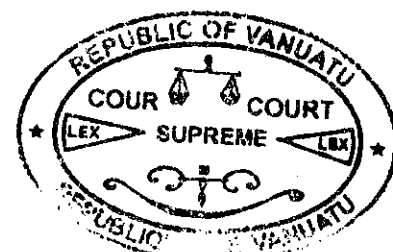
Motion Number 12/2014 dated 18/11/2014 admitted as **Exhibit P31**

Summons for Parliament to meet dated 24/10/2014 (a) (b) (c) admitted as **Exhibit P32**

2 photos taken by Philip Boedoro showing picture of VT500,000 notes with written words underneath, admitted as **Exhibit P33(a) + (b)**

[33] Mr. Boedoro testified that MP John Tessei approached him in Parliament with cash of VT 500,000 which he counted in front of him and he confirmed that it was VT500,000 before taking the photograph of the money. Mr Boedoro said after he took the photograph he called the Daily Post Newspaper to come and he gave the photos to the Daily Post employee and that the Daily Post published them the next day. Mr Boedoro confirmed that MP Tessei took the money back with him.

[34] Mr. Boedoro was cross examined. He stated that he was the speaker of Parliament in the Government of Joe Natuman. He said he reported the matter to the Daily Post Newspaper because he thought that it constitutes a crime. He confirmed to the court that he never reported this matter to



neither the Police nor the Attorney General. He confirmed that he is the Secretary General of the Vanuaku Party. He said that as a Speaker of Parliament he must be neutral and fair to both sides of the Parliament that is Opposition and Government members. He said he should not call Mr. Nari as he was told that Mr Nari had a bag of money. He said he owes a duty to Parliament and not to Daily Post Newspaper. He said he never saw MP Nari giving money to MP John Tessei.

[35] **Prosecution Witness #4**

**Edmond Williamson** (Westpac Bank Risk Manager)

He produced and tendered the following Exhibits:

Letter from Manager Operational Risk & Compliance dated 2 December 2014 - admitted as **Exhibit P34**

Swift document dated 21/10/14 admitted as **Exhibit P35**

Letter from Thomas Bayer dated 22/10/2014 to Adam - **Exhibit P36**

Sale Shares Agreement admitted as **Exhibit P37**

Email dated 22/10/2014 from Thomas Bayer admitted as **Exhibit P38**

Email dated 24/10/2014 from Westpac to Thomas Bayer - **Exhibit P39**

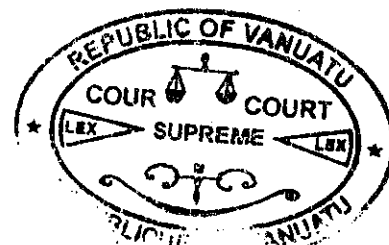
Email dated 27/10/2014 from Thomas Bayer to Westpac - **Exhibit P40**

Suspicious Transaction Report (STR 4 pages) admitted as **Exhibit P41**

PITCO USD Bank Statements from Westpac Banking Corporation admitted as **Exhibit P42**

PITCO Vatu Bank Statements from Westpac Banking Corporation admitted as **Exhibit P43**

Westpac Bank Cheque dated 28/10/2014 to Moana Carcasses Kalosil admitted as **Exhibit P44**





Letter dated 10<sup>th</sup> October 2014, from Mr. Williamson to Vanuatu Police Force admitted as **Exhibit P45**

Bank records for PITCO admitted as **Exhibit P46**

Bank Statement for Jean Yves Chabod admitted as **Exhibit P47**

Bank Statement for Willie Jimmy admitted as **Exhibit P48**

Search warrant for Jean Yves Chabod admitted as **Exhibit P49**

Search warrant for Willy Jimmy admitted as **Exhibit P50**

### **Prosecution Witness #5**

#### **Leinasei Kalosis(ANZ Assurance Manager)**

This witness confirmed that search warrants were received by ANZ Bank in respect of Moana Carcasses Kalosil. These were admitted as **Exhibit P51**

Warrant in respect of the bank account of John Amos - **Exhibit P52**

Warrant in respect of the bank account of Kalfau Moli - **Exhibit P53**

Warrant in respect of the bank account of Arnold Prasad - **Exhibit P54**

Warrant in regards to the bank account of Hosea Nevu - **Exhibit P55**

Warrant in respect of the bank account of Serge Vohor - **Exhibit P56**

Warrant in respect of the bank account of Paul Telukluk - **Exhibit P57**

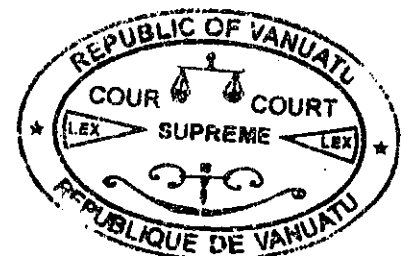
Warrant in respect of the bank account of Steven Kalsakau - **Exhibit P58**

Search warrant dated 17/11/14 for Moana Carcasses Kalosil - **Exhibit P59**

Bank Statement of Moana Carcasses Kalosil dated 17/11/14 - **Exhibit P60**

Search warrant for Paul Telukluk admitted as **Exhibit P61**

Bank Statement for Paul Telukluk admitted as **Exhibit P62**



Search warrant for Steven Kalsakau admitted as **Exhibit P63**

Bank Statement for Steven Kalsakau admitted as **Exhibit P64**

Search warrant for Arnold Prasad admitted as **Exhibit P65**

Bank Statement for Arnold Prasad admitted as **Exhibit P66**

Search warrant for Kalfau Moli admitted as **Exhibit P67**

Bank Statement for Moli Kalfau admitted as **Exhibit P68**

Search warrant for Serge Vohor admitted as **Exhibit P69**

Bank Statement for Serge Vohor admitted as **Exhibit P70**

Search warrant for Amos Jonas admitted as **Exhibit P71**

Bank Statement for John Amos admitted as **Exhibit P72**

Search warrant for Hosea Nevu admitted as **Exhibit P73**

Bank Statement for Hosea Nevu admitted as **Exhibit P74**

Option Agreement between Marie Louise Milne and PITCO dated 27/10/2014 admitted as **Exhibit P75**

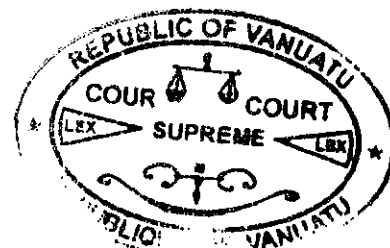
Email from Moana Carcasses Kalosil dated 30/10/2014 endorsed at the bottom "*the fund is to help opposition MPs to develop further their communities and get more political support in preparation of the 2016 general election*" admitted as **Exhibit P76**

Email from Moana Carcasses Kalosil dated 4/11/2014 to Wilson Johnny admitted as **Exhibit P77**

Email sent dated 5/11/2014 admitted as **Exhibit P78**

Email sent dated 27/11/2014 admitted as **Exhibit P79**

Report dated 3/12/2014 statement No. 1 admitted as **Exhibit P80**



Report dated 3/12/2014 statement No. 2 admitted as **Exhibit P81**

Report dated 3/12/2014 statement No. 3 admitted as **Exhibit P82**

Search warrant for Robert Bohn admitted as **Exhibit P83**

[36] **Prosecution Witness #6**

**Pipian Willie** – Bank Officer from (NBV). She produced and tendered:

Bank Statement of Sebastien Harry admitted as **Exhibit P84**

Bank Statement of Jonas James admitted as **Exhibit P85**

Bank Statement of Thomas Laken admitted as **Exhibit P86**

Bank Statement of Marcellino Pipite admitted as **Exhibit P87**

Bank Statement of Silas Yatan admitted as **Exhibit P88**

Document from NBV to the Police admitted as **Exhibit P89**

Statement of Account of Robert admitted as **Exhibit P90**

[37] **Prosecution Witness #7**

**Suresh Naidu** (Head of Risk and Compliance - Bred Bank). He produced and tendered the following documents:

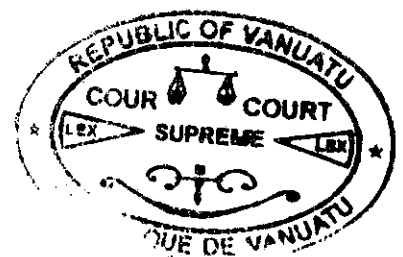
Search warrant for Samson Samsen admitted as **Exhibit P91**

Search warrant for Tony Nari admitted as **Exhibit P92**

Search warrant for Anthony Wright admitted as **Exhibit P93**

Search warrant for Milne Marie Louise Paulette admitted as **Exhibit P94**

Statement of Samson Samsen admitted as **Exhibit P95**



Statement of Marie-Louise Paulette Milne admitted as **Exhibit P96**

Statement of Tony Nari admitted as **Exhibit P97**

Statement of Anthony Wright admitted as **Exhibit P98**

[38] **Prosecution Witness #8**

**Kalfau Moli**

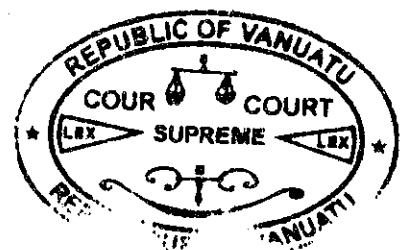
This witness' testimony will be considered in depth later on in this judgment. For now, suffice to say that he is one of the MPs indemnified by the prosecution. He told the Court that he has been an MP for almost 3 years; He said that he had signed a motion of no confidence and that he was approached by Moana Carcasses Kalosil and offered a loan on the basis that he will be made Prime Minister.

