

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

Criminal Case No. 97 / 2009

PUBLIC PROSECUTOR

V

ALICK EDMOND

Trial: ***8-12 August 2011 (Lakatoro)***

***18-19 August 2011, 9 September 2011 and 14 October
2011 (Port Vila)***

Before: ***Justice Robert Spear***

Appearances: ***Simcha Blessing for State
Saling Stephens for Accused***

VERDICTS AND REASONS FOR VERDICTS

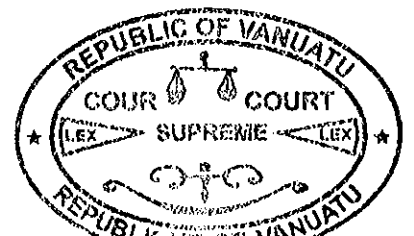
14 October 2011

VERDICTS

Not Guilty - Counts - 2 & 7

Guilty - Counts - 1, 3-6, 8, 9-15, 17, 18, 20-28 & 30

Discharged - Counts - 16, 19 & 29



1. The accused faced trial on an indictment charging him with 30 counts of theft or misappropriation. The offending is alleged to have occurred over 2001 and 2002 at the time when the accused was a bank teller at the Lakatoro branch of the National Bank of Vanuatu.
2. The general prosecution case is that, over 2001 and 2002, the accused took money from bank customers for his own financial advantage.
3. This case took a somewhat unusual turn as explained more exactly in the trial ruling of 19 August 2011, "*State of Play*". The end result was that a bank witness intended to be called by the prosecution (Mr Jack Roy) was not called prior to the closure of the prosecution case.
4. Notwithstanding this turn of events, the *voir dire* proceeded and resulted in the ruling given on 19 August 2011 in respect of the accused's statements.
5. I am unaware exactly why it took so long for this case to come to trial given that the accused was arrested in August 2002 although he continued to be interviewed on occasions right through to September 2003 as more complaints were made. The formal prosecution was commenced in the Magistrates' Court in August 2004. I suspect that what delays have occurred in this case have come about because of the extensive nature of the prosecution, that this offending was alleged to have occurred at Lakatoro with its limited facilities and service, and possibly also the complications caused by the 2007 fire of the Court house and



records at Port Vila. Additionally, and significantly, the accused did not attend on dates set for his trial.

6. In any event, the case was eventually reached on 8 August 2011 at Lakatoro with the accused's attendance guaranteed as he was by then in custody having been arrested following his non-appearance for the trial set to commence earlier this year.
7. The absence of any evidence from a bank officer for the prosecution has caused some limitation in the explanation as to how the Lakatoro Branch at the National Bank operated and, particularly, as to its accounting procedures. Be that as it may, the consistent evidence from many witnesses confirmed that the accused worked at the Lakatoro branch of the National Bank during the relevant period, that he dealt personally with them as one of the tellers and that he personally handled their banking transactions for them. To a large extent, the statements given by the accused, all of which have been ruled admissible except for statements taken around the day of his arrest, provide significant insight into the banking practice adopted by that branch and the accused's attention to it.
8. It is, of course, for the prosecution to prove each element of a charge to the high criminal standard of beyond reasonable doubt before the accused can be found guilty of that charge. Proof beyond reasonable doubt simply means that the Court is left sure of guilt.
9. While the accused gave evidence in the *voir dire*, he elected not to either give or call evidence in his defence. The evidence given by him during the course of the *voir dire* is admissible only in respect



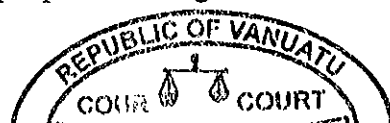
of the admissibility issue and it is not admissible against him in respect of the substantive charges.

10. The indictment contains 30 separate counts of either theft or misappropriation. The accused impressed me with a good understanding of English and that was confirmed by his counsel. However, as a safeguard, the indictment was presented in both English and a Bislama but on the agreed basis that the English version would be the formal indictment.
11. A bundle of exhibits was prepared by the prosecutor and used in the case subject to verification by individual witnesses. Statements taken from witnesses were included in that bundle for convenience but of course were not evidence in the case except where the witness was permitted to refer to his or her statement.
12. The charges proffered against the accused were for either theft under section 122 or misappropriation under section 123 -Penal Code [Cap.135]. The offence, however, is really under section 125 of causing loss either by theft or misappropriation.

