

BETWEEN : CHERN CHIN HER
(Appellant)

AND : PUBLIC PROSECUTOR
(Respondent)

JUDGEMENT

In this case the accused pleaded not guilty and a full trial had to be held. At the end, it was clear beyond all reasonable doubt that the accused was within Vanuatu waters when fishing and should have easily known this from the equipment he had on board his ship. The prosecution evidence regarding his position was clear. The learned Senior Magistrate obviously took into consideration that the accused pleaded not guilty when he was in breach of the law. She also took into consideration that the offence was an attempt to deprive the population of Vanuatu of a large share of their livelihood.

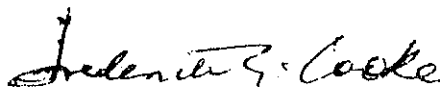
Captains of ships who take chances of fishing illegally must suffer the consequences when caught.

The legislature obviously considered an offence of this nature to be serious in so far as they decided that the maximum penalty for the offence should be 20 million vatu. The learned Senior Magistrate has imposed a fine of 8 million, which viewing all the circumstances of the case, is not excessive in my opinion. If anything, the learned Senior Magistrate erred towards leniency.

I have considered it right and proper to look at the overall sentence and forfeiture and the Appellant's behaviour not only for fishing in Vanuatu waters but his thieving of fish therefrom. I therefore dismiss the appeal against the fine. The forfeiture of a vessel, its equipment and catch has to be imposed to be a deterrent to other captains of trawlers who attempt to steal fish from Vanuatu waters. The deterrent element in a sentence was not primarily to deter the offender himself but others. This appeal is also dismissed. If the owners of the vessel are prepared to pay a reasonable price for the return of the vessel and equipment I am sure the Vanuatu Government would agree to such.

The Appellant is not allowed to leave the country until the fine is paid.

Dated at Port Vila this 26th day of October, 1989.



Frederick G. Cooke

CHIEF JUSTICE