



**Charge**

8. The charge against you is outlined below:

Wilson Menateti

Of Nea Village, Temotu Province

Is charged with the following offences:

Count 1

Statement of offence

Procuring execution of documents by false pretence, contrary to section 350 of the Penal Code

Particulars of the offence

That Wilson Menateti on an unknown date between January 1, 2015 and September 1, 2016 at Honiara did by means of any false and fraudulent representations as to the nature, contents or operation of a document, execute the document of title to lands the property of John Melanoli, Mathew Bade and John Tauto.

Count 2

Statement of offence

Larceny of documents, contrary to section 263 (a) of the Penal Code

That Wilson Menateti on an unknown date between January 1, 2015 and September 1, 2016 at Honiara did steal the whole document of title to lands the property of John Melanoli, Mathew Bade and John Tauto.

**Issue for consideration**

9. The issue I must consider at this stage, is whether or not, the Crown has adduced enough or sufficient evidence on the facts in issue that requires you to be put to your defence.

**Law on no case to answer at the Magistrate Court**

10. The law applicable for this application here at the Magistrate's Court, is section 197 of the Criminal Procedure Code, which states:

*"if at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused."*

11. It is not for me to decide at this stage, whether the Crown has proved their case beyond a reasonable doubt, but whether they have adduced sufficient evidence with respect to the elements involved, requiring that you be out to your defence.

12. In the case of *Regina v Luvena*<sup>1</sup>, Principal Magistrate Augustine Aulanga, as he was then, highlights the word sufficiently as being the key term under section 197 of the Criminal Procedure Code.
13. With reference to the Modern Oxford Dictionary, His Worship, as he was then, stated as follows: *The key word in the section is "sufficiently" which comes from the word 'sufficient'. According to Australian Modern Oxford Dictionary.[3] it defines the word 'sufficient' to mean 'enough.' This means, as long as prosecution produces/adduces enough evidence to the elements of the charge then, the case must proceed to the next stage - that is to the defence case*<sup>2</sup>.
14. In the High Court case of *Regina v Tara*<sup>3</sup>, His Lordship, Palmer CJ, made the following remarks with respect to the test in which the Magistrate's Court is ought to consider: *In the Magistrates court, the test to be applied is that there is either no evidence or insufficient evidence to prove the element of the charge. If the submission of 'no case to answer' is successful, the defendant will not be required to answer the charge or make a defence and shall be entitled to a finding of not guilty*<sup>4</sup>.
15. The principles in the case of *Lutu*<sup>5</sup>, has been referenced in a number of cases similar to this application. In that case, Ward CJ, as he was then, stated the following: *Clearly this is not the time to evaluate such matters as discrepancies between witnesses, or which parts of the evidence are credible and accurate and which are not. These are all matters for the conclusion of the evidence as a whole and, where there is evidence that could result in a conviction by the court, then the accused must be put to his defence*<sup>6</sup>. *Where, however, there is some evidence but it is so little or unconvincing that it is insufficient even if uncontradicted by the defence to make a conviction possible, the court should not require the accused to make a defence*<sup>7</sup>.
16. Clearly, there are two limbs to the principle quoted above. Limb one highlights that the no case to answer stage should not be seen as a time to evaluate on the discrepancies or inconsistencies of the Crown's evidence as such considerations should be done at the conclusion of the overall evidence. In the event that the Crown has adduced evidence that is capable of reaching a guilty verdict, the defendant must be out to his defence.
17. The second limb on the other hand obviously highlights, that when the evidence adduced is so little or unconvincing, so much so that it is insufficient or not enough to result in a conviction, the defendant should not be required to make a defence. In other words, the second limb allows the court to acquit the defendant, when it finds that there is not enough evidence adduced by the Crown.

### **Crown's Evidence**

18. There were 6 witnesses who gave evidence under oath. the first witness, was Mr Luke Melanoli, whom I will refer to as PW1.
19. PW1 states that his father, late John Melanoli, was one of the three trustees mandated by law, to oversee Kulupulu Land, in Santa Cruz, Temotu Province. He goes on to say that these three trustees never signed the grant of profit (GOP) given to Tufoal Timber Exporters LTD. When asked if he

<sup>1</sup> [2016] SBMC 35; Criminal Case 173 of 2016 (22 November 2016).

<sup>2</sup> Above n 1.