125. Prohibition of theft, misappropriation and false pretences

- (a) No person shall cause loss to another –
- (b) by theft;
- (c) by misappropriation; or
- (d) by false pretences.
- (e) Penalty: Imprisonment for 12 years.

13. Despite the distinction in respect of the two types of charges employed, there is really little difference in the case against the accused in each respect. Theft would be an appropriate charge if



cash was physically taken with the intention to permanently deprive the owner of those particular bank notes. More so, however, misappropriation applies to either the conversion of customer's cash or the use of funds in customer's accounts given the position of trust that the accused was in by virtue of his position as a bank officer.

14. At the conclusion of the prosecution case, I raised with Mr Stephens whether he had any objection to the counts being determined on the basis that they were all for misappropriation given the absurdity of trying to determine whether individual bank notes were taken and the same notes returned. The nature of the case, as it unfolded, pointed clearly to the appropriate offending being misappropriation. Mr Stephens felt able to object only on the basis that it was "*too late*" for any of the theft charges to be amended to misappropriation charges. When pressed, however, he conceded that such an approach would cause his client no prejudice at all. In particular, Mr Stephens confirmed the accused would not have altered the way in which the defence had been run if the charges were all for misappropriation from the outset. The accused was offered the opportunity to have any prosecution witness recalled but he indicated that he did not require the recall of any witnesses. Furthermore, and notwithstanding that the accused had elected not to call evidence, the opportunity was again given to him to call evidence in view of the alteration to the charges but he declined to take up that opportunity.
15. This turn of events simply recognises the absurdity of a charge of causing loss by theft being defeated because of a possibility that it was loss by misappropriation or false pretenses. Furthermore, the real case against the accused, acknowledged by his ~~accused~~



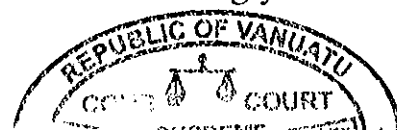
right from the outset, was whether there was sufficient evidence of dishonest dealing by the accused with bank customer's funds. .

16. Accordingly, in respect of each of the counts, they are approached on the basis that they are each for the misappropriation of funds. Section 123 defines misappropriation in these terms

Misappropriation defined

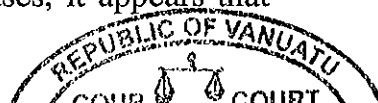
A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption).

17. This approach is consistent with the offence section (s.125) which places theft, misappropriation and false pretences as the alternative bases for the offence. Those three offences are clearly treated as just being different species of dishonest offending causing loss. It would make a mockery of the criminal justice system if a charge say of causing loss by theft under s.125 could be defeated on the basis that it was possible that it was instead a case of causing loss by misappropriation or false pretences.
18. What must surely govern such an approach is whether any such change might conceivably cause prejudice to an accused in respect of his defence. Mr Stephens candidly acknowledges that the issue of prejudice does not arise here.
19. The general prosecution case is that from about June 2001 through to August 2002, the accused converted funds belonging to various bank customers for his personal financial advantage. In particular, he admits that he did this on occasions to cover up shortfalls occurring in the bank's accounting system that he had created through the pilfering of money. This was strikingly



obvious during the period 5 to 9 August 2002 when the accused helped himself to substantial funds to cover up the deficit caused by his defalcations.

