

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

**Criminal  
Case No. 19/1590 MC/CRML**

**PUBLIC PROSECUTOR**

**V-**

**SIMEON SEULE**

**Before:** *Senior Magistrate Moses Peter*

**In Attendance:** *Ms. Micheline Tasso for the State, Ms.  
Viska Muluan for the defendant*

**Date of Trial Hearing:** *24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> February 2020*

**Date of Verdict:** *9<sup>th</sup> March 2020*

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**JUDGMENT**

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**Introduction**

1. The defendant allegedly committed series of criminal actions on two different dates and time.
2. On 3<sup>rd</sup> of October 2019 he pleaded not guilty to all five counts of offences. Consequently, the matter is affixed for trial hearing on 24<sup>th</sup> to 26<sup>th</sup> of February 2020.
3. Before commencing the trial hearing on 24 February 2020, the Prosecution applied to withdraw charges of assault contrary to section 107 (a) of the Penal Code Act.
4. The court granted her application on the ground that the prosecution is statute barred by virtue of section 15(c) of the Penal Code Act to prosecute these charges. The offence was committed in December 2016 and the formal complaint was lodged with the police on 23 July 2018.
5. This proceeding will only address offences in count 1, 2 and 4 of the charges.
6. The trial hearing began with court reading section 81 of the Criminal Procedure Code to the Defendant before permitting counsel for the State to advance her opening statement and call of witnesses.



### 7. Count 1

#### **Malicious Damage to Property contrary to section 133 of the Penal Code Act [CAP 135]**

##### **Particulars of Offence**

*"Simeon Seule, on 16<sup>th</sup> December 2016 you willfully and unlawfully destroyed the mobile phone of Fredeline Tanarango when you throw it against the floor and broke it"*

### 8. Count 2

#### **Intentional Assault contrary to section 107 (b) of the Penal Code Act [Cap 135]**

*"Simeon Seule, on 16<sup>th</sup> December 2016 you intentionally assaulted Fredeline Tanarango when you hit her on her backside, face and her neck and kicked her with your legs on her backside and caused damage of temporary nature on her body".*

### 9. Count 4

#### **Attempt to kidnap contrary to section 105 (b) of the Penal Code Act [Cap 135]**

*Simeon Seule, on 23<sup>rd</sup> December 2016 by force compel Fredeline Tanarango to enter the Ministerial vehicle (G13) from the compound of Ministry of Youth and Sport, Port Vila to an unknown place in which she threatened to jump off when the vehicle reach the Ministry's gate and she got off the vehicle".*

### 10. STANDARD OF PROOF

To validate the criminal conviction on the Defendant; the standard of evidence required of the State to prove is prove beyond reasonable doubt.

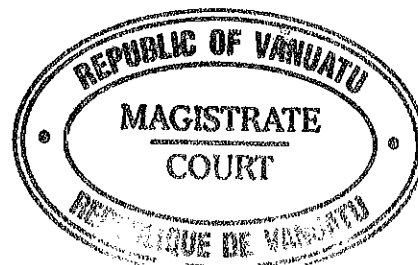
Section 8 (1) of the Penal Code Act [CAP 135] reads:

*"No person shall be convicted of any offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous."*

11. The State has the burden to prove the essential elements of the offences. If at the end of the trial hearing that burden is not discharged, the defendant shall have the benefit of acquittal.

12. For offence of Malicious Damage to Property the Prosecution must prove the following elements beyond reasonable doubt:

- On 16<sup>th</sup> December at Hotel Santo in Luganville, Santo
- Simeon Seule
- Willfully and unlawfully
- Destroy or damage



- A mobile phone knowingly belongs to
- Fredeline Tanarango

13. For offence of Intentional Assault contrary to section 107 (b) the Prosecution must prove the following elements beyond reasonable doubt:

- On 16<sup>th</sup> December 2016 at Hotel Santo in Luganville, Santo
- Simeon Seule
- Intentionally
- Caused damage on the body of Fredeline Tanarango
- Of temporary nature

14. For offence of Attempt to kidnap the Prosecution must prove the following elements beyond reasonable doubt:

- On 23<sup>rd</sup> December at Ministry of Youth and Sport premises at Port Vila
- Simeon Seule
- By force compel (a) or (b) by fraudulent means induce
- Fredeline Tanarango to go from one place to another
- Without Fredeline Tanarango's consent
- Without lawful excuse

## 15. Law

### Malicious Damage to Property

Section 133 of the Penal Code Act [Cap 135]

"No person shall willfully and unlawfully destroy or damage any property which to his knowledge belongs to another". (My underlining).

