

**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 Sentence: 27 August 2025  
Before: Justice M A MacKenzie  
Counsel: Mr L Young for the Public Prosecutor  
Mr N Morrison for the Defendant

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## SENTENCE

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### Introduction

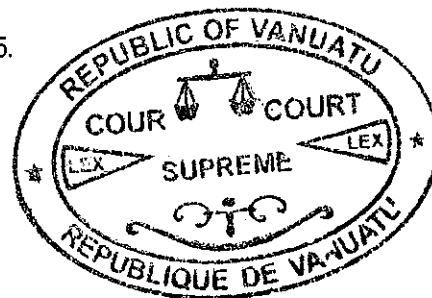
1. Mr Simeon Seule, you appear for sentence in relation to a charge of theft contrary to s 125(a) of the Penal Code [CAP 135]. The maximum penalty is 12 years imprisonment.
2. You pleaded not guilty to the charge. You were found guilty of theft following a trial. I now enter a conviction.

### The facts

3. The facts are set out in detail in the verdict.<sup>1</sup> In 2011, the Vanuatu government purchased a grey Mitsubishi L200 double cabin vehicle for use by the Ministry of Youth and Sport. It had a G number plate, G 934 (*"the vehicle"*).<sup>2</sup>
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, you were the Minister of Youth and Sport. You became aware that the vehicle was on Tongoa, and arranged for an employee of the Ministry of Youth and Sport to

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<sup>1</sup> The sentence should be read in conjunction with the verdict delivered on August 2025.



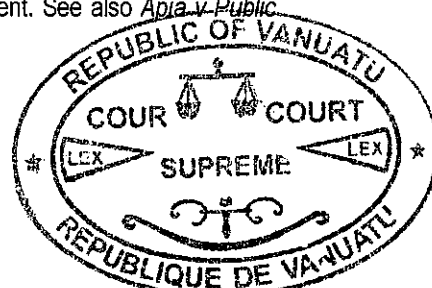
travel to Tongoa to transport the vehicle back to Port Vila. The vehicle was taken from the ship, Kiwitrader, to the Public Works Department ("PWD"). There was to be a report on the vehicle, but it was removed from the PWD before the report was available.

6. You instructed Stanley Fred to remove the vehicle from PWD. You also told Mr Fred you had purchased the vehicle from Fleet Management. Mr Fred and Kalo Matau (Mr Kalo) removed the vehicle from the PWD and took it to a private address in Elluk for repairs. They were able to do so because Mr Fred told the PWD that you had sorted the vehicle out with Fleet Management. You had become aware that Fleet Management had no formal record of vehicle G 934.
7. Once the vehicle had been repaired mechanically, it was taken firstly to your property at Dash Studio, and then to your property at Etmat, Erakor. Once at Erakor, you arranged for another mechanic to do further work on the vehicle, 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. When the vehicle was at your property at Erakor, you told another staff member, Mr Nalwang, that you had purchased the vehicle. At some later point in time, the vehicle was shipped to Epi, your home island, where the vehicle was used by your son for private and public transport. On 9 February 2021, the vehicle was shipped back to Port Vila and was seized by police.
8. Your defence at trial was firstly, that the Vanuatu government was not the owner of the vehicle, and secondly, that you did not intend to permanently deprive the government of the vehicle, when you took it. You had no obligation to give any explanation, but you choose to. You said the vehicle had been abandoned in Tongoa, was in poor condition so was a write off, and 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. You also said that your intention was to bring the truck from Tongoa and have it repaired for use by the Ministry of Youth and Sport. It was not your intention to sell the vehicle by tender, or to keep it yourself. I rejected your evidence on key issues for various reasons, including that it was not believable.

### **Sentencing purposes/principles**

9. The sentence I impose must hold you accountable and must denounce your conduct and deter you and others from offending in this manner. I consider that deterrence is an important purpose of sentencing here, given that you were a leader who acted dishonestly when you stole an asset of the government you were part of.<sup>3</sup> There is a

<sup>3</sup> Both counsel referred to *R v Radich* [1954] NZLR 86, which held that one of the main purposes of punishment is to protect the public is to protect the public from the commission of crime by making it clear to the offender and others, that if they yield to similar impulses, they will be met with severe punishment. See also *Apia v Public Prosecutor* [2015] VUCA 30.



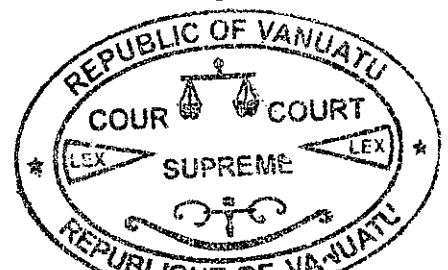
need to promote in you a sense of responsibility for, and acknowledgment of the harm caused by this offending. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. The sentence must reflect the gravity of the offending, and be generally consistent.