The Loan agreement was admitted as **Exhibit P99**

[39] **Prosecution Witness #9**

**Richard Mera** (MP).

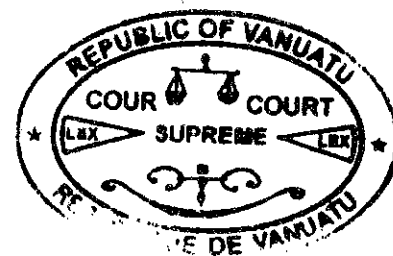
Richard Mera said he is a Member of Parliament. He has his own business of Kava Bar. He affiliates to Vanuaku Party. Last year 2014 he was in Government side in Mr Natuman's Government. Sometime in August 2014, he was approached by MP John Tessei and MP Kaltaliu at his Nakamal. Then they all left and went to the Airport in Port Vila to see Mr .Tony Nari. When they arrived at the airport, they met MP Tony Nari inside a yellow bus which was parked at the domestic terminal. MP John Tessei went and saw MP Tony Nari inside the bus. He said he was waiting in the car. When MP John Tessei finished with MP Tony, MP John Tessei asked him to go and see MP Tony



Nari. The witness said that on their way to the airport MP John Tessei told them that they were getting a loan from an investor. At the airport he said he signed two documents, one was a blank paper, the other one has some writing on it but because it was dark he could not read it. He admitted that he obtained a loan of VT500, 000 from Tony Nari took an advance from of VT30,000. The money he received at that time was in VT10, 000 notes. He said MP Tony Nari said he will go to Pentecost first and when he comes back they will discuss the loan repayment. MP Mera said he had trust in MP Nari when he received an amount of VT500,000 from him. He said one of the papers he signed at the airport was the motion of no confidence against Prime Minister Natuman. Under cross examination by Mr John Malcolm, MP Richard Mera admitted that accepting cash of VT 470,000 in a yellow bus at the airport in the dark and signing some blank paper was not reasonable. He said he signed a blank paper at the airport. He also stated his signature was to show the investor that he received the money. He stated that he thought that he signed a motion of no confidence against the Prime Minister, so he wrote a letter to the Speaker of Parliament the next day to withdraw his signature to any upcoming motion of no confidence against the Prime Minister.

[40] **Prosecution Witness #10**

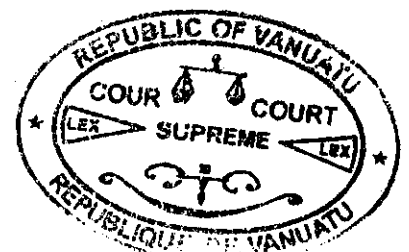
**Sophie Mera**. She is Richard Mera's wife. She owns a Nakamal at No. 2. She confirmed her husband's account of events at her Nakamal and also the threats that were made by Mr. Moana Carcasses to her husband at Tropical Market Fuel Station.



[41] **Prosecution Witness #11**

**John Tessei (MP)**

Sometime in August 2014, he and MP Kaltaliu picked up MP Mera at his Nakamal and they all left and went to the Airport in Port Vila to see Mr. Tony Nari. He said that at the airport, MP Tony Nari invited him to get into a bus and when he got inside the bus MP Tony asked him to sign two papers. One was the loan agreement and the other was a blank paper. He said he did not read the agreement. He said he signed a blank paper at the airport. He also stated his signature was to show the investor that he receive the money. In his evidence, he thought that he was signing a motion of no confidence against the Prime Minister. Then he wrote a letter the next day to the Speaker of Parliament to withdraw his signature to any upcoming motion of no confidence against the Prime Minister. In his evidence he agreed that the Vanuaku Party Congress took place at Lycee in Port Vila and got some of his supporters flown by plane from TAFEA outer island to Port Vila. He said that he paid for them to fly to Port Vila BUT then change his answer and said that the Vanuaku paid for their trip by plane to Port Vila. He said in his evidence that he had to come to Port Vila because of the telephone call he received from MP Tony to come back to Vila. He said in his evidence that when he arrived in Port Vila from TAFEA outer islands he said that he was driven by MP Thomas Laken to Coconut Palm resort where he was allocated a room no. 3 but then he left that night. He said that he attended caucus meeting the next day and at that said caucus meeting he received a call from MP Tony Nari and put it on speaker for others in the meeting to hear what MP Tony was saying. He was cross examined and says that he confirmed receiving the money from Tony Nari as a loan at coconut palms resort. He also confirmed that after receiving that money he approached Mr Boedoro and showed him



the VT500, 000 cash. He also confirmed that he never reported the incident at coconut palms to the police at the time the incident happen.

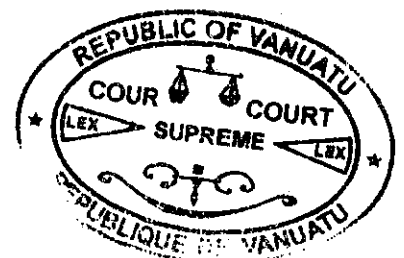
[42] **Prosecution Witness #12**

**Bob Loughman (MP)**

Mr. Bob Loughman he is a Member of Parliament since 2004. On the last week of August 2014 in a Caucus meeting which was held at the conference room of the Council of Ministers. He said MP Joe Natuman, MP Charlot Salwai, MP John Tessei were present and he was sitting one person away from MP John Tessei. He said he recognized the voice of the MP for Pentecost Tony Nari and that the last part of the conversation which he heard loud and clear was: "*wetaem bai yukam*" he said the receiver of the phone call said "*yufala i wantem pruvum?*" then the receiver of the call left. He said he went to his office and at 3.30pm he heard a knock on the back door and he said "come in" and MP John Tessei came in and that MP Loughman joked with him saying "afta? He said MP John Tessei pulled out an envelope from his back pocket and put it in front of them. He said at that time, Mr Jesse Dick and Ms Jocelyne Mete were present. He said the envelope was not sealed. He said he saw a substantial amount of money. He said he advised MP John Tessei to go and see the Speaker of Parliament. He said at that time the opposition was challenging the Speaker because of a motion. He said Mr Tessei left the room. He said the next day he saw the photo of that money in the Daily Post newspaper.

[43] **Prosecution Witness #13**

**Samson Samsen (MP)**



This witness' testimony will be considered in depth later on in this judgment. Suffice to say that this witness was very impressive and he remained unfazed throughout a very vigorous and long cross-examination. I believe his testimony and I accept his evidence as true and credible.

[44] **Prosecution Witness #14**

**Charlot Salwai (MP)**

Mr Charlot Salwai confirmed that he is a Member of Parliament for 13 years. He confirmed that he was at the caucus meeting in August 2014. He remembered he was with MP Ham Lini, MP George Wells, MP John Tessei, MP James Bule and others. He said John Tessei was sitting in a row behind him and he heard John Tessei say that "MP Tony Nari had stated: *"John Five Hundred Thousand i redi yu kam karem"*. In cross examination he said he never saw MP Tony Nari giving the money to MP John Tessei.

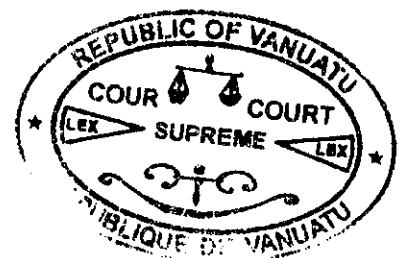
[45] **Prosecution Witness #15**

**John Lum (MP)**

This witness' testimony will be considered in depth later on in this judgment.

[46] **Prosecution Witness #16**

**Isaac Hamariliu (MP)** He confirmed being at Unelco Company with two friends when he was approached by Moana Carcasses Kalosil and Moana offered him VT1 million upfront and VT4 million after by instalment for his support for Moana for Moana to be Prime Minister.





[47] **Prosecution Witness #17**

**Jessy Dick** DG - Education

Mr Jessy Dick gave evidence that he is the Director General of the Ministry of Education and training. Sometimes last year 2014, he was in a meeting with the Minister of Education Hon. Bob Loughman and the First Political Advisor Ms Jocelyne Mete when they heard knocking from the back door. Minister Loughman opened the door and invited John Tessei into the room. He said he wanted to excuse himself but the Minister said it will only take a minute. He said MP John Tessei took money out of his pocket and put it on the table and said "we have to stop this corrupt practice; I have to be the first". He was asked whether MP John Tessei did bring any paper and he said MP Tessei did not bring any paper. He said in cross examination that he does not know where the money had come from.

[48] **Prosecution Witness #18**

**Samson Boe** (Mechanic) was with PW16 at UNELCO

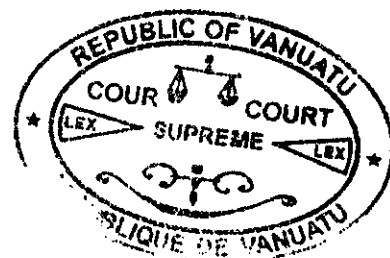
[49] **Prosecution Witness #19**

**Moses Jonathan** (Mechanic) was with PW16 and PW18 at UNELCO.

[50] **Prosecution Witness #20**

**John Sala** Customs Inland Revenue Officer

Tendered letter dated 24<sup>th</sup> November 2014 - admitted as Exhibit P100



Letter written by John Sala Acting Director Customs & Inland Revenue to the Acting Police Commissioner Vanuatu Police Force admitted as **Exhibit P101**

[51] **Prosecution Witness #21**

**Don Ken** stated that he is a Member of Parliament for seven years now and he is from Malekula Constituency. He said that sometime towards the end of last year 2014, Mr Jay Ngwele, MP Osea Nevu and MP Tony Nari went to meet him at his house and that they told him about the loan. He confirmed that Moana C. Kalosil offered him money at Au Bon Marche shopping centre but he rejected the offer and told him he won't sell his country.