20. The evidence in this case came from a number of the complainants all being customers of the Lakatoro branch of the National Bank of Vanuatu. The only non-complainant witness in the case proper was Corporal Ansen; the officer in charge of the case.
21. Corporal Ansen's evidence related to a number of dealings that he had with the accused from the time of first contact on 13 or 14 August 2002 through to the final interview on 22 September 2003.
22. I have ruled inadmissible the statements taken from the accused over 14, 15 or 16 August 2002 as the case may be. However, Corporal Ansen also interviewed the accused on a number of subsequent occasions.
23. I accept Corporal Ansen's evidence, not disputed outside the *voir dire*, that after the accused was arrested, interviewed on 14 or 16 August 2002 and released on bail, he would receive material from time to time from the bank as the bank detected transactions of concern relating to the accused. The bank would forward that material on to Corporal Ansen who would then arrange for the accused to come into the Police station to be interviewed about the complaints. In some cases, the actual bank customers / the complainants were seen by Corporal Ansen before he interviewed the accused. Occasionally, the interview took place with the complainant after the accused had been interviewed on the basis of material provided by the bank. In some cases, it appears that



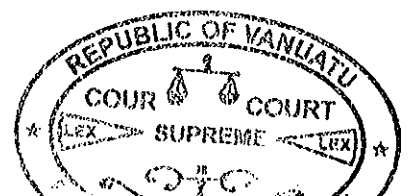
the complainants were never interviewed with Corporal Ansen simply worked off material sent to him by the bank.

24. Excluding the interviews and other dealings between Corporal Ansen and the accused over 14, 15 and 16 August 2002, the evidence established that there were a total of 11 separate occasions when the accused was called in to be interviewed by Corporal Ansen about complaints emanating from the bank. Those interviews covered the period from 30 October 2002 down to 22 September 2003. Annexed is a break-down of the interviews with cross-referencing to the particular statement (by its exhibit number), the particular count involved and the page reference in the agreed bundle of documents.
25. Many off the complainants who gave evidence in the case referred to discussions that they had had with the bank officer, Jack Roy. Of course, what Jack Roy may have told them is inadmissible as to the truth of what they heard but not of the words spoken. That position would have been different in the event that Jack Roy had given evidence but he did not.
26. As previously determined, the interviews subsequent to 14-16 August 2002 were conducted unexceptionally in relation to the voluntary nature of the interview. That is, there is no suggestion that the accused voluntarily answered the questions put to him during the interviews. In each case, the interview was commenced with a formal caution confirming to the accused his right not to have to make a statement. In one case, the accused indeed exercised that right to remain silent which indicates that he was aware of his rights and that he did not believe he had no



realistic choice but to submit to the interview. In almost all cases, the accused appears to have wanted to make a “*clean breast*” of the offending and there appeared to be little prevaricating or attempts to “*fudge*” what happened.

27. In some cases, however, it is uncertain as to exactly what the interview relates to and that will be addressed separately in each respect.
28. However, there is no doubt that where the accused admits that he took or misused customer’s money for his own purposes on a number of occasions, occasionally just for a short period, he acted dishonestly and that amounted to a misappropriation by way of conversion by a person in a position of trust.
29. The accused was, at all times, in relation to the bank’s customer’s funds, in a position of trust simply through his employment as a bank officer.
30. The dishonesty is clearly and directly established in the evidence in respect of a number of charges but none more so than where where the accused admitted that he took the funds by altering and in some cases forging withdrawal slips.
31. By way of a general observation, I mention that I had no difficulty assessing the accused as being clearly of above average intelligence. He certainly appeared to follow the various turns in the case without difficulty. He also had an excellent grasp of English.
32. I turn now to the individual charges.



33. *Count 1, Malekula Cattle Farm Association.*

The case is that the accused withdrew Vt 275,000 without authority from this customer's account using a passbook that had been left at the bank "for safekeeping". There was no evidence from the complainant. The prosecution relied upon the accused's statement given on 3 June 2003.

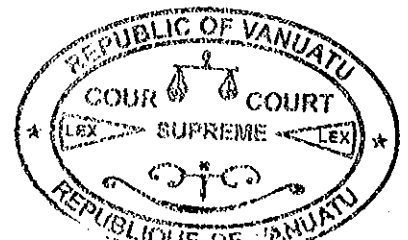
34. The statement taken from the accused admitted that he was looking after a customer's bank book and that he wrote out a withdrawal for Vt 275,000 to generate funds so that he could cover up a cash shortage that he had caused.