*Penalty: VT 5,000 fine or one year imprisonment or both (s 36 (3) of the Interpretation Act [Cap 132]*

### Intentional Assault

Section 107 (b) of the Penal Code Act [Cap 135]

*No person shall commit intentional assault on the body of another person.*

*Penalty:*

- (a) *If no physical damage is caused, imprisonment for 3 months;*
- (b) *If damage of temporary nature is caused, imprisonment for 1 year;*
- (c) *If damage of a permanent nature is caused, imprisonment for 5 years;*
- (d) *If the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years. (My underlining).*



## Attempts

### *Section 28 of the Penal Code Act [Cap 135]*

- (1) *An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connected with it, or would have been had the facts been as the offender supposed them to be.*
- (2) *An attempt shall be committed notwithstanding that complete commission of the offence was impossible by reason of a circumstances unknown to the offender.*
- (3) *Acts committed in mere preparation of an offence shall not constitute an offence.*
- (4) *The Commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned.*
- (5) *The criminal responsibility of a person committing an attempted offence who voluntarily withdraws from the attempt before the offence has been committed shall be diminished.*

## Kidnapping

### *Section 105 of the Penal Code Act [Cap 135]*

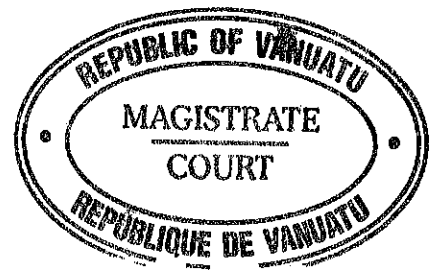
*No person shall-*

- (a) *Convey any person beyond limits of the Republic without consent of that person, or of some person legally authorized to consent on behalf of that person; or*
- (b) *By force compel, or by fraudulent means induce, any person to go from any place to another place. (My underlining)*

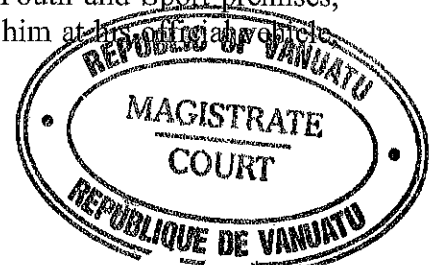
*Penalty: Imprisonment for 10 years.*

## Prosecution case

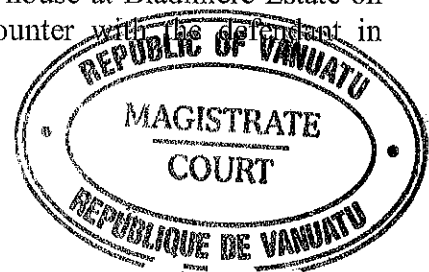
16. First witness is the complainant herself who confirms her position as the Principal Budgeting Officer in the Department of Youth and Sport.
17. She said on 15 December 2016, the defendant who was at the time occupying position of Minister of Youth and Sport led a team to Luganville, Santo which comprises of herself, Acting Director to Department of Youth and Sport Mr. Paul Nalau, Executive Officer to Ministry of Youth Sport Mr. Batiste Firiam, First Political Adviser to the Minister Ms. Wendy Himford, and Second Political Adviser Mr. Joel Nilwo.
18. The purpose of their travel to Luganville, Santo is to officially close the national games.
19. When they arrived in Luganville, they were accommodated in Hotel Santo.
20. On 16 December 2016 at round 7pm to 8pm, the defendant instructed Acting Director Paul Nalau to go and tell her to give him some money.
21. She refused because it is against the financial regulation as all his allowances had been paid to him (Minister).



