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

Criminal
Case No. 24/3258 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: SIMEON SEULE
Defendant

Date of Trial: 7 – 10 July 2025
Submissions: 11 July 2025 and 17 July 2025
Date of Verdict: 6 August 2025
Before: Justice M A MacKenzie
Counsel: Mr L Young for the Public Prosecutor
Mr N Morrison for the Defendant

VERDICT

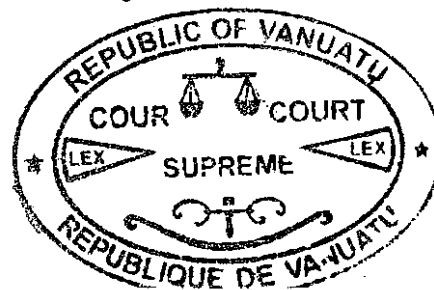
Introduction

1. Mr Seule faces two charges:¹
 - a. Charge 1- Theft contrary to s 125(a) of the Penal Code [CAP 135].
 - b. Charge 2- Obtains by deception contrary to s 130B(1)(2) of the Penal Code [CAP 135].
2. Charge 2 is laid in the alternative. I will only consider the obtains by deception charge in the event that I find Mr Seule not guilty of the theft charge.

Brief background

3. In 2011, the Vanuatu government purchased a grey Mitsubishi L200 double cabin vehicle with serial number MMBJNKB70AD016510. The vehicle was purchased from

¹ As set out in the Amended Information filed on 1 July 2025. Mr Morrison did not oppose the filing of the Amended Information. Leave was granted in a Minute dated 4 July 2025



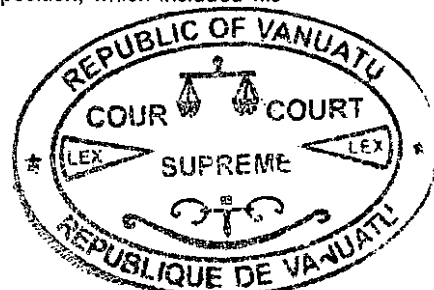
IntraCo. It was for use by the Ministry of Youth and Sport. It had a G number plate, G 934 (*"the vehicle"*).²

4. The vehicle went to Tongoa at some point. It sat idle there. There was an unsuccessful attempt to retrieve the vehicle in 2015, initiated by a former Minister of Youth and Sport.
5. In 2018, Mr Seule was the Minister of Youth and Sport. He became aware that the vehicle was on Tongoa. Mr Seule arranged for an employee of the Ministry of Youth and Sport to travel to Tongoa to transport the vehicle back to Port Vila. The vehicle was taken from the ship, Kiwitrader, to the Public Works Department ("PWD"). At PWD, the vehicle was assessed by Jean Juliano. Mr Juliano prepared a report on vehicle G 934, and a valuation.³
6. It is not in dispute that when the vehicle returned from Tongoa, it needed repairs.
7. The prosecution allege that Mr Seule instructed Stanley Fred to remove the vehicle from PWD, and so took and carried away the vehicle. It is alleged that Mr Seule told Mr Fred that he had purchased the vehicle from Fleet Management. Mr Fred and Kalo Matau (Mr Kalo) removed the vehicle and took it to a private address in Elluk for repairs. They were able to do so because Mr Fred told the PWD that Mr Seule had sorted the vehicle out with Fleet Management.
8. Once the vehicle had been repaired mechanically, it was taken firstly to Mr Seule's property at Dash Studio, and then to his property at Etnat, Erakor. Mr Seule then arranged for another mechanic to do further work on the vehicle (panelbeating and removal of rust spots), repaint the vehicle dark green, and put new number plates on the vehicle. The plates put on the vehicle were not G plates, but rather "CT", commercial transport plates. The plate number put on the vehicle was CT 7857. It is further alleged that Mr Seule shipped the vehicle to Epi, his home island, where the vehicle was used for private and public transport. On 9 February 2021, the vehicle was shipped back to Port Vila and was seized by police.
9. The prosecution case is that Mr Seule either stole the vehicle or obtained it by deception.
10. Mr Seule denies that he either stole or obtained the vehicle by deception. His view is that the complaint to police was motivated to politically damage him. He asserted that there are politicians involved in the case who believed if he went to Court, he would lose his seat and that an unspecified person would take his job.⁴

² A police officer, Mr Nimissa, made inquiries with IntraCo. He said he was satisfied that the IntraCo information related to vehicle G 934

³ Exhibit P6

⁴ When the evidence had concluded, Mr Seule asked the Court if he could have a last word. While unorthodox, I permitted him to do so. Mr Morrison had no objection. Mr Seule summarised his position, which included his concern as to a politically motivated complaint.



11. The defence dispute two elements of the theft charge:
 - Ownership of the vehicle by the Vanuatu government.
 - That Mr Seule had an intention to permanently deprive the government of the vehicle, at the time he took it.
12. As regards ownership, Mr Seule's position is that the vehicle had been abandoned in Tongoa, was in poor condition so was a write off. Further that the government showed no independent interest in the vehicle and had no record anywhere of the vehicle. Therefore, the vehicle was no longer owned by the government.
13. In relation to the issue of permanent intention to deprive the government of the vehicle when he took it, Mr Seule's position is that his intention was to bring the truck from Tongoa and have it repaired for use by the Ministry of Youth and Sport. It was not his intention to sell the vehicle by tender, or to keep it himself.

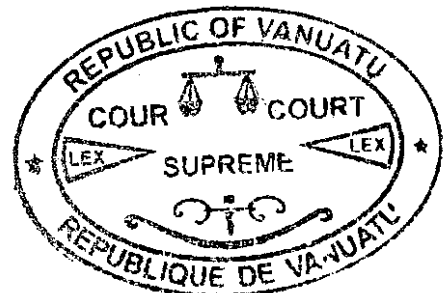
Submissions

14. The day following the conclusion of the evidence, counsel filed written submissions, which were amplified by oral submissions. During oral submissions, Mr Morrison alluded to cases. On 14 July 2025, I issued a Minute inviting counsel to file memoranda attaching any cases they wished to rely on. Both counsel did so. I have considered and taken into account both the written and oral submissions.

Burden and standard of proof

15. The Prosecution has the onus of proof and is required to establish the elements of each charge beyond reasonable doubt before a finding of guilt can be made in respect of the charges. This excludes consideration of any possibility which is merely fanciful or frivolous.⁵
16. Proof beyond reasonable doubt is a very high standard of proof which the Prosecution will have met only if, at the end of case, I am sure that Mr Seule is guilty. What then is reasonable doubt? Reasonable doubt is an honest and reasonable uncertainty about Mr Seule's guilt after giving careful and impartial consideration to all the evidence.
17. Mr Seule is not required to establish anything. He is presumed innocent. The presumption of innocence means that he does not have to give or call any evidence and does not have to establish his innocence. If at the end of the trial, any reasonable

⁵ Section 8 of the Penal Code [CAP 135]

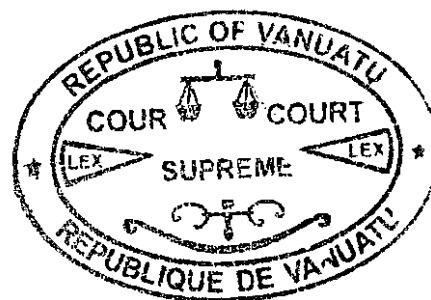


doubt exists as to his guilt, he will be deemed to be innocent of the charge and will be acquitted.

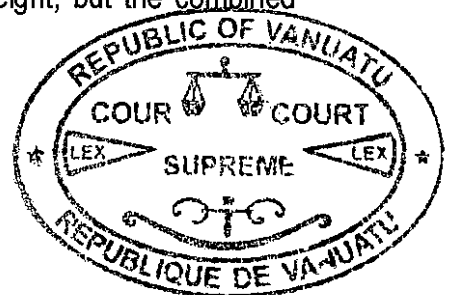
18. This was confirmed to Mr Seule prior to the prosecution opening its case. I read the statement required by s 81 of the Criminal Procedure Code aloud to Mr Seule in English. A translation into Bislama was not required.

Approach to assessing the evidence

19. This case turns on the credibility and reliability of the witnesses. While parts of the prosecution case are not in dispute, such as the movements of the vehicle (other than to Epi Island), there are factual disputes as to other aspects of the evidence so credibility findings are necessary where a factual conflict is material to an element of the offences.
20. It is therefore important to distinguish between credibility and reliability. Credibility is about truthfulness. So, credibility is about whether a witness can be believed? Reliability is about the accuracy of evidence which is honestly given. The first involves an intention to mislead or lie. The second involves error or mistake. Even the most honest witnesses capable of being mistaken, particularly when being asked to recall events which occurred many years ago. But a witness who sets out to give false evidence is an entirely different position. All of what is said may be called into question if the witness is setting out to be dishonesty in some or all respects.
21. I may accept everything a witness has said. On the other hand, I may reject everything a witness has said. There is a middle ground, which is that I can accept some parts of what a witness has said and reject other parts.
22. It is important that before relying on evidence, I am able to conclude that it was honestly given, but also that it is reliable.
23. In assessing the evidence given by the witnesses, there are a number of factors which assist with considering whether the witnesses gave truthful and accurate evidence. In considering the evidence of all the witnesses who gave evidence during the trial, I have considered the reasonableness, probability and coherence of the evidence. Sometimes conflicts or differences in the evidence can be caused by mistakes and misinterpretation; sometimes witnesses can see and hear things that were not seen and heard by other witnesses. This does not mean one of the witnesses is necessarily not telling the truth. But sometimes conflicts are not able to be explained away.
24. The witness' demeanour is a small part of my assessment of the witness. I prefer though to look at what the witness actually said, and take into account;



- a. consistency within the witness' account and over time? If there is an inconsistency, it does not necessarily mean that the evidence in court cannot be relied on. The mere fact that a witness is inconsistent on a particular topic does not mean that person is generally untruthful or inaccurate. Inconsistencies can happen even when someone is telling the truth. I must consider whether that inconsistency is a significant one or a minor one and any explanation given for the inconsistency;
 - b. consistency when comparing the witness' account with relevant exhibits;
 - c. consistency with the evidence of other witnesses whose evidence I have accepted.
 - d. whether there is supporting evidence. Supporting evidence is not required but it can help.
 - e. the inherent plausibility and coherence, or not, of the witness' account. Does it make sense?
 - f. Does the evidence have the ring of truth to it?
25. It is important that I consider each witness' evidence in the context of all the evidence in the case. Also, witnesses can be inaccurate or may not remember secondary, marginal or unimportant facts for various reasons, including that they were not seen as important at the time. However, their evidence may be accurate about essential matters, but not about details. Essential matters are matters which relate to the elements of the charges.
26. The prosecution case as to whether Mr Seule stole the vehicle or obtained it by deception depends in part on what is described as circumstantial evidence. Circumstantial evidence relies on reasoning by inference.
27. I reminded myself that if I am to draw inferences, they cannot be guesses or speculation but had to be logical conclusions drawn from reliably accepted or properly established facts. As was said by the Court of Appeal in *Swanson v Public Prosecutor [1998] VUCA 9*, inferences may be drawn from proved facts if they follow logically from them. If they do not, then the drawing of any conclusion speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. Inferences need not be irresistible.
28. Circumstantial evidence gets its force from the involvement of a number of factors that independently point to the guilt of Mr Seule. The analogy that is often drawn is of a rope. Any one strand of the rope may not support a particular weight, but the combined

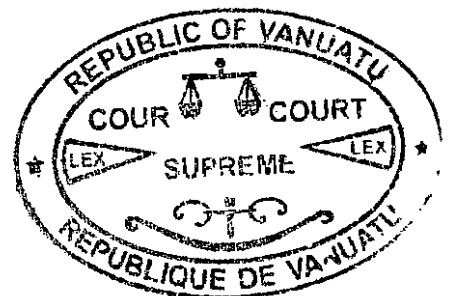


strands are strong enough to do so. The logic that underpins a circumstantial case is that Mr Seule is either guilty or is the victim of an implausible and unlikely series of coincidences.

29. The ultimate issue though is whether or not, on the totality of all the evidence, I am sure that all elements of the offence or offences are proved.

Mr Seule's position

30. Mr Seule made a statement to police under caution on 10 August 2024. It was produced by consent. The statement was taken in Bislama but was translated into English. Mr Seule remained silent and said he would speak in Court.
31. Once the prosecution case concluded, the s 88 statement was read aloud to Mr Seule in English. It was not translated into Bislama as Mr Seule elected to give evidence in English. Mr Seule elected to give and call evidence. Mr Seule gave evidence, as did Daniel Kalorus and Roro Gregory Seule.
32. The fact that Mr Seule gave evidence does not change who must prove the allegations. The prosecution has that task, and Mr Seule does not have to prove that he is not guilty. The question remains the same - has the prosecution proved his guilt beyond reasonable doubt. That means - am I sure?
33. If I accept what he says, then obviously the proper verdicts are not guilty because he will not have done what the prosecution says he did.
34. If what he says leaves me unsure, then again, the proper verdict is not guilty, because I will have been left with a reasonable doubt. If what Mr Seule says seems a reasonable possibility, the prosecution will not have discharged its task, and I must find him not guilty.
35. If I disbelieve Mr Seule's evidence on key issues, then I cannot not leap from that assessment to guilt, because to do that would be to forget who has to prove the case. Instead, I must assess all the evidence that I accept as reliable. This includes any part of the defence evidence I accept. Does that evidence satisfy me of Mr Seule's guilt to the required standard?