[52] **Prosecution Witness #22**

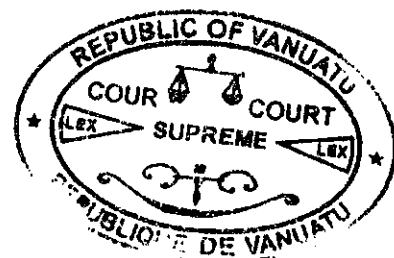
**James Bule** (MP) for 17 years now since 1998.

This witness' testimony will be considered in depth later on in this judgment. He has been a Member of Parliament since 1998. He recalls on 4<sup>th</sup> November it was around midday he was at ANZ bank changing foreign currency because he was due to travel overseas to attend a meeting on climate change. Moana Carcasses came up to him and talked to him about a lending scheme from the Green Confederation Party.

[53] **Prosecution Witness #23**

**Jean Marc Pierre** Director of Lands Survey & Records

The original lease between the ministry of Lands and Yannick Milne admitted as **Exhibit 102**



Transfer of lease admitted as **Exhibit P103**

Last entry in Register admitted as **Exhibit P104**

[54] **Prosecution Witness #24**

**Peter Pata**

Property valuer with the Department of Lands at the valuation unit. Valuation Report dated 17<sup>th</sup> April admitted as **Exhibit P105**

By consent Valuation Report of **Jeremy Dick** dated 24<sup>th</sup> April 2015 admitted as **Exhibit P106**

[55] **Prosecution Witness #25**

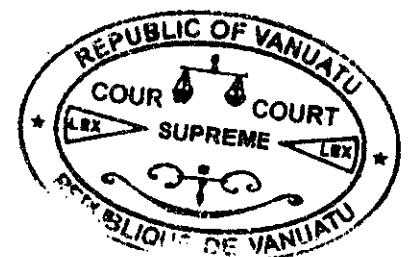
**Hosea Nevu** (MP). He went to Moana Carcasses Kalosil's Office to sign a loan agreement. This witness' testimony will be considered in depth later on in this judgment.

[56] **Prosecution Witness #26**

**Melton Aru** Manager of Rates & Taxes section

Under the Department of C&I Revenue. Explains the Revenue Management System. Used key words "Moana" & "Green". Shown document in respect of "Green" - admitted as **Exhibit P107**

Shown document in respect of Moana Carcasses Kalosil or Green Federation Development Fund. Moana Carcasses Kalosil held a business



licence in 1999 under the business Licence Act shown document for Moana Carcasses Kalosil admitted as **Exhibit P108**

[57] **Prosecution Witness #27**

**Serah Obed** Deputy Commissioner VFSC

Document shown admitted as **Exhibits P109, P110, P111 & P112 (a) (b) (c)**

[58] **Prosecution Witness #28**

**Simeon Athy** - Governor of Reserve Bank

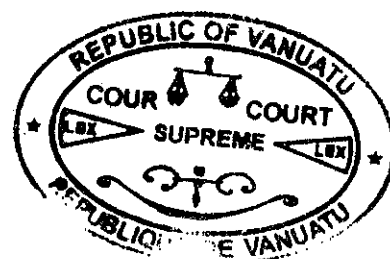
[59] **Prosecution Witness #29**

**Michael Hililan** - Adviser to Governor's office at Reserve Bank.

### **Defence Evidence**

[60] With the exception of Mr. Robert Bohn, all the accused persons have chosen not to give evidence. Robert Bohn gave evidence in his own defence.

[61] Where, as here, the defendant elects to give evidence, a Judge may not convict the defendant if his account might reasonably be true. That is simply a reflection of the burden and high standard of proof resting on the prosecution: if the defendant's account might reasonably be true then there is by definition a reasonable doubt about whether the prosecution case has

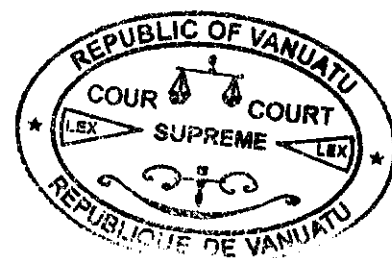


been established. The corollary is that a trial Judge may only convict a defendant who gives evidence if satisfied that the defendant's account is not reasonably capable of belief and must therefore be rejected. Even if that stage is reached a conviction does not necessarily follow; the Judge must then put the defendant's evidence to one side and determine whether the prosecution evidence leaves him sure of guilt.

[62] It is of course fundamental that regardless of whether or not a defendant in criminal case gives or calls evidence there is never an onus on a defendant to prove anything. He is presumed to be innocent unless and until found guilty. An election to call defence evidence does not change that or involve his taking on any burden. Regardless of whether a defendant's evidence includes an assertion of fabrication and reasons why there may have been one, the starting point of the Court's analysis must be the defendant's explanation or account, considered in the context of the case as outlined by the prosecution.

There are three possibilities:

- a) The Court may accept the defendant's account and denials in which case of course he must be acquitted.
- b) The Court may be unsure whether or not the defendant's explanation or account is true and ought to be accepted. If so, he again must be acquitted because by definition the Court must have a reasonable doubt as to his guilt.
- c) The Court may reject the defendant's explanation. Even then a finding of guilt does not necessarily follow. The Court must put aside the defendant's evidence and carefully consider the prosecution evidence,

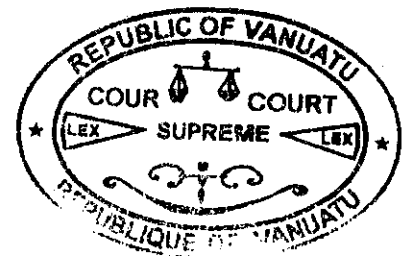


or the parts of it which it accepts. An assessment must then be made as to whether or not that evidence leaves the Court sure of guilt i.e. satisfied beyond reasonable doubt that each of the requisite elements of the charge are proved.

These fundamental principles were recently reaffirmed in *Public Prosecutor v Mass* [2015] VUSC 125; Criminal Case 38 of 2015 (4 September 2015); see also *Apia v Public Prosecutor* [2015] VUCA 30.

### **Drawing Adverse Inferences in a judge-alone trial**

- [63] As discussed earlier in this judgment, with the exception of Mr. Robert Bohn, all the accused persons have chosen not to give evidence. In making this election, the accused persons exercised their legal right to remain silent which is a legal right recognized, explicitly or by convention, in many of the world's legal systems.
- [64] The right covers a number of issues centered on the right of the accused to refuse to comment or provide an answer when questioned, either prior to or during legal proceedings in a court of law. This can be the right to avoid self-incrimination or the right to remain silent when questioned. The right usually includes the provision that adverse comments or inferences cannot be made by the Judge or jury regarding the refusal by an accused to answer questions before or during a trial or any other legal proceeding. In other jurisdictions, the right to silence is protected by the European Convention of Human Rights. Although there is no express entitlement to remain silent, it has been held to be part of the generally recognised international standard of justice and is part of the system established by ECHR.

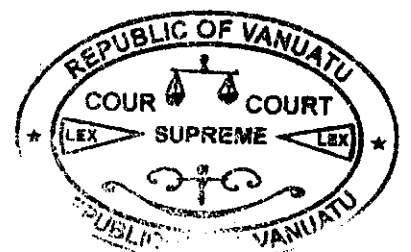


[65] *John Murray v United Kingdom* (1996) 22 E.H.R.R. was a legal case heard by the European Court of Human Rights in 1996 regarding the right to silence in the United Kingdom, especially the legality of the reduction in the right so as to allow for adverse inferences to be made. At the trial in May 1991 before the Lord Chief Justice of Northern Ireland, sitting without a jury, Mr. Murray chose not to give evidence. As part of his decision the Judge drew adverse inferences against him under Articles 4 and 6 of the Criminal Evidence (Northern Ireland) Order 1988 and he was found guilty of aiding and abetting the false imprisonment of a police informer and sentenced to eight years' imprisonment.

[66] Mr. Murray complained that his rights under the European Convention on Human Rights had been breached, notably his right to silence during questioning and at trial, that the inferences from his silence were an integral part of the decision to find him guilty. The Commission found the reductions to the right of silence were not in breach of Article 6 of the 1988 Order and that the right was not absolute:

*"Whether the drawing of adverse inferences from an accused's silence infringes Article 6 is a matter to be determined in the light of all the circumstances of the case, having particular regard to the situations where inferences may be drawn, the weight to be attached to them by national Courts in their assessment of the evidence and the degree of compulsion inherent in the situation."*

[67] An inference is a logical conclusion which is drawn from established facts and is often utilised when there is no direct evidence of an element of the prosecution's case. In New Zealand, the Court of Appeal in *Graham v R* [2012] NZCA 372 cited *R v Puttick* [1985] 1 CRNZ 644 with approval for



this expression of the "well-known" circumstances in which inferences may be drawn:

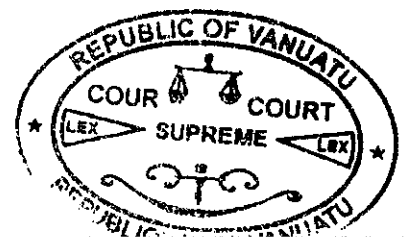
*"Inference is simply one of the mental processes which may be used by a jury in carrying out its primary task of assessing the evidence and deciding whether or not it establishes the guilt of the accused beyond reasonable doubt. Where the charge has several essential elements, proof of guilt necessarily involves proof of each of those elements to the same standard. It does not, however, require proof beyond reasonable doubt of every fact which may be relevant to proof of each essential element."*

[68] In this present case, an issue arises about whether it is permissible for me to draw adverse inferences from the silence of the accused persons. It is therefore timely for me to consider some of the decisions which discuss the tension between the right of silence and the drawing of adverse inferences from a silent accused.