### Approach to sentence

10. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### Step One: Starting point

11. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.
12. There is a guideline for sentencing of certain types of theft, being *Public Prosecutor v Mala* [1996] VUSC 22, adopted by the Court of Appeal in *Apia v Public Prosecutor* [2015] VUCA 30. In *Gamma v Public Prosecutor* [2021] VUCA 62, the Court of Appeal affirmed that the statements in *Public Prosecutor v Mala* remained valid in 2021 in terms of the guiding principles and the sentencing ranges and was helpful in achieving consistency for fraud and theft offending.
13. As set out in *Mala*, the factors to be considered are:
  - the quality and degree of trust reposed in the offender, including his or her rank.
  - the duration of the theft or fraud.
  - the use to which the dishonestly taken property was put.
  - the effect on the victim.
  - the impact of the offending on the public and public confidence.
  - the effect on fellow employees and partners; and
  - the value of the theft or fraud.
14. In *Mala*, the Court said that while the sum involved is not the only factor to be considered, it may in many cases provide a useful guide. Relevant to sentencing in this case, the Court said that where the amount is less than VT 1 million, terms of imprisonment ranging from the very short up to about 18 months imprisonment are appropriate.
15. With reference to *Public Prosecutor v Mala*, the aggravating factors of the offending are:



a. (i) The offending involved a gross breach of trust. I do not accept Mr Morrison's submission that the breach of trust was at the very low end of the scale and is mitigated by the specific facts. Firstly, I reject the contention that there are any mitigating features of the offending itself.<sup>4</sup> Secondly, that submission overlooks the fact that at the relevant times, you were a leader. There are not many leadership positions in Vanuatu that rank higher or are more important than a government minister. I consider that you were a high ranking leader at the time.

(ii) At the time the vehicle was taken from the PWD in 2018, you were the Minister of Youth and Sport. You subsequently became the Speaker of Parliament. You used your position as a government minister and the power and authority with that position to take a government vehicle. Pursuant to Article 67 of the Constitution of the Republic of Vanuatu ("the Constitution"), you were a "leader".<sup>5</sup> Because you were a government minister, you had certain duties. The duties are set out at Article 66 of the Constitution, and in the Leadership Code. The duties include a duty to comply with and observe the law, and a duty to conduct yourself in such a way, both publicly and privately, not to diminish respect for and confidence in the integrity of the government, and not to use your office for personal gain. You held a position of influence and authority in the community, and as such had an obligation to behave honestly in your dealings with colleagues and other people.<sup>6</sup>

(iii) Your actions involve a gross breach of trust both in relation to the government and the people of Vanuatu. You had a duty to comply with and observe the law. Instead, you abused your power and authority as a government minister to steal an asset owned by the Vanuatu government, for personal gain.

b. The vehicle was under your control for approximately two years. That period of time cannot be said to be fleeting. The reason for that is at least in part due to the fact that the vehicle's appearance was altered.

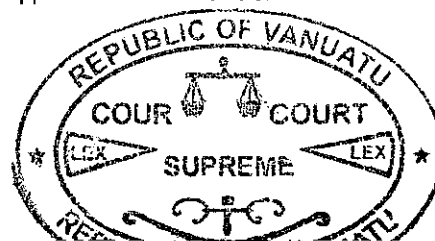
c. The vehicle's appearance was deliberately altered at your direction.<sup>7</sup> It was painted a different colour and a CT plate was affixed to the vehicle. This was brazen. The purpose can only have been to conceal the offending.

<sup>4</sup> See the discussion at paragraphs 16, 17 and 18.

<sup>5</sup> Article 67 says: 67. *Definition of a leader: For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.*

<sup>6</sup> See Article 66 of the Constitution which sets out the duties of a leader, and ss 2,3 and 12 of the Leadership Code [CAP 240].

<sup>7</sup> See paragraph 153 of the verdict. I inferred that Mr Seule deliberately altered the appearance of the vehicle.