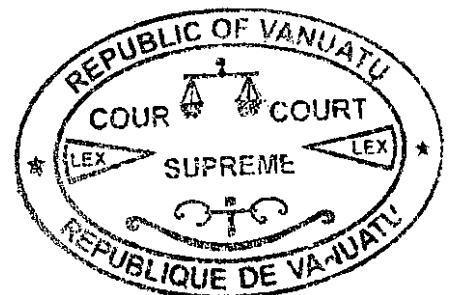


General credibility and reliability

Prosecution witnesses

36. As there are factual conflicts, I need to assess the reliability and credibility generally of the prosecution witnesses. In all overall sense, I consider that the prosecution witnesses gave truthful and reliable evidence. The witnesses recounted in a matter of fact way, and without embellishment their actions, knowledge of vehicle G 934 and interactions with Mr Seule at the time. Generally, the evidence of each witness was internally consistent and consistent with other evidence. For example, all the witnesses who were asked about the condition of the vehicle were consistent that it was in a poor condition. I acknowledge recall was not perfect and there were differences between the witnesses but that is understandable when the witnesses are recalling events which took place a number of years ago.
37. Mr Morrison contended in his written submissions that the evidence of various witnesses, being Mr Nalwang, Mr Kalo, Mr Fred and Mr Juliano cannot be relied upon. As regards Mr Nalwang, Mr Kalo and Mr Fred, Mr Morrison contends that the inconsistencies between their evidence as to how the vehicle went from the wharf to PWD, whether it had number plates and where it was parked, mean that their evidence has no value.
38. I accept there were inconsistencies as to whether the vehicle was driven or towed from the wharf to PWD, where the vehicle was parked at the PWD, where the number plates were, and how long the vehicle was at the PWD. Mr Fiji and Mr Nalwang had a differing view as to how the vehicle got to the PWD from the wharf. Mr Fiji said he drove it about 30 metres from the wharf to the PWD. Mr Nalwang said the vehicle was towed there. The witnesses did also have differing recollections as to where the vehicle was parked at the PWD. There was, as noted by Mr Morrison varying recollections as to how long the vehicle was at the PWD.
39. Inconsistencies can happen even when a witness is telling the truth. Whether or not an inconsistency impacts on the credibility and reliability of a witness's evidence will turn on the nature of the inconsistency, and whether it is minor or significant. How the vehicle got to the PWD, where it was parked at the PWD and how long it was there are inconsequential inconsistencies. These matters do not go directly to an element of the offences.⁶
40. As regards the G plates, the evidence, apart from Mr Seule's evidence, is consistent that the vehicle had a G plate, G 934 on the way back from Tongoa and at the PWD. Where the evidence differs is where the plate was. Eddy Williams' statement was tendered by consent. It is unchallenged. He worked on the Kiwitrader, which transported

⁶ I refer to a New Zealand case, *R v Bell* CA 393/05, 24 April 2006 at [13]



a G vehicle from Tongoa to Port Vila.⁷ Mr Fred said the vehicle did not have a front plate, but plate G 934 was on the back of the vehicle. Mr Juliano in his report said it was vehicle G 934. While he did not check the system at PWD, because he already had the plate number. Mr Juliano said the vehicle was G 934. He said he did not recall where the registration plates were- behind or on the front or back seats. Mr Kalo said that the plates G 934 were on the back seat of the vehicle. I do not regard the varying recall as to the location of the plates to be a significant inconsistency so as to mean that the evidence lacks credibility and reliability. Witness recall can vary even when describing the same event. All the witnesses were asked to recount events which happened a number of years ago. The differences would suggest that the witnesses have not got together to make up their evidence. I regard the evidence that the vehicle had plates G 934 with it, wherever they were, to show consistency in the evidence.

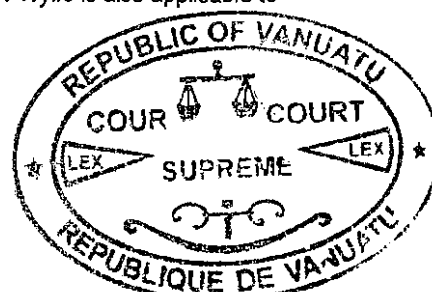
41. Mr Fred was granted immunity from prosecution. He was initially charged with complicity to theft.⁸ In cases involving immunity from prosecution, the risk factor is that the witness has a motive to lie.⁹ I remind myself that because there is a risk that Mr Fred was motivated to lie because of the immunity from prosecution, there is a need for caution in deciding whether to accept the evidence and the weight to be given to the evidence.
42. Mr Fred's immunity from prosecution was not a feature of the defence case. It was not suggested to him in cross examination that he was untruthful or motivated to lie because he had been granted immunity from prosecution.
43. I have considered whether Mr Fred may have been motivated to lie to "save his own skin", even though his evidence was not challenged on that basis. I consider that Mr Fred's evidence overall to be cogent and authentic. His evidence that Mr Seule instructed him to remove the vehicle from the PWD, and which he followed, to be plausible and to have an air of authenticity about it. It is entirely explicable for the reasons Mr Fred gave during his evidence. Mr Seule was the Minister, he was the first political adviser, he was his superior and his boss. Mr Seule had a position of power and control over Mr Fred, and they were also related. Also, Mr Fred's evidence as to how the vehicle was removed from the PWD has a ring of truth to it. His evidence was that he relayed the Minister's instructions to someone at PWD and told him that Mr Seule had sorted it out with Fleet Management and then the door was opened. Mr Fred's evidence that Mr Seule told him he had purchased the vehicle from Fleet Management was unchallenged and is the only evidence about that. As was held in *Fisher v Wylie* [2021] VUCA 5, the fact that Mr Fred was not cross examined on that evidence leaves it specifically unchallenged, and so in the normal course it would be accepted.¹⁰

⁷ Mr Williams does not refer to the specific plate G 934, but I infer that the G plate can only have been G 934.

⁸ Sections 30 and 125(a) of the Penal Code

⁹ *Bamber v R* [2024] NZCA 222 at [56].

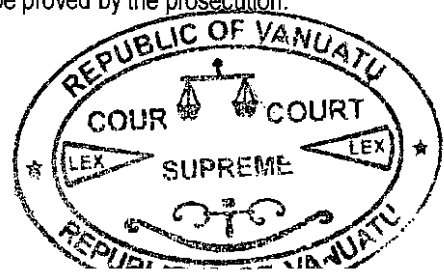
¹⁰ There was other unchallenged evidence which is discussed in the judgment. *Fisher v Wylie* is also applicable to that evidence



44. But importantly, the vehicle had to be released in some way to Mr Fred and Mr Kalo by the PWD. His evidence is also consistent with other evidence, such as Mr Kalo and Mr Lawrence. There is a seeming inconsistency between what Mr Stanley said in his police statement and his evidence about whether he went to pick up the vehicle from the wharf and took it to the PWD, which he explained.¹¹ It is a minor inconsistency and does not mean that his evidence lacks credibility.
45. Mr Morrison is critical of Mr Juliano's evidence. He submits his evidence had no credibility. That he intentionally or otherwise failed to answer questions and his report contained concerning errors, including that the purchase year of the vehicle and the date of examination were seemingly wrong. And that although Mr Juliano insisted it was a valuation report for the purposes of the tender process, nowhere in the report was any value placed on the vehicle. I accept the validity of Mr Morrison's criticism of Mr Juliano's evidence regarding the valuation of the vehicle. Mr Juliano's evidence about how he valued the vehicle at VT 350,000 was difficult to understand. But I do not doubt the sincerity of his evidence, that from his perspective, that he was undertaking a valuation of the vehicle based on a number of components. And the purchase year of the vehicle was wrong. But Mr Juliano gave an explanation for that, which is that he had estimated the year. But the relevance of the report had little to do with the valuation or its methodology.¹² The significance of the report was that firstly, it identified the Mitsubishi vehicle as G 934, and secondly that there was actually a report about the vehicle. That there was a report was confirmed by both Mr Nalwang, and Mr Lawrence. Mr Juliano's evidence about the condition of the vehicle was consistent with all the other evidence on that point. The date of inspection recorded on the report was 12 December 2018. I accept that is not correct as the vehicle had been moved from the PWD by then. The explanation lies in Mr Juliano's evidence that he inspected the vehicle and did the report at a later date. Having regard to these matters, I do not reject Mr Juliano's evidence entirely. I do not accept the evidence as to the valuation because it was difficult to understand that evidence. Notably, as I have said, the value of the vehicle is not an element of the offence. I do however, accept other parts of his evidence. His evidence was internally consistent and also consistent with other evidence. Overall, his evidence was plausible, and a factual narrative of his assessment of vehicle G 934.
46. As regards John Nalwang's evidence, I do not agree that the inconsistencies referred to above mean that his evidence should be rejected. As I said, they are of no consequence, so do not impact of the reliability and credibility of his evidence. Overall, I accept Mr Nalwang's evidence. Mr Nalwang gave his evidence in a matter of fact way and recounted his interactions with Mr Seule and his involvement with vehicle G 934. His evidence was cogent and plausible. Consistent with Mr Fred's evidence, Mr Nalwang's evidence was that he was acting on Mr Seule's instructions at the time. Of

¹¹ In his statement, he said he and Mr Kalo went to pick up the vehicle and take it to the PWD. In his evidence he said he was not part of the process of moving the vehicle to the PWD. He said he meant was that he was driving Mr Kalo around and was not part of the arrangements. He went to the wharf later

¹² The value of the vehicle is not an element of the offence, so does not need to be proved by the prosecution.



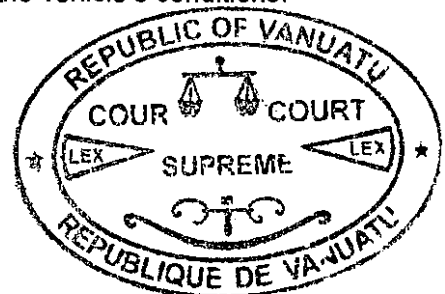
note, Mr Nalwang said that he gave a copy of Mr Juliano's report to Mr Seule, which Mr Seule denied happening, when he gave evidence. Mr Nalwang was not challenged in cross examination about that. Mr Nalwang's evidence was also consistent with other evidence, such as the condition of the vehicle, that he was instructed to check on the vehicle at the PWD, that he received Mr Juliano's report and that he took the report to Mr Lawrence at Fleet Management.

47. I accept Mr Nalwang's evidence that he gave Mr Seule a copy of the report. It has the ring of truth. Mr Seule himself said he was waiting for the report. Once Mr Nalwang received it, he says he gave it to both Mr Seule and Mr Lawrence at Fleet Management. It is inconceivable that Mr Nalwang would only give the report to Mr Lawrence and not his boss, who had asked for it.
48. I do not intend to discuss the evidence of other prosecution witnesses at this point. I will do so, if necessary, when considering the elements of the charges.

Mr Seule

49. Mr Seule does not have to prove anything. But he chose to provide the Court with his narrative. The general reliability and credibility of his evidence needs to be assessed, as there are issues which require the Court to consider Mr Seule's state of mind, including whether he intended to permanently deprive the government of the vehicle at the time he took it.
50. Mr Seule gave his evidence in a forthright manner. He was adamant that he had no interest in a tender process for the vehicle, and that his intention was to have the vehicle repaired and used by the Ministry of Youth and Sport. Further, he refuted the proposition that his intention was to keep the vehicle. I consider that there are issues about the reliability and credibility of Mr Seule's evidence generally, as I now explain.
51. Mr Seule's evidence was inconsistent with other evidence I have accepted. As I have already said inconsistencies do not necessarily mean that evidence is untruthful. A minor inconsistency made by of no consequence, but a significant inconsistency may impact on whether I believe Mr Seule's evidence and accept it as being reliable. The inconsistencies I detail below do impact on the truthfulness and reliability of Mr Seule's evidence, as they are directly relevant to elements of theft- either ownership of the vehicle, or whether Mr Seule intended to permanently deprive the government of the vehicle. So, they are not minor inconsistencies. Examples include:
- a. One inconsistency is that while witnesses who saw the vehicle at the PWD saw the vehicle with plate G 934, Mr Seule did not,¹³ despite seeing the vehicle at the PWD and making detailed observations as to the vehicle's conditions.

