

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

Criminal
Case No. 19/1354 SC/CRML

PUBLIC PROSECUTOR

v

MIKE UYORI

Dates of Trial: 23-25 March 2020, 28-29 May 2020, and 1 & 8 June 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr S. Blessing
Defendant – Mr W. Kapalu
Date of Decision: 12 June 2020

VERDICT

A. Introduction

1. Mr Uyori is charged with:

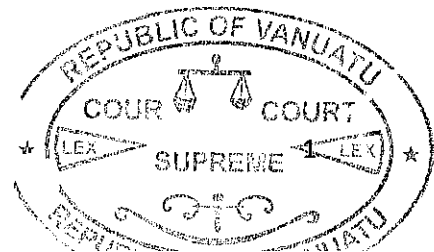
- 1) Forgery contrary to ss 139 and 140 of the *Penal Code* [CAP. 135] ('Count 1'); and
- 2) Obtaining a valuable thing by deception contrary to s. 130B of the *Penal Code* ('Count 2').

2. The two charges are set out in the Information filed on 2 July 2019:

Count 1 Statement of Offence
Forgery - contrary to sections 139 and 140 of the Penal Code [CAP. 135]

Particulars of Offence
That you Mike Uyori and Jacky Nikae between the 1 January 2009 and 31 December 2015 at Erromango and Port Vila, made a false document that you knew to be false, namely minutes of Ipota Area Land Tribunal with the intention that it shall be action upon as genuine or some persons shall be induced by the belief that it is genuine.

Count 2 Statement of Offence



Obtaining a valuable thing by deception - contrary to s. 130B(1) and (2) of the Penal Code [CAP. 135]

Particulars of Offence

That you Mike Uyori and Jacky Nikae between the 1 January 2009 and 31 December 2015 at Erromango and Port Vila, by deception obtained for yourselves a valuable thing, namely leasehold title 14/0624/007 also known as land Nompuntovat, Nompuntompoi and Ivwar.

3. Jacky Nikae was also charged. At the conclusion of Mr Nikae's evidence, the Prosecution entered *nolle prosequi* in relation to the charges against him. Mr Nikae was immediately discharged and I do not consider him any further in this proceeding.

B. The Law

Count 1

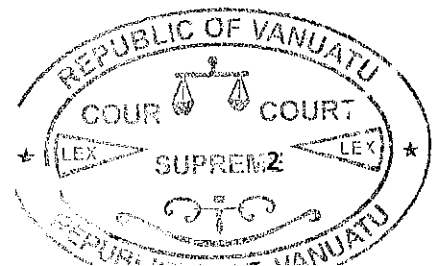
4. The offence of forgery is set out in ss 139 and 140 of the *Penal Code* as follows:

139. Forgery defined

- (1) *Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within the Republic or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the Republic or not.*
- (2) *For the purposes of this section, the expression "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise.*
- (3) *For the purposes of this section the expression "false document" means a document—*
- (a) *of which the whole or any material part purports to be made by any person who did not make it or authorise its making;*
 - (b) *of which the whole or any material part purports to be made on behalf of any person who did not authorise its making;*
 - (c) *in which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, whether either is material, or any number or distinguishing mark identifying the document, whether either is material, is falsely stated;*
 - (d) *of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or which is made in the name of an existing person, either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.*
- (4) *It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the Republic it is expressed to take effect.*
- (5) *The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorised or recognized by law, is a material part of such document.*

140. Prohibition of forgery

No person shall commit forgery.



Penalty: Imprisonment for 10 years.

5. The Prosecution must prove these elements of forgery beyond a reasonable doubt:
- 1) The defendant made a "false document";
 - 2) The defendant knew that the document is false; and
 - 3) The defendant intended that the document shall be used or acted upon as genuine.

Count 2

6. Section 130B of the *Penal Code Act* provides:

130B. Obtaining money, etc., by deception

- (1) *A person must not by any deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.*

Penalty: Imprisonment for 12 years.