- d. Once the vehicle's identity had been concealed, it was used by your family as both a public and private transport vehicle.
- e. There was planning. This is evidenced by the fact that you told Mr Fred you had purchased the vehicle from the PWD, which was not true. You directed others to make inquiries with Fleet Management, you instructed Mr Fred to remove the vehicle from the PWD, which he did under false pretences. At the time, you knew that Fleet Management had no formal record of the vehicle.<sup>8</sup> As I said in the verdict, an available inference is that you decided to take the vehicle once you knew Fleet Management had no formal record of the vehicle.<sup>9</sup>
- f. This offending had an effect of the victim, the Vanuatu government in two ways. Firstly, you deprived the government of an asset it owned. Secondly, as a government minister, you used your position to steal from your own government which must damage and erode public trust and confidence in the government, and elected members of Parliament. The public elected you, and other members of Parliament. The public are entitled to expect elected members to have integrity and be honest.
- g. The vehicle still has a value. I am unable to say what the value of the vehicle was in 2018 when it was taken for the reasons explained in the verdict. The current value is estimated to be between VT 100,000 - 200,000.<sup>10</sup>
16. There are no mitigating features of the offending itself. Mr Morrison submits that the offending is mitigated by the enhanced value of the asset and an entire lack of care and control by the asset's owner.<sup>11</sup> I do not accept that those factors, or any other factor, mitigate the offending itself.
17. As to the enhanced value of the vehicle, that submission can only be based on the evidence that you arranged for repairs to the vehicle so that it was able to be driven and for body work to be done. I did not accept what evidence there was as to the value of the vehicle in 2018, and there was no other valuation evidence to indicate that this work actually enhanced the value of the vehicle. The work was done to benefit you and your family.
18. In terms of the government's interest or otherwise in the vehicle, I do not intend to repeat what I said in the verdict about ownership of the vehicle.<sup>12</sup> It had languished on Tongoa for a number of years. The evidence established that the Ministry of Finance had a

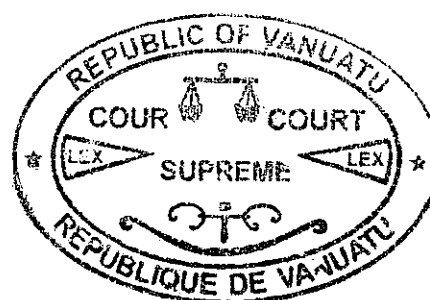
<sup>8</sup> See paragraph 158 of the verdict

<sup>9</sup> See paragraph 159 of the verdict

<sup>10</sup> As per counsel's joint memorandum filed on 7 August 2025

<sup>11</sup> At paragraph 16 of the submissions filed on 21 August 2025

<sup>12</sup> See paragraphs 84 -111



record of the purchase but not disposal of vehicle G 934. Further, while Fleet Management did not hold any formal record of the vehicle, they were told about the vehicle in 2018, and had the report from the PWD. As I said, seemingly through ineptitude, nothing was done about that information. Mr Morrison submits that it was not a case of you being aware of the lack of government records for the vehicle and taking advantage of that. Rather, there was a lack of, or negligent management of the asset by the government. However, as I said, you knew that Fleet Management had no formal record of the vehicle, and that an available inference was that when you became aware of that, you decided to take the vehicle and intended to treat it as your own.<sup>13</sup> The fact that the vehicle was highly visible after it had been taken from the PWD, and that the government lacked interest in the vehicle does not mitigate your culpability.<sup>14</sup> Firstly, you had told subordinates ( Mr Fred and Mr Nalwang) that you had purchased the vehicle, and secondly, you altered the appearance of the vehicle. It did not have a G plate. So, how would the government know it was their asset ? That in my view was the reason to alter the vehicle's appearance.

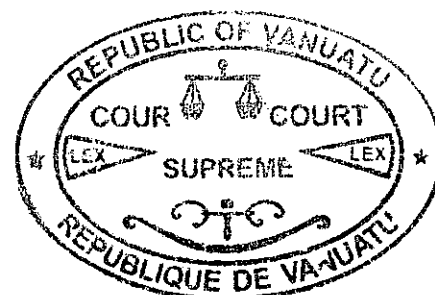
19. As to the starting point, Mr Young submits that the appropriate starting point is 4 to 5 years imprisonment, with reference to the maximum penalty and the cases cited in his submissions.<sup>15</sup> Mr Morrison submits that the appropriate starting point is no more than 2 years imprisonment.<sup>16</sup> Mr Morrison's submission is based on the unusual facts, and the starting points adopted in *Public Prosecutor v Kalosil* [2015] VUSC 149, a case involving 14 members of Parliament who were sentenced for corruption and bribery of officials. The starting points adopted were between 3 and 4 years imprisonment for offending involving multiple charges in the instance of some of the defendants.
20. While the comparator cases Mr Young cites involve a single charge of theft, none involve a leader. The standout aggravating factor here, unlike those cases, is the significant breach of trust arising from the fact that you were a government minister, and therefore a leader at the time you took the vehicle. During the period of time the vehicle was in your possession, you became the Speaker of Parliament.
21. I have considered the following cases to assist in determining the appropriate starting point:
  - a. *Public Prosecutor v Tolak* [2018] VUCA 42. Mr Tolak was found guilty of a charge of theft following a trial. He was a businessperson with his own shop. He purchased goods from time to time from another retailer to sell in his shop. He instigated an arrangement with three employees of the retailer to purchase 64 boxes of knives at a grossly undervalued price. Mr Tolak then onsold the knives

<sup>13</sup> See paragraph 159

<sup>14</sup> Refer to paragraph 8 of Mr Morrison's submissions.