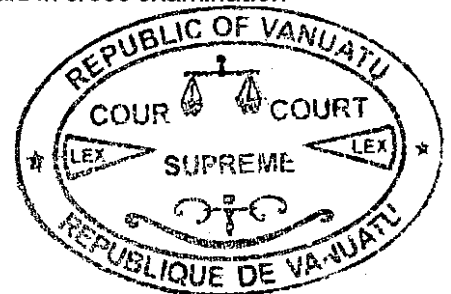
¹³ Mr Fred, Mr Kalo and Mr Juliano



- b. Another inconsistency is Mr Seule's adamant denial that he was interested in a tender process. There is evidence to the contrary. Mr Fred's unchallenged evidence was that the vehicle was taken to the PWD for it to be valued so it could be put up for tender as Mr Seule wanted to purchase it, and he processed the documents to go to Fleet Management. And that is exactly what Mr Juliano did. He did a valuation for tender purposes. Mr Nalwang's evidence was that when he received information from Mr Juliano at PWD that the truck should be put out for tender, Mr Seule asked him to go and talk to Fleet Management which he did. Then there is Mr Lawrence's evidence in particular that Mr Nalwang had visited him with a report, which he mislaid and asked for another copy for tender purposes. So, despite Mr Seule saying that he was not interested in the tender process for the vehicle, two staff members took steps towards a tender process at Mr Seule's direction.
- c. Then there is the inconsistency between Mr Seule's evidence that Mr Nalwang did not give him a copy of the report on G 934, and Mr Nalwang's evidence he did. As noted, Mr Nalwang was not asked about that in cross-examination. I find it inconceivable that Mr Seule did not receive a copy of the report, yet Mr Lawrence did, when the whole point was to obtain a report to give to Mr Seule.
- d. Mr Seule's evidence regarding the repainting of the vehicle and the CT plates is at odds with Mr Kemu's evidence. As I explain at paragraph 150, I accept Mr Kemu's evidence. I assess that Mr Seule was untruthful about the alterations to the vehicle.¹⁴

52. At times, Mr Seule's evidence was internally inconsistent. One example is his evidence as to whether vehicle G 934 was a government asset. In his evidence in chief, Mr Seule said he told Mr Stanley and Mr Fiji to get the vehicle to the PWD because it was an asset of the government. In cross examination, Mr Seule said that it used to be a government asset.
53. Then there is Mr Seule's evidence about his instructions to Mr Kemu to put a plate on the vehicle. In evidence in chief, Mr Seule was asked about this, and said he was told there were no plate numbers so told them to put a plate number on it. He said he did not know where the plates came from. In cross examination, it was put to Mr Seule that as a Member of Parliament, he should have instructed Mr Kemu to wait and get a G plate from finance because it was a government truck. Mr Seule then said that he told Mr Kemu to wait for the plate. Later in cross examination, Mr Seule said something different again. It was put to him that his intention (in instructing Mr Kemu to put any plate on) was to have the vehicle as his own. Mr Seule said that during the trial most of those who were driving the truck said the plate number was in the truck. He said he told Mr Kemu to find the plate and put it on the truck. Mr Seule also said in cross examination

¹⁴ See the discussion at paragraph 153



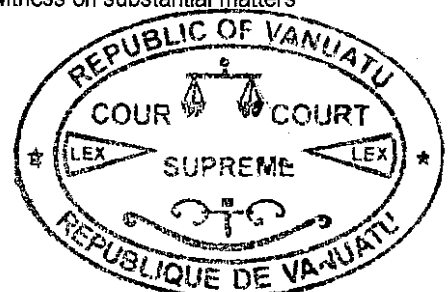
that he told Mr Kemu that the truck could not run without a plate on a public road. That is why Mr Kemu took the plate off another vehicle and put it on the truck. Mr Seule's evidence about the plate evolved, was internally inconsistent and confusing. I do not believe it.

54. Another example is Mr Seule's evidence as to his knowledge about how the vehicle went to Epi. In evidence in chief Mr Seule said he did not know how the truck went to Epi, and that it was his son Fredson who made the decision to send it to Epi. In response to a question from the Court, Mr Seule said the vehicle went on the ship he had chartered to send his Landcruiser to the island. So, he did know how the vehicle got to Epi.
55. A number of aspects of the defence case were not put to prosecution witnesses for comment. The common law position is that the essence of contradictory material normally has to be put to a witness so they might have an opportunity to explain the contradiction.¹⁵ This is to ensure fairness.¹⁶ The Court gained the impression that Mr Seule's evidence evolved. I have difficulty giving these parts of Mr Seule's evidence much weight given that some of the witnesses did not have an opportunity to comment on Mr Seule's narrative. These matters include:

- Neither Mr Fred nor Mr Kalo were asked about Mr Seule's evidence that the vehicle was moved from Elluk to Mr Seule's home at Dash Studio was because Mr Fred and Mr Kalo were misusing it, running around in it at night, going to clubs.
- That vehicle G 934 was a write off and no longer a government asset. Mr Letlet, who was the Director-General of Finance at the time, was not asked to comment on that proposition.
- Mr Seule's evidence that it was Mr Fred and Mr Kalo's idea to fix the vehicle was not put to them.
- As already mentioned, Mr Seule's evidence that he did not receive the report regarding G 934 was not put to Mr Nalwang.
- Mr Seule's evidence that the PWD did not have time to fix the vehicle was not put to Mr Juliano, who was a supervisor at the PWD at the time.

¹⁵ *Browne v Dunn* 1893 6 R 67 HL

¹⁶ The Vanuatu Evidence Bill has now been passed and is awaiting gazetting. Under s 59 of the Evidence Act, there will be various steps the Court can take if a party fails to cross examine a witness on substantial matters of the party's case.



- Mr Seule's evidence that he told Mr Kemu to either find the G plate and put it on the vehicle or to wait and get a G plate from Finance was not put to Mr Kemu.
 - Mr Seule's denial in evidence in chief that he told Mr Nalwang that he told Mr Nalwang the truck was paid for. Mr Seule said he told Mr Nalwang that he spent a lot of money on fixing the vehicle, so he needed reimbursement from the finance section of the Ministry of Youth and Sport.
56. Mr Seule also gave evidence which did not have the ring of truth and was implausible, such as not seeing the plate G 934 on or with the vehicle at PWD, not receiving Mr Juliano's report, that it was the idea of Mr Kalo and Mr Fred to repair the vehicle¹⁷, Mr Seule's evidence that he was not interested in a tender process yet had instructed Mr Fred and Mr Nalwang to make inquiries about a tender, the evolving evidence about his instructions to Mr Kemu about putting a number plate on the vehicle, and also Mr Seule's evidence disavowing knowing that the truck went to Epi.
57. Sometimes small details are important. Mr Seule's evidence disavowing knowledge that the vehicle went to Epi is not believable. He said that his son Fredson took the truck to Epi without his knowledge. The vehicle was at Mr Seule's property at Etrmat. He was in control of the vehicle. Fredson was a young student at the time. I infer then he did not have the means to ship the vehicle to Epi. In response to a question from the Court, Mr Seule then said that the vehicle went on a ship he had chartered to take another vehicle to Epi. Mr Seule knew the vehicle had gone to Epi.
58. Overall Mr Seule's evidence, particularly on the key issues was both inconsistent with other evidence and internally inconsistent at times, was unconvincing and implausible. It was not believable. Therefore I reject his evidence on key issues. That is not to say that I reject all his evidence. I accept evidence that is consistent with or supported by other evidence.

Charge one - Theft

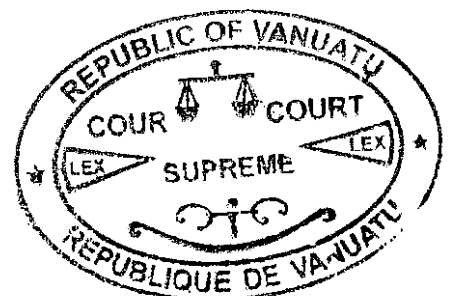
59. Section 125(a) of the Penal Code says:

PROHIBITION OF THEFT, MISAPPROPRIATION AND FALSE PRETENCES

125. No person shall cause loss to another-

(a) by theft;

¹⁷ Mr Fred was a subordinate of Mr Seule who acted on instructions from Mr Seule.



- (b) by misappropriation; or
 - (c) by false pretences.
- Penalty: Imprisonment for 12 years.

60. Section 122 of the Penal Code defines theft. It says:

THEFT DEFINED

122.(1) *A person commits theft who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof;*

(2) *A person shall also be guilty of theft of any such thing notwithstanding that he has lawful physical control thereof, if, being a bailee or part owner thereof he fraudulently converts the same to his own use or the use of any person other than the owner.*

(3) *For the purpose of subsection (1)-*

(a) *the word "takes" includes obtaining physical control-*

(i) *by any trick or by intimidation;*

(ii) *under a mistake on the part of the owner with knowledge on the part of the taker that physical control has been so obtained;*

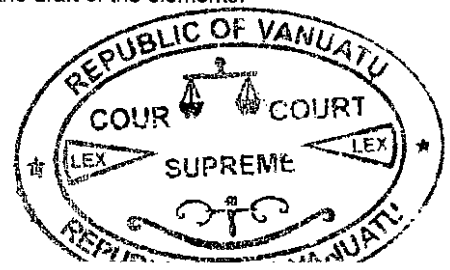
(iii) *by finding, whether or not at the time of finding the finder believes that the owner can be discovered by taking reasonable steps;*

(b) *the words "carried away" include the removal of any thing from the place which it occupies but in the case of a thing attached, only if it has been completely detached;*

(c) *the word "owner" includes any part-owner or person having physical control of, or a special property or interest in, anything capable of being stolen.*

61. Mr Young submitted in his opening address that there are 4 elements of theft. I consider that in the context of this case, the elements of theft are:¹⁸

¹⁸ I did not entirely agree with Mr Young's assessment of the elements of theft. Therefore, I circulated to both counsel a document setting out the elements of theft. Both counsel agreed with that document. The first element is slightly different to the document as circulated. I have added a separate element regarding ownership of the vehicle, as that is specifically in dispute, which I did not know when I circulated the draft of the elements.

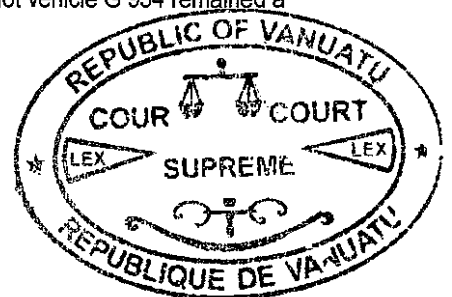


- a. That Mr Seule took and carried away vehicle G 934?
 - b. Was the Vanuatu government the owner of vehicle G 934 at the time the vehicle was taken and carried away?
 - c. That Mr Seule took vehicle G934 without the consent of its owner, the Vanuatu government.
 - d. That Mr Seule took G 934 fraudulently.
 - e. That Mr Seule took G 934 without a claim of right made in good faith.
 - f. At the time he took vehicle G 934, Mr Seule intended to permanently deprive the Vanuatu government of the vehicle.
62. While the Prosecution must prove each element of theft, Mr Morrison submitted there are two issues:
- a. Was the Vanuatu government the owner of vehicle G 934?
 - b. At the time he took the vehicle, did Mr Seule intend to permanently deprive the government of the vehicle.¹⁹

Did Mr Seule take and carry away vehicle G 934?

63. Mr Young contends that Mr Seule took and carried away the vehicle when it was removed from PWD, and taken initially to Elluk, then to Mr Seule's residences at Dash Studio and Etmat. It was then re-painted, had a new plate affixed to it and was sent to Epi.
64. While it is for the prosecution to prove this element to the required standard, this issue is not in dispute. The defence submissions regarding this issue focussed on the other issue in the trial relating to whether there was a permanent intention to deprive the government of ownership (assuming the government was the owner), at the time the vehicle was taken and carried away.
65. In his written submissions, Morrison submitted that the physical taking of the vehicle occurred in Tongoa, and that the taking of the vehicle from the government power and control occurred on its removal from the PWD. He also submitted that the vehicle

¹⁹ Mr Morrison opened the defence case on the basis that the issue was whether or not vehicle G 934 remained a government asset.

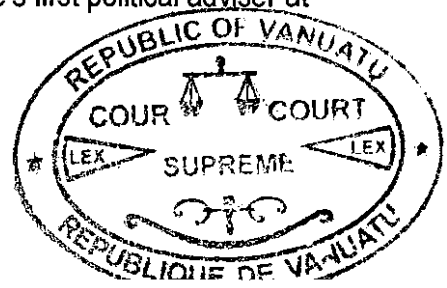


needed fixing to be of use and that Mr Seule took no more than the necessary practical steps to have it fixed.

66. Theft is defined in s 122 of the Penal Code, which is set out above. As Tuohy J explained in *Public Prosecutor v Weties* [2008] VUSC 6:

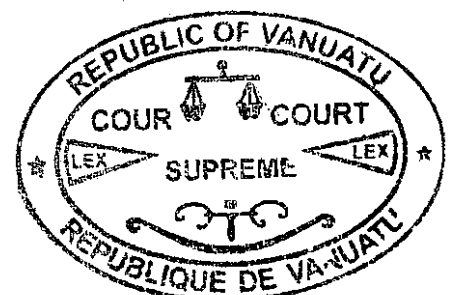
35. Section 122 of the Penal Code Act is actually a virtual copy of the definition of theft in the Larceny Act 1916 of the United Kingdom which has long ago been repealed there. It was repealed in the United Kingdom in 1968, but it is on the Larceny Act 1916 that our Section 122 is based. It is exactly the same except that in subsection 3 the words "physical control" are substituted for the word "possession".

67. Pursuant to s 122(3), "taking" includes obtaining physical control by various means. "Carried away" includes removing property from a place it occupied.
68. Having regard to the statutory definitions of "taking" and "carried away", taking and carrying away property must mean obtaining physical control of the property and then moving or removing the property taken. Given Tuohy J's observations in *Weties* that s 122 is a virtual copy of the definition of theft in the United Kingdom Larceny Act 1916, I infer that substituting the words "physical control" for "possession" was deliberate.
69. By way of background and context, Mr Seule became aware that there was a Ministry of Youth and Sport vehicle on Tongoa. That is because Mr Seule said that during his term as Minister of Youth and Sport, he found out that a vehicle of Youth and Sport had been shipped to Tongoa by the former minister, the late Morking Stephens. He said that when Mr Stephens finished with Youth and Sport, the vehicle was left behind on Tongoa and was not working. He went on to say that he checked the correspondence of the previous Minister, Norris Jack. A boat to take the vehicle from Tongoa back to Port Vila had already been paid for, but it had not happened. Mr Seule then instructed his first political adviser, Mr Fred to arrange for the return of the vehicle from Port Vila.
70. Mr John Fiji, a clerk at the Ministry of Youth and Sport, went to Tongoa to get the vehicle. He is from Tongoa and the vehicle was in his village in Tongoa. The vehicle was transported from Tongoa back to Port Vila on a ship, the Kiwitrader. Once at the wharf in Port Vila, the vehicle was taken immediately to the PWD, a government department. None of the witnesses were sure how long the vehicle was at the PWD. Various people, including Mr Seule visited the PWD and saw the vehicle. In his evidence in chief, Mr Seule said that he told Mr Fiji and Mr Fred to take the vehicle to the PWD. He said that was because the vehicle was an asset of the government, and had to go there for checks and assessment, and to be fixed.
71. Mr Fiji said that the vehicle was taken to the PWD because it was an asset of the government and for repairs by a mechanic. Mr Fred, Mr Seule's first political adviser at



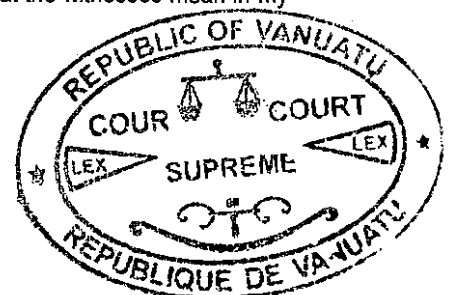
the time, said the vehicle was taken to the PWD for the vehicle to be valued so that it could be put up for tender. His understanding was that Mr Seule wanted to buy the vehicle, so he processed documents to go to Fleet Management.