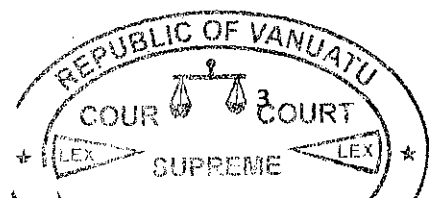
- (2) *In subsection (1) –*

"deception" means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

- (a) *a deception as to the present intentions of the person using the deception or of any other person; and*
- (b) *an act or thing done or omitted to be done with the intention of causing –*
 - (i) *a computer system; or*
 - (ii) *a machine that is designed to operate by means of payment or identification,*

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

7. The essential elements that the Prosecution must prove beyond a reasonable doubt are:
- 1) That Mr Uyori obtained for himself a valuable thing; and
 - 2) That Mr Uyori by means of deception dishonestly obtained the valuable thing.
8. I remind myself as to who carries the burden of proving the charges. This being a criminal trial, the Prosecution bears the burden of proving the essential elements of the charges against Mr Uyori beyond reasonable doubt. If the Prosecution fails to establish Mr Uyori's guilt to the required standard he shall be deemed to be innocent and shall be acquitted.
9. Before the Prosecution case commenced, I read to Mr Uyori the statement of the presumption of innocence in s. 81 of the *Criminal Procedure Code* [CAP. 136]. He confirmed that he understood it.



10. Mr Uyori did not have to prove his innocence. He elected to give evidence under oath and had done so before I realised and informed him of his rights under s. 88 of the *Criminal Procedure Code*. He confirmed that he understood the statement.
11. I reminded myself that if I were to draw inferences, they could not be guesses or speculation, but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
12. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within that witness' account; consistency with other witnesses' accounts; compared their account with exhibits such as documentary evidence; and considered the inherent likelihood, or not, of the witness' account.

C. Forgery

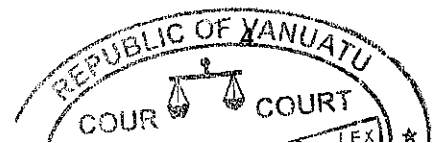
13. The Prosecution case against Mr Uyori is that between 1 January 2009 and 31 December 2015 at Erromango and Port Vila:
 - a. Mr Uyori made a false document, namely the minutes of the Ipota Area Land Tribunal dated 9 October 2019, titled "Ipota Erea Kaonsel blong ol Jifs, East Erromango, Official Minutes blong land tribunal hearings lo disputed lands ya namely Nompuntovat, Nompuntopoi mo Ivwar", "**Exhibit P16**";
 - b. That he knew to be false; and
 - c. With the intention that the false document would be acted upon as genuine.
14. The issues are:
 - 1) Are the minutes of the Ipota Area Land Tribunal a false document? [**Issue 1**]
 - 2) Was the false document made with the intent that it shall be used or acted upon as genuine? [**Issue 2**]
 - 3) Did Mr Uyori make the false document, knowing it to be false? [**Issue 3**]

D. Issue 1: Are the minutes of the Ipota Area Land Tribunal a false document?

15. 'False document' is defined in para. 139(3)(a) of the *Penal Code* as:

... (a document) of which the whole or any material part purports to be made by any person who did not make it or authorize its making.

16. The document "**Exhibit P16**" purports to be the minutes and decision of the Ipota Area Land Tribunal meeting on 9 October 2009. It sets out that Mr Uyori, Mr Nikae and Jif Jobo Nisse are the custom owners of Nompuntovat, Nompuntopoi and Ivwar land. The names of 7 persons are listed at the end of the document (being Chairman, Secretary



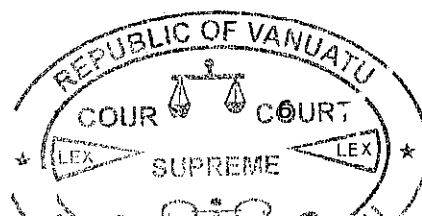
and Members allegedly present at the Tribunal meeting) and each person's signature is next to their name.