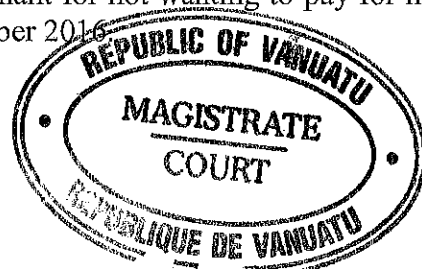
22. She said she saw the defendant and her group left the hotel around 11.00 pm and she went to bed until early hours of 17 December 2016, she heard the defendant shouting at her outside the door of her room. She was afraid so she opened the door. She saw the defendant was very angry. He went inside her bedroom, she told him to sit on an unoccupied bed in her bedroom.
23. The defendant demanded money from her. About 3 minutes later Joel Nilwo entered her bedroom and insisted with the defendant that she give them money.
24. She refused so the defendant took her bag and threw it on the floor. Inside the bag was her purse, perfume and mobile phone. She could not remember the brand but said it is either a nokia or an alcatel phone that she had bought at TVL for VT 22,000. As a result, her phone cracked.
25. She said she and the defendant were struggling to crap her bag and it fell on the floor. At that point, she was not sure if the defendant had assaulted her. Joel Nilwo then removed the defendant from her room. She said while she was lying on the floor nothing else happened. Prosecution led her to her police statement 2.3.7 which she stated that the defendant assaulted her.
26. It was put to her in cross-examination that the defendant did not assault her, she resonated being pulled by her hair and punched several times on her back and neck.
27. She left the hotel as instructed by the defendant, went to the market and return at about 20 minutes later. Paul Nalau told her not to touch her belonging until end of their program on that day.
28. Some minutes later, she and Wendy Himford went to sort some bill when she reported the incident to Wendy Himford.
29. Ms. Wendy Himford advise her to reconcile with the defendant before they start their program. She hesitated but then accepted the reconciliation. The defendant apologized to her and instructed herself and Ms. Wendy Himford to go and buy herself a new phone.
30. She felt pain on her back after the incident so Ms. Wendy Himford massaged her. She said she did not seek immediate medical relief because it was her first time in Luganville, Santo. She only went to the Vila Central hospital around March of 2017 after experiencing pain on her back.
31. In the Vila Central hospital, she saw Dr. Steward. The pain on her back did not stop so she went to see Dr. Steward the second time and he advised her to go and see Physiotherapist.
32. She said she felt good after seeing the physiotherapist.
33. At cross-examination, she said the defendant threw her bag against the wall resulting in the crack on her phone that was inside the bag. Defence counsel asked her to confirm her evidence in chief that the phone fell of her bag, she maintained silence in court.
34. At cross examination she was asked if she followed the defendant to his bedroom door and assaulted his chest with a comp, she refuted.
35. Complainant confirms making another payment to defendant on 19 December 2016 in Port Vila as his extra allowance. This was tendered in evidence as exhibit D2. She maintained that the defendant signed a receipt showing all allowance entitlements had been given to him in full. When the court put it to her that if, she had given the defendant her allowance why she gave her another VT 30,000 as his extra allowance. She could not comfortably respond.
36. She said on 23 December 2016 the Department of Youth and Sport premises, the defendant sent gardener to tell her to go and see him at his office at the



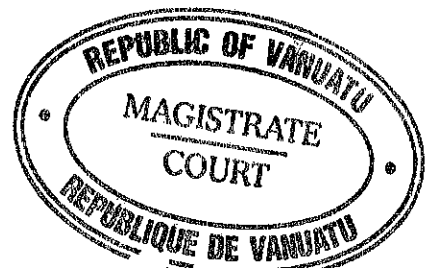
- which was parked outside. She reluctantly went on the advice of the Executive Officer Mr. Batiste Firiām.
37. She went in and sat with the defendant his official vehicle. He then started to blame her for being responsible for his cancelled trip to Epi. She told him it was not her fault.
  38. He was angry and was driving out when she told her to stop or she will jump out of the vehicle. She said at that point the defendant stopped his vehicle and she got off it. She said she remained in the vehicle for about three (3) minutes.
  39. At cross-examination, she said reiterated what was said in examination in chief and concluded that the incident happened in the compound of Ministry of Youth and Sport.
  40. She said she did not want to report the matter to the police because she was afraid the defendant might terminate her. It was put to her that the Public Service Commission employed her and it would be impossible for the defendant to terminate her. However, she said after reporting the matter to police on 23 July 2018, she received a second warning letter and a suspension letter by Director General of Youth and Sport through instruction of the defendant. She appeared before Public Service Commission disciplinary hearing and was ordered to resume duty.
  41. It was put to her at cross-examination that she refused to give the defendant his money because she was jealous of the defendant having drinks with other women. She denied.
  42. She was also asked in cross-examination if she had been having sexual affairs with the defendant for some time and on the night of 16<sup>th</sup> December 2016, she slept with the defendant in his hotel room. She denied and argued that the hearing is not to deal with any sexual affairs she may have had with the defendant.
  43. She denied being assaulted by her husband when he heard about the affairs with the defendant at Luganville, Santo. She only went and report the matter after encountering these series of criminal conduct by the defendant on 17<sup>th</sup> and 23<sup>rd</sup> December 2016.
  44. She confirmed writing two letters to the Public Prosecution office to withdraw charges against the defendant.
  45. The second witness for the prosecution is the complainant's husband namely Robert Tanarango.
  46. He said he is married to the complainant and they have lived together for more than 2 decade and raised three (3) children.
  47. He said the complainant suffered spinal problem that saw a curve on her back making it difficult for her to breath.
  48. Her condition transpired when the complainant visited Doctor Spooner back in year 1989.
  49. He said because of her wife's condition, he had to look after her very well.
  50. In 2016 his wife experienced pain on her back so he investigated the cause of the pain then she told him about what the defendant had done to her in Luganville.
  51. He then advised her to lodge a complaint in the police and she agreed. A medical examination was performed after lodging the complaint to police on 15 February 2017.
  52. He said MP Tomker and Joel Nilwo went to his house at Bladiniere Estate on 21 February 2017 and explain his wife's encounter with the defendant in