35. The difficulty here is that the record of the interview does not identify the complainant and, in that respect, the prosecution is left to rely on Corporal Ansen's evidence that he introduced the complainant as being the Malekula Cattle Farm Association at the commencement of the interview. I accept Corporal Ansen's evidence in this respect. It is difficult to imagine how the interview could have been conducted in these terms and with this result with this accused without such an introduction. That leaves me satisfied that the accused's confession of wrongdoing relates to this charge.

36. The accused is guilty of count 1.

37. *Count 2, Aisen Samuel*

The case here is that the accused withdrew Vt 32,675 on 10 May 2000 without authority and to cover up a cash shortage that he had caused with the bank.



38. Again, the statement taken from the accused does not identify the complainant. More particularly, however, the statement notes that the accused exercised his right to remain silent.

39. There is no evidence sufficient to prove guilt. The accused is not guilty of count 2.

40. *Count 3, Unmet dispensary.*

In this respect, the accused admitted that he withdrew Vt 100,000 from Unmet Dispensary's account to cover up a cash shortage that he had caused. This is a complete confession of misappropriation and the accused is guilty.

41. *Count 4, Mandry Neptick.*

The case against the accused here is that the accused took Vt 500,000 from the complainant for his own purposes.

42. Mandry Neptick is an unsophisticated gardener from a bush village. He went to the bank in 2001 and met with the accused. The complainant had substantial funds in his savings account and the accused advised him to take some funds from his savings account and deposit it in a fixed term account. The complainant went home to think about that and returned some days later with an interpreter as he had no Bislama and spoke only his local language. The complainant dealt again with the accused and accepted the accused's advice that he should withdraw Vt 500,000 from his savings account and put it on term deposit. However, while it is clear that the withdrawal of Vt 500,000 then took place with the assistance of the accused, the complainant's passbook was not dated with that withdrawal and no fixed term deposit was ever made.



43. The deficiency came to the notice of the bank after the accused had been arrested, the complainant heard about the arrest, and asked the bank to check his account.
44. When interviewed in 30 October 2002, the accused admitted that he had "*misused Vt 500,000*" relating to an unspecified complainant. This, again, is a case where the interview and thus the confession relies entirely on Corporal Ansen's evidence that Mandrey Neptick's complaint was clearly identified at the commencement of the interview.
45. I accept Corporal Ansen's evidence to that effect. In particular, it supports and is consistent with the clear evidence given by Mandrey Neptick as to how the accused dealt with him. I am satisfied in this case that there is no possibility of confusion by the accused as to which account he was dealing with. The accused is guilty.
46. *Count 5 - Ecole Saint Louise.*
The case is that the president and treasurer of this school committee went to the bank in August 2002 to withdraw Vt 25,000 from the school account. Both signed the withdrawal slip. They were dealt with by the accused. The withdrawal slip was altered to read Vt 125,000 and the alteration is unquestionably obvious. It is significant that the withdrawal slip shows that Vt 25,000 cash was received and that is consistent with the evidence of the president and treasurer. However, on the right hand side of the withdrawal form the alterations show the withdrawal as Vt 125,000. The complainant's bank statement also shows that Vt 125,000 was re-deposited into this account on 8



August 2002 which was 3 days later. The president's signature appears on that deposit form but he denied any knowledge of this and said that no such funds were deposited at that time.

47. When the accused was interviewed on 3 December 2002, he confessed that he had withdrawn Vt 125,000 on the school's account on 5 August 2002 and re-deposited it on 8 August 2002. He said that he did so to cover a shortfall in the bank accounts caused by him. Interestingly, the accused repaid Vt 125,000 when the amount that he had effectively taken dishonestly was Vt 100,000 given that Vt 25,000 was taken away by the president and treasurer.

48. The evidence is overwhelming that the accused converted Vt 100,000 to his own use for a period of some 3 days. He is accordingly guilty of count 5.