<sup>15</sup> Mr Young cited *Public Prosecutor v Tolak* [2018] VUCA 42, and *Public Prosecutor v Narai* [2022] VUSC 234 to assist with setting the starting point.

<sup>16</sup> Mr Morrison did not cite any cases that address the starting point for theft.

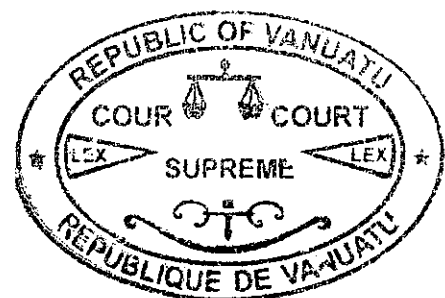


- for a significant profit, and netted VT 1.2 million from his dishonesty. The Court of Appeal described his actions as brazen act of systematic planning to use the employees to steal from their employer on his behalf and caused the retailer to suffer substantial loss. The Court of Appeal increased the starting point from 3 years imprisonment to 4 years imprisonment.<sup>17</sup>
- b. *Apia v Public Prosecutor* [2015] VUCA 30. Mr Apia was a Senior Sergeant in the Vanuatu Police Force ("VPF"). He had been a police officer for 22 years. He was convicted of 6 charges of forgery and a charge of obtaining money by deception. Over a four month period Mr Apia created a large number of fake documents, such as road tax stickers, driver's licences, public transport driver's permits, and other documents. This resulted in the government being defrauded of revenue of approximately VT 1,440,220. The Court of Appeal said that if Mr Apia was an ordinary citizen, the appropriate starting point would be approximately 2 years imprisonment. However, the Court said that a strong deterrent sentence was required taking into account the gross breach of trust which dishonest offending by a senior police officer represents. And further, that the consequences in financial terms, while relevant, were less significant than the damage done to the image of the Police Force and to the public's faith in those who are sworn to uphold, rather than breach, the law. Therefore, the Court adopted a starting point of 4 years imprisonment taking into account the maximum penalties available.<sup>18</sup>
- c. *Gamma v Public Prosecutor* [2021] VUCA 62. Mr Gamma was employed by Vanuatu Brewing Limited ("VBL") as a sales representative. He pleaded guilty to 4 charges of misappropriation under s 125(b) of the Penal Code, and 2 charges of forgery. The offending took place over a 2 month period. Amongst other things, Mr Gamma retained cash paid to him by customers, sold VBL's products to his own customers and created two false tax invoices which related to another business supplied by VBL for stock which he sold to his own customers. Mr Gamma received VT 1, 488,135 from his sales. On appeal, the Court adopted a starting point of 3 years imprisonment, taking account of various aggravating factors.
- d. *Public Prosecutor v Temakon* [2020] VUSC 19. *Temakon* was referred to by the Court of Appeal in *Gamma v Public Prosecutor*. Ms Temakon was a cashier at an ABM fuel station. Over a 20 month period she misappropriated VT 1,491,674 from her employer. After setting out the aggravating factors of gross breach of trust towards her employer, the degree of planning, duration of offending, and the extent of the loss, the Judge adopted a starting point of 3 years imprisonment.

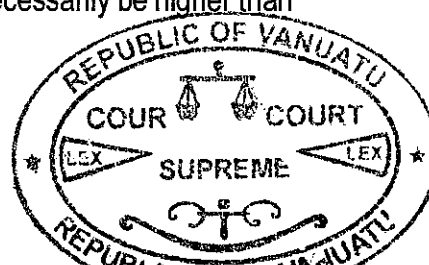
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<sup>17</sup> This case was cited by Mr Young in his written submissions.