72. Mr Nalwang worked with Mr Seule in 2018. He went with Mr Fiji to collect the vehicle from the wharf and take it to the PWD. He said that vehicles normally go to the PWD once in Port Vila to be repaired. Once at the PWD, his evidence was that Mr Seule instructed him to check on the status/condition of the vehicle -whether the engine was working. He spoke to Mr Juliano who said the vehicle was in poor condition, and he needed to refer it back to the Minister responsible to start a tender process. Mr Seule told him to go and talk to Fleet Management, which he did. After speaking with Mr Lawrence at Fleet Management, Mr Seule told him to get a report from Mr Juliano, which he did. Mr Nalwang's evidence was that he gave the report to both Mr Lawrence and Mr Seule. Mr Seule denied having received the report. However, this was not put to Mr Nalwang.
73. While the vehicle was at the PWD, its condition was assessed, and was valued by Mr Juliano. This included a physical assessment and other checks. Mr Juliano produced a report on the vehicle, G 934. In the report, he recorded the inspection date as 12 December 2018. His evidence was that the vehicle came in, was inspected and the report was produced at a later date. His evidence is that he gave the report to Mr Nalwang and also the Tenders Board.
74. The vehicle did not remain at PWD for repairs. Mr Fred said he was instructed by Mr Seule to remove the truck from the PWD and take it to a private garage for repairs. He said he was told to do it as the weekend. Mr Fred said he followed the instructions to remove the vehicle, because as first political adviser, he followed what he was told by the Minister. Later in his evidence in chief, Mr Fred said that he considered Mr Seule to be his superior. He was the minister, he respected him as the Minister, and he followed his instructions as he was his boss.
75. Mr Seule told Mr Fred that he had purchased the vehicle from Fleet Management. Mr Fred said that he and Mr Kalo went to the PWD on a Sunday in November 2018 to remove the vehicle. Before they moved the vehicle, he spoke to a young man at the garage, and relayed the Minister's instructions to him, and told him that the Minister had sorted it out with Fleet Management, so the young man opened the door.
76. Mr Fred and Mr Kalo towed the vehicle to Elluk. Mr Kalo and Mr Fred are brothers and were living at a private residence at Elluk. They are also related to Mr Seule. Relevantly, Mr Kalo is a mechanic. Mr Kalo did mechanical repairs to the vehicle, including servicing it, changing the oil filter, the fuel filter and engine oil. As a result, the vehicle could be driven.



77. Mr Seule gave a detailed explanation as to why the vehicle was removed from the PWD. He confirmed in cross examination that he did instruct Mr Fred and Mr Kalo to move the truck from the PWD because they said they could fix it. He said Mr Fred and Mr Kalo came to him to say they could fix it, so he told them that if they could fix it, and should take it somewhere and fix it. So, they took the vehicle to Elluk to fix it.
78. In cross examination, Mr Seule was asked why he did not tell Mr Fred and Mr Kalo to leave the vehicle at the PWD for PWD to fix it, rather than removing it. Mr Seule's response was he was told by PWD they were very busy and there were too many old trucks there. The space was very full. It was situated in the place where they did inspections. He also said that government vehicles can be repaired at other places- for example, where they are purchased. None of this was put to Mr Juliano, who was a supervisor at PWD at the time, in cross examination. I assess that Mr Seule's evidence about this evolved.
79. Once the vehicle was in a condition where it could be driven,²⁰ Mr Seule instructed his son to take it from Elluk to his residence at Dash Studio. In cross examination, Mr Seule accepted that the vehicle the vehicle was under his possession and authority at the time. He said this was because Mr Fred and Mr Kalo were using the vehicle and running around town in it at night going to clubs. This was not put to either Mr Fred or Mr Kalo.
80. As I have said, Mr Seule himself acknowledged that he instructed Mr Fred and Mr Kalo to remove the vehicle from the PWD to Elluk, because they said they could fix it. It went to a private residence, and then once it could be driven, was taken to his residence at Dash Studio, and then to his residence at Etrmat.
81. It is not in dispute that the vehicle was moved from the PWD to a property in Elluk by Mr Fred and Mr Kalo. I consider that Mr Seule took and carried away vehicle G 934 when he instructed Mr Fred to remove it from the PWD. Mr Seule accepts that he gave those instructions, but because Mr Fred and Mr Kalo said they could fix it. At that point he had physical control of the vehicle, because he was directing others as to what they should do with the vehicle. Put another way, the vehicle would never have left the PWD at that stage but for Mr Seule's instruction to an inferior staff member. He did not take the vehicle there but according to his evidence his Landcruiser was used to tow the vehicle to the private residence at Elluk. The vehicle was carried away when it was removed from the PWD. PWD was the place it had been "occupying".
82. Mr Seule did not take and carry away the vehicle not when he instructed Mr Fiji to bring the vehicle back from Tongoa to Port Vila. The vehicle was taken immediately to the PWD for assessment. Mr Seule did not have physical control of the vehicle then. It was in the possession and physical control of the PWD.
83. Therefore, I am sure that Mr Seule took and carried away vehicle G 934.

²⁰ There was a lot of evidence about the vehicle being in "running" condition, but what the witnesses mean in my view is that the vehicle could be driven.

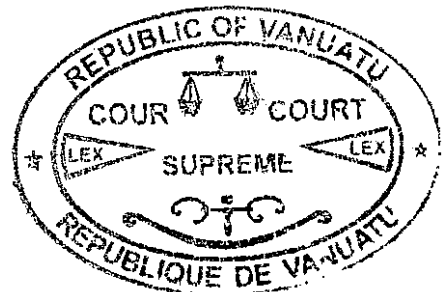


Was the Vanuatu government the owner of vehicle G 934 at the time it was taken and carried away?

84. Mr Young contends that that G 934 was an asset owned by the government, and points to various pieces of evidence which he contends proves ownership by the government, including John Fiji, Stanley Fred, Kalo Matau (Mr Kalo), John Nalwang, August Letlet, Mr Seule's own evidence and exhibits P6 and P10.²¹
85. Mr Morrison contends otherwise. He submits that the evidence generally showed high degrees of incompetence in relevant government systems, highlighting the fact that until 2018, there was no consolidated data relation to its motor vehicles until 2018. Mr Morrison points to a lack of documentary evidence, particularly from PWD, as to ownership. He contends that from the time it was no longer roadworthy until seized by police, the apparent government owner showed no independent interest in the vehicle and had no record anywhere of the vehicle.
86. Mr Morrison contends that it is incredible that someone asserting ownership of a vehicle could produce no documentary proof of that ownership, other than Mr Juliano's report, which Mr Morrison is highly critical of. And this was despite at least some inquiries being made by various people, including Mr Fred, Mr Nalwang, Mr Kalorus and Gregory Seule.
87. While Mr Seule does not have to prove anything, he chose to explain his position. His position is that while the government acquired ownership of the vehicle in 2011 and exercised ownership rights for some years (not longer than March 2015), in 2018 it was no longer a government asset as it had been abandoned, disowned by the government, and was a write off given:
- a. The vehicle was off the radar for many years.
 - b. The vehicle was not functioning and unroadworthy for many years.
 - c. The vehicle suffered body damage.
 - d. Mr Seule made payments in respect of the vehicle which may well have exceeded its value.
88. The evidence establishes that every vehicle purchased by the government comes to PWD to be issued with a number plate²². It is surprising that no documentary evidence was produced from PWD as to the ownership of vehicle G 934 and when the number plates were issued. However, I do not speculate why that is so. As was said in *Kal v*

²¹ P6 is Jean Juliano's report and P10 is the document from IntraCo.

²² As per the evidence of Jean Juliano.



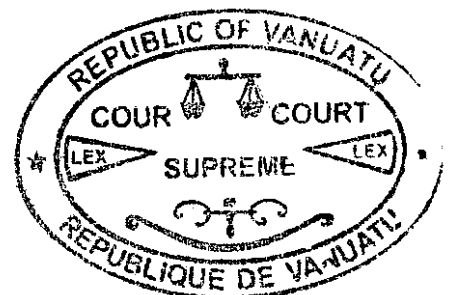
Public Prosecutor [2016] VUCA 56, Judges make their decisions based on the evidence before them. I must consider what evidence there is as to ownership, and considered whether I am sure that the Vanuatu Government was the ownership of G 934 at the relevant time.

89. The Ministry of Youth and Sport purchased a grey Mitsubishi L200 double cabin utility from Intraco in 2011.²³ As noted, it is not in dispute that the government acquired ownership of the vehicle at that point. In my view, the chassis number of that vehicle matched the chassis number of the vehicle seized by police in 2021. There was a minor discrepancy between the chassis number as recorded in the IntraCo document and the chassis number recorded by Cooks Thompson in relation to one letter, but Mr Thompson conceded in cross examination that he could have been mistaken due to the fact there was rust.
90. There were various pieces of evidence about the ownership of vehicle G 934. The following witnesses gave evidence about their knowledge as to the ownership of vehicle G 934.

- Mr Letlet August

- (i) Mr Letlet, now the governor of the Reserve Bank, was the Director-General of the Ministry of Finance and Economic Management between 2015 - 2023. Mr Letlet's evidence was that there was a record of the purchase, but not the disposal of, vehicle G 934. That evidence was not challenged. He said that the vehicle records should show the date of purchase, which government agency will be using the asset and also its disposition. He confirmed that the Ministry of Youth and Sport purchased vehicle G 934. Mr Letlet also said that there was no record of disposal of G 934. He said that there was no tender process followed for vehicle G 934. Mr Letlet explained that the tender regulation outlines the process for purchase and disposal of all government assets.
- (ii) While Mr Letlet confirmed in cross examination that normally there is a process for writing off a vehicle, for example if it had been in an accident, often it is not done. He explained that each agency has to submit a form to the Department of Finance to have the vehicle withdrawn. But often that is not done so there is no record that a vehicle is not usable.
- (iii) A key aspect of the defence case is that the vehicle had been abandoned or written off, and as such, was no longer owned by the government. Mr Letlet's evidence was that while the government does not hold records of every government vehicle, the financial system of

²³ See exhibit P 10



the government can track or release reports on assets held by Department, Ministry and by section. And as noted above, Mr Letlet confirmed that when he checked the government records in 2022, there was a record of purchase but not disposal of the vehicle. However, Mr Letlet was not specifically cross examined as to any write off or process for write off of vehicle G 934. In his capacity as Director-General of Finance at the time, he should have been given an opportunity to comment on Mr Seule's position that the vehicle had been written off by the government, rather than a hypothetical example being put to him.

- John Fiji

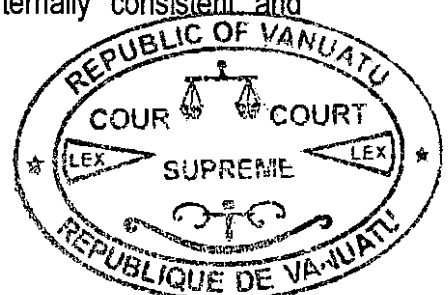
- (i) Mr Fiji was a clerk at the Ministry of Youth and Sport from 2016 - 2018. He said that the vehicle he arranged to be transported from Tongoa to Port Vila was taken to the PWD because it was an asset of the government and also for repairs. Mr Fiji was asked how Mr Seule knew about the vehicle. He said that he knew every vehicle in the Ministry is registered and its location known. Mr Fiji said he knew about the vehicle because it was a G registration vehicle, which was kept in his village.

- Stanley Fred

- (i) Mr Fred said the vehicle was taken to PWD for it to be valued so that it could be put up for tender as Mr Seule wanted to purchase it. This evidence was unchallenged, as was Mr Fred's evidence that Mr Seule told him he had purchased the vehicle from Fleet Management. He said he processed the documents to go to Fleet Management. However, there was no response from Fleet Management, so Mr Seule instructed him to remove the vehicle from PWD.
- (ii) He said that at the PWD, the vehicle had a plate G 934 on the back. There was no G plate on the front.

- Mr Kalo

- (i) Mr Kalo first saw the vehicle at the PWD. He said plates G 934 were on the back seat of the vehicle.
- (ii) I assess that Mr Kalo gave coherent and plausible evidence. His evidence was matter of fact and was internally consistent and



consistent with other evidence.²⁴ It had the ring of truth to it. As with Mr Fred, Mr Kalo is related to Mr Seule and there was an obvious power imbalance between the two men, given Mr Seule's position. So, I accept that Mr Kalo was simply following instructions given by Mr Seule, rather than initiating the idea of repairing the vehicle. I accept his evidence as credible and reliable.