49. *Count 6 - Isaiah Niptik.*

This is the brother of Mandrey Niptik (count 2). He is similarly an unsophisticated and illiterate gardener from a bush village but who also had a significant bank balance. Again, in this case, the accused advised the complainant to invest Vt 200,000 sitting in his savings account in a fixed term account. The complainant went home to think about this and came back probably on 16 March 2001 with an interpreter as he, like his brother, only spoke his local language and did not speak Bislama. He decided to withdraw Vt 200,000 from his savings account in accordance with the accused's advice and invest it as a fixed term deposit. The accused filled in the withdrawal slip for him and then got the complainant to sign it. However the withdrawal slip was for Vt 400,000 which was not then picked up by the complainant.



50. The accused was interviewed about this on 10 February 2003. The accused admitted the offending and, in particular, that he did not put Vt 200,000 in the fixed term deposit but kept it to cover up his shortage at the bank. He is guilty of this charge.

51. *Count 7 - Suthy Lunabek.*

The complainant was informed in 2003 that Vt 97,000 had been withdrawn from his account on one day and re-deposited later the same day. However, this complainant knew nothing about that. It appears that the case against the accused is that he withdrew money from this account in order to cover his tracks with the Isaiah Niptik account (count 6).

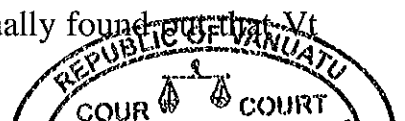
52. The accused's statement is not particularly clear and it is certainly insufficient to amount to a clear and exact admission on his part of wrongdoing in this respect. He is not guilty of count 7.

53. *Counts 8 and 16 - Kaoka Metenesel Estates Ltd.*

The case is that the accused withdrew Vt 508,420 on 5 August 2002 to cover up a cash shortage caused by him and that he re-deposited that amount on 8 August 2002. The accused has made a full confession that he made that withdrawal to cover up temporarily a cash shortage caused by him. It is necessary only for this offending to be addressed by count 8. The accused is guilty of count 8 and count 16 is dismissed.

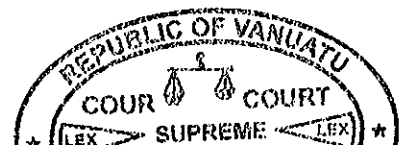
54. *Counts 9 & 30 - Robert Tavlili and Erick Tavlili.*

This is another case where two brothers, both unsophisticated gardeners from a bush village were taken advantage of by the accused. In this case, Robert Tavlili eventually found out that Vt



150,000 had been withdrawn from his account in September 2003. The Complainant was shown his withdrawal slip and he was adamant that it was not his, that he never completed the withdrawal slip and that he never withdrew Vt 150,000 at that time. The complainant also indicated that he had a problem with his eyesight and that is why he was unable to read his bank statement and pick up the withdrawal at an earlier time.

55. Erick Tavlili gave similar evidence about an amount of Vt 115,000 that was withdrawn from his account without his knowledge.
56. The question raised here for the defence is whether the two brothers heard about the accused and decided to take advantage of that. That was not the impression that the complainants made on me. Indeed, I consider that it would be beyond them to try and pull such a fraud off. Furthermore, it is significant that the withdrawals for both brothers (counts 9 and 30) were both on the same day.
57. The accused was interviewed on 22 September 2003 and he made clear and separate admissions that he withdrew those amounts of Vt 150,000 (Robert Tavlili - count 9) and Vt 115,000 Erick Tablili - count 30) and that he did so in order to cover up temporarily a cash shortage at the bank caused by him.
58. I am satisfied that this is another case where the accused has plundered the bank accounts of two brothers whom he knew were unsophisticated and would be unlikely to pick up the movement in their account for quite some time.



59. The accused is guilty of counts 9 and 30.

60. *Count 10 - Moses Sedak.*

The case here is that the accused withdraw Vt 1.2 million on 19 December 2001 and re-deposited that on 9 August 2002 all without the knowledge of the bank customer. Moses Sedak is a teacher from North West Malekula who ascertained from his bank statements that Vt 1.2 million had been withdrawn on 19 December 2001 but re-deposited on 9 August 2002. This was indeed brought to his attention by another bank officer Hendry. Moses Sedak was referred to the relevant withdrawal slip but he said he knew nothing about this, that he did not complete it and it was not his signature. He made a similar observation in respect of the deposit form.