[69] As the Court of Appeal of Vanuatu observed in the case of *Swanson v Public Prosecutor* (supra) the situation is not a modern phenomenon. See *Purdie v Maxwell* (1959) which quoted *R v Burdett* (1820), 4 B & Ald. 95, 140, 161 - 2. The Court of Appeal said:

*"Inferences may be drawn from proved facts if they follow logically from them. If they do not, then the drawing of any conclusion is speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. (R. v Harbour [1995] 1 NZLR 440.*

*Inferences need not to be irresistible. The prosecution is not required to disprove any inference that the ingenuity of counsel might devise. It must exclude any reasonable hypothesis based on the evidence*





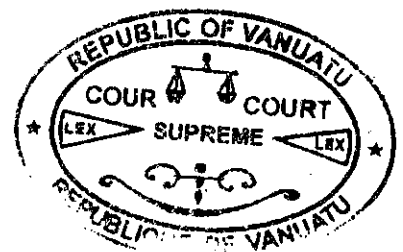
*which is consistent with innocence, but no more. R. v. Laugalis (1993) 10 CRNZ 350, 359. To similar effect is Section 8 (1) of the Penal Code Act [CAP 135] which mandates proof beyond reasonable doubt but states that "the determination of proof beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous".*

*In a circumstantial evidence case, where the accused makes no statement out of Court and/or elects not to give evidence, inferences can be drawn from the absence of any explanation from the person "with unique knowledge of the complicated dealings to which the charges relate" (a quote from R. v. Connell [1985] NZLR 233 237 - also a complicated fraud case.*

*The limits of the right to draw inferences from an accused's silence are discussed in such cases as *Trompert v Police* [1985] 1 NZLR 357 and *Weissersteiner v R* [1993] HCA 65; [1993] 117 ALR 545. It is basically a matter of common sense to be used in the circumstances of the case. See *Haw Tua Tau v Public Prosecutor* [1982] AC 136, 151, 153. (a Judge-alone criminal trial).*

*The Judge did not rely on the accused's silence as a basis for drawing adverse inferences against the accused. In our view, he did not need to do so because the other inferences discussed already amply justified the convictions. However, since the inferences are available to be drawn from unchallenged evidence, we should have thought that this case provided a suitable occasion for the drawing of inferences adverse to the accused, stemming as a matter of common sense from his lack of any explanation."*

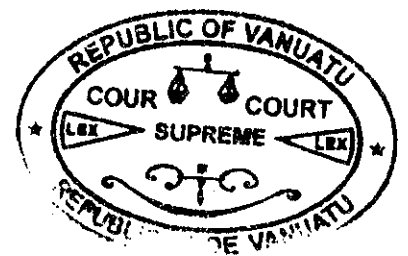
[70] In New Zealand, the decision in *Trompert v Police* (supra) remains the starting point in considering whether an adverse inference can be drawn from an accused's silence. The NZ Court of Appeal adopted the reasoning of Adams J. in *Purdie v Maxwell* that where a prima facie case is established, the court is entitled to take into account the failure of the accused to give or call evidence where such evidence could provide the explanation that the accused might be expected to give if he or she were innocent. The Court held:



*"In summary proceedings the failure of an accused to give evidence may properly be explicitly taken into account in determining whether a charge had been proved beyond reasonable doubt: Purdie v Maxwell [1960] NZLR followed. Section 67(5) of the Summary Proceedings Act 1957 does not preclude such an approach nor is the Judge confined to the terms of the direction usually given to the jury in a criminal trial concerning the decision of the accused not to give evidence."*

[71] In *Purdie v Maxwell* (supra), in a passage adopted in *Trompert* at 358, Adams J. observed that where facts are proved that call for explanation by the accused he *"preserves silence at his peril ... the silence of an accused person has always been a major indication of guilt in cases where he might be expected to speak if he were innocent."* His Lordship then went on to say:

*"I have never previously come across the suggestion that an accused person has a general privilege of silence which protects him from such inferences as will naturally be drawn from his silence in the face of proved facts which call for explanation on his part. In the face of such facts, an accused person preserves silence at his peril, except where some particular rule of law protects him. In my experience, but subject always to those particular rules, the silence of an accused person has always been regarded as a major indication of guilt in cases where he might be expected to speak if he were innocent. Even where a statute prohibits comment on failure to testify, there is no privilege of silence, as no law has ever purported to prohibit the tribunal of fact, be it jury, Judge or Magistrate, from drawing such inferences as must inevitably be drawn from silence on the part of the accused. If ever such a statute were passed, it would be, in my humble opinion, a grievous, unnecessary and unjustifiable weakening of the arm of the law."*



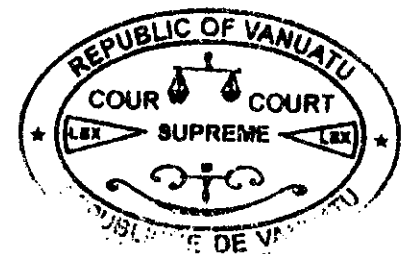
[72] In *Haw Tua Tau v Public Prosecutor* [1982] AC 136, Lord Diplock stated (pp. 152-153) that:

*"English law has always recognised the right of the deciders of fact in a criminal trial to draw inferences from the failure of accused to exercise his right to give evidence and thereby submit himself to cross-examination. It would in any event be hopeless to expect jurors or Judges, as reasonable men, to refrain from doing so. Although the Criminal Evidence Act 1898 prohibited the prosecution itself from inviting the jury to draw inferences from the accused's failure to testify in his own defence, it did not prohibit Judges from commenting on such failure; very often the judge did comment and draw to the attention of the jury inferences that they might properly draw, if they thought fit, from the failure of the accused to go into the witness box to contradict the evidence of the prosecution on matters that were within his own knowledge or to displace a natural inference as to his mental attitude at the time of the alleged offence that, in the absence of some other explanation, would properly be drawn by any reasonable person from his conduct at that time."*

And referring to Judge alone procedures under Singapore law, Lord Diplock continued (p. 153):

*"What inferences are proper to be drawn from an accused's refusal to give evidence depend upon the circumstances of the particular case, and is a question to be decided by applying ordinary commonsense - on which the judiciary of Singapore needs no instruction by this Board."*

[73] In the Australian case of *Weissersteiner v The Queen* (supra), Weissensteiner led no evidence and did not testify at trial. The trial judge instructed the jury that they might more safely draw an inference of guilt from the evidence on the basis that he had not given evidence of facts he appeared to have personal knowledge of. On appeal the High Court said that *"the silence of the accused may bear upon the probative value of the evidence led by the*



*Crown, particularly in cases in which the accused has not supported any hypothesis which is consistent with innocence from facts which are perceived to be within his or her knowledge."*

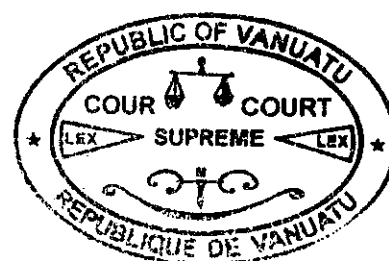
[74] It seems clear to me that, in not giving evidence, the accused persons who have chosen to remain silent before this Court are not to be criticised for having not done so and particular caution is required before an adverse inference can be drawn by me.

[75] I am equally mindful of the statement in section 88 of the CPC which I read aloud to the accused persons at the close of the case for the prosecution as follows:

*"88. In making your defence in this trial, you are entitled, in addition to calling other persons as witnesses, to give evidence yourself on your own behalf, upon oath or affirmation and subject to cross-examination by the prosecution. However you are not obliged to give evidence and may elect instead to remain silent. If you do not choose to give evidence, this will not of itself lead to an inference of guilt against you."*

[76] To my mind, the operative words in this statement appear to be "this will not of itself" (*Emphasis mine*). Indeed, the fact that the accused persons have chosen to exercise their legal right to remain silent will not of itself lead to an inference of guilt against them. Nonetheless, their silence will be relevant in assessing the persuasiveness of the evidence adduced by the prosecution and I will also weigh it as part of the evidence in all of the circumstances.

[77] Therefore, to conclude this issue of drawing adverse inferences, suffice to say that Courts generally seek guidance from precedent cases and, having done

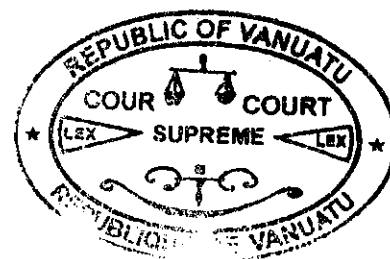


so, I adopt and apply the conclusions of Adams J. in *Purdie v Maxwell (supra)* which, in the words of the NZ Court of Appeal in *Trompert v Police* "are sound in principle and amply supported by authority." It is clear from the aforementioned authorities that when an explanation is clearly called for from an accused, his failure to provide an innocent explanation to contradict a 'clear' or a 'strong' prosecution case gives rise to the probability that adverse inferences can be drawn from proven facts, not mere speculation or guesswork. There is no reason why this principle should not be applied in relation to this present case.