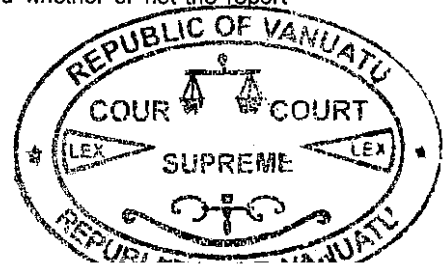
- Jean Juliano

- (i) In 2018, Mr Juliano was a supervisor at PWD. His evidence was that in 2018, he was approached by Mr Seule about a valuation.²⁵ Mr Juliano agreed, but the truck did not come to PWD for inspection at the time. The truck came to PWD a few weeks later. On that occasion, it was John Nalwang and John Fiji who came to Mr Juliano asking for a physical assessment of the truck to produce a valuation to be presented to the Minister concerned. He added that the purpose was to produce a report to go to the Tenders Board for information as to the current condition of the vehicle.
- (ii) Mr Juliano confirmed that PWD is responsible for all government vehicles, and the issue of G plates. He assessed the vehicle at PWD. He did a physical inspection and took it for a test drive. He said the vehicle had with it number plates, G 934, although he did not recall whether the plates were on the back or on front or back seats of the vehicle.
- (iii) Mr Juliano produced a report, purporting to be a valuation of the vehicle. The report relates to the grey Mitsubishi L 200 double cabin vehicle, registration G 934. I infer that the G 934 plates must have been with the vehicle, because Mr Juliano did not make any check in the PWD system as he said he already had the registration plate number.
- (iv) Mr Juliano said he did not do the valuation at the time of the physical assessment, because he was involved in other work that had been assigned to him. He did the report at a later date. He valued the vehicle at VT 350,000. The basis for the valuation and his evidence about that was difficult to understand. There are valid criticisms of the report made by Mr Morrison.²⁶ But he did confirm in cross examination that while the vehicle was in running condition, it was not roadworthy.

²⁴ An example is that Mr Kalo said Greg Seule moved the vehicle from Elluk to Dash Studio. Greg Seule confirmed that.

²⁵ Although he did not recall how it occurred - whether it was by phone, directly in person or email.

²⁶ Such as Mr Juliano estimating wrongly that the vehicle was a 2013 vehicle and whether or not the report



- Jerry Lawrence

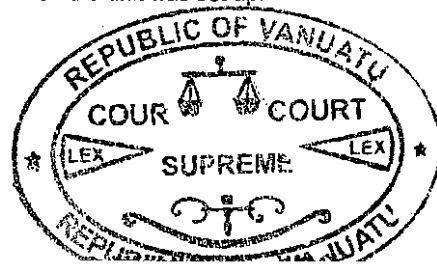
- (i) In 2018 and 2019, Mr Lawrence was a senior fleet officer in the Fleet Management Unit.²⁷ He said the Fleet Management Unit was set up in 2018. His role was to identify all government vehicles throughout Vanuatu. This included how many vehicles there were and how many were in running condition and how many were not.
- (ii) Mr Lawrence said that John Fiji, John Nalwang and Stanley Fred came to see him about the vehicle in 2018. Mr Fiji told him he was interested in the vehicle, which was on Tongoa, and Mr Lawrence told him that the Fleet Unit had no details about the vehicle and that if he was interested, he would have to bring it over and go through the Customs Department first, and it would have to go to tender. He confirmed that Mr Nalwang came to see him with a report from the PWD, and that Mr Nalwang gave him Mr Juliano's report regarding the vehicle but that he misplaced it. He said he asked for another copy so that the vehicle could be registered for the tender process. In cross examination, Mr Lawrence confirmed that Mr Stanley Fred also came to see him. He said that Mr Fred did not come and see him to express an interest in a tender. He came to see him about a truck on Tongoa, which was G 934.

- John Nalwang

- (i) In 2018 John Nalwang worked with Mr Seule. He worked alongside the first political adviser, Mr Fred until he replaced Mr Fred as first political adviser. Mr Nalwang confirmed that the vehicle returned from Tongoa and went to PWD.
- (ii) He said that Mr Seule instructed him to check on the status/condition of the truck- whether the engine was working. When information was received from Mr Juliano at PWD about the poor condition of the vehicle and that the truck should be put out for tender, Mr Nalwang said that Mr Seule asked him to go to talk to the Fleet Management Unit, which he did. He spoke with Mr Lawrence who said a proper valuation was needed. Mr Seule who told him to get a report from Mr Juliano. Once he got the report, he said he gave the report to both Mr Seule and Mr Lawrence. Mr Seule denies having been given a copy of the report by Mr Nalwang. This was not put to Mr Nalwang when he was cross examined.

contained a valuation of the vehicle.

²⁷ Mr Seule's evidence is that Fleet Management was set up in 2016. Nothing turns on when the unit was set up.



(iii) Mr Nalwang also said that he saw the vehicle at Mr Seule's home at Etmat Bay covered with a tarpaulin. He thought the tender process must have been completed. He then asked Mr Seule if he had purchased the vehicle, and he confirmed that he had. Mr Seule said there was a conversation but denies saying the truck was paid for. He said he told Mr Nalwang he had spent a lot of money fixing the vehicle, so needed reimbursement from the Finance Section of the Department of Youth and Sport.

- Simeon Seule

(i) Mr Seule did not have to give evidence but chose to. He was not required to give any explanation about events surrounding the truck but did so. He said that during his term as Minister of Youth and Sport, he found out that a vehicle of the Ministry of Youth and Sport had been shipped to Tongoa by Morking Stephens. The truck had been left on Tongoa and was not working. He checked the correspondence of the previous minister, who had arranged to bring the vehicle back which had not happened. So, he told his first political adviser to organise someone to bring the truck back to Port Vila.

(ii) Mr Seule said various things about ownership of the vehicle in his evidence. During evidence in chief, Mr Seule said that he told John Fiji and Stanley Fred to get the truck to PWD. That was because it is an asset of the government and it had to go there for checks and assessment and to be fixed.

(iii) Mr Seule's evidence was that his intention was to have the vehicle repaired to use by the Ministry of Youth and Sport. He confirmed that he went to PWD and questioned the mechanic who looked after the workshop. He was told someone by the name of Johnny who is responsible for the workshop would prepare a report. He confirmed he was referring to Jean Juliano. He denies ever having received a report about the vehicle. Mr Seule said that mechanics at PWD told him they could not do anything with the truck as they already had too much rubbish at the workshop.

(iv) Mr Seule saw the vehicle at PWD, and said the truck had a broken roof, was rusty, the engine was not working. It was an old truck which had been sitting there, like abandoned for a long time. Despite detailed observations about the condition of the truck, Mr Seule said that the vehicle did not have any number plates. In addition, in evidence in chief he said that he contacted Fleet Management to find out about the front

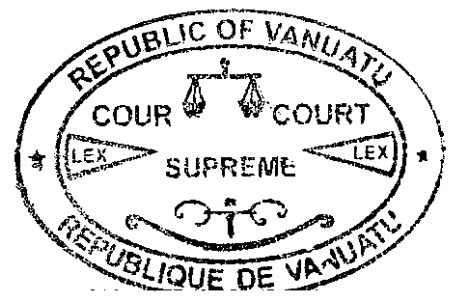


plate or registration and they said they did not have a record of the vehicle as the system had just been set up in 2016. In cross examination, Mr Seule back tracked and said that Fleet Management is not responsible for the plate. It is responsible for the registration of the vehicle. He also made an enquiry with the Chairperson of the Public Service Commission and was advised that Fleet Management had just been set up, and there was no such record of the truck that had been sent to Tongoa.

- (v) In contrast to his earlier evidence, in cross examination, Mr Seule said that the vehicle used to be a government asset.²⁸ When Mr Young put to Mr Seule that the vehicle went to PWD because it was a government asset, Mr Seule's response was that it went to PWD for assessment and for confirmation that it was a government asset. He said in answer to another question that it was a government asset only if PWD confirmed because it had been abandoned on Tongoa for some time. In answer to a question from the Court, Mr Seule said that the government used to own the truck when they sent it to Tongoa. When it was brought back, it was written off.

- Daniel Kalorus

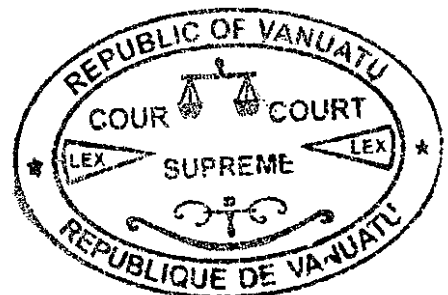
- (i) Mr Kalorus is from Tongoa. He saw vehicle G 934 in his village in Tongoa. He knew the vehicle had returned to Port Vila because he went and saw it at PWD.²⁹ He was interested in the vehicle. He said he spoke to a young officer who said the vehicle had been written off and therefore could not be put out for tender. Relevantly, the witness from the PWD who assessed the truck, Mr Juliano was not asked about whether PWD had written off the truck, or indeed whether PWD had the authority at all to do so.

- Roro Gregory Seule

- (i) Mr Seule said that his involvement with the vehicle was primarily driving it from Elluk to Dash Studio. In 2019, he also said that while he was working at the Ministry of Youth and Sport he remembers talking with the finance department about putting the truck into one of the garages (to settle a payment before it went into a garage), but the response was that the truck was not registered under Fleet Management,

²⁸ Emphasis added

²⁹ Mr Kaloris knew it was there because his brother is John Fiji



specifically under the Department of Youth and Sport, so they could not help with that.

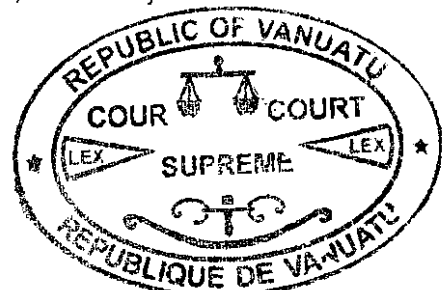
Discussion

91. Whether I am sure that vehicle G 934 was owned by the government has to be assessed when the vehicle was taken and carried away, which was when the vehicle was removed from the PWD. It was taken firstly to Elluk for repairs and then to Mr Seule's properties at Dash Studio and Etmat.
92. What Mr Seule contends is that the vehicle was no longer a government asset because it had languished on Tongoa for a number of years, and as a result was in poor condition, was not able to be driven and so had been abandoned or written off. Allied, is Mr Morrison's submission that there was no record anywhere of the vehicle or any apparent government interest in the vehicle.
93. To assist with the issue of whether the vehicle was government asset, Mr Morrison annexed to his submissions regulation 9.4 of the Financial Regulations No 36 of 2005, but not the complete Regulations. He also referred to the Government Contracts and Tenders Regulation.³⁰ The Government Contracts and Tenders Regulation post-dates the alleged taking of the vehicle, so does not assist.³¹
94. The Financial Regulations in force in 2018 were the Financial Regulations Order 27 of 2000, and amendment published Gazette No. 36 of 2005. Regulation 9.4, which provides for the sale and disposal of fixed assets, is set out below. Saliiently, it differs from that provided by Mr Morrison. Both counsel have made enquiries to establish the provenance of the version of regulation 9.4 attached to Mr Morrison's submissions, and now accept that the Court should rely on regulation 9.4 below.³²
95. Regulation 9.4 provides for the sale and disposal of fixed assets. It says:

³⁰ Order 96 of 2021 and Order 97 of 2021

³¹ The Tenders Regulation in force in 2018 was the Tenders Regulation Order No 40 Of 1999. It does not assist.

³² When the Court became aware of the discrepancy, I directed my PA to make enquiries with counsel about the difference between the two versions of regulation 9.4, and asked counsel to provide the Court with the complete Regulations relied upon. The information received by the Court was that the version of regulation 9.4 tendered to the Court by Mr Morrison was attached to the statement of one of the prosecution witnesses, Mr Hughes. I then issued a formal Minute on 31 July 2025 advising counsel that unless counsel provided the Court with the complete Financial Regulations to be relied upon, including the Order number, I would rely on Financial Regulations Order 27 of 2000, and amendment published Gazette No.36 of 2005



PART 9 – FIXED ASSETS

9.4. Sale and disposal of fixed assets

(1) *The Head of Ministry must keep a record of any assets sold or otherwise disposed of by the Ministry.*

(2) *All sales of assets must be by tender or auction to the highest bidder and must follow any instructions or procedures issued by the Director of Finance. A trade-in price offered for purchasing a replacement asset may be considered to be a bid for tendering or auctioning purposes.*

(3) *If an asset is traded in to purchase a replacement asset, both the sale and purchase transactions must be recorded in the accounts of the relevant Ministry. The new asset must be recorded at the gross price, and the difference must be shown as sale of assets.*

(4) *Notice of an invitation to tender or auction for the sale of assets must appear in the print media.*

(5) *Any person interested in purchasing any asset for sale must be given access to the asset for the purposes of reviewing its condition and assessing its worth.*

(6) *The Head of Ministry is responsible for ensuring that the best price is obtained for assets being sold and that any assets being sold are no longer needed by the Ministry.*

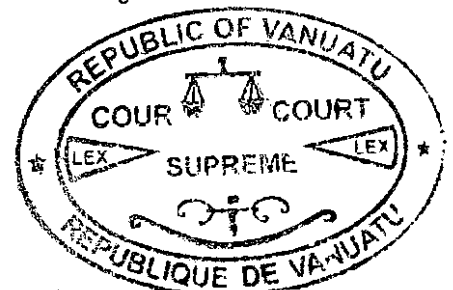
(7) *The proceeds of any sale of assets must be deposited directly into the Public Fund, except where the asset has been traded in towards a replacement asset.*

(8) *A Ministry may use the proceeds from the sale of assets to assist in the funding of the purchase of replacement assets only if approved in writing by the Director General of MFEM.*

96. A statutory provision must be read in light of its purpose and context. As set out in regulation 9.4(1), government assets may be disposed of otherwise than by sale. There is no definition of “disposal” in either the Financial Regulations in force at the time, or the Public Finance and Economic Management Act [CAP 244].³³

97. I have derived assistance as to the meaning of “disposal” from *Commissioner of Police v Pirini* [2022] HZHC 2326. In *Pirini*, the High Court considered the meaning of

³³ I note that the term “disposal” is now defined in s 2 of the Government Contracts and Tenders Regulation Orders 96 and 97 of 2021, as including “the sale, transfer and destruction of an asset.”