61. The accused was interviewed and he made a full confession that he had withdrawn the Vt 1.2 million from this account to cover the cash shortage he had caused. He said that the reason for this was that a Mr Kalpat Tarip had come to check out their work. The accused is guilty of count 10.

62. *Count 11 - Tautu Marketin Co-op.*

This is a similar case where the accused has made a full confession to taking Vt 60,000 from this account on 5 August 2002 to cover a cash shortage caused by him. He is guilty of count 11.

63. *Count 12 - Flavina Linsari.*

The accused admitted withdrawing Vt 50,000 from this account to cover up a cash shortage. While the statement does not specify the name of the complainant or make any other reference to the



account number, I accept Corporal Ansen's evidence that he introduced the complaint to the accused before the statement was taken. The accused is guilty

64. *Count 13 - Lawrence Thenil.*

On 5 August 2002, Mr Thenil went to the bank and was dealt with by the accused. He filled in a withdrawal slip for Vt 8,000. The withdrawal slip was quite obviously altered to read Vt 80,000. The alteration was glaringly and unquestionably obvious given that Mr Thenil filled out the withdrawal form using a fountain pen but a biro has clearly been used to make the alterations. Significantly, also, the withdrawal slip still shows on the left hand side that the cash actually taken was Vt 8,000 whereas on the right side of the form it is for the altered amount of Vt 80,000.

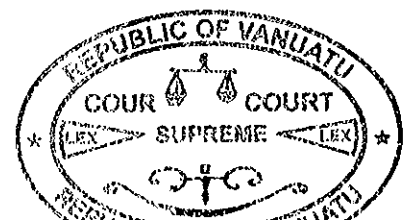
65. The accused confessed that he altered the withdrawal slips to read Vt 80,000 from Vt 8,000 thus receiving Vt 72,000 which he said he applied to cover up a short fall in the bank's accounts that he had caused.

66. The accused is guilty.

67. *Count 14 - Pedro Melsul.*

There is a full confession by the accused in conformity with the complainant's evidence that the accused took Vt 30,000 on 6 August 2002 from his account to cover up cash shortage caused by him and that he re-deposited equivalent funds on 9 August 2002. He is guilty of count 14.

68. *Count 15 - Jason Uren.*



The accused fully admitted in his statement that a deposit made by the complainant's father into his son's account on 6 August 2002 of Vt 30,000 was not actually credited into the account until 9 August 2002; some 3 days later. The accused admits that he used the Vt 30,000 over those 3 days to cover up the cash shortage caused by his dishonest ways. The accused is guilty.

69. *Count 17 – Memorial Shopping Centre.*

In this case, the accused admitted that on 5 August 2002 he "processed" Vt 705,000 from the Memorial Shopping Centre account to cover up cash shortage that he had caused and he that reversed it 3 days later on 8 August 2002. The accused is guilty of count 17.

70. *Counts 18 & 19 – Norsup Island PWMU and Rolline Donna*

Another case of a delayed deposit and again it is 3 days from 5 to 8 August 2002. The sum of Vt 7,100 was deposited on 5 August 2002 but not credited to the account until 8 August 2002. The accused again admitted that he held up the deposit to cover up a cash shortage caused by him and this of course was at a time when he was holding up a number of deposits. While the interview does not specifically identify the complainant, I accept the evidence from Corporal Ansen that this particular complaint was appropriately identified and the interview related to this transaction.

71. The accused is guilty of count 18. There is no need for a conviction to be entered on count 19 and the accused is accordingly discharged.



72. *Count 20 – Unelco.*

Another case where the accused received a deposit on 5 August 2002 and in this case held up crediting the account until 9 August 2002. Full confession made in respect of the amount of Vt 28,133. The accused is guilty.

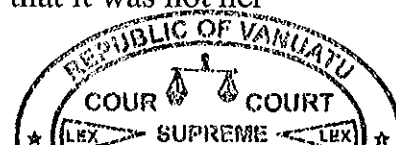
73. *Count 21 – Monique Natu*

The case here is that the accused received Vt 6,000 to deposit in this complainant's account and did not do so.