[78] In my view, notwithstanding any statutory overlay, I cannot see how, for example, a jury would be permitted to draw an inference in some circumstances but a Judge, in the same circumstances, would not (or vice versa). The same principle applies where the combined roles of decider of law and decider of fact are vested in a single Judge. As the fact finder in this case, I am entitled as a matter of common sense to draw my own conclusions since the accused persons who are faced with evidence which does call for an answer have failed to come forward and provide it. Therefore, I will proceed along the premise enunciated in *Purdie v Maxwell and Trompert v Police*.

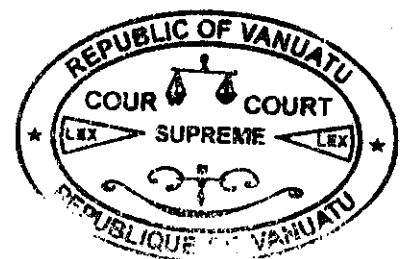
### **Submissions of Counsel**

[79] Mr. Malcolm submitted that the offence under s. 73 of the Penal Code involves corrupt offers, but that throughout the Prosecution evidence, there was continuous and unopposed evidence that:- at every election, or change of Government, there are negotiations as between members of Parliament to form government with offers of Minister ships, Employment and Board Memberships to get the memberships to get the members vote. He said that this seems not to be a corrupt practice.



[80] Mr. Takau submits that MP Mera did not give truthful evidence but the sole purpose for him to be involved in this case as a witness and as a person obtaining money from MP Tony was a special network for the MPs for the Vanuaku party (VP) to damage MP Tony's reputation and at the same time it is politically motivated on the part of VP MPs to change the Government. As such we submit that the Court should not rely on the evidence of MP Richard Mera. In relation to MP John Tessei's evidence, counsel submits that there are inconsistencies with other prosecution witnesses. Firstly, MP Richard Mera said that MP Tony never talked to him before in relation to them meeting at the airport. He further stated that it was MP John Tessei who picked him up and then informed him that they were going to the airport to receive money from an investor. However MP John Tessei said that it was MP Tony Nari who had made the arrangements for them to meet at the airport.

[81] Counsel also submits that MP John Tessei did not have to come back by air taxi as he was with the Prime Minister at TAFEA outer island his own constituency. The question is why would he leave the Prime Minister at TAFEA outer islands and charter an air taxi to come back to Port Vila just because of the call from MP Tony? Furthermore, why would he leave the Prime Minister alone in his own constituency? Counsel further submits that this would be disrespect to the Prime Minister and contrary to the protocol. The Court should also warn itself that the evidence given about the plane charter is uncorroborated evidence therefore unreliable.



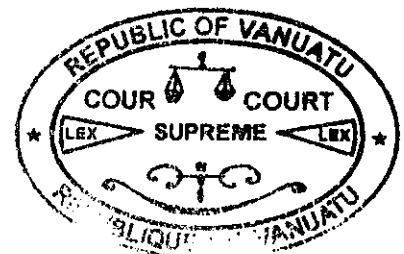
[82] Mr. Takau further submits that the evidence of MP John Tessei during the government caucus meeting shows that he was going to receive a bribe from Tony Nari but instead that when he presented himself to Tony Nari he was actually receiving a loan. Counsel further submits that the Prosecution failed to establish evidence of bribery through MP John Tessei as all throughout his evidence; he referred to the money received from MP Tony Nari as "loan", a loan which the prosecution had not provided any evidence of its existence all throughout the trial. Therefore, Mr. Takau submits that Mr John Tessei is not a credible witness as his evidence in Court clearly demonstrates that he is not an honest man as well as a person who cannot be relied on and that he used that opportunity to gain extra money for his own personal use.

### **Discussion of the evidence**

[83] As regards the charges of **Corruption and Bribery of Officials** contrary to section 73 subsections (1) and (2) of the Penal Code Act, one of the elements of the offence which the prosecution must prove is that the bribe was "corruptly" accepted or obtained in relation to s. 73(1) and "corruptly" given or offered in relation to s.73(2).

[84] Let me pause here to consider the word "corruptly" in order to have a clear understanding of its meaning in the context in which it appears in the above mentioned sections of the Penal Code Act.

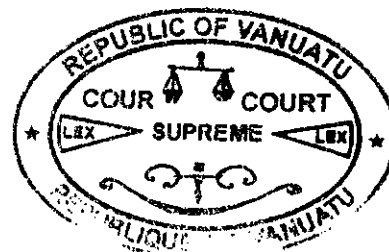
[85] In dealing with a similar statutory provision in the case of *Borough Limerick (1869) O'Malley & Hardcastle 260*, Mr. Baron Fitzgerald said:



"I am satisfied that where in the formal part of the 2nd section of the Corrupt Practices Act reference is made to offers and promises made before the vote is given, the legislature clearly intended the Court to draw a prima facie reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could. Every forbidden act done for the purpose mentioned in this Act is to be regarded as done for a corrupt purpose, and once shown that a forbidden act is done for any of the purposes mentioned in the Act it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one; that is to say, in some cases the act itself afford ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word "corrupt"; and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference prima facie that it was done for a corrupt purpose. But there are other cases in which the legislature, from some reason or other, appears to have thought the inference not so strong and in these cases it introduces the word "corruptly" for the purpose of showing that it did not intend the ordinary inference or intention to be relied upon... so here, where the legislature has not introduced the word "corruptly", and the actual and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt without mentioning anything more about it. But in those cases in which it seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word "corruptly". The whole proof of corruption, as it appears to me, consists in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament". (Underlining mine for emphasis.)

[86] Likewise, in his decision in the *County of Norfolk (Northern District) case, Colman v Walpole and Lacon (1869) 1 O'M & H 236*, His Lordship Blackburn J. explained the meaning of "corruptly" in this way:

"Then comes the section which governs the matter, and which we have to consider and that is the 4th section, which says "every candidate at



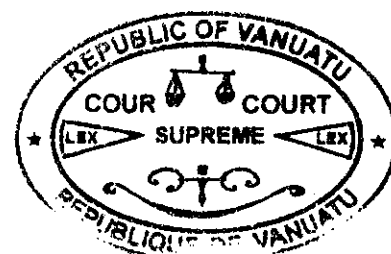


*an election who shall corruptly". Now I may stop at that and say that I believe all the Judges have considered that the word "corruptly" governs the whole, and that means, with the object and intention of doing that thing which the statute intended to forbid. What that is I will see presently, It does not mean corrupt in the sense that you may look upon a man as a knave or villain, but that it is to be shown that he was meaning to do that thing which the statute forbids". (Underlining mine for emphasis.)*

[87] In *R v Gallagher* [1986] VR 219; (1985) 16 A Crim R 215 the Victorian Court of Appeal rejected a submission that acting corruptly connotes dishonesty and held that what is struck at by the statutory provision is the intention on the part of the giver or receiver of a gift or consideration to show favour or to forbear from showing disfavour to another in relation to the principal's affairs or business. In coming to this conclusion the court reviewed the authorities including *C v Johnson* [1967] SASR 279 and observed that what emerged from them (including also *R v Mills* (1978)8 Cr App R 154 adopting *R v Carr* [1957] WLR 165; [1956] 3 All ER 979 at WLR 166; *R v Scott* [1907] VLR 471; (1907)13 ALR 143; and *R v Stevenson* [1907] VLR 475; (1907) 13 ALR 383) was that it is the intention of the person either giving or receiving, as the case may be, at the time of the passing of the consideration which is relevant to whether the behavior charged was corrupt within the meaning of the section.

[88] The Court in *Gallagher* at VR 228 affirmed the ruling of Brooking J in *R v Dillon* [1982] VR 434 at 436 as follows:

*".....an agent does act corruptly if he receives a benefit in the belief that the giver intends that it shall influence him to show favour in*

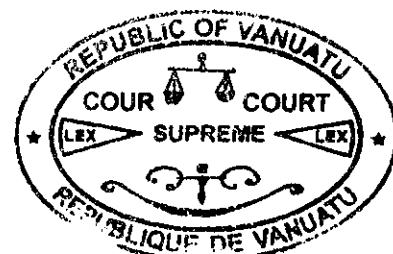


*relation to the principal's affairs. If he accepts a benefit which he believes is being given to him because the donor hopes for an act of favouritism in return, even though he does not intend to perform that act, he is, by the mere act of receiving the benefit with his belief as to the intention with which it is given, knowingly encouraging the donor in the act of bribery or attempted bribery, knowing profiting from his position of agent by reason of his supposed ability and willingness, in return for some reward, to show favouritism in his principal's affairs and knowingly putting himself in a position of temptation as regards the impartial discharge of his duties in consequence of the acceptance of a benefit."*

[89] Coming closer to this jurisdiction, I have also considered the case of *Fiji Independent Commission Against Corruption v Devo* [2010] FJHC 107 in which the accused was charged with official corruption. In his direction to the jury at paragraph 12 of his Summing Up, Judge Daniel Goundar said:

*"The focus on this case may, and it is a matter for you, end up on your assessment of what the word corruptly means. I am not going to explain that to you except to say that it does not mean dishonesty. It is a different word. It means purposefully doing an act which the law forbids."*

[90] Mindful of the meaning of the word "corruptly" as outlined in the case authorities cited above, I have carefully considered the evidence of the following prosecution witnesses, namely, Kalfau Moli (PW8), Richard Mera (PW9), John Tessei (PW11), Samson Samsen (PW13), John Lum (PW15), Issac Hamariliu (PW16), Don Ken (PW21), James Bule (PW22) and Hosea Nevu (PW25). Suffice to say that the evidence of these nine MPs was unequivocally to the effect that they had been approached by either Moana Carcasses Kalosil or Tony Nari and offered a bribe. Consistent with the



standard enunciated in the foregoing case authorities to the extent that they reinforce my view on the plain meaning of the word "corruptly", I must say that I believe these prosecution witnesses and I accept their evidence.