"disposition", noting that it was not defined in the legislation under consideration.³⁴ I set out the discussion at [11] - [14] as follows:³⁵

[11] Various dictionary definitions of "disposition" include the following:

(a) In the Oxford English Dictionary:²

disposition, n.

1. The action or faculty of disposing, the condition of being disposed.

1. a. The action of setting in order, or condition of being set in order; arrangement, order; ...

2. a. Arrangement (of affairs, measures, etc.), esp. for the accomplishment of a purpose; plan, preparation; condition or complexion of affairs.

...
4. a. The action of disposing of, putting away, getting rid of, making over, etc. (see DISPOSE ...); bestowal; spec. in Law, the action of disposing; bestowal or conveyance by deed or will.

(b) In the Collins English Dictionary:³

disposition, n.

...
3 another word for disposal

...
5 archaic manner of placing or arranging

disposal, n.

...
2 placement or arrangement in a particular order

...
4 the act or process of transferring something to or providing something for another ...

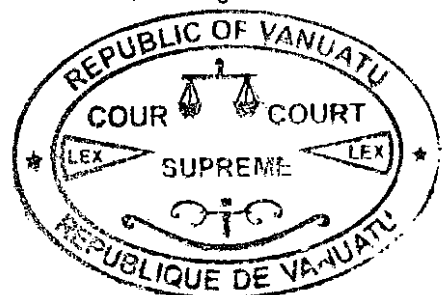
(c) In the New Zealand Oxford Dictionary:⁴

disposition, n.

...
2a setting in order, arranging. ...

³⁴ Section 32 of the Criminal Proceeds (Recovery) Act 2009. I acknowledge the context is different, but the general principles discussed are helpful.

³⁵ Footnotes omitted



4a a bestowal by deed or will.

...

[12] To "dispose" of something is defined in various dictionaries as follows:

(a) In the Oxford English Dictionary:

dispose, v.

...

8. to dispose of

a. To make a disposition, ordering, or arrangement of; to do what one will with; to order, control, regulate, manage: ...

...

c. To make over or part with by way of sale or bargain, sell.

(b) In the Collins English Dictionary:

dispose, v.

a to deal with or settle

b to give, sell, or transfer to another

c to throw out or away ...

(c) In the New Zealand Oxford Dictionary:

dispose, v.

...

dispose of

1a deal with.

b get rid of.

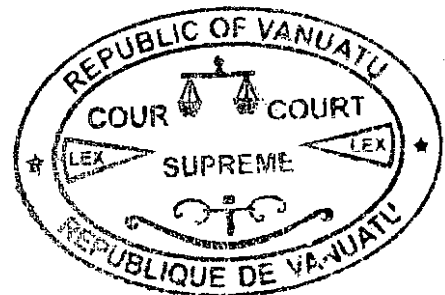
...

2 sell.

[13] I have not found these dictionary definitions particularly illuminating. As the Court of Appeal observed in *Stockco Ltd v Gibson*:⁸

...

we doubt that much is to be gained by using synonyms of the statutory language. In the end the statutory words ["ordinary course of business of the seller"] are everyday terms having common meaning and are reasonably clear in their own right. The hard part is applying them to the facts of the case. We do not think that the exercise is greatly assisted by applying the facts to similar but not identical wording

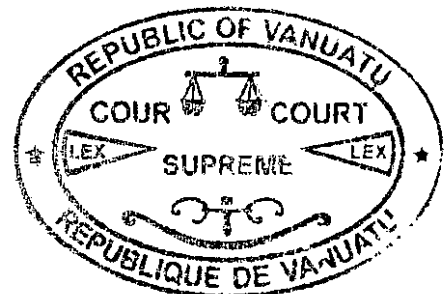


[14] The interpretation of "disposition" (and "was disposed of") as used in s 32 is best approached by considering the ordinary meaning of what are everyday terms, in their context and in light of the purposes of the Act. Approached in this way, and while not purporting to formulate an exhaustive meaning of these terms, a "disposition", or property that "was disposed of", will likely involve some action taken to divest oneself of property, in either a physical or legal sense, and most usually in a permanent sense. So, for example, to dispose of a computer would include to give it away, sell it (or in some other way transfer ownership rights to it), throw it away, destroy or discard it.

.....
9

98. I adopt the approach taken in *Pirini* as to interpretation of "disposition". Thus, the interpretation of "disposal" in regulation 9.4 is best approached by considering the ordinary meaning of everyday terms, in their context and in light of the purposes of the Financial Regulations. Further, as was said in *Pirini*, a "disposition" or property that "was disposed of" will likely involve some action taken to divest oneself of property, in either a physical or legal sense, and most usually in a permanent sense. It can include getting rid of an asset.
99. The overarching purposes of the applicable Financial Regulations include ensuring effective economic, fiscal and financial management responsibility by the government in a number of areas, including management of fixed assets. Self-evidently, the regulations apply to public resources and public money.³⁶ In furtherance of such purposes, regulation 9.4 provides for the sale and disposal of fixed assets. I accept that the ordinary meaning of "disposal" could include discarding an asset, such as the vehicle in question, but the disposal must be made by the owner, the Vanuatu government.
100. It is not in dispute that a Mitsubishi L200 double cab grey vehicle was purchased by the Ministry of Youth and Sport in 2011. It is also not in dispute that the vehicle was never disposed of under a tender or auction process. Mr Seule was very clear that he had no intention of disposing of the vehicle under a tender process. And in that regard, whether or not there were others interested in the vehicle, is irrelevant. And Mr Seule did not purchase the vehicle, as he said in his evidence.
101. Had the vehicle been disposed of in another way, so was no longer a government asset?
102. Mr Letlet's uncontested evidence is that the Department of Finance records show that G 934 was purchased by the Ministry of Youth and Sport, and that there was no record of disposal when he checked the records held by the Department of Finance in 2022.

³⁶ Regulations 1.1 and 1.2



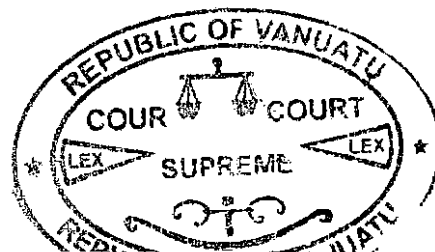
This is telling evidence. As already noted, the specific issue that the vehicle had somehow been abandoned/written off or disowned by the government was never put to him and in my view, it should have been, so that Mr Letlet had an opportunity to comment. I accept Mr Letlet's evidence. Firstly, it was unchallenged. Secondly, Mr Letlet's evidence was derived from records held by the government.

103. In addition to Mr Letlet's evidence, there is other supporting evidence:

- Mr Fiji's evidence that every vehicle in the Ministry is registered and its location known. He knew about the vehicle because it was a G registration vehicle.
- I accept the evidence that the vehicle had with it a G number plate, G 934 indicating it was a government vehicle. The evidence was consistent that the vehicle had a G plate, G 934, but there were differences between the witnesses as to where the plates were.³⁷ But none of the inconsistencies are significant and the witnesses were consistent that the vehicle had plate G 934 either on it or with it. It would be a remarkable con-incident then if the vehicle with a G plate was not a government owned vehicle.
- While Fleet Management did not hold any record of the vehicle G 934, Mr Lawrence's evidence established that Fleet Management did know about vehicle G 934, given the evidence of Mr Fiji, Mr Fred and Mr Nalwang. Further, Mr Lawrence had been given Mr Juliano's report. However, seemingly through ineptitude, nothing was done with the information about vehicle G 934.
- That various inquiries were made with Fleet Management, responsible for a register of government vehicles, leads to an inference that the vehicle was a government vehicle.³⁸
- At Mr Seule's direction, the vehicle was taken to the PWD, the government department responsible for the assessment and valuations of government vehicles.
- Mr Seule acknowledged in evidence in chief that the vehicle was a government asset, although as set out at paragraph 107, he backtracked on that.
- Mr Seule told Mr Fred and Mr Nalwang he had purchased the vehicle. In Mr Fred's case, he was told that it had been purchased from Fleet Management. An available inference from those conversations is that the vehicle was a government asset, which Mr Seule knew.

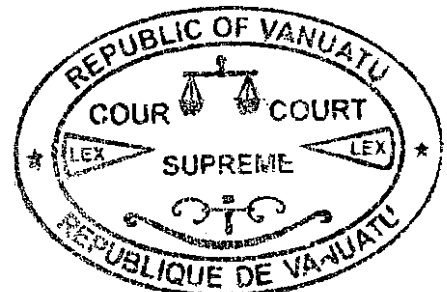
³⁷ Mr Fred said there was a plate on the back of the vehicle, Mr Kalo said the plates were in the vehicle and Mr Juliano said the plates were in the vehicle.

³⁸ I have discussed the evidence of Mr Lawrence, Mr Fiji, Mr Fred and Mr Nalwang about contact with Fleet Management. Greg Seule also said that he was advised that the truck was not registered with Fleet Management.



104. I acknowledge that I have not referred to Mr Hughes evidence. Mr Hughes was a prosecution witness, who was previously the secretary of the Central Tenders Board, under the Ministry of Finance. Mr Morrison submitted that Mr Hughes gave helpful evidence for the defence, in that he said there was nothing regarding vehicle G 934 on the systems and that the tenders process would not warrant a vehicle of low value going to tender.
105. Mr Hughes was involved in the Vehicle Management Committee ("VMC"), which included tenders going to the committee. Mr Hughes did not actually refer to vehicle G 934 in his evidence. Mr Hughes said that in 2021 he received an email from Corporal Nimissa in relation to some process about a vehicle. He was asked if he knew what vehicle he had been asked about when Corporal Nimissa emailed him. He said that Corporal Nimissa wrote about one G vehicle of the Ministry of Health. Mr Hughes replied and said there had been no proceeds of sale.³⁹ Mr Hughes explained that any single vehicle would not be put up for tender because the amount would not warrant it so it would be disposed of in another way. He said that usually assets that go before the VMC are put in bulk so that when the government spends money on advertisements there is a large number to be considered. But in this instance, it was only one vehicle, so it would not go to the VMC. Hence his reply that he was not aware of any process or proceeds of sale.
106. I understand the gist of his evidence was that a single vehicle would not be put up for tender but would be disposed of in another way. I took from that there would still be a disposal. I did not find Mr Hughes evidence to be overly helpful in assessing the issues to be determined, given Mr Letlet's evidence that there was no record that the vehicle had been disposed of, and that regulation 9.4 provides that if an asset is sold, it must be by tender or auction.
107. Mr Seule's evidence is contradictory. Initially he said that the vehicle was a government asset. Then he said that the vehicle used to be a government asset and had been abandoned and written off. This is because the vehicle had languished on Tongoa and was not in working order. Mr Seule's assessment that the vehicle was a write off and therefore, no longer a government asset was not put to any prosecution witness. This was key to his defence and so should have been. Various prosecution witnesses were asked about the condition of the vehicle, which I accept was poor. But that is very different to the proposition that because of its condition, a government vehicle and specifically vehicle G 934 had been written off by the Vanuatu government. And therefore, was no longer a government asset.
108. I reject Mr Seule's evidence, being his self-assessment that the vehicle was no longer a government asset because it had languished in Tongoa and was not in a driveable condition. His supposition is implausible and inconsistent with other evidence I have accepted, particularly Mr Letlet's evidence. According to Mr Letlet's evidence, vehicle

³⁹ The email exchange was not adduced into evidence.



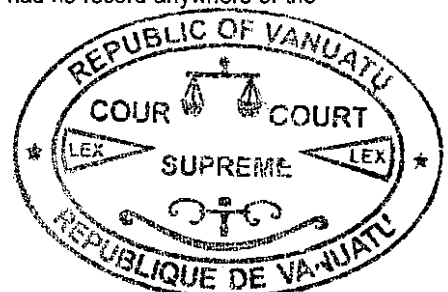
G 934 was a government asset, because there was no record of disposal of vehicle G 934. There is no evidence to suggest it had been disposed of in any way. The vehicle had not been disowned or abandoned by the government. While I accept the vehicle could not be driven upon its return from Tongoa, it is a long bow to suggest that means the vehicle had been abandoned or disowned, and therefore no longer a government asset.