- Luganville. Joel Nilwo said he went into his wife's room at the hotel and saw the defendant assaulting her and dragging her on the floor.
53. After these persons explained the incident to him, they ask him not to proceed with the police report or the complainant may lose her job. He told them the matter is before the police and there is nothing he could do about it.
  54. At cross-examination, he denied assaulting the complainant when the issue was reported to him.
  55. He said he could remember that was his wife's second travel to Luganville, first being September 2016 and again on 15<sup>th</sup> December 2016.
  56. He said the rumors about his wife's sexual affair with the defendant is false.
  57. He maintained having good communication with the complainant and she would report anything to him.
  58. The complainant did not report the incident immediately to him. Even after returning to Port Vila.
  59. Regularly the complainant would experience pain on her back and she would massage her and gave her Panadol to drink.
  60. At around January to February of 2017, the pain on her back continued so they went to the hospital on 16 February 2017 and the doctor after examining his wife authorized sick leave of 2 working days.
  61. He said he was hurt when heard about what the defendant had done to his wife. He assisted her to make complaint with the police but he did not write the police complaint on her behalf.
  62. He said he was aware of a letter written by the complainant to the Public Prosecutor requesting to withdraw the charges against the defendant.
  63. Third witness for the prosecution is Joel Nilwo who joined the delegation led by the defendant to Luganville, Santo.
  64. He said he was in his room and at around 6 o'clock in the morning he heard the Minister arguing with the complainant in her room. He thinks they argued about money. He then went to see what was going on and as he entered the complainant's room, he saw her bag thrown towards the wall of her room. He said he could not remember the defendant's appearance at the time but thinks he must be angry.
  65. He said the complainant's appearance shows she was angry also and jealous.
  66. He then removed the defendant from the complainant's room. Soon after Ms. Wendy Himford organized, a reconciliation and they witnessed defendant and complainant shook hand, and defendant bought complainant a new phone.
  67. At cross-examination, he said he saw defendant and complainant fighting to gain possession of the complainant's bag when the phone fell off it. He said he did not see the defendant assaulting the complainant. As regards to the sexual affairs, the witness said he worked very closely with the defendant and he witnessed some unbecoming conduct, which he became suspicious of an affair between both persons. When asked for clarity, he reported seeing complainant coming out of the defendant's room in the early hours of 16<sup>th</sup> December 2016 as if she had slept with the defendant in his room.
  68. The fourth witness for the prosecution is Mrs. Wendy Himford who appears to show discontentment on the summons issued by the Prosecutor to testify in court.
  69. She showed frustration towards the complainant for not wanting to pay for her air ticket to Luganville on the 15<sup>th</sup> of December 2016.