<sup>3</sup> [2005] SBHC 91; HCSI-CRC 353 of 2004 (18 August 2005).

<sup>4</sup> Above n 2.

<sup>5</sup> [1986] SBHC 16; [1985-1986] SILR 249 (23 October 1986).

<sup>6</sup> Above n 5.

<sup>7</sup> Above n 5.

- was actually present when the signing was done in 2015, he stated that he was just informed by his brother, Mr Dickson Melanoli.
20. The Second witness was Mr Dickson Melanoli (PW2). He also states that his father never signed the grant of profit (GOP) given to Tufoal Timber Exporters LTD. He recalls sometime in 2015 when an administration was carried out, where some men he claims to be related to the defendant tried to convince him to sign a consent letter. There was nothing else stated to explain what was being attempted and if his father had actually signed.
  21. When asked if he was present during the actual signing of the GOP in question, or if he had just heard the story from someone, he stated that he only knew about the GOP when his brother engaged a lawyer to get more information about the transfer. He maintained that that he knew about the transfer from the documents relating to Tufoal Timber Exporters LTD Grant of Profit.
  22. During the examination in chief and cross examination for PW 1 and PW 2, both witnesses referred to three documents, which I marked for identification purposes as, PE-JT, PE-DM and PE-MB. These documents are statutory declarations alleged to have been made by these three trustees of Kulupulu Land, stating that they did not sign any Grant of Profit to Tufoal and that they demand the Grant of Profit be released.
  23. Both PW 1 and PW 2 stated that their father, late John Melanoli, was already at a very old age, hence, it was not possible if he was claimed to have signed along with the other two trustees.
  24. When asked as to who wrote PE-DM, given late John Melanoli's inability to write on his own, PW 2 stated, that PE-DM was written by someone named John Metelvyi. John Metelvyi was said to have written all three documents referred to in paragraph 18 of this ruling, based on a discussion they had.
  25. The Crown was able to call Mr John Metelvyi as a witness, but unfortunately, nothing he said seem to have confirmed the claim by PW 2.
  26. Mr Lazaruz Lateu, PW 3, was asked about a statement he gave to the police on whether he actually witnessed what he stated, or if he only heard it from someone else, and he stated that he witnessed it.
  27. When asked to clarify what he meant when he said he witnessed it, he went on to talk about his father owning a block of land within Kulupulu Land, and how he was shocked to have discovered that the Grant of Profit had been given to someone else, or in his own word, "*me seke that grant of profit go lo nara man na*". Even if he had positively identified who the Grant of Profit was transferred to, it remains unclear whether he was present when the actual signings took place.
  28. Mr Jacob Kapulo (PW 4) states that he was the one who assisted late George Malirbaal and Wilson Menateti, when they asked him if he could act as witness to a Grant of Profit. He claims to have signed as witness on the 4<sup>th</sup> of May 2015, since Wilson and late George told him that they would have to submit the Grant of Profit to the Commissioner of Forestry on the 5<sup>th</sup> of May 2015.
  29. He identified his signature on page 3 of the purported grant of profit. On the same page, I note that someone by the name of Paul Mekimo was the person signing as witness under the signatures alleged to have been forged.
  30. For some unknown reasons, Mr Paul Mekimo was not called to testify in court.
  31. The two final witnesses were far from being helpful to the Crown's case since they claim to have known nothing about the purported grant of profit.
  32. The Crown in my view, has relied on two irreconcilable pieces of evidence, the first comprises of PE-JT, PE-DM and PE-MB, while the second is the grant of profit, marled as PE LM1.
  33. As far as this court is concerned, the grant of profit marked as PE-LM1, is a legal document that can only be overturned on the grounds of fraud and misrepresentation by the High Court.

34. A civil trial should never be disguised as a criminal proceeding. This is premised on the principles of justice and fair trial. It is important to understand, that civil and criminal cases serve two different purposes. With this, it also means they have separate rules of procedure, and separate standard of proofs. In the Solomon Islands, the former is guided by the Civil Procedure Rules, while the latter is guided by the Criminal Procedure code.