109. Then there is Mr Kalorus' evidence that he too was interested in the vehicle so went to PWD and spoke to a young person who told him the vehicle had been written off. I attach no weight to Mr Kalorus' evidence that he had been told by someone at PWD the vehicle had been written off. On the face of it, it is hearsay because this person was not a witness and the purpose of the evidence must have been to prove the truth of what was said. And that evidence could not be tested. Mr Juliano, who was a supervisor at PWD was not asked about the vehicle being written off, and Mr Kalorus's evidence is inconsistent with the evidence of a report being prepared by Mr Juliano for the purposes of a tender. It is also inconsistent with Mr Juliano's assessment that the vehicle was in running condition and had a value.
110. I cannot accept Mr Morrison's submission that the apparent government owner had no record anywhere of the vehicle when it was removed from the PWD.⁴⁰ That is because Mr Letlet's evidence is that the Department of Finance held records about the vehicle, which showed that as at 2022, the vehicle had not been disposed of. Therefore, I infer that vehicle G 934 was a government asset.
111. Therefore, taking the matters discussed in the preceding paragraphs into account, particularly Mr Letlet's evidence and the supporting evidence I have referred to, I am sure that at the time it was taken, vehicle G 934 was a government asset, and owned by the Vanuatu government.

Am I sure that Mr Seule took vehicle G 934 without the consent of the Vanuatu government?

112. It is not in dispute that the vehicle was at the PWD for assessment and valuation, or that Mr Seule had asked for a report on the vehicle. He said in his evidence that he knew Mr Juliano was doing a report and he was waiting for it. Yet he authorised the vehicle's removal before he had seen the report, and under false pretences. He also told Mr Fred that he had purchased the vehicle from Fleet Management, when he had not paid for the vehicle.
113. This issue is not in dispute, so Mr Morrison did not address this in his submissions.

⁴⁰ Mr Morrison's actual submission was that from the time it was no longer roadworthy until seized by police the apparent government owner showed no independent interest in the vehicle and had no record anywhere of the vehicle.

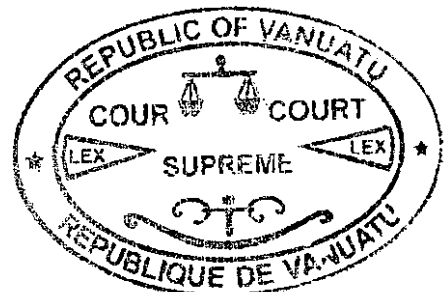


114. Mr Letlet confirmed in his evidence that the records held by the government showed that the vehicle remained a government asset and had not been through a disposal process. As Mr Letlet said, he had no knowledge of the vehicle until it was drawn to his attention during the police investigation, so had not been involved in any matter relating to the vehicle.
115. Mr Seule believed that the vehicle was no longer a government asset, so he was never going to seek consent to remove the vehicle from the PWD. As I discuss later in the judgment, I reject Mr Seule's evidence that the vehicle was removed from the PWD with the intention of repairing it for use by the Ministry of Youth and Sport, and am sure Mr Seule intended to keep the vehicle as his own on his own evidence he did not pay for the vehicle. As such, there cannot be any suggestion that as the Minister, Mr Seule could consent to the vehicle being taken from the PWD.
116. Therefore, taking all the above factors into account, I infer that when Mr Seule instructed that the vehicle be removed from the PWD, the government, as represented by the Director-General of Finance, did not consent to Mr Seule taking the vehicle.
117. I am sure that Mr Seule took vehicle G 934 without the consent of the Vanuatu government.

Am I sure that Mr Seule took vehicle G 934 fraudulently?

118. Mr Young contends that this element is proven because the evidence establishes that G 934 had never been through a tender process, the vehicle was moved from PWD and to other locations at Mr Seule's behest and the vehicle was modified on Mr Seule's instructions – re-painted and had a new non-government plate number.
119. This issue is not in dispute, so Mr Morrison did not address this in his submissions.
120. "*Fraudulently*" is not defined in s 22 of the Penal Code. Counsel did not provide me with any authorities to assist with the meaning of "*fraudulently*". In a New Zealand case *Broom v Police* HC Christchurch AP310/93, 15 October 1993 discussed the meaning of the word "*fraudulently*" in the context of theft and said:

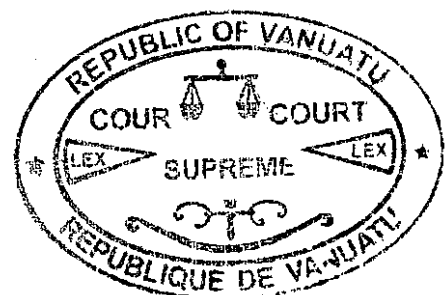
"Put at the simplest level the word "fraudulently" in the definition of theft means dishonestly: see R v Feely [1973] QB 530 (CA). In R v Williams [1985] 1 NZLR 294 and R v Coombridge [1976] 2 NZLR 381 the Court of Appeal indicated that to have acted fraudulently a person accused of theft must be shown to have acted deliberately and with knowledge that he or she was acting in breach of a legal obligation. That said, the synonym "dishonestly" is easier to apply and essentially conveys the correct connotation of the word "fraudulently"."



121. In another New Zealand case, *R v Williams* [1985] 1 NZLR 294, the Court of Appeal held that where it is alleged that an accused acted fraudulently, the prosecution must show that the accused acted deliberately and with knowledge that he was acting in breach of his legal obligation.
122. Whether Mr Seule acted fraudulently must be assessed at the time Mr Seule took the vehicle. Mr Seule's legal obligation as a government minister was to ensure that the vehicle remained a government asset. The matters set out in paragraphs 112, 114 and 115 are relevant, because they show Mr Seule was acting dishonestly.
123. I am sure that Mr Seule acted dishonestly. He acted deliberately and with knowledge he was acting in breach of his legal obligation to ensure the vehicle remained a government asset, because his intention was to keep the vehicle for himself, as discussed later in the judgment.
124. Therefore, I am sure that Mr Seule took vehicle G 934 fraudulently.

Am I sure Mr Seule took vehicle G 934 without a claim of right in good faith?

125. This issue is not in dispute, so Mr Morrison did not address this in his submissions.
126. "*Claim of right*" means that Mr Seule had a genuine belief that, at the time of taking the vehicle, he had a lawful right to take it.
127. Mr Seule's evidence is that he believed the vehicle to no longer be a government asset, because it had been written off by the government. As already detailed, this belief was based on the condition of the vehicle and that it had been abandoned on Tongoa. I have rejected Mr Seule's position about that. There is no evidence that the vehicle had been disposed of in any way, including being written off. In fact, Mr Letlet said there was no record of the vehicle being disposed of. I also reject his evidence that his intention when he took the vehicle was to repair and use the vehicle in the Ministry of Youth and Sport. I repeat the discussion at paragraphs 112, 114 and 115. Relevantly, the vehicle was removed under false pretences. In all the circumstances, Mr Seule did not have a genuine belief that he had a lawful right to take the vehicle and did not act in good faith.
128. Therefore, I am sure Mr Seule took the vehicle without a claim of right in good faith.



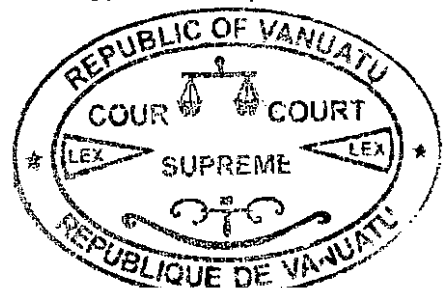
Am I sure that at the time he took vehicle G 934, Mr Seule intended to permanently deprive the Vanuatu government of the vehicle?

129. The phrase "*permanent intention to deprive*" is not defined in the Penal Code. In the Westlaw New Zealand commentary at CA219.05, there is a discussion about the meaning of permanent intention to deprive:

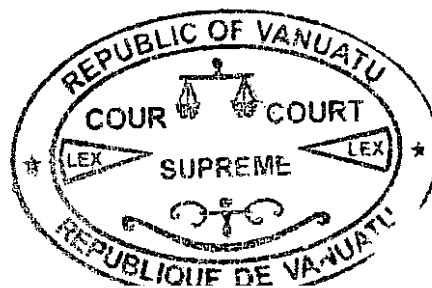
"Intention to deprive permanently" — normal meaning. The literal meaning of an intention to deprive another permanently of property is that one desires, or foresees as virtually certain, that the other person will never regain the property.

130. This issue involves considering Mr Seule's intent at the time the vehicle was removed from the PWD at his instruction. In his supplementary submissions, Mr Morrison referred to Australian commentary⁴¹ and two cases, *Ilich v R* (1987) 162 CLR 110 and *R v Weatherstone* (NSW CCA 1987) in support of his submission that the mental element required was not present when the vehicle was taken.
131. The Court in *R v Weatherstone* cited with approval an earlier case, *Reg v Smails* (1957) 17 WN. In *Reg v Smails*, the Court said that the offence of larceny is committed when any person, without the consent of the owner, wrongfully and without a genuine claim of right in good faith, takes and carries away anything capable of being stolen, intending at the time of the taking to permanently deprive the owner of such articles. That is virtually identical to the offence of theft as set out in s 122 of the Penal Code. Relevantly, there must be an intention to permanently deprive the owner of the property at the time it was taken.
132. The Court in *Smails* held that whether or not a permanent intention to deprive exists is a question of fact and, like every other intent, may be inferred, and in fact is to be inferred from the mode in which the party charged deals with the property in question.
133. I accept the submission that the intent to permanently deprive must co-incide with the taking, because s 122 makes that clear.
134. Mr Young submits that the direct and circumstantial evidence points to Mr Seule taking the vehicle intentionally to deprive the government of the vehicle. He contends that the direct and circumstantial evidence shows Mr Seule took the vehicle and intended to deprive the government of the vehicle, given that the vehicle went to Mr Seule's residences, that body work was done, it was repainted and plates were affixed at Mr Seule's instructions, and that the vehicle went to Epi.

⁴¹ Mr Morrison provided Australian commentary, but no details as to the legal publisher of the commentary. He was given an opportunity to provide the information requested to the Court but did not. Accordingly, I am unable place any weight on the commentary.



135. Mr Morrison submits that there was no intention on Mr Seule's part to permanently deprive the government of the vehicle, at the time he took it. Rather his express intention was to repair the vehicle for use by the Ministry of Youth and Sport. Further, for the vehicle to be of use, it needed fixing, and that Mr Seule took no more than the necessary practical steps to have it fixed. Mr Morrison downplayed the re-painting of the vehicle in his written submissions. He submits that did not manifest an intention to permanently deprive the government of the vehicle, as Mr Kemu said it needed painting. A green vehicle could be part of the fleet, and the vehicle remained visible.
136. In his evidence in chief, Mr Seule said the vehicle went to the PWD for checks and assessment and to be fixed. Mr Seule himself went to the PWD and had a look at the vehicle. He said he was told they could not do anything with the truck as they already had too much rubbish at the workshop, and that they would do an assessment report. He said he would wait for the assessment report. Mr Seule said that when he saw the vehicle the truck had a broken roof, was rusty and the engine was not working. It was an old truck, which had been sitting there, abandoned for a long time.
137. Mr Seule was asked why he requested an assessment report. He said that it is very important there is a technical/mechanics report to certify that the truck can be fixed. That if the mechanics found out what is wrong with it, then there could be a rough estimation of the cost to fix it. Mr Seule confirmed in cross examination that he knew Mr Juliano was doing the assessment and that he was waiting for the report. He also said that he was waiting for the report to know what was not good and to fix it. He also agreed that he sent Mr Nalwang to the PWD to obtain the valuation report from the PWD. However, Mr Seule says that to his knowledge such a report was not made, and he never received a copy of any report.
138. Mr Seule's evidence is that he instructed Mr Fred and Mr Kalo to remove the vehicle from PWD because Mr Fred and Mr Kalo told him that they could fix the vehicle. It was their idea. His evidence was that he told them if they could fix it, they should take it somewhere and fix it. So, they took the truck to Elluk. Mr Seule was clear that his intention was for the vehicle to be used by the Ministry of Youth and Sport. He said that the Ministry of Youth and Sport had a lack of vehicles at the time. They had one vehicle only.
139. Mr Seule was asked in cross examination about why the vehicle did not stay at the PWD to be repaired. Mr Seule said that he was told by PWD they were very busy and there were too many old trucks there. He also said that Mr Fred and Mr Kalo advised him that PWD had said they did not have time to fix the vehicle.
140. The vehicle was at Elluk temporarily. Once the vehicle was able to be driven, the vehicle went firstly to Mr Seule's property at Dash Studio and then to his property at Etnat. As noted, Mr Seule said that the vehicle was taken from Elluk to his property at Dash Studio by his son Greg because Mr Fred and Mr Kalo were misusing the vehicle. When the

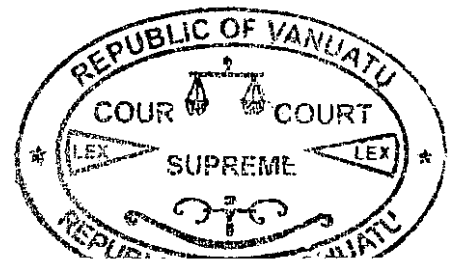


vehicle was at Mr Seule's residence at Etmat, he instructed a local mechanic, Mr Philip Kemu, to do further work on the vehicle. According to Mr Kemu's evidence the work required was not extensive. There was some panelbeating to the roof, and there were some rust spots on the sides of the vehicle. The vehicle was grey and was re-painted dark green. A commercial transport plate and not a G plate was put on the vehicle.