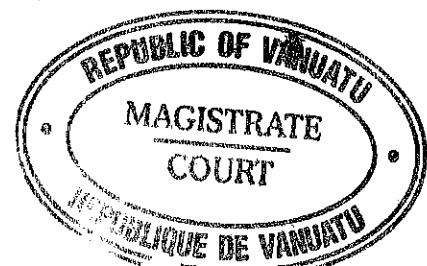
70. She said in her years of service in the government she never saw an accountant being so disrespectful towards the authority and is very unusual for person with that position to be included in a government delegation.
71. She made her way to Luganville and the complainant did not want her to stay in the same hotel so she lied to her that they are lodged at Tropicana. Upon arriving at Tropicana she found out that they stayed at Hotel Santo then she went and join them.
72. She said the complainant told her she had an argument with the defendant because she refuses to give him money. She also said the complainant told her the defendant threw her phone on the floor. She then massaged the complainant but did not see any scar or mark on her body. She then organized a reconciliation and both defendant and complainant came into good terms again.
73. At cross-examination, she said she only massage complainant to cool her down but she was not feeling any pain but was laughing all along. There was no show of injury sustained by complainant.
74. Fifth witness for prosecution is Paul Nalau who was at the time the Acting Director of Youth and Sport.
75. He confirm staying in the same hotel in Luganville with the complainant, the defendant and the rest of the team. He said the complainant called her one morning and was crying. She went to her room and saw her with Joel Nilwo. She said two (2) persons went and ask for money but she refuses. She reported a row. At the time the defendant was standing outside her room. He saw the complainant's bag on the floor so he help her pick the bag up and told her to leave the place with all monies in her custody.
76. Sixth witness is Doctor Steward Tari of the Vila Central Hospital. He confirmed examining the complainant on 16<sup>th</sup> February 2017. He said the complainant sought for medical assistance after filing a complaint in the police department. He said upon examining the body he saw a small swell on her back and pains at fist touch. She said this could be caused by cold on her back or muscular strain on her backside. It can also happen through assault but it must be immediate. He said he ordered a chest x ray on February 2017 but not the 2015 chest x-ray reported presented by the prosecution. In the x ray report, he saw tender swell on her back. She said if the assault had happened some months back he will see marks on skin and change of skin colour. He said healing of muscle will take time if assault is severe. He said the curve spine on the complainant could be possible cause of the pain she suffered on her back. After seeing the complainant the second time, he referred her to the physiologist.
77. The final witness for the Prosecution is the physiologist namely Albert Kaiapam who saw the complainant on 14th , 17th and 27th of March 2017. He said the complaint complain about back problem.
78. Her x-ray findings show she has a condition at birth called Scoliosis. This can cause prolonged pain on her back. At any time, she can experience back pain from sitting long hours. After dealing with her, he issued a medical certificate confirming her condition and the type of support she was given in his department.
79. He treated her by massaging her back and treated her with Panadol and Ibuprofen.
80. Prosecution exhibits accepted in evidence are:





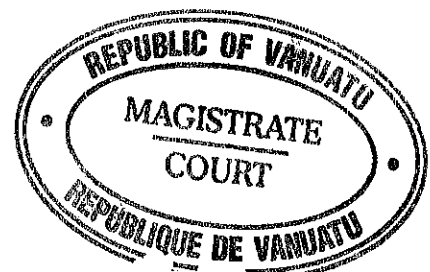
- Exhibit P1- Receipts produced by complainant showing amount of money given to defendant towards his DSA allowances.
- Exhibit P2- Receipt of TVL for purchase of new mobile phone
- Exhibit P3- Medical report of Doctor Steward Tari dated 16 February 2017
- Exhibit P4- Sick leave certificate of Physio Albert Kaiapam dated 17<sup>th</sup> March 2017