17. The statements of Harry Ulukoi ("**Exhibit P4**") and Thomas Nimaklep ("**Exhibit P5**") were tendered by consent as they were unable to attend trial without an unreasonable delay. Both stated that they were not at any Ipota Lands Tribunal meeting and the signature on the document is not their signature. Mr Ulukoi (spelt "Jif Harry Loukoi" in "**Exhibit P16**") stated that the meeting did not take place and the letter is not a true letter. Mr Nimaklep stated that he did not give his consent to the person who signed his name on the document.
18. Four of the other 5 signatories of the document, namely Louis Norwo, Killion Lovo, Tom Novwal and Harry Nora stated that they never signed a minute or decision of a Land Tribunal for Ipota – someone else made the signatures that are purportedly theirs.
19. The evidence of Louis Norwo, Tom Novwal, Harry Nora, Harry Ulukoi and Thomas Nimaklep is that they did not attend an Ipota Lands Tribunal meeting on 9 October 2009 although their names and signatures are on the document.
20. Mr Novwal said he does not read or write but can sign his name and would know if he has signed a document. He said he never signed a minute for the Ipota Lands Tribunal and never attended a meeting of such a Tribunal. His signature on the document is falsified. While in the witness box, Mr Novwal affixed his signature to a document that Prosecution tendered as "**Exhibit P10**". That signature is quite different from that on "**Exhibit P16**".
21. Mr Novwal deposed that Killion Lovo was chosen to become the Secretary of the Ipota Lands Tribunal but that Tribunal was never set up.
22. Bill Norwo deposed that he was not present at an Ipota Lands Tribunal meeting on 9 October 2009 even though the document references him as present at that meeting.
23. Bill Norwo and Mr Novwal deposed that a meeting was held in Ipota to select tribunal members but the Office in Vila did not come back to set up the tribunal.
24. Louis Norwo said that in 2009, he was living in Port Vila, for 3 years, and only returned to Ipota in 2011. The minute is lying in saying that he is the Tribunal Chairman as he has never been Chairman of such Tribunal.
25. Killion Lovo stated that he was selected to be a member of the Ipota Lands Tribunal, that they were sworn in but then never carried out work as a Tribunal to determine land disputes. He was never Secretary of such a Tribunal although that is what is stated in the minute. Mr Lovo said he what he signed was the hand-written letter also dated 9 October 2009 from Mr Novwal to Alicita Vuti, Director of the Customary Land Tribunal Unit ('CLTU'), "**Exhibit P11**", that went with the 30 days' notice by Mr Uyori and Mr Nikae, confirming that no one challenged the notice.
26. Philip Charley Norwo, Bill Norwo, Tom Lovo, Silas Nllwo and Mr Novwal all gave evidence that they are not aware of the establishment of an Ipota Lands Tribunal. Bill



Norwo and Philip Charley Norwo, are obviously on the opposing side to Mr Uyori in terms of ownership claims for Ipota land, aligned with Daniel Epsi. However, I did not detect animosity in them towards Mr Uyori whom they are also related to.