74. The case depends upon the admission of the accused who simply says that he receive the Vt 6,000 for deposit but misplaced the deposit form and forgot to enter it into the system. In short, the accused said that this was an honest mistake. However, given that this occurred again on 5 August 2002, a date which has become somewhat auspicious as relating to a time when the accused was desperate for funds and had kept funds from being deposited in other cases, it is clear here that this is simply another case of the accused taking the funds to cover up a cash shortage caused by him. The accused is guilty on count 21.

75. *Count 22 – Nevin Rose Sawyer*

The complainant is a nurse from the Lambubu Estate. When she visited the bank on 14 August 2002, she found that she had supposedly withdrawn Vt 80,000 on 5 August 2002. She disavowed any knowledge of such a withdrawal. She stated further that she was not at Lakatoro or anywhere near Lakatoro on 5 August 2002 and indeed was working all that day at the clinic. She was referred to the withdrawal slip and said that it was not her signature and that she did not complete it.



76. This again is another case of money taken by the accused on or about 5 August 2002.
77. The accused indeed admitted in his interview of 3 December 2002 that he had used the Vt 80,000 to cover up a cash shortage that he had caused. He is guilty of count 22.
78. *Count 23 – Sandy Massing.*
Another case where the accused held up the processing of deposit of Vt 15,000 for 2 days from 5 to 7 August 2002. The accused admits this and he is guilty.
79. *Count 24 – Joseph Atel.*
Mr Atel is a nurse practitioner at Norsup hospital. On 5 August 2002 he went to the bank to withdraw Vt 20,000 and received Vt 20,000. He was dealt with by the accused as the bank teller. Mr Atel took the money and his passbook outside but then noticed that the accused had not signed it as acknowledging the withdrawal. He took the bank book back into the accused and got the accused to sign it.
80. Later, he noticed on his bank statement that, rather than Vt 20,000 having been withdrawn on 5 August 2002, an amount of Vt 300,000 was withdrawn that day. He was referred to the withdrawal slip and he said that this had clearly been altered from what he had completed from Vt 20,000 to Vt 300,000. It is indeed obvious that this form had been altered in that way.
81. The accused admitted that he altered the withdrawal form from Vt 20,000 to Vt 300,000 explaining that this was used to cover up a

cash shortage that he had caused. The accused is guilty of count 24.

82. *Count 25 – Raxon Josley.*

Another case where a deposit of Vt 17,000 was held up for 3 days from 5 to 8 August 2002. The accused admits that this occurred. He is guilty of count 25.

83. *Count 26 – Norsup Hospital Canteen.*

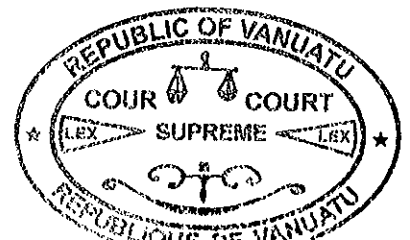
The accused was interviewed and admitted that he held up a deposit of Vt 2 million from 8 to 21 May 2002. On his admission he is guilty notwithstanding that there is no evidence from a complainant.

84. *Count 27 – Marcel Tapkandi.*

Another delay deposit case - this time of Vt 15,000 from 6 to 8 August 2002 and admitted by the accused as being to cover up a cash shortage caused by him. The accused is guilty on count 27.

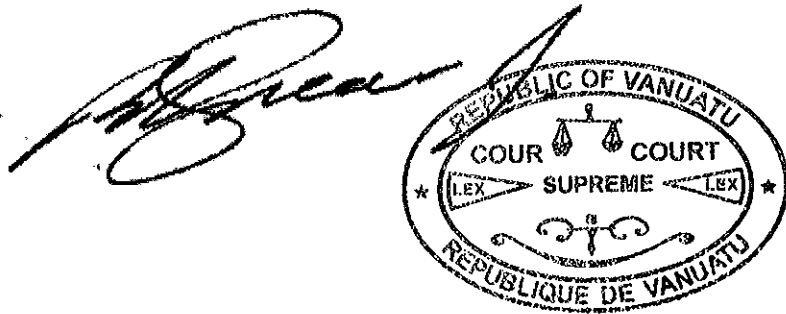
85. *Counts 28 and 29 – Lakatoro Trading Centre.*