81. That is the end of the prosecution case.
82. The court ruled a case has been made out against the defendant and read to defendant section 88 of the Criminal Procedure Code. The defense denied having committed the alleged offences and called several witnesses to support his deposition.
83. The first witness for defense is the defendant himself. He confirmed leading the team of people mentioned by the complainant to Luganville to close the national games. He said that was the third time he and the complainant had travelled to Luganville. First on September 2016 for the preparation of the national games, again on 2<sup>nd</sup> of December 2016 for the opening of the national games and finally on 15<sup>th</sup> December 2016 for the closing of the national games.
84. When the complainant as the budget officer was distributing the daily subsistence allowance to the delegation members, she only gave him VT 6,000. She insisted that the rest of his DSA will be given to him later. She proposed that way because she is wanting to save his money because they have a sexual relationship which began when they first went to Luganville around September of that same year for the preparation for the national games.
85. He said he had Christmas party with staff of the Ministry and Department of Youth and Sport. She was jealous that he was drinking with other female staff so when he sent Paul Nalau and Joel Nilwo for his part allowance she refused because she thinks he will use the money to sponsor drinks for the women who attended the Christmas party.
86. In the morning of 17<sup>th</sup> December 2016 he woke up and went to her bedroom window and call her out. She opened the door and he went in and requested his allowance. He saw her bag on the table so he grab it to find his money when the complainant hold onto it so they struggle to gain possession of it until the complainant loses her balance and fell on the floor with her bag also on the floor. Soon after, Joel Nilwo went and remove him from the complainant's room. He denied throwing the complainant's bag against the wall.
87. He said the complainant followed him to his room and hit him on the chest with a hair comb.
88. He never knew the complainant's phone had been damaged until she mentioned that to him when they were having breakfast. They reconciled that morning and after apologizing to her, he instructed them to buy her a new phone.
89. On 18<sup>th</sup> December 2016 when they return to Port Vila, the complainant gave him his final allowance.
90. With regard to the offending of 23<sup>rd</sup> December 2016, he drove to the parking lot to the Ministry of Youth and Sport and sent the gardener for the complainant. She arrive some minutes later. He told her to get into his vehicle and she willingly responded.



91. While she was in the vehicle, he questioned her why she fail to prepare an LPO on time resulting in the cancelation of his trip to Epi Island.
92. He was reversing out of the parking lot when she begged him to stop for her to get out so he stopped and she got off. It is not an unusual thing to do as they have been riding together several times on his vehicle to advance their sexual relationship.
93. At cross-examination, he maintained being invited into complainant's room by complainant when she heard him calling at her door. He went in, sat on an unoccupied bed in her bedroom, and discussed with complainant about his remaining allowance monies to be released to him. At that point, the complainant still refuses to give him his money.
94. At the heat of discussion, they were fighting over possession of the bag when the phone fell on the floor. It was not his intention to destroy the phone.
95. When questioned by the court on the payment of his allowance after returning to Port Vila, he said he was paid VT 30,000 in Port Vila and the receipt dates does not reflect the actual payments of money by complainant because they do not come in the order of the number of the receipts. The receipts were only written for the purpose of the complainants reporting to the government treasury.
96. Second and third witnesses for defence are Maxim Ureles who appears to be a relative of the complainant and Ian Mael who was part of a team with the defendant to travel to Luganville for the opening of the national games. Both reported seeing them sleeping together in a hotel room in Luganville during the opening of the national games.
97. Final witness for defence is Doctor Tulimanu Kaiva. He is a professional doctor practicing for more than 47 years.
98. At viewing the x-ray of the complainant dated 27<sup>th</sup> July 2015, he said the report showed the complainant has a bend from her spinal cord to the chest level. The condition is called scoliosis. He said this condition could result in the patient experience back pain from time to time. He said the x-ray report was issued before the assault happened so is a clear indication that she may have been suffering backache from her medical condition.
99. At cross-examination, he said he could have given a more detailed explanation on the complainant's medical condition if he had the chance to examine her.
100. Defence's exhibits accepted in evidence are:
  - Exhibit D1- Receipts produced by complainant showing amount of money paid to province as departure tax from Luganville airport.
  - Exhibit D2- Receipt produced by complainant to defendant for his extra allowance of VT 30,000 dated 19 December 2016.
  - Exhibit D3- First warning letter, second warning letter and letter of suspension by DG of Ministry of Youth and Sport.
  - Exhibit D4- Letter of complainant to Public Prosecutor dated 1<sup>st</sup> July 2019 to withdraw the case against the defendant.
  - Exhibit D5 Second letter of complainant to Public Prosecutor to state her position not to stand as witness for the Prosecution in this matter.