<sup>18</sup> At paragraphs 35-37



22. None of the cases I have referred to are squarely on point. I do not consider that *Tolak* is of assistance in setting a starting point because it is too factually distinct. *Public Prosecutor v Kalosil* does not really assist either, because the members of Parliament were not charged with theft, and further, there is a guideline for theft, which must be the starting point, particularly for consistency.
23. *Apia v Public Prosecutor*, *Gamma v Public Prosecutor* and *Public Prosecutor v Temankon* provide some assistance because they involve situations of dishonesty by either employees or in the case of *Apia*, a senior police officer, and a serious breach of trust. I acknowledge that the amounts dishonestly obtained or misappropriated in those cases are much higher than in your case. It is not clear what the vehicle's value was in 2018. It was valued by the PWD at VT 350,000 but I was unable to accept that evidence because it was difficult to understand. The current value, as agreed, is between VT 100,000 - 200,000.
24. The case which is most relevant is *Apia*, given the position of trust occupied by Mr Apia, a senior police officer in the VPF. The approach taken by the Court of Appeal in *Apia* shows that the nature and magnitude of the breach of trust is highly relevant to the starting point. Applying the observations made by the Court of Appeal in *Apia* to this case, I consider that the consequences in financial terms, while relevant, are less significant than the damage caused to the Vanuatu government, and the diminished public trust and confidence in the government, arising from the gross breach of trust. And that as a result, there is a need for a stern deterrent message. Echoing the Court's words in *Apia*, you are not an ordinary citizen. As a government minister, you were a high ranking leader, who abused your power and authority to steal a vehicle from the government.
25. Generally, a sentencing Judge is to not only take into account the relevant aggravating factors, but also consider their seriousness. In your case, the value of the vehicle is an aggravating factor present to a low degree. The standout aggravating factor present to a very high degree is the gross breach of trust, for the reasons already detailed. The planning, and that you arranged for the vehicle's appearance to be altered to conceal the offending, are present to a high degree.
26. Having regard to *Mala*, the starting point based on the value alone of the vehicle would be no more than 18 months imprisonment. But as was said in *Mala*, value is not the only factor to be considered. The starting point must appropriately reflect the aggravating factors, including those which are particularly serious as the gross breach of trust is, for the reasons given. Here, the financial consequences are relevant, but less significant than the damage to confidence in the integrity of the government, and the public's faith in government ministers. As a leader, you had a duty to comply with and observe the law and to comply with the fundamental principles of leadership in Article 66 of the Constitution. You did not comply with these duties. You are not an ordinary citizen and as demonstrated by *Apia*, the starting point must necessarily be higher than

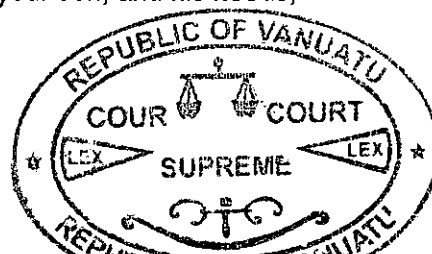


18 months imprisonment because of that. With reference to *Apia*, I regard the breach of trust here to be significantly more serious than in *Apia*. Mr Apia would be defined as a leader, but in my view, there is an important difference between a government minister and a serving police officer in terms of rank and responsibilities and therefore culpability. As noted, there are not many leadership positions in Vanuatu that rank higher or are more important than a government minister. I do though note that unlike the present case, Mr Apia was also sentenced for a greater range of offending, being forgery as well as dishonestly obtaining funds.

27. Therefore, taking into account the matters I have just set out, the cases I have referred to, and *Apia* in particular, the aggravating factors, particularly the gross breach of trust, and also the planning and the fact the vehicle was deliberately altered to conceal the theft, I adopt a starting point of 3 years imprisonment. Notwithstanding the relatively more serious breach of trust in the present case, I do not start at 4 years imprisonment as was the case in *Apia*, given the greater range of offending in that case, and the much higher value of the dishonestly obtained funds.

#### **Step Two: Personal factors**

28. In your case there can be no allowance for a guilty plea, as you were found guilty following a trial.
29. Mr Morrison submits that the sentence should be reduced to take account of personal factors, being that you are a recognised contributor to the community, that you spent your own money repairing and transporting the vehicle, and that you are remorseful for the offending due to the damage it has caused to your people on Epi Island. Mr Morrison submits that the sentence could be reduced by 12 months for these factors (and any other matters referred to in the presentence report) consistent with the 12 month reduction for personal factors in *Public Prosecutor v Kalosil*.
30. You are currently aged 54 years and have a high standing in your community. You have the support of Chief Matarick Vava who attests to your important contribution and role as a leader in your community and Epi Island as a whole. You told the presentence report writer that you are sorry for the offending due to the damage it has caused the people of Epi. You have, according to the presentence report, a 12 year old child with special needs. Your other children are adults but remain dependent on you. You have some health issues, as you are a Type 2 diabetic, currently on medication.
31. I consider that there should be a reduction to the sentence to reflect your contribution to the community. You have served the people of Epi as their elected representative since 2016. You are held in high standing in that community. I will also reduce the sentence by a modest amount for your responsibility to your 12 year old son. The reduction will be modest because I have no information about your son, and his needs,

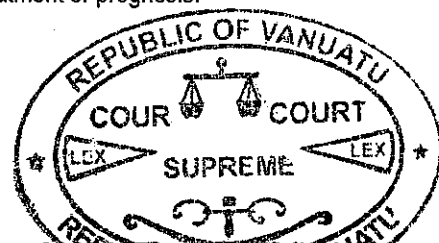


beyond the brief mention in the presentence report, so I am not able to assess his level of dependence, or needs. Your other children are adults, and while they may be dependent on you, as far as you are concerned, that does not warrant a sentence reduction. There is no information before the Court as to why they are financially dependent and cannot support themselves. For example, your son Roro Greg Seule, who gave evidence as part of the defence case, is a lawyer who works as a legal officer for World Vision in Vanuatu. He could not be categorised as dependent.