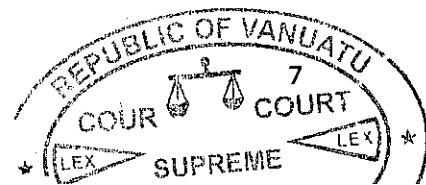
27. I accepted each of these witnesses was a witness of truth and accept their evidence.
 28. The witnesses' accounts are consistent with each other. I compared Mr Novwal's account with the documentary evidence.
 29. I consider that the Prosecution have proved beyond a reasonable doubt that document "**Exhibit P16**" purporting to be the minutes of the Ipota Area Land Tribunal is a false document. My answer to the question, "Are the minutes of the Ipota Area Land Tribunal a false document?" is, "**Yes**".
- E. Issue 2: Was the false document made with the intent that it shall be used or acted upon as genuine?
30. Both Alicka Vuti, then of the CLTU, and Mr Uyori confirmed that Mr Uyori presented the document "**Exhibit P16**" to the CLTU for its acknowledgement of the decision.
 31. Mr Vuti deposed that under the *Customary Land Tribunal Act*, he had only 21 days in which to respond to the document, and he could not extend that time frame. He deposed that due to the time frame and also due to the pressure including threats that he received from Mr Uyori and a friend of his, he wrote the letter dated 8 November 2011 acknowledging the decision of the chiefs ("**Exhibit P30**"). He gave the letter to Mr Uyori and his friend. Mr Vuti accepted in cross-examination that he did not make a complaint to the Police in relation to the pressure and threats from Mr Uyori and his friend. For his part, Mr Uyori denied making any threats to Mr Vuti, that he did not perceive their actions as threats.
 32. I accepted Mr Vuti as a witness of truth and accept his evidence.
 33. Mr Uyori confirmed in cross examination that he relied on both documents "**Exhibit P16**" and the hand-written document "**Exhibit P11**" in the process to obtain leasehold title 14/0624/007 over Nompuntovat, Nompuntompoi and Ivwar land (the 'lease').
 34. There is an Ipota Area Lands Tribunal stamp affixed to the bottom of the last page of "**Exhibit P16**". The same stamp appears on the bottom of the second page of the hand-written letter "**Exhibit P11**". That stamp on the documents "**Exhibit P16**" and "**Exhibit P11**" makes them appear to be official, authorised documents of the Ipota Area Lands Tribunal.
 35. Yaxley Bob Tumu of Design Impax deposed that Mr Uyori brought a hand-drawn design for a stamp, paid the urgent fee of VT1,500 to have the stamp produced within an hour, approved Mr Tumu's design for the Ipota Area Lands Tribunal stamp and collected the stamp (see "**Exhibit P12**"). Mr Uyori deposed that he ordered and purchased the stamp from Sign Language (now Design Impax) in Port Vila.



36. John Ativi Norwo deposed that in 2008 he was already paramount chief and a member of the Ipota Council of Chiefs. He stated that that Council never asked Mr Uyori to make a stamp for the Ipota Lands Tribunal nor approved the stamp purportedly for the Ipota Area Lands Tribunal.
37. Mr Uyori on the other hand deposed that he is a principal chief of Ipota through blood, and served as Chairman of the Erromango Simanlou Natmonuk Council of Chiefs for 3 terms of 4 years each. He stated that the Simanlou Natmonuk Council of Chiefs set up Lands Tribunals for Dillons Bay, Ralivati, Port Narvin and Ipota. As the Chairman of the Simanlou and principal chief of the village, he had a right to buy a stamp for the Ipota Land Tribunal for the chiefs to use.
38. Whether or not the stamp was authorised by a council of chiefs, it is clear that Mr Uyori believed he had a right to buy a stamp for the Ipota Area Lands Tribunal for the chiefs to use. He said in his evidence too that not just any person could buy such a stamp, only persons with the authority to do so can.
39. In the circumstances, I consider that the Prosecution have proved beyond a reasonable doubt that the false document was made with the intent that it shall be used or acted upon as genuine. My answer to the question, "Was the false document made with the intent that it shall be used or acted upon as genuine?" is, "Yes".

F. Issue 3: Did Mr Uyori make the false document, knowing it to be false?

40. Mr Blessing submits that:
- As a former member of the Simanlou Natmonuk Council of Chiefs and principal chief of Ipota, Mr Uyori knew or ought to have known that a Tribunal has never been established for Ipota; and
 - Mr Uyori knew or ought to have known that a Tribunal could only be established if chiefs are identified and trained as adjudicators and a list containing their names is provided to the CLTU.
41. I note Mr Kapalu's written submission that the Prosecution witnesses stated in their evidence that there is no tribunal hearing and that, "The defendant concede to that argument saying that there is a list of eligible names given to the Customary Land Tribunal office to be judges but there was no training for them." Mr Uyori deposed that a list of adjudicators for the Ipota Land Tribunal had been given to the CLTU but Mr Vuti was clear that the CLTU was not aware that it had ever acknowledged receiving a list of adjudicators. I accept Mr Vuti's evidence. I conclude from the concession made in Mr Kapalu's submissions that Mr Uyori agrees there was never an Ipota Area Land Tribunal hearing and that accordingly the documents "Exhibit P16" and "Exhibit P11" are false documents.
42. Mr Kapalu further submits that since no one challenged Mr Uyori's notice under the *Customary Land Tribunal Act* ("Exhibit P1"), there is no dispute therefore s. 8 of that Act cannot apply such that a Tribunal must be set up and Mr Uyori and his families are the