[91] I also accept the evidence of Kalfau Moli, Samson Samsen and Hosea Nevu to the effect that their bank accounts had been credited with individual payments of VT1,000,000 from Moana Carcasses Kalosil as evidenced by **Exhibits P68, P74 and P95** respectively. There is also compelling evidence that Moana Carcasses Kalosil had made individual payments of VT1,000,000 into the bank accounts of the other 14 accused persons, namely, Serge Vohor, Tony Nari, Arnold Prasad, Sebastian Harry, Thomas Laken, Anthony Wright, John Amos, Marcellino Pipite, Jean Yves Chabod, Jonas James, Paul Barthelemy Telukluk, Steven Kalsakau, Silas Yatan and Robert Bohn as well as to Kalfau Moli (PW8), Samson Samsen (PW13), Hosea Nevu (PW25) and Willie Jimmy as evidenced on **Exhibits P76, P77 and P79**.

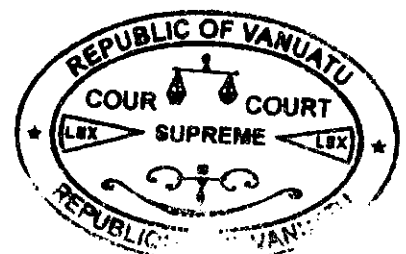
[92] For convenience, I have reproduced hereunder **Exhibits P76** which is an email sent on Thursday October 30, 2014 at 9:50 am by CARCASSES Moana [jacquesraymondKalosilmoanacarcasses@gmail.com](mailto:jacquesraymondKalosilmoanacarcasses@gmail.com) to Malas Libby (of ANZ Bank) Cc: Motuliki Tony.

Mr. Moana Carcasses Kalosil wrote:

*"CONFIDENTIAL*

*Hi Libby and Tony,*

*Thank you for your support and help me to clear the funds. As discussed this morning Libby, you are instructed to TT money to the following persons:*



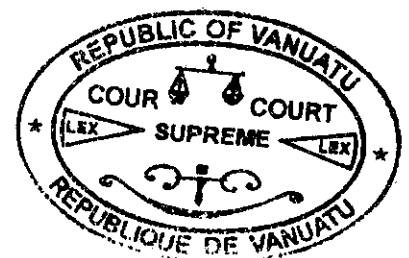
1. Miss Marie Louise Paulette MILNE- BRED BANK A/c No 282533010018 – 1 million vatu
2. Hon Serge VOHOR – ANZ BANK A/c No 756147 – 1 million vatu
3. Hon Tony Nari – BRED BANK A/c No 218943010013 – 1 million vatu
4. Hon Arnold PRASAD – ANZ BANK A/c No 1045463 – 1 million vatu
5. Hon Sebastien HARRY – NBV BANK A/c No 0104645002 – 1 million vatu
6. Hon Thomas LAKEN – NBV BANK A/c No 0089674001 – 1 million vatu
7. Hon Samson SAMSEN – BRED BANK A/c No 137093010016- 1 million vatu
8. Hon Kalfau MOLI – ANZ BANK A/c No 1616032 – 1 million vatu
9. Hon Anthony WRIGHT – BRED BANK A/c No 212513010014 – 1 million vatu
10. Hon John AMOS – ANZ BANK A/c No 1616155 – 1 million vatu
11. Hosea Nevu – ANZ BANK A/c No1615753 – 1 million vatu
12. Hon Marcelino PIPITE – NBV BANK A/c No 0096921001 – 1 million vatu
13. Hon Jean Yves CHABOT – WESTPAC BANK A/c No 0118696201-1 million vatu
14. Hon Jonas James –NBV BANK A/c No 00089996001 – 1 million vatu
15. Hon Paul Barthelemy TELUKLUK – ANZ BANK A/c No 1642299 - 1 million vatu
16. Hon Steven KALSAKAU – ANZ BANK A/c No 755008 – 1 million vatu”

*"The fund is to help opposition MPs to develop further their communities and get more political support in preparation of the 2016 general election."*

Then on the same Thursday 30<sup>th</sup> October 2014 at 9:54 am another email was sent by Carcasses Moana Jacques Raymond with the Subject: Telegraphic Transfer from personal account 794864. It reads:

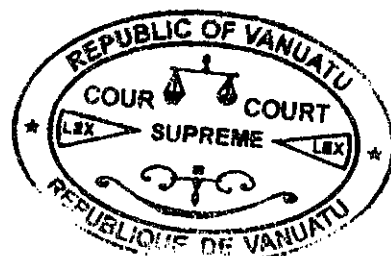
*"Libby, Hon Tony NARI - BRED BANK A/c No.218943010013 – Do not Transfer 1 million vatu instead TT 500,000 into his Account.*

*Merci*



*Moana CARCASSES"*

- [93] It is interesting to note that the name of Moana's wife, *Marie Louise Paulette MILNE*, appears as number 1 on the list detailing the payments to the MPs on **Exhibit P76**. One wonders whether the endorsement at the bottom of the exhibit stating that "the fund is to help opposition MPs to develop further their communities and get more political support in preparation of the 2016 general election" also relates to her even though she is not an MP.
- [94] Corruption payments are clandestine, difficult to detect and easily camouflaged or explained away on some pretext or other if they do happen to be discovered.
- [95] A case in point is one which is dubbed the "chickengate" case. In December 2014, the Serious Fraud Office (SFO) in the UK secured a conviction after trial at the Southwark Crown Court (on Indictment No. T20137605) of a corporate (Smith and Ouzman Limited) and its Chairman (Christopher Smith) and sales and marketing Director (Nicholas Smith) for offences involving bribery of foreign public Officials. The corrupt payments totaled £395,074 and were made to public officials for multiple contracts awarded to the company, primarily in Kenya and Mauritania in Africa. The bribes were paid through a number of mechanisms: Primarily as inflated "commissions" to the company's agents in Kenya and Mauritania in Africa. In some instances by direct bank transfer from the company and in some instances by cash payments to the government officials for "subsistence" during their visits to the company in the UK. In respect of the main part of the Mauritania bribes,

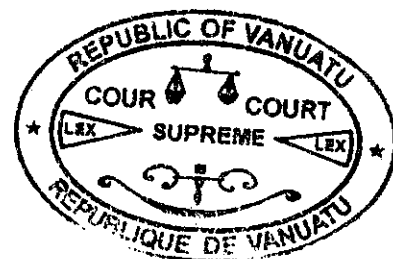


by direct bank transfer from the company to the accounts of the daughters of one of the corrupt government officials in France described as "educational costs" or similar. The defendants sought to argue that the commissions were either entirely for the agents or for entirely legitimate purposes.

[96] There were two principal sources of evidence of the bribes: One was the pricing summary schedules within the directors' records which showed two separate commissions, one for the agent and an additional much larger one which the prosecution successfully demonstrated was for bribes. The other was emails between Messrs Smith and the Agents which adopted the stratagem of referring to the bribes as "chicken". This required interpretation of the emails as follows:

- "...we shall all go to my bank and I'll give the chicken to karani" (I will take one of the government officials to my bank to pay over the bribes).
- "...they are desperate for the chicken" (the government officials want to receive the bribes soonest).
- "...the chickens will fly straight away" (the bribes are available immediately).
- "We will keep our chickens for now" (do not make cash payments to any of the government officials on their visit to the UK as some of them are clean).
- "These guys are already on the table waiting to be served" (the government officials await their bribes)

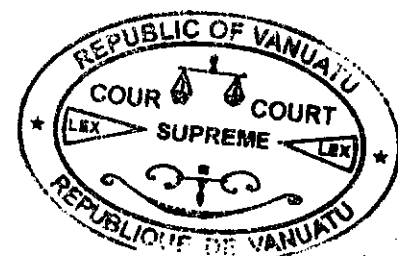
[97] It is to be inferred that the jury did not accept the defendants' various explanations of the meaning of "chicken" nor of the purpose of the



"commissions". Christopher Smith was sentenced to 18 months imprisonment suspended for 2 years (he is 72 years of age), 250 hours of unpaid work and 3 months curfew. Nicholas Smith was sentenced to three years imprisonment. Both were disqualified from acting as directors for six years.

[98] In this present case, there is some reasonable evidence from which it can be inferred that the individual payments of VT 1 million made by Moana Carcasses Kalosil to the other 14 accused persons and to PW8 Kalfau Moli, PW13 Samson Samsen and PW25 Hosea Nevu were bribery payments corruptly made on the pretext that the funds were "to help opposition MPs to develop further their communities and get more political support in preparation of the 2016 general election."

[98] I am satisfied that there is some reasonable evidence from which it can be inferred that the required element of "corruptly" has been established by the prosecution beyond reasonable doubt. I am equally satisfied on the basis of the evidence adduced that the corrupt payments were made in order to influence the MPs to vote in favour of the motion of no confidence which had been lodged against the Prime Minister Joe Natuman. During his examination in chief by the public prosecutor, the following question was put to John Tessei: "what were you expected to do in relation to the vote of no confidence?" to which he responded: "They expected me to vote in favour of the motion against the prime minister that they had lodged." (see transcript at page 381 para 11).