32. That you are sorry for the damage caused to the people of Epi could be seen as an expression of remorse. Remorse does not need to be exceptional, but it needs to be actually experienced. It is a matter of robust evaluation to assess whether remorse is genuine, and thus capable of reducing the sentence. Judges usually look to see if there is some tangible evidence of remorse. Here, there is a bare assertion of remorse. Notably, you apologise only to the people of Epi. In 2018, you were a government minister, and not simply an elected representative for Epi. There is nothing in the presentence report or the submissions that demonstrates any insight or remorse for the damage to the trust and confidence in the government, and the public's faith in government ministers. Further, in the presentence report, you maintain the narrative given during the trial, which is inconsistent with theft. You are entitled to do so, but it sits uneasily with a genuine expression of remorse for theft of a government vehicle. It is unclear then what the remorse reflects. I do not reduce the sentence for remorse.
33. You do have Type 2 diabetes. While Mr Morrison refers generally to the matters in the presentence report, I do not understand that a specific reduction is sought for this factor. For the sake of completeness, the sentence will not be reduced for your health. That is because there is no current medical information about this condition, your medication and how it affects you or any sentence to be imposed. The material annexed to the presentence report is 3 years old and consists of laboratory results. There is no medical report from a doctor or any medical specialist you have sought treatment from overseas.<sup>19</sup>
34. While you did spend money on repairs to the vehicle, I do not think that is a matter which should reduce the sentence. You did so because you intended to keep the vehicle yourself. You should not receive a sentence reduction for the cost of altering the appearance of the vehicle so as to conceal the offending. And as I have said, there is no actual evidence that the work you paid for resulted in an enhanced value of the vehicle.
35. The sentence is reduced by 6 months, which equates to just over 15 percent, to reflect your standing in the community and contribution to your community and Epi Island

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<sup>19</sup> In the presentence report, there is reference to Mr Seule been treated in Vietnam, Fiji and Australia. However, there are no medical reports or other information to shed any light on medication, treatment or prognosis.



generally, as well as the fact that you have a dependent 12 year old. I do not think that the sentence should be reduced for any other personal factors, for the reasons given.

36. You do have relevant previous convictions. In 1997, you were convicted of theft and appeared in the Magistrate's Court. You were fined VT 10,000, and ordered to pay compensation of VT 90,000, and a contribution towards the costs of the prosecution. In 2001, you were convicted of misappropriation and appeared in the Magistrate's Court. Again, you were fined VT 10,000, and ordered to pay compensation of VT 90,000, and a contribution towards the costs of the prosecution.<sup>20</sup> The convictions are historic, so I accept Mr Morrison's submission that they have little relevance to sentencing, with one caveat which I will explain shortly.<sup>21</sup> But the prior convictions are too historic to mean that the sentence needs to be increased for deterrence.

### **The end sentence**

37. The sentence is 2 years 6 months imprisonment.

### *Submissions as to end sentence*

38. Mr Morrison submits that the sentence should be suspended. His submission is that there should be an end sentence of 18 months imprisonment, suspended for 2 years. Mr Morrison in fact goes further and contends that that a fine together with a sentence of community work is the most appropriate sentence. It is contended that the conviction in and of itself is a significant black mark against you, which will denounce your actions to the community. Mr Young submits that the sentence should not be suspended.

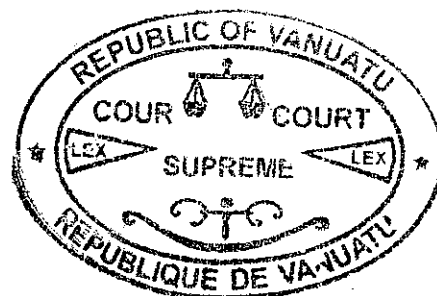
### *Is a fine and community work a proportionate sentence?*

39. Before I consider the question of suspension of the sentence, I want to address the contention that a fine and community work are the most appropriate sentencing outcomes. The first point is that such a sentence will have little deterrent effect. You were sentenced to a fine for dishonesty offending in both 1997 and 2001. You are back before the Court many years later for dishonesty offending, so the fines imposed had little to no effect. A step up the sentencing ladder is needed. Secondly, a fine, even with community work, would not meet the purposes and principles of sentencing, particularly the need for deterrence. I reiterate the observations of the Court of Appeal in *Apia*, when the Court said that a strong deterrent sentence was required taking into account the gross breach of trust which dishonest offending by a senior police officer represents.

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<sup>20</sup> See paragraph 15 of Mr Young's submissions, and annexures.

<sup>21</sup> See the discussion at paragraph 39



This applies equally to you. A strong deterrent sentence is required for dishonesty offending by a leader. As such, a fine and community work would be an entirely inadequate sentencing response.