Mr Benard Tang is the General Manager of LTC. His evidence is that he transferred Vt 2 million from the company's savings account to the cheque account requiring both a withdrawal form and a deposit form to be completed. That transaction was conducted by him with the accused as his bank teller on 6 August 2002. However the withdrawal form is date stamped 5 August 2002 over the date handwritten by Mr Tang of 6 August 2002. The deposit form is also stamped with 7 August 2002 over Mr Tang's handwritten 6 August 2002.



86. The case here is that the accused had the benefit of Vt 2 million for a period of 2 days to cover up cash shortage caused by him and the accused admitted that this was so. The accused said that this was because the branch manager was carrying out daily balance of accounts at that time.
87. There is no need here for the offending to be covered by two charges to reflect the withdrawal and the deposit. The accused is guilty on count 28 and discharged on count 29.

BY THE COURT



| Exh No. | Admission Statement of Defendant in relation to complainant | Date of Defendant's Statement | Count | Bundle Page |
|---------|---|-------------------------------|----------|-------------|
| 32 & 33 | General – introductory interview | 14.08.02 16.08.02 | | |
| 2 | Mandry Neptick | 30.10.02 * | 4 | 41 |
| 3 | Ecole Saint Louis (Daniel Sylverio) | 03.12.02 | 5 | 55 |
| 4 | Memorial Shopping Centre (Jeannot Malsekan) | 03.12.02 | 17 | 198 |
| 5 | Nevin Rose Sawier | 03.12.02 | 22 | 255 |
| 6 | Kaoka Metenesel Estates Ltd (James Bue) | 23.12.02 | 8 16 | 184 |
| 7 | Joseph Atel | 13.01.03 | 24 | 278 |
| 8 | Moses Setak | 13.01.03 | 10 | 99 |
| 9 | Pedro Melsul | 13.01.03 | 14 | 161 |
| 10 | Lawrence Thenil | 28.01.03 | 13 | 148 |
| 11 | Flaviana Linsari | 30.10.02 * | 12 | 133 |
| 12 | Isaiah Neptick | 10.02.03 | 6 | 66 |
| 13 | Unmet Dispensary (Sister Ida Bibi) | 10.02.03 | 3 | 27 |
| 14 | Jaison Uren (Safety Uren) | 27.05.03 | 15 | 171 |
| 15 | UNELCO Ltd (Yano Maltock) | 27.05.03 | 20 | 230 |
| 16 | Lakatoro Trading Centre (Benard) | 27.05.03 | 28 29 | 321 |
| 17 | Tautu Marketing Co-op (Joel Kalnpal) | 27.05.03 | 11 | 122 |
| 18 | Marcel Tapkandi | 27.05.03 | 27 | 34 |
| 19 | Rolline Donna | 27.05.03 | 19 | 220 |
| 20 | Norsup Island PWMU (Rolline Donna) | 27.05.03 | 18 | 212 |
| 21 | Samuel Aison | 27.05.03 | 2 | 16 |
| 22 | Rexon Josly (Rollin Donna) | 27.05.03 | 25 | 289 |
| 23 | Sandy Massing (Corennethy Tavunwo) | 27.05.03 | 23 | 268 |
| 24 | Malekula Cattle Farmer Association (Apia Albert) (Caution Statement lost) | 03.06.03 | 1 | 6 |
| 25 | Norsup Hospital Canteen (Jeannot Malsekan) | 10.06.03 | 26 | 302 |
| 26 | Suthy Lunabek | 10.06.03 | 7 | 18 |
| 27 | Albert Honore (Natou Monique) | 11.06.03 | 21 | 243 |
| 28 | Erick Tavlili | 22.09.03 | 30 | 336 |
| 29 | Robert Tavlili | 22.09.03 | 9 | 88 |