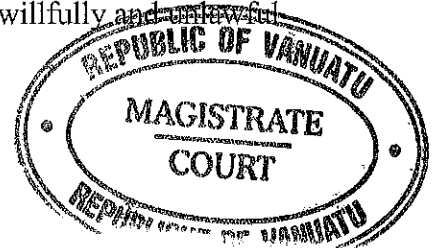
Count 1



101. In the early hours of 17<sup>th</sup> December 2016, defendant entered the complainant's bedroom at Hotel Santo.
102. The complainant opened the door and told her to sit on an unoccupied bed in her room. At some point their discussion became intense leading to argument. Joel Nilwo can hear them argue from his room and went to check what was going on. He think he heard them arguing over money.
103. This assertion was confirmed by complainant and defendant. Defendant claim to have part of his allowance in custody of complainant who refused to give him on his request the previous evening. In that instance he was after his allowance but the complainant declined on the ground that she had paid defendant all his allowance on 15<sup>th</sup> December 2016 (exhibit P2). I disagree, she failed to explain why she paid defendant an extra allowance of VT 30,000 on 19<sup>th</sup> December 2016.
104. That being quite irrelevant, it appears this issue instigated argument leading to the alleged damage of the mobile phone. Frankly, the phone is contained with some personal belonging of the complainant in her bag. Complainant has a conflicting explanation of how the phone was damaged. First she and the defendant struggled to maintain possession of the bag that it fell on the floor. Her second account of the scenario was that the defendant threw it against the wall of her bedroom. Defendant concurs with the complainant first assertion that he tried to grab her bag in order to obtain his allowance when the complainant forcefully withhold possession of it that it slipped off from both of their possession and fell on the floor.
105. It is unfortunate that the phone was not tendered as substantial evidence to ascertain the nature of its damage. The complainant said the phone cracked but cannot show if was destroyed. The prosecution strongly submits that the defendant threw the bag against the wall, however her brief facts outlined in the charges related the bag being thrown against the floor. If it can be accepted that the defendant actually threw the bag against the wall or the floor, it must be shown that he deliberately exerted some force in order to destroy the mobile phone. Evidence showed he did not know the phone was damages until the complainant mentioned that to him some time later that morning.
106. The court held in the case Public Prosecutor v Morsau [1975] VUNHJC 5 and I quote:

*"The Public Prosecutor submitted that it was sufficient for the prosecution to show that the accused had opened the car door with considerable force for him to be found guilty of the offence of wilfully and unlawfully damaging the door.....The Court was not able to accept this view and considered that in order to prove that the damage had been done "wilfully", an intention deliberately to cause damage must be proved. It noted the following entry as to the meaning of the word "wilfully" in the shorter Oxford English Dictionary "3. Purposely, on purpose, intentionally, deliberately. Chiefly, not always in a bad sense; occas., implying "maliciously". ". The Court was not satisfied beyond all reasonable doubt, as required, that the first accused had had an intention deliberately to damage the door..."*

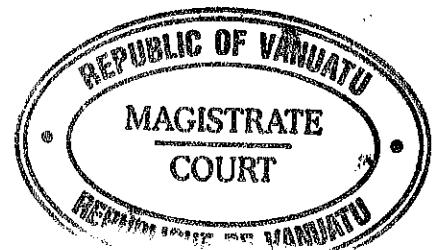
107. It is clear in evidence that a reconciliation ceremony was organized that morning whereby the defendant shook hand with the complainant and said sorry to her, however, it is remote to proof that he willfully and unlawfully destroyed her mobile phone.



108. The court is also of the considerate view that the complainant having possession of the phone does not qualify her as its owner. Evidence in exhibit shows a new phone had been purchased under the name of the complainant and the Department of Youth and Sport. Evidence of the prosecution failed to show at the time of offending, the defendant deliberately damaged the phone knowing it belonged to the defendant.
109. I therefore maintain doubt that the defendant deliberately destroyed the mobile phone wilfully and unlawfully knowing it belonged to the complainant.