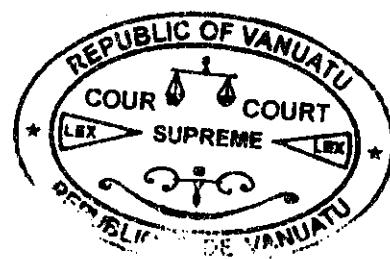


I have taken into consideration the fact that there is compelling evidence that the payments were for the same amount of VT1 million and the instruction by email from Moana Carcasses as reflected on **Exhibit P76** shows the payments for 16 MPs were all made on the same date. The instruction from Moana Carcasses for payment to Silas Yatan as shown on **Exhibit P77** was made on Tuesday 4<sup>th</sup> November 2014 and **Exhibit P90** reflects the payment made to Robert Bohn on 11<sup>th</sup> November 2014.

[100] There is also compelling evidence, which I accept, from PW8 Kalfau Moli, PW9 Richard Mera, PW11 John Tessei, PW13 Samson Samsen and PW15 John Lum that the payment was to influence the opposition members, to whom it was offered, to sign a motion of no confidence to oust the then Prime Minister Joe Natuman.,

**Richard Mera** testified that they were asked to do one thing which was to change the Government and he (Moana Carcasses Kalosil) would be Prime Minister. (At page 297 para 17 of the transcript) In answer to questions put to him during cross examination the witness said that he realized that Tony Nari was used to convince MPs. During re-examination (see page 331 para 13) the public prosecutor sought clarification of that answer and Richard Mera responded thus at page 332 para 3: *"I mean that I found out that this money was given just for the purpose of us ousting the Joe Natuman government"*. He went on to state at para 6 that they *realised this when their "names and signatures were on the motion of no confidence."*

[101] PW11 **John Tessei** (MP) at page onwards testified that whilst at a caucus meeting he received a telephone call from Tony Nari to go and collect





VT500,000 and that he returned to Coconut Palms to collect VT500,000. (see page 376 para 1- 379 commencing at para 4) John Tessei went on to testify that he was met by Tony Nari at the entrance and then he was taken to Tony Nari's room. He said he was given a loan agreement to sign and after signing it he was given VT500,000. John Tessei further testified that the loan agreement he signed had the same heading as the previous loan agreement he had signed inside the yellow bus at the domestic airport when the first VT500,000 was given to him by Tony Nari. He said the latter had then demanded VT30,000 as an advance leaving him with VT470,000. The witness was cross examined by counsel Mr. Malcolm who asked him what he had done with the VT470,000 and he replied as follows: "I threw it all down the toilet."

[102] PW15 **John Lum** (MP) testified about his encounter with Marcellino Pipite, Paul Telukluk and Tony Nari on the 8<sup>th</sup> of November 2014. For ease of reference, Salient portions from John Lum's examination in chief relating to the issue of the motion of no confidence are reproduced hereunder verbatim as recorded:

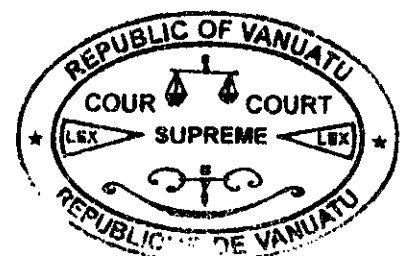
*"PP JN: When they came to your residence what happened? What did they say?"*

*I: Time oli kam luk u lo house blo u wanem ibin happen? Oli talem wanem?*

*PW15: Oli kam blo askem mi blo signem wan pepa blo karem wan mani afta we oli go mitim Kalfau Moli lo Santo.*

*I: They came and asked me to sign a paper relating to money prior to that they contacted Kalfau Moli.*

*PP JN: Mr Lum am asking you about that particular incident on the 8<sup>th</sup> of November. We'll go back to the prior incidents later.*



I: Mi stap tokbout stret incident ia lo namba 8 November babmbai mifala kam bak lo ol narafala wan afta.

PP JN: Can you explain what happened when they came to your residence.

I: U save explainem wanem now I happen time we oli kam lo house blo u?

PW15: Yea oli kam blo askem me, emia emi namba three time oli approachem mi afta we oli kam kasem mi lo house blo askem mi signem wan pepa we oli talem lo mi se oli bin mitim Kalfau Moli vinis lo Santo. Kalfau I askem blo olgeta ikam luk mi spos mi agree bai mifala evriwan I signem pepa mo karem wan mani.

I: They came to see me this is the third time they approached me. They came to my house for me to sign a paper. They had already been to see Kalfau Moli who had told them to come and see me and that if I agreed then we would sign the document for the money.

PP JN: What kind of paper did they produce on that day?

I: Wanem kind pepa oli bin soem lo u lo day ia?

PW15: Mi no luk any paper be wanem oli tokbout emi wan motion.

I: I didn't see any paper or any document what they were talking about was a motion.

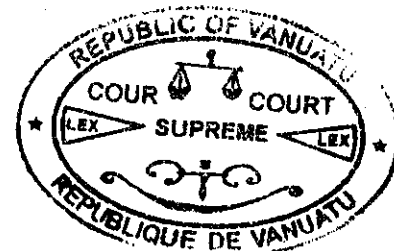
PP JN: An uh what kind of a motion were they talking about Mr Lum?

I: Wanem kind motion oli bin stap tokabout lo time?

PW15: Motion blo remuvum Prime Minister lo time ia Natuman mo electem new Prime Minister.

I: The motion was to remove the then Prime Minister who was Joe Natuman and elect a new Prime Minister.

PP JN: And was any name mentioned in relation to the Prime Minister?



I: *Oli bin talem who now bai oli wantem electem olsem nuifala Prime Minister? Oli givim wan name?*

PW15: *Moan Carcasses Kalosil.*

I: *Moana Carcasses Kalosil.*

PP JN: *So if you were to sign the motion what would happen? Did they tell you?*

I: *Spos u signem wan motion wanem now bai I saveh happen? Oli bin talem lo u?*

PW15: *Wanem oli talem se blo mi signem motion then oli givim one million cash. Then igat part blo mani istap bai oli givim afta mo two hundred thousand evri monthly allowance time newfala gavman igo lo power.*

I: *What they said in the event of the motion passing was that I would receive one million vatu in cash, it would be paid in part further part later on and in addition two hundred thousand vatu per month.*

PP JN: *And when they offered this to you what was your response?*

I: *Time oli offerem samting ia lo u wanem now u bin talem lo ogeta?*

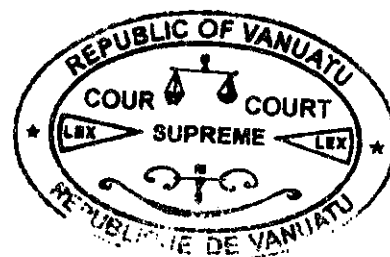
PW15: *Mi jes decline nomo mi talem se mi no wantem, mi no acceptem blo mi risivim any mani from mi stap lo wan gavman vinis.*

I: *I said I didn't agree I wouldn't accept any money because I was already in government.*

PP JN: *Yes, did they say anything further in relation to the money, when it was going to be transferred or anything like that?*

PW15: *Yes oli talem se spos mi agree sorry bai money I transfer igo lo account blo mi.*

I: *Yes they said that if I did agree the money would be transferred into my account."*



[103] PW8 **Kalfau Moli** also gave evidence about the payment of VT1 million being a conditional loan on the premise that Moana Carcasses became the Prime Minister. His examination in chief was as follows:

"PPJN -Can you explain to the court, Mr Moli the circumstances in which you were approached. Perhaps starting with a day, a time and a place.

PW3 - Around August or September I was in my constituency in Luganville, after signing a motion of no confidence, I was approached that there was a loan by MP Moana that can be issued to the members of Parliament.

PPJN -.....Now you said that you had signed a motion, what motion was this?

PW3 - The motion was prepared by the then leader of opposition, I had signed prior to going to Santo.

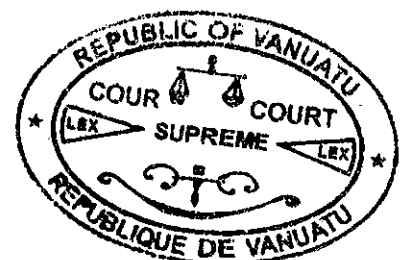
PPJN -And what was the nature of the motion.

PW3- The nature of that motion was to topple the then government, Mr Natuman.

PPJN -Now after you said you sign the motion and you were approached by, who were you approached by?

PW3 -I was approached by Mr. Moana.

PPJN - Mr. Moana. And he was the leader of the opposition at that time as well?



*PW3 - Yes he was the leader of the opposition at that time and I sought verification also regarding the loan.*

*PPJN -What did he say about the loan to you?*

*JM - .....*

*PPJN- He sought verification.*

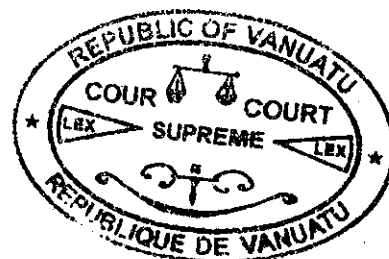
*PPJN -Now am going to ask you the question what did he say about the loan?*

*PW3 - Well I said that I signed the motion already but he said that he's giving the loan so that he wants to be Prime Minister.*

*PPJN -So what...He was giving the loan...*

*PW3 - On condition that he be made prime minister."*

[104] Mr. Moli then produced and tendered the Loan Agreement which was admitted in evidence as **Exhibit P99**. Under cross examination it was put to him that the motion of no confidence and voting Mr. Kalosil as Prime Minister, were not linked to the loan but the witness denied. It was put to Mr. Moli that there is nothing in the loan agreement about Mr. Carcasses becoming Prime Minister and that signing the motion of no confidence was irrelevant to him signing the agreement and getting the money because he had already signed it. However, Mr. Moli denied counsel's suggestion and he said "It was a verbal condition that he would become PM."