### **Whether or Not there is Sufficient Evidence**

35. Based on the evidence adduced by the Crown, I have come to note the following;
- (i) The evidence by PW 1 and PW 2 focused more on the allegation that the signatures of the three trustees for Kulupulu Land on the grant of profit marked as PE-LM1, were forged. They believed that it was not possible since their father had already reached a very old age and was not capable of signing on his own.
  - (ii) Both PW 1 and PW 2 have seemed to claim that the grant of profit was transferred to Tufoal Timber Exporters LTD by fraudulent means, but failed to provide more evidence on what the fraudulent means are. They were of the view that the grant of profit marked as PE-LM1 was enough evidence to prove their point. From the evidence before me, this grant of profit was and is an unchallenged legal document that could have only been rendered null and void through a judicial review at the High Court.
  - (iii) The evidence by PW 3 in my view, leaned mostly towards him having an interest in the Kulupulu land, but failed to provide sufficient evidence on the allegation, that the Defendant procured the execution of documents through false pretence. He has also failed to provide sufficient evidence that the Defendant did in fact steal the whole document of title belonging to the 3 trustees, with the intention to permanently deprive the owners.
  - (iv) PW 4 gave evidence that he was the one who signed as witness for the Defendant and the late George Malirbaal. I have gone over the grant of profit that PW 4 claimed to have signed as witness for the Defendant and late George Malirbaal more than once. I note that there are signatures signed against the section that requires the grantor (s) to sign. The fact that no relevant officer from the office of the Commissioner of Lands or Registrar of titles was called to explain the process that results in a grant of profit, does not warrant me to conjecture what could have and what should not have been done, to complete the process for obtaining a grant of profit.
  - (v) One thing for sure is, the grant of profit marked as PE-LM 1, is a significant legal instrument governed by both statutory and administrative frameworks. The legal life of the grant of profit is elucidated by its five-year term. Per se, its enforceability and the rights it confers upon the grantee (s) are restricted to this timeframe.
  - (vi) It is therefore beyond my power to declare this legal instrument as null and void, for such declarations falls within the inherent powers of the High Court.
  - (vii) PW 5 and PW 6, denied having any knowledge with respect to the allegations at hand.
  - (viii) The statement alleged to have been given by the late John Tauto, to Sergeant Ezekiel Walters, was also brought before my attention. I had the opportunity to read the statement which also touched on the statutory declarations marked as PE-JT, PE-DM and PE-MB. You would recall that PW 2 had stated in his evidence in chief, that it was John Metelvyi or PW 5 who wrote the statutory declarations for the three trustees. From PW 5's evidence in chief, he gave very little evidence to confirm the role he played. He was referred to prior statements, but said little about whether he actually did the things he was claimed to have done or not.

- (ix) The surviving trustee, Mr Mathew Bade was not involved in this case. The Crown overlooked the importance of calling Mr Bade.
36. I acknowledge, that this is not the time for me to evaluate on the inconsistencies of the evidence before me, as well as the credibility of the witnesses involved. The principle in the case of Lutu is very clear, whereby, if there is sufficient or enough evidence capable of reaching a guilty verdict, a defendant must be put to his defence. In the event that the evidence adduced by the Crown is very little, insufficient and not capable of reaching a guilty plea, even if it is not contradicted by the defence, then the trial must stop, with the consequential effect of the defendant being acquitted.
37. So far, there is no concrete evidence backing the allegation that the defendant, Mr Wilson Menateti procured the execution of documents by means of false pretence. Most of the evidence I recorded from the Crown witnesses, falls under hearsay and uncorroborated.
38. The same can be said for the allegation whereby, Mr Wilson Menateti was said to have stolen the document of title, the property of John Melanoli, John Tauto and Mathew Bade, with the intention to permanently deprive them thereof. The relevant evidence to back this allegation, if any, was never presented, hence it can only be right to say that there is not enough evidence or in other words, there is insufficient evidence
39. With the two limbs in the case of *Lutu*, I am of the view, that this is such a case that falls under the second limb.
40. In this circumstance, the court hereby concludes, that the Crown has failed to adduce sufficient evidence against the defendant with respect to the charge at hand, I therefore conclude, that the defendant Wilson Menateti is not required to make a defence and is hereby acquitted forthwith from the charge comprising 1 count of procuring document by false pretence, and 1 count of stealing legal document.
41. Right of appeal applies within 14 days from the date in which the written ruling is published.

Dated this 13<sup>th</sup> day of December 2024.

  
THE COURT

Emily Z Vagibule Pakoa (Mrs)

Principal Magistrate