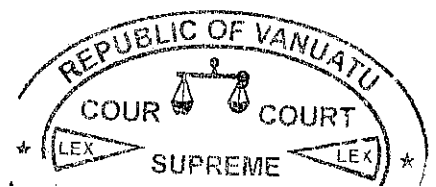


custom owners of Ipota land. They complied with the *Land Reform Act* and *Land Leases Act* to obtain the lease.

43. Whether or not Mr Uyori complied with the *Customary Land Tribunal Act*, or indeed the *Land Reform Act* and *Land Leases Act* to obtain the lease, are not issues for the Court's determination in this case. Even if Mr Uyori complied with the legislative requirements to obtain a lease, I fail to see how that could be a defence to a criminal charge of forgery.
44. Given Mr Uyori's evidence of his service as Chairman of the Simanlou Natmonuk Council of Chiefs and that he is a principal chief of Ipota, I accept that as a former member of the Simanlou Council and as a principal chief of Ipota, Mr Uyori knew or ought to have known that a Tribunal has never been established for Ipota; and he knew or ought to have known that a Tribunal could only be established if chiefs are identified and trained as adjudicators and a list containing their names is provided to the CLTU.
45. It is accepted that Mr Uyori created a stamp for the Ipota Area Lands Tribunal, which stamp was used on the purported minutes "**Exhibit P16**" and on the letter "**Exhibit P11**". Mr Uyori used these very documents in the process to obtain the lease.
46. Mr Novwal deposed that he recognised the handwriting in the letter "**Exhibit P11**" as Mr Uyori's handwriting as Mr Uyori had been his teacher. Mr Novwal was firm in denying that he signed "**Exhibit P11**". In cross-examination, Mr Uyori denied that he wrote that letter. However, the handwriting is similar to that on the Kastom Ona Blong Kraon form for the lease ("**Exhibit P31**") and on the hand-drawn stamp design that Mr Uyori brought to Mr Tumu at Sign Language ("**Exhibit P12**"). Mr Nikae's evidence was that Mr Uyori was the one who took the steps in the process to obtain a lease, he was called in at the end to sign the lease. Accordingly, I find that the letter "**Exhibit P11**" was made by Mr Uyori.
47. In his own evidence, Mr Uyori stated that the hand-written minute, "**Exhibit P11**" (Document 7 in the Prosecution trial bundle) is the true minute and that he did not know of the typed decision, "**Exhibit P16**" (Document 6 in the Prosecution trial bundle). He agreed that both documents were relied on to get him the lease. Later in his evidence, Mr Uyori stated that he took Document 6 with him to Mr Vuti's Office, "but no save Document 7", directly contradicting his earlier evidence. In the circumstances, I do not accept Mr Uyori's evidence that he did not know of the typed decision, "**Exhibit P16**".
48. Mr Uyori gave evidence that he was surprised at the trial at Ipota, Erromango to hear the Prosecution witnesses say that they had not signed the document, "**Exhibit P16**". I do not accept that given that Mr Uyori will have known what the Prosecution witnesses' evidence is since receiving the Prosecution's Preliminary Inquiry bundle.
49. Finally, Jean-Paul Titus Simon deposed that the Police served a search warrant on him in 2016 and he accompanied them to Ben Wotu's house at Nambatri area, Port Vila. At Mr Wotu's house, while Mr Uyori accompanied the Police officer conducting the search Mr Simon overheard two phone calls by Mr Nisse to his wife telling her to hide the stamp, and then confirming that she had done so. The Prosecution submit that Mr Uyori knew that the stamp was unauthorised which was why when the Police executed a search warrant on Mr Uyori's possessions at Mr Wotu's house at Nambatri area, Port Vila,

Mr Uyori accompanied the police officer while Jobo Nisse phoned his wife. I note this is hearsay evidence. This was also not put to Mr Uyori in accordance with the rule in *Browne v Dunn* and so I disregard this evidence.