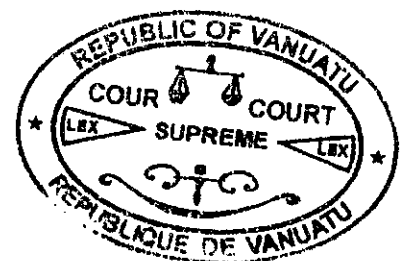


[105] PW13 **Samson Samsen's** testimony was to the effect that he could recall that in November 2014, Mr. Telukluk and Mr. Tony Wright had approached him at the parliament house and that they had called him into a room where they showed him a file with a motion for signing. He said the motion was against the prime minister and that he was asked to sign it and he did.

[106] There is evidence before this Court, which I accept, that the motion of no confidence had been filed on 29 August 2014 and further summons had been issued for Parliament to sit on 18 November 2014. In effect, the motion of no confidence was pending as on the dates the individual payments of VT 1 million were made by Moana Carcasses Kalosil to the other 14 accused persons and to John Tessei and the other prosecution witnesses.

[107] It is timely to state that this is a case where some part of the prosecution evidence is based on circumstantial evidence, and therefore, the onus rests on the prosecution to prove the elements of the charges against each of the accused persons beyond reasonable doubt. In such a situation, the appropriate course for the Court to take is that each item of circumstantial evidence does not have to be independently proved beyond reasonable doubt: See *R v Thomas* [1972] NZLR 34, and *Shepherd v The Queen* [1990] HCA 56;

[108] A number of facts, each of which alone is not proved beyond reasonable doubt, may, when taken together operate so as to justify an inference beyond reasonable doubt of an offence in the Information. As Thorp J. said in the New Zealand Court of Appeal in *R v Puttick* (1985), 1 CRNZ 644, 647

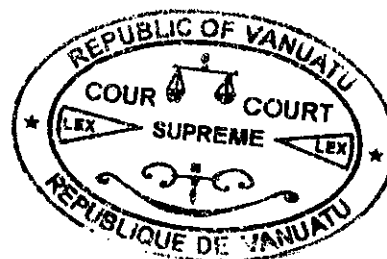


*"where the charge has several essential elements, proof of guilt necessarily involves proof of each of those elements to the same standard. It does not however, require proof beyond reasonable doubt of every fact which may be relevant to proof of each essential element".*

[109] As I have said earlier, the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. However, it does not mean that every fact, every piece of evidence relied upon to prove an element by inference must itself be proved beyond reasonable doubt. The Court may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt.

[110] The proper course for me to adopt as the Judge of fact is to consider all the evidence together and then decide whether I accept the evidence of a particular fact, not by considering the evidence directly relating to that fact in isolation, but in light of the whole evidence and that I can draw an inference of guilt from a combination of facts, none of which viewed alone support that inference. In so doing, I have reminded myself of the principle that guilt should be only a rational inference that could be drawn from all the circumstances: See *Plomb v The Queen* [1963] HCA 44. I am equally mindful of the fact that the law makes no distinction between the weight to be given to direct or circumstantial evidence.

[111] Taken together, the evidence of the bribes, the degree of improbability that the VT1,000,000 was to "help opposition MPs to develop further their communities....." as appears on **Exhibit P76** and the documentary exhibits



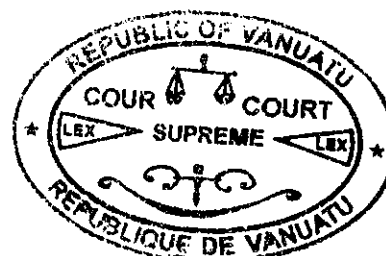
relating to the bank statements i.e. **Exhibits P47, P48, P60, P62, P64, P66, P68, P70, P72, P74, P84, P85, P86, P87, P88, P90, P95, P97 and P98** make out a very strong case that the payments made by Moana Carcasses Kalosil to the MPs were "corruptly given" and "corruptly accepted." I so hold.

[112] In these circumstances, it can reasonably be inferred that the corrupt payments were made with intent to influence the public officers in any act or omission by them in their official capacity. If the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference prima facie that it was done for a corrupt purpose. I adopt and apply the principle referred to above that "*once shown that a forbidden act is done for any of the purposes mentioned in the Act it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one.*" The bottom line is simply doing that which the Act forbids.

### **Factual Findings**

[113] Having had the opportunity of seeing and hearing all the witnesses, as well as observing their demeanor during the trial and judging from the totality of the evidence adduced, I hereby make the following findings:

[114] I accept and find the evidence of PW8 Kalfau Moli, PW9 Richard Mera, PW11 John Tessei, PW13 Samson Samsen, PW15 John Lum and PW25 Hosea Nevu. Having assessed their evidence in context and taking into account the defence challenges to their credibility, my conclusion is that the evidence was clear, consistent and corroborative. I found it credible and I accept it.

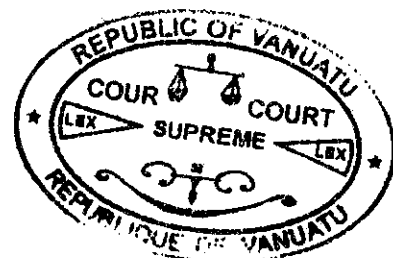




[115] I accept and find as an established fact that in respect of counts **26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48** and **50** of the charge of **Corruption and Bribery of Officials**, under section 73 (1) of the Penal Code Act, the following accused persons, namely, Silas Yatan Rouard, Paul Barthelemy Telukluk, Tony Nari, Serge Vohor, John Amos, Arnold Prasad, Steven Kalsakau, Anthony Wright, Sebastian Harry, Thomas Laken, Marcellino Pipite, Jonas James and Jean Yves Chabod respectively are all public officers and that as public officers each of them did corruptly accept or obtain a bribe, namely, VT1,000,000 for himself in respect of an act to be done by him in his official capacity.

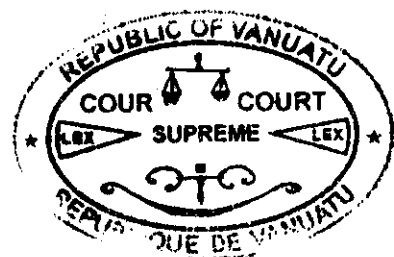
[116] I accept and find as an established fact that in respect of counts **8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, and 25** of the charge of **Corruption and Bribery of Officials**, under section 73 (2) of the Penal Code Act, the accused Moana Carcasses Kalosil as a public officer did corruptly give a bribe namely VT1,000,000 to the following persons: Jean Yves Chabod, Sebastian Harry, Jonas James, Thomas Laken, Marcellino Pipite, Anthony Wright, Tony Nari, Samson Samsen, Silas Yatan Rouard, Willie Jimmy, Robert Bohn, Paul Barthelemy Telukluk, Hosea Nevu, John Amos, Serge Vohor, Arnold Prasad, Steven Kalsakau and Kalfau Moli respectively.

[117] I accept and find as an established fact that the bribe given by the accused Moana Carcasses Kalosil was given to the said Jean Yves Chabod, Sebastian Harry, Jonas James, Thomas Laken, Marcellino Pipite, Anthony Wright, Tony Nari, Samson Samsen, Silas Yatan Rouard, Willie Jimmy, Robert Bohn, Paul



Barthelemy Telukluk, Hosea Nevu, John Amos, Serge Vohor, Arnold Prasad, Steven Kalsakau and Kalfau Moli in their official capacity as public officers.

- [118] I accept and find as an established fact that when the bribe, namely, VT1,000,000 was given by the accused Moana Carcasses Kalosil to those named persons in the paragraph above, it was corruptly given with intent to influence them in respect of an act or omission by them as public officers in their official capacity.
- [119] I accept and find as an established fact that in respect to count 6 of the charge of **Corruption and Bribery of Officials**, under section 73 (2) of the Penal Code Act, the accused Tony Nari did corruptly give VT500,000 to John Tessei (MP) with intent to influence him in respect of an act or omission by him as public officer in his official capacity.
- [120] I accept the evidence of Robert Murray Bohn and the explanation given in respect to Count 54 of the Information. Accordingly, Count **54** is dismissed and the accused is hereby acquitted.
- [121] On the totality of the evidence adduced, the Court finds that there is evidence capable of supporting a conviction against the remaining accused persons in respect to the offence of **Corruption and Bribery of Officials** under section 73 subsections (1) and (2) of the Penal Code Act [CAP 135] as alleged in the Information. I am satisfied that all the elements of the offence




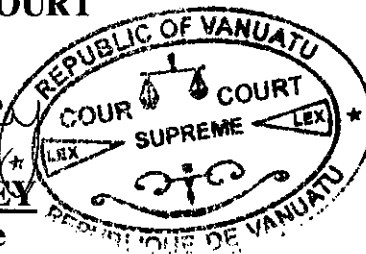
which the prosecution is required to prove are made out on the standard required.

[122] In the result, I therefore find the charges of **Corruption and Bribery of Officials**, under section 73 subsections (1) and (2) of the Penal Code Act [CAP 135] proved by the prosecution beyond reasonable doubt and the following accused persons, namely, **Moana Carcasses Kalosil, Silas Yatan Rouard, Paul Barthelemy Telukluk, Tony Nari, Serge Vohor, John Amos, Arnold Prasad, Steven Kalsakau, Anthony Wright, Sebastian Harry, Thomas Laken, Marcellino Pipite, Jonas James and Jean Yves Chabod** are accordingly convicted as charged.

**DATED at Port Vila, this 9th day of October, 2015.**

**BY THE COURT**

  
**M.M. SEY**  
Judge

  
REPUBLIC OF VANUATU  
COURT SUPREME  
LEX