Discussion

141. In assessing Mr Seule's intention, I will consider whether or not I accept his evidence that he intended to have the vehicle repaired for use in the Ministry of Youth and Sport. As I have already said, generally there are issues that call into question the reliability and credibility of Mr Seule's evidence about his intention when the vehicle was removed from the PWD.
142. Mr Seule's stated intention to repair the vehicle and use it within the Ministry of Youth and Sport, sits uneasily with his view that the vehicle was no longer owned by the government. Yet he intended to use a vehicle he said was no longer owned by the government in a government Ministry. That is illogical.
143. All the evidence points to the vehicle being in a poor condition, mechanically. Mr Seule knew Mr Juliano was doing a report and said that he was waiting for the report to know what was not good and to fix it. His own evidence was that it was important there was a technical/mechanics report to certify that the vehicle could be fixed. But Mr Seule's narrative is that he instructed Mr Fred to remove the vehicle from PWD for repairs, without having received the report. The vehicle was moved without Mr Seule knowing if the vehicle could be fixed or what was not good, the very purpose for the report in the first place, according to Mr Seule. That makes no sense.
144. Mr Seule said that it was Mr Fred and Mr Kalo's idea to fix the vehicle. I do not believe that evidence. Both Mr Fred and Mr Kalo are related to Mr Seule and were very much in an inferior position. There was a power imbalance particularly in relation to Mr Fred who was subordinate to Mr Seule and acted on his instructions. It was Mr Seule who was interested in this vehicle – he went to see the vehicle at the PWD and issued instructions to both Mr Fred and Mr Nalwang regarding a tender process.
145. Mr Seule's evidence that his intention was to use the vehicle in the Ministry of Youth and Sport is incongruent with evidence of other things he said and did prior to the vehicle's removal from the PWD. There is Mr Fred's unchallenged evidence that Mr Seule had told him he had purchased the vehicle from Fleet Management. Then there is the evidence of Mr Fred and Mr Nalwang regarding a tender process, disavowed by Mr Seule. Their evidence, which I accept, is that they were taking steps towards a tender process, initiated by Mr Seule.⁴²

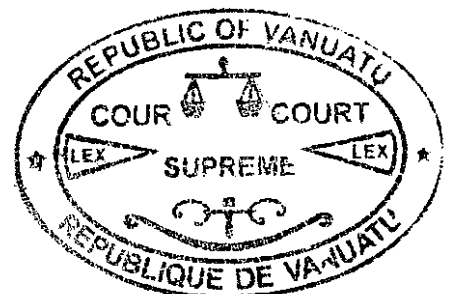
⁴² Their evidence is also supported by Mr Lawrence's evidence about his interactions with both Mr Fred and Mr



146. Then there is Mr Seule's evidence as to why the PWD did not repair the vehicle. Mr Seule said he was told by PWD they could not do anything with the truck as they already had too much rubbish at the workshop. He also said that Mr Fred told him PWD did not have time to repair the truck. On the face of it, that evidence is hearsay, because Mr Seule must be relying on the evidence for its truthfulness, and there was no evidence from the PWD about this. Mr Juliano could have been asked about this but was not. I place no weight on that evidence, which could not be tested.
147. Finally, Mr Fred's evidence as to how the vehicle was removed from the PWD is at odds with the vehicle being legitimately taken away from the PWD for repairs, because the PWD either did not want to, or were too busy to repair the vehicle.
148. Mr Seule's actions after the vehicle was removed from the PWD are entirely incongruent with an intention to use the vehicle in the Ministry of Youth and Sport. Tellingly, the vehicle did not go anywhere near the Ministry of Youth and Sport at any point. It went to Mr Seule's properties at Dash Studio and Etmat. Mr Nalwang saw the vehicle at Mr Seule's residence at Etmat. He said Mr Seule told him he had purchased the vehicle, which was not true. It then went to a mechanic at Erakor, Mr Kemu, for panelbeating and removal of rust spots at Mr Seule's instruction. The vehicle was repainted dark green. A commercial transport plate, CT 7857 was put on the vehicle. At some point after that, the vehicle was taken from Mr Seule's residence at Etmat to Epi Island. The vehicle was seen at Mr Seule's house at Sara Village, Epi and Mr Seule's son, Fredson was seen driving it.
149. Mr Kemu said that Mr Seule came to see him and asked him to panelbeat the vehicle, and to paint it a different colour. It was sprayed dark green. Rust spots were also removed from the sides of the vehicle. Mr Kemu said that Mr Seule also asked him to put another plate on the vehicle. Mr Kemu was shown photos of the vehicle.⁴³ He confirmed that the truck shown in the photos was the truck he worked on and that the number plate shown in the photos (CT 7857) was the plate he put on the vehicle. Mr Kemu also said that the roof was still in good order, and that rust on the sides was removed. He accepted in cross examination that there were spots or patches of filler and that to complete the job, the vehicle would need painting. Mr Kemu said that the plates belonged to another vehicle to be sent to Tanna that was not in working order. As Mr Seule had asked him to fix other plates to the vehicle, those were the plates he used. He confirmed that Mr Seule had personally paid him VT 90,000 for the work.
150. Mr Kemu had no vested interest in the case. He was asked to do work to a vehicle, which he did. His evidence was coherent and internally consistent. He remained steadfast in cross examination that Mr Seule asked him to paint the vehicle a different colour and to put other plates on the vehicle. Mr Seule's position as to the re-painting and the plates was not put to Mr Kemu for comment. In cross examination Mr Seule

Nalwang.

⁴³ Exhibit P7



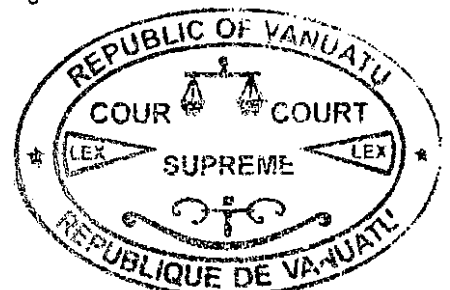
denied he had instructed Mr Kemu to paint the vehicle dark green. He said he proposed that Mr Kemu put paint to cover all the panels. I consider that Mr Kemu was a truthful witness. He did not embellish, made a reasonable concession that because of the filler the vehicle did need to be painted and his evidence was both internally consistent and consistent with other evidence. Mr Kemu was simply carrying out Mr Seule's instructions. His evidence had a ring of truth to it. There is no plausible reason why the vehicle needed to be painted a different colour all over. If it needed painting to cover the filler, which was confined to the sides of the vehicle, (and the roof) then logically, grey paint could have been used.

151. It is not in dispute that the vehicle went to Epi, although Mr Seule disavows knowledge as to how the vehicle got there, which I do not accept.⁴⁴ The vehicle was seen parked at Mr Seule's house at Sara Village, Epi by Mr Fred and Mr Kalo. According to Mr Fred, he saw Mr Seule's son, Fredson driving the vehicle. Mr Kalo also said that the vehicle was used for transport on the island and had a CT plate on it.⁴⁵
152. In evidence in chief, Mr Seule was asked if he wished to make any comments as to events subsequent to the vehicle's removal from the PWD; that is to say being taken to his properties and painted and repaired. Mr Seule said that the truck was moved out of the workshop after the panelbeating. He had spent money and was waiting for reimbursement from the Ministry. He said that did not guarantee that the truck was in good condition. That they were waiting for the Ministry to identify a good workshop to fix the truck properly. Mr Seule disagreed that the truck was used for transport on Epi because there was no transport licence.
153. Mr Seule's evidence about the re-painting of the vehicle and the plates is inconsistent with Mr Kemu's evidence which I have accepted. Having accepted Mr Kemu's evidence, I assess that Mr Seule was untruthful about the repainting of the vehicle and the plates. As I have already said, his evolving and contradictory evidence about the plates is unbelievable. The inference I draw as to the work at Mr Kemu's garage was that Mr Seule deliberately altered the appearance of the vehicle. Mr Nimissa, a police officer who conducted inquiries into the vehicle, said in cross examination he was satisfied that the vehicle purchased from IntraCo related to vehicle G 934.⁴⁶
154. Curiously, Mr Seule's assertion that he was waiting for reimbursement from the Ministry is at odds with his view that the vehicle was no longer a government asset. Why would he then be entitled to reimbursement? In a similar vein, Mr Seule's evidence that he was waiting for the Ministry to identify a good workshop to fix the truck properly is improbable. All the evidence points to Mr Seule being in control of what was happening to the vehicle and the vehicle had already had both mechanical and bodywork repairs.

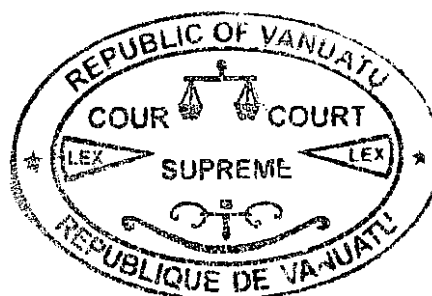
⁴⁴ Refer to paragraph 54.

⁴⁵ This evidence was unchallenged.

⁴⁶ Mr Nimissa was not asked anything further about this in cross examination to challenge the truthfulness of that evidence.



155. The mode in which Mr Seule dealt with the vehicle was to alter its appearance by having it repainted a different colour and having a non-government plate affixed to the vehicle. If there was a genuine intent to use the vehicle in the Ministry of Youth and Sport, then it defies logic and belief that a CT plate would be put on the vehicle. The vehicle would have been taken to the PWD to get a replacement or new plate. The vehicle never went near the Ministry of Youth and Sport. It was located at Mr Seule's residences and then went to Mr Seule's residence at Sara Village, Epi, and was used for private and not government purposes.
156. As regards the vehicle being sent to Epi, again Mr Seule's evidence was contradictory. He said he did know how the vehicle went to Epi. The unchallenged evidence of Mr Fred and Mr Kalo was that the vehicle was at Mr Seule's house at Sara Village, was being driven by his son and was used as a transport vehicle. Mr Seule had both possession and physical control of the vehicle and it is inconceivable that he did not know that the vehicle went to Epi, being used by his son and as a transport vehicle, for the reasons already discussed.
157. The matters set out above, taken in combination with the assessment generally of Mr Seule's evidence, mean that I reject his evidence that when the vehicle was removed from the PWD, his intention was to repair the vehicle and use it in the Ministry of Youth and Sport. His evidence about this issue is implausible, unconvincing and not believable.
158. Having rejected Mr Seule's evidence, I will consider what inferences can be drawn from reliably established facts or evidence I have accepted in assessing whether Mr Seule intended to permanently deprive the government of the vehicle at the time it was removed from the PWD. I have taken the following factors into consideration:
- a. Mr Seule had formed his own self assessed view that the government no longer owned the vehicle.
 - b. Mr Seule acknowledged in cross examination that he had not paid for the vehicle.
 - c. Mr Seule was sufficiently interested in the vehicle that he personally visited the PWD to look at the vehicle and check its condition. That seems an odd thing to do when he was the Minister and already had both Mr Fred and Mr Nalwang acting on his instructions in relation to the vehicle, which included visiting the PWD and reporting back to him. I infer that Mr Seule had an interest in the vehicle which was personal and beyond securing a vehicle for the Ministry of Youth and Sport.

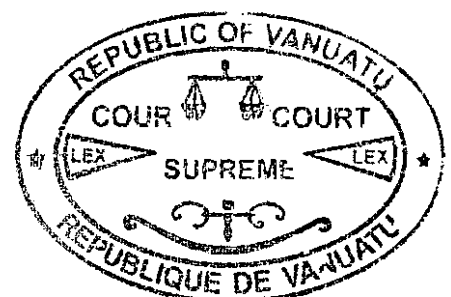


- d. Mr Seule had told Mr Fred that he had purchased the vehicle from Fleet Management when that was untrue. He also told Mr Nalwang he had purchased the vehicle, which was also untrue.
- e. Inquiries about a tender process had been started. Mr Fred said the vehicle went to the PWD to be valued for tender purposes as Mr Seule wanted to purchase the vehicle. He also gave Mr Nalwang instructions regarding a tender process.
- f. The vehicle was removed from the PWD under false pretences.
- g. When the vehicle was removed from the PWD, Mr Seule knew that Fleet Management had no formal record of vehicle G 934.
- h. The vehicle was removed from the PWD before the report he directed was available. He knew Mr Juliano was doing a report and was waiting for it. As I have said, that makes no sense.
- i. The mode in which Mr Seule dealt with the vehicle is instructive. He deliberately arranged for the vehicle's appearance to be altered by having it repainted a different colour and having a non-government plate affixed to the vehicle. If there was a genuine intent to use the vehicle in the Ministry of Youth and Sport, then it defies logic and belief that a CT plate would be put on the vehicle. The vehicle would have been taken to the PWD to get a replacement or new plate. The vehicle never went near the Ministry of Youth and Sport. It was located at Mr Seule's residences and then went to Mr Seule's residence at Sara Village, Epi, and was used for private and not government purposes.⁴⁷

159. Viewed cumulatively, these factors, lead me to infer that Mr Seule intended to permanently deprive the government of the vehicle at the time it was taken. He wished or foresaw as virtually certain that the government will never regain the vehicle. Mr Seule intended to treat the vehicle as his own in a complete or indefinite way. In particular, Mr Seule believed the vehicle was no longer a government asset and knew that Fleet Management had no formal record of the vehicle. An available inference is that when he became aware of this, he decided to take the vehicle and intended to treat it as his own, as demonstrated by the mode in which Mr Seule dealt with the vehicle. Mr Seule's subsequent actions as detailed above are congruent with his intention, at the time he took it, to treat the vehicle as his in a complete or indefinite way.

160. I am sure Mr Seule intended to permanently deprive the government of the vehicle at the time he took it from the PWD, for the reasons set out in the preceding paragraphs.

⁴⁷ As per *Reg v Smalls*.



Verdict – theft charge

161. All the elements of theft are established beyond reasonable doubt. I find Mr Seule guilty of theft.

Alternative charge – obtains by deception

162. Given that I have found Mr Seule guilty of theft, it is unnecessary to consider the charge of obtains by deception, as it is an alternative charge.

DATED at Port Vila this 6th day of August 2025

BY THE COURT

Mackenzie
.....
Justice M A MacKenzie