50. Given my findings that Mr Uyori knew or ought to have known that a Tribunal has never been established for Ipota, and that he made the letter "**Exhibit P11**", I consider that the Prosecution has proved that Mr Uyori made the false document "**Exhibit P16**", knowing it to be false.
51. My answer to the question, "Did Mr Uyori make the false document, knowing it to be false?" is, "**Yes**".
52. Given my answers to **Issues 1-3**, I find that the Prosecution has proved Mr Uyori's guilt beyond a reasonable doubt on the charge of forgery. He is convicted on that charge.
- G. Obtaining valuable thing by deception
53. The Prosecution's case is that between 1 January 2009 and 31 December 2015 at Erromango and Port Vila:
- Mr Uyori by deception;
 - Dishonestly obtained for himself;
 - A valuable thing, namely leasehold title 14/0624/007 over the land known as Nompuntovat, Nompuntopoi and Iwar.
54. It is accepted that Mr Uyori obtained for himself the lease.
55. Accordingly, the sole issue is:
- Did Mr Uyori dishonestly obtain the lease by means of deceptive conduct or words? [**Issue 4**]
- H. Issue 4: Did Mr Uyori dishonestly obtain the lease by means of deceptive conduct or words?
56. Mr Kapalu submitted that the lease was not obtained by deception because Mr Uyori has followed the due process of the law. I repeat that I fail to see how complying with the legislative requirements to obtain a lease can be a defence to this criminal charge.
57. I rely on my findings at paras 15-29 above that the purported minutes and decision of the Ipota Area Land Tribunal, "**Exhibit P16**" was a false document, and at paras 40-51 above that Mr Uyori made the false document, knowing it to be false. I also found at para. 46 above that Mr Uyori made the hand-written letter, "**Exhibit P11**".
58. Mr Uyori used both documents "**Exhibit P16**" and "**Exhibit P11**" in the process to obtain the lease. They purported to be official documents of the Ipota Area Land Tribunal



whereas in my findings above, Mr Uyori knew or ought to have known that a Tribunal has never been established for Ipota.

59. Accordingly, I am satisfied that the Prosecution have proved beyond a reasonable doubt that Mr Uyori by means of deceptive conduct and using the false document "**Exhibit P16**" dishonestly obtained the lease. My answer to the question, "Did Mr Uyori dishonestly obtain the lease by means of deceptive conduct or words?" is, "**Yes.**"
60. Finally, I note that much time was spent on whether or not Daniel Epsi's adoption involved birthright rights to land, and whether or not it was by his maternal grandmother Alice Nantvaive or was for the purpose of placing Mr Epsi in the care of Mr Uyori's father. It is not for the Court to decide in this case which type of adoption Mr Epsi's was and into whose care or custody he was placed. Accordingly, I could not make a finding either way as to whether or not this was part of any deception by Mr Uyori.
61. I find that the Prosecution has proved Mr Uyori's guilt beyond a reasonable doubt on the charge of obtaining a valuable thing by deception. He is convicted on that charge.

I. Verdicts

62. I find Mr Uyori guilty of the charge of forgery. He is convicted on that charge.
63. I find Mr Uyori guilty of the charge of obtaining a valuable thing by deception. He is convicted on that charge.
64. Mr Uyori has 14 days to appeal this decision if he disagrees with it.

**DATED at Port Vila this 12th day of June 2020
BY THE COURT**


.....
Viran Molisa Trief
Judge