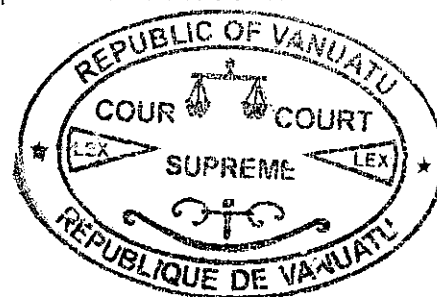
### *Suspension of the sentence*

40. Pursuant to s 57 of the Penal Code, there is a discretion to suspend a sentence of imprisonment, taking into account the circumstances, the nature of the crime and the character of the offender.<sup>22</sup> When exercising the discretion under s 57, the Court of Appeal in *Public Prosecutor v Garae* [2025] VUCA 37<sup>23</sup> recently affirmed the approach to the exercise of the discretion. A sentencing Judge is to take into account all aggravating and mitigating factors relevant to the discretion. This requires a balancing exercise of the factors against, and the factors, for, suspension.
41. There are factors which do not favour suspension of the sentence. As I have set out at paragraph 15, there are a number of aggravating factors. They include the gross breach of trust, that the vehicle was under your control for approximately 2 years, the deliberate alteration of the vehicles' appearance, it was used by your family for private and public transport, there was planning, the damage to public trust and confidence in the government, and the value of the vehicle.
42. The gross breach of trust is the standout aggravating factor. You used your power and authority as a government minister to steal a government asset and concealed that fact for 2 years, as you arranged for the vehicle's appearance to be altered. It resulted in personal gain for you and your family. You were a leader and breached your duty to comply with the law, and the duty of integrity and honesty, and importantly, the duty not to diminish respect for and confidence in the government's integrity. The people of Vanuatu must be able to both trust and respect the government they elect. When a government minister steals from the government, that damages the integrity of, and public faith in, the government.
43. As I have said the planning and the deliberate altering of the vehicle to conceal the offending are aggravating factors present to a high degree. While all the relevant aggravating factors contribute to the level of culpability, the gross breach of trust and the planning and altering the vehicle's appearance to conceal the offending mean that the offending is in a serious category. Relevantly, you are a high ranking leader and not an ordinary citizen.

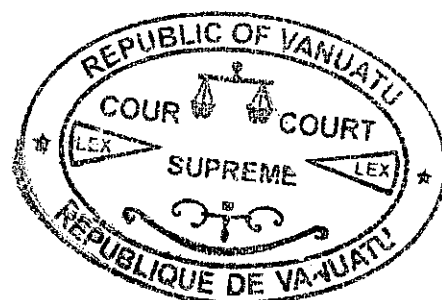
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<sup>22</sup> Note that pursuant to s 58 of the Penal Code, the Court should consider whether there are grounds to suspend the sentence if the Court has decided that the case is so serious as to warrant imprisonment and that it is not appropriate to suspend the whole sentence.

<sup>23</sup> At paragraph 28. See also *Malau v Public Prosecutor* [2021] VUCA 48.



44. There are factors which favour suspension of the sentence. These factors include the low value of the vehicle, the fact that while you have two prior dishonesty convictions they were many years ago, so not relevant and the personal factors I have referred to. Specifically, that you are a person of good standing in your community and Epi Island and have contributed to your community and have the support of a Chief. Further, that you have a dependent 12 year old who has special needs.
45. In weighing and balancing the factors against and the factors for suspension, the seriousness of the offending, particularly the gross breach of trust which dishonesty by a government minister represents, weighs heavily against suspension. A sentence which sends a clear message that elected politicians must be held to account, and that actions that cause damage to the government and erode the public's faith in those who have a duty to comply with the law will be strongly condemned, is needed. While there are factors which favour suspension, as I have detailed, they do not outweigh the need to impose a sentence which meets all the relevant sentencing purposes and principles, including accountability, deterrence and denunciation, and is consistent. Suspension of the sentence would send the wrong message to you and other elected politicians who may be minded use their power and authority to offend. It would also send the wrong message to the people of Vanuatu, who should have confidence that government ministers, just like any other citizen, will be held to account. As a high ranking leader you acted dishonestly, and stole from the government you were a minister of in 2018. The key sentencing purpose then is the need to impose a strong deterrent sentence to send a message that this type of offending is unacceptable.
46. Suspension would not be a consistent sentencing approach either. In *Mala*, the Court said that generally fraud and theft would require a term of imprisonment, save in very exceptional circumstances or where the quantum is small. While I accept the quantum is small here, relatively speaking, that factor does not tip the scales in favour of suspension, given you were a high ranking leader. Sentencing is always an individualised assessment relating to both the offence and the offender. However, the cases I have referred to demonstrate that suspension of the sentence, either in whole or in part would not be consistent.
47. Accordingly, in summary, after weighing and balancing the factors which are both against and for suspension of the sentence, I decline to suspend the sentence, either in whole or in part. While I have taken all the factors which favour suspension into account, as must be obvious, weighing heavily in the balance against suspension is the need for a strong deterrent message, as you were a high ranking leader who acted dishonestly and in breach of your duties as a leader. Put another way, the factors which favour suspension do not outweigh the need for deterrence, which cannot be met by a suspended sentence.



