

BETWEEN: HOSEA TOA

AND : PUBLIC PROSECUTOR

Coram: Mr. Justice Frederick G. Cooke

JUDGMENT

In this case the evidence is clear that on the night of 13/14 of November 1981, a breaking and entry had taken place at the Immigration Office, Adamani Buildings, as related by John Kwari and Jimmy Rovo in their statements which were admitted by consent of both counsel.

Again it is clear that the accused was in the vicinity of the said building on the same night.

The taxi driver Savu stated he picked up some boys near the residence of Mr. Molissa on Rue Colardeau and one of these was the accused and that he dropped the accused near the post office at about 10 p.m. Further at that time the accused seemed to be a little drunk. He said he was not too sure of the time but it was later than eight o'clock.

Then we had a witness named Fred Leo, whose memory did not seem very good. He remembers it was the same week when the trouble occurred that he met the accused at the Rossi and bought him some drinks. That the accused asked him for a loan of money but he did not give him any. That when the bar at the Rossi closed he went with the accused to a place beside the Cultural Centre where he had hidden a bottle of wine and that he and the accused practically consumed the bottle when a bus arrived and he left the accused with the wine and caught the bus home.

Again he said he met the accused at the Solwater Club on the 15th of March 1982, the accused spoke to him and asked him to be his witness because the police had taken his statement.

Further that the accused told him that the police also knew that he had done wrong as he had told them but would he keep on helping him to defend himself. He said he did not reply.

There was argument as to the taking of the statements of this witness by Insp. Laban. The witness stated that he did not sign his initials at the end of exhibit 'B' whereas the Inspector swore that he did initial the statement.

The assessors and myself examined the various initials and we cannot say that the initials on exhibit 'B' are not that of the Fred Leo. More care seems to have been taken with the initial at the end of exhibit 'B' than on the first page.

The assessors and myself accepted the evidence of the Inspector Laban when he stated it was the initial of the witness.

The assessors and myself considered that the witness had considerable difficulty with remembering events and could easily have been mistaken here.

We then had the evidence of Inspector Laban who stated, he took a statement from the accused after cautioning him.

I had, in the absence of the assessors, admitted the statement in evidence being satisfied that the prosecution had proved that it was voluntarily made.

In the statement the accused admitted that he broke into the Immigration Office and the District Commissioner's Office on the same night. He explained that after being dropped from the taxi driven by Savu, that he had no money, was a bit drunk and wanted more drink so he went to the Immigration Office, broke some louveres as he could not remove them, climbed into the office, searched drawers and cash boxes but could not find any money; tried to open the safe but did not succeed. He looked for money in the District Commissioner's Office but found nothing so left the building and went to the Rossi Hotel.

Inspector Laban was cross-examined at length by Mr. Coombe, the Defence Counsel but myself and assessors were very impressed at the manner in which he gave his evidence and accepted him as a witness of the truth.

The accused gave evidence on oath. He admitted being on a cruise ship drinking, came back to town in a taxi with friends;- changed taxis to Suva, went various places and eventually came down to town in the taxi and was dropped near the post office. He had a can of beer in his hand and made his way to the Rossi where he met Fred Leo and had drinks with him, later drank wine with him beside the Cultural Centre Building; that Fred Leo left him and caught a bus and that later he went to La Palace.

He told of his conversation with Inspector Laban in his office and that because the Inspector told him if he did not say something he would not let him go and as a result he made up the story which is contained in exhibit 'A' - that the Inspector read the statement back to him and that he signed it. He said - he made up the story because he did not want to stay in the cell. He denied he went to the Immigration Office on the night of 13/14th of November 1981.

In cross examination he stated the story in his statement was made up by him and not as a result of any suggestions made by the Inspector. Further that the Inspector did not give him any details of the 'break-in'.

Having examined the statement of the accused, the assessors and myself found it very difficult to accept that anyone not familiar with the events of the break-in and what had taken place within the premises, would have been in a position to give such details in a made up story, even appreciating that the accused had worked in the building previously. The assessors and myself did not accept the accused's evidence - we did not believe that he was a witness of the truth.

Two witnesses were called for the defence, William Frank and Pasa Tosusu which did not alter the view of the assessors and myself of our decision on the evidence before us.

The assessors and myself accepted unanimously the evidence of the prosecution.

We found that the prosecution have proved their case beyond all reasonable doubt.

We find the accused guilty of the charges and convict him of those charges.

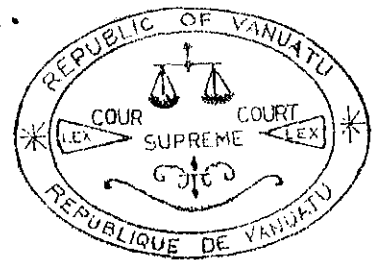
The accused had one prior conviction of unlawful use of Immigration Department money. He took 40,000 Vatu from the Department. He was fined 10,000 Vatu or 3 months imprisonment and ordered to pay compensation of 40,000 Vatu.

We took into consideration what Mr. Coombe said on his behalf and the fact that he may have been a little drunk when he committed the offence but as Parliament considered such offences to be serious when assessing the maximