

IN THE SENIOR MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU

CASES NOS. 537/91
538/91
540/91
536/91

Holden at Port Vila

This 23rd day of October, 1992

Public Prosecutor -V- Jemina Tari & 3ors
Public Prosecutor -V- Hanson Mataskelekele & 2 ors
Public Prosecuroor -V- Willie Reuben Abel & another
Public Prosecutor -V- Jeannett Bolenga

JUDGEMENT

All accused were charged with theft contrary to section 125 of the Penal Code Cap 135. the Charges relate to various substantial quantity of property belonging to the Government of the Republic of Vanuatu which were taken from various Government Departments, namely the Department of Agriculture, Forestry and Fisheries, the Ministry of Education, the Finance Department or Ministry of Finance, and the Ministry of Home Affairs.

Accused Willie Reuben Abel and Tom Seule appeared before me on 20.10.92. The Charge was put to each one of them and they pleaded guilty and accused Willie Reuben Abel indicated he had a Statement to be tendered to Court a copy to the Public Prosecutor. After having read the Statement, the Public Prosecutor suggest that the Statement tendered seemed to raise a defence relating to genuine belief held by the two accused at the material time. The Public Prosecutor also suggested that, the Court should treat the tendered Statement as a Not Guilty plea and that it was advisable for the two accused to have legal representation. After the Court asked the two accused, they each and severally indicated they wanted a lawyer. The matter was then adjourned to 23.10.92 at 8.30 am for hearing.

Accused Hanson Matas Kelekele, Clifford Bice and Jean Marie Uagahu appeared briefly before me on 21.10.92. The Charge was put to each and severally and the Public Prosecutor again suggested that instead of asking the defendants to plea, the accused should be asked if they wanted legal representation. In answer to this, the three accused answered in the affirmative. The case was further adjourned to 29.10.92 at 8.30am for hearing.

However late on 21.10.92, both Counsels had a short conference with me in Chamber asking me if it was possible to hold a joined hearing of all the three cases plus the one of Jeaneette Bolenga. I indicated to them both that, it was possible if the defendants could then be advised accordingly.

When we resume 22.10.92 the Public Prosecutor, then made an application that in consultation with the Public Solicitor, the two cases which were adjourned to 23.10.92 and 29.10.92 should now be heard jointly with the one that was set for yesterday. as well the case of Jeannette Bolenga had been heard by his Honour Acting Chief Justice Edwin Goldsbrough who has left the country was also pending for sentence.

The court indicated that, a trial had been conducted on her case and that accordingly to section 125 of the Criminal Procedure Code Cap 136, the Court has the power to act on the evidence already recorded by my predecessor. Her case was then ready for sentence only.

The Public Solicitor who represented the defendants submitted that he had been instructed by his clients to enter a Guilty plea on behalf of them all.

The Court also brought the attention of both Counsels that the defendant Mr Andrew Pakoa was one that, I had known personally and that, the Court should disqualify itself from presiding over his case. To this both Counsels suggested that, the Court should inquiry from accused if he wanted the Court to disqualify itself from proceeding with his case. When asked by the Court accused Mr Andrew pakoa replied by saying that he wanted his case to be heard by the presiding Magistrate. the proceeding continued.

The Public Solicitor then reiterated that he was entering a Guilty plea on behalf of all accused. the Court accepted the Guilty Pleas and asked the Public Prosecutor to present the facts of the case to the Court.

The facts of all these cases were sufficiently canvassed by the Public Prosecutor yesterday and I do not wish to re-open the case myself.

What I need to say from the bench is this, that I accept the fact that, the cases before me are not just ordinary theft cases like everyday theft cases that come up before the Courts. The reason for saying this is that, none of the accused stole for purposes of either personal gain or benefit.

I understand from the facts, yesterday that what you did was an act of allegiance to the former Prime Minister the Right Honourable Fr. Walter Lini and the Vanuaku Pati which led this country into Independence in 1980. As rightly pointed out yesterday by the Public Prosecutor, what occurred in your case has occurred nearly every where in countries where the concept of democracy exists. Of course there is no harm in supporting a particular pati in this jurisdiction and it is your rights to support which ever pati you support.

(hr) However the allegiance and support that anyone bares to a Government or party can only be exercised to a certain extent and the degree of allegiance is regulated by statute to ensure that actions of supporters of a party or any particular Government do not harm another person be it a Government, a pati, an individual or a corporate personality.

I find from the facts of these cases that, the several actions that you each and severally played was a misguided concept of allegiance because the various quantity of properties that you carried away were all that material time the property of the Government of the Day. I find that they did not belong to any particular person, pati or Government. They were and are the property of the Government of the Republic of Vanuatu.

MITIGATION:

Your lawyer, the Public Solicitor submitted in mitigation yesterday, that these cases before me cannot be categorized as any ordinary theft cases and he urged the Court to take this into consideration. That your allegiance to your leader who is undoubtedly one of the greatest leaders and the father of this nation, your support and belief facilitated what you are before this Court for. That however this was a misguided belief.

Your lawyer also urged this Court to take into account in sentencing you two factors:


- (a) That these offences you were charged with are not just like any other stealing cases and
- (b) that you each and severally stole the property not for any personal gain or benefit.

All the submission in mitigation - I have fully considered. In sentencing you, I take into consideration the fact that you pleaded guilty through your lawyer. That you have served the last government in various capacities, no matter how short your term of office may have been. Your lawyer also submitted that some of you are church leaders of various denominations and that you have since continued to live lives of fine examples before your people in beautiful Vanuatu.

Having said the above I now proceed to sentence you plus the defendant Jeannette Bolenga.

Court Orders

- All Defendants in cases No. 537/91, 538/91 and 540/91 and accused Jeannette Bolenga in case No. 536/91 are each and severally found guilty, convicted and ordered to pay fines of VT50,000 to each and severally imprisonment 3 Months to each and severally.
- This order is suspended for 2 years ie this order binds you for two years.
- Court orders prosecution costs of VT10,000 to each and severally payable within 6 weeks.


S. LENALIA
Committing Magistrate