## Count 2

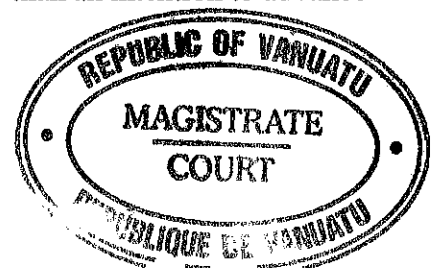
110. I reiterate from the accounts of events mentioned above there was an argument between the defendant and the complainant. Witness Joel Nilwo confirmed this.
111. The complainant said she was pulled on her hair and punched on her back and face by the defendant. The defendant rejected that assertion and said the complainant only fell on the floor as they were struggling to gain possession of her bag. I disagree.
112. The tone of their argument is sufficient to explain that some physical force is exerted on the complainant. This is well explained by witness Joel Nilwo who can hear the argument from his bedroom.
113. When he intervened, he removed the defendant from the complainant's bedroom. Witness namely Paul Nalau said he saw the complainant crying and he advised her to leave the premises with the money kept in her custody.
114. Sufficient to say the nature of the argument leading to assault would justify for a reconciliation ceremony to be organized later that morning. Complainant said she experience pain on her back as a result and sought for massage from Ms. Wendy Himford. Ms. Wendy Himford agreed but said she was only comforting her and at that time the complainant was in a good state.
115. It is unfortunate that the complainant had not sought for medical attention immediately with a medical certificate confirming the nature of damage from the assault. It appears a medical report was issued on 16<sup>th</sup> February 2017 by Doctor Steward Tari at the Vila Central Hospital.
116. Evidence of complainant's husband namely Robert Tanarango and Doctor Steward Tari shows the complainant suffered a medical condition called scoliosis.
117. This is a curve in the spinal code to the chest region. It is explained in oral evidence that such condition would render the patient suffering back pain from time to time.
118. Other factors that will activate back pain from this condition are straining of the back muscle when sitting long hours, back arthritis and after an immediate assault.
119. The complainant's husband says after the complainant returns from Luganville, she experiences continuous pain on her back and upon investigation, her wife reported the assault on her by the defendant so they went and filed a police complaint followed by seeing the doctor at the Vila Central Hospital.
120. An x-ray report issued in 2015 confirmed the complainant's medical condition. The medical explanation of Doctor Steward Tari is consistent with the expert opinion of Doctor Tulimanu Kaiva.



121. It appears the complainant have had several medical assistance as regards to her condition as depicted in the x-ray report of 2015 before the Luganville Incident.
122. In the circumstances, the court is found to be in a difficult position to satisfy itself beyond reasonable doubt that the pain on the complainant's back derives from the assault perpetrated on her by the defendant in Luganville on 17<sup>th</sup> December 2016 some three months earlier.

#### Count 4

123. I am of the firm view that the offence of kidnapping if viewed on the wording of it does not fit well for an attempt to kidnap to be an alternative charge to kidnapping itself.
124. To prove elements of offence of kidnapping, there needs to be a complete execution of actions between both the complainant and the defendant.
125. It is not disputed as a fact that the defendant was inside his official vehicle, which was parked in the parking area of the Ministry of Youth and Sport premises. He then instructed the gardener to go and fetch the complainant for him.
126. The gardener did as instructed and complainant said she sought permission from the Executive Officer namely Batiste Firiam who then advised her to go and see the defendant.
127. When he went to see the defendant, he could see that he was drunk and cross.
128. He asked her to get into his vehicle and she went in and sat on the passenger seat next to him.
129. At that time, she could see a bottle of wine beside the defendant. The defendant started complaining about her not doing her job properly resulting in the cancellation of his trip to Epi Island
130. It appears she willingly got into the vehicle and sat in the passenger seat next to the defendant.
131. That defendant said he has taken the complainant out on his vehicle several times to advance their sexual affairs and it cannot be seen that he is trying to force the complainant into his vehicle as submitted by the Prosecution.
132. At that point, the defendant was reversing off the car park. He warned the defendant to stop or she will open the door of his vehicle and jump off.
133. The defendant obeyed and it was his intention to reverse off to the entrance of the complainant's office to let her get off.
134. She got off and went back to her office The Prosecution submitted that even though the car moved only with the premises of the Ministry of Youth and Sport, it satisfies the element of moving from one place to another. I disagree.
135. She was not carried away from the place she would have rather have been if she was to exercise her free will (*R. Williard (1978) 3 ALL ER at p.163*). The premises of the Department of Youth and Sport is her usual place of work and she was not deprived the liberty to remain in the same premises to do her job. There was nonexistence of lawful excuse. It could be accepted that the Minister has an authoritative capacity over Fredeline Tanarango however, in the circumstances, the very act of driving away with the complainant does not go within the scope of their working relationship except that it is nothing more than an intention to advance their social affairs.



However, on the totality of the evidence received, I am quite reluctant to accept that the element of this offence is being proved beyond reasonable doubt.

Having considered the evidence received at trial hearing I now pronounce the verdict to the following effect:

For offence of Malicious Damage to Property- Not Guilty  
For Offence of Intentional Assault causing, damage temporary in nature – Not Guilty  
For Offence of Attempted Kidnapping- Not Guilty.

**DATED at Port Vila this 9<sup>th</sup> day of March 2020**

**BY THE COURT**

.....  
**MOSES PETER**  
Senior Magistrate