*End sentence*

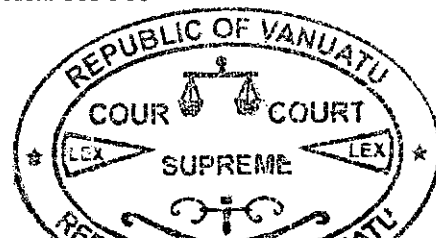
48. You are sentenced to 2 years 6 months imprisonment.
49. I cannot impose an immediate term of imprisonment. That is because s 50 of the Penal Code applies, as you have not been remanded in custody at all.<sup>24</sup> You are to present yourself to the Department of Corrections at 9am 10 September 2025 to begin the sentence, unless you elect to begin the sentence earlier. The Director of Corrections is to confirm to the Court that you have presented yourself to Corrections to start serving the sentence.
50. You have 14 days to appeal.

*A final matter - the Leadership Code*

51. There is one final matter. In his written submissions, Mr Young submits that the Court should make orders under the Leadership Code ("the Code") dismissing you from office under s 41 of the Leadership Code and disqualify you from standing for election for a period of 10 years under s 42. Mr Morrison opposes any such orders, and in his written submissions contended that these are not matters within the sentencing jurisdiction. Rather, they may be the proper and end result of a statutory process but are not matters for the Court in sentencing you today. Mr Young did not file any submissions in reply addressing this point. He made oral submissions today, reiterating his written submissions. While no specific leave was given to do so, the better approach would have been to seek leave to file submissions in reply as this is a novel and technical point. I note that Mr Young did not provide any authorities to support the submission.
52. Under s 27(1) of the Leadership Code, a leader who is convicted of an offence under the Penal Code as set out in s 27(2) is in breach of the Code, and is liable to be dealt with in accordance with ss 41 and 42 of the Code in addition to any other punishment that may be imposed. I accept that theft is a qualifying offence under s 27(2) of the Code.
53. Part 6 of the Code deals with punishment of leaders. Relevantly, s 41(1) provides that where a leader is convicted of a breach of the Code, the Court may, if it regards the breach as serious make an order dismissing the leader from office. Section 41(2) sets out the factors that the Court may have regard to. One of the factors is the amount involved.
54. I do not intend to embark upon a detailed analysis as to the inter-relationship between s 27 of the Leadership Code on the one hand, and ss 41 and 42 on the other hand. It is

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<sup>24</sup> Also, no warrant of arrest or remand was issued against Mr Seule at the time of conviction. See s 50



unnecessary for me to do so. That is because, as Mr Young rightly contended, dismissal from office under s 41 is a matter of discretion. Unless the Court makes a dismissal order under s 41, a disqualification order cannot be made under s 42 of the Code.

55. In this case, I decline to exercise the Court's discretion to make a dismissal order under s 41 of the Leadership Code. My reasons are as follows:

- a. You did not face a charge of breach of the Leadership Code. While I proceed on the basis that I could still make orders under ss 41 and 42 of the Code, as sought, without a specific charge of breach of the Leadership Code, it was always open to the prosecution to lay such a charge. They did not. The relevance is simply that if you faced such a charge, it may have alerted you to the fact that there may have been consequences beyond a sentence being imposed by this Court.
- b. One of the factors to be taken into account under s 41(1) is the amount involved. While I regard this as serious offending for the reasons set out at some length, the amount involved is low. The seriousness of the offending here arises in large measure from the gross breach of trust involved in this offending. And that is why the sentence is a term of imprisonment without suspension. The position may well be entirely different if a high ranking leader acted dishonestly in circumstances where the quantum involved was significant, but that is not the case here. The Court may be more willing to exercise the discretion to dismiss a leader under s 41 if that was the case.
- c. Any punishment must be proportionate. It must reflect the purposes and principles of sentencing. A key sentencing need, as discussed in *Apia*, is a strong need for deterrence. That is met today by the imposition of a full-time custodial sentence without suspension. A term of imprisonment also meets the need for accountability and denunciation. To dismiss you under s 41 would be overly punitive in the particular circumstances of this case, and in that regard, I place weight on the low value of the vehicle, relatively speaking. Another case may result in a completely different outcome, as I have said.
- d. Finally, as Mr Morrison submitted, there may well be other processes that will address your suitability to be an elected politician and a leader.

DATED at Port Vila this 27th day of August 2025

BY THE COURT

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Justice M A MacKenzie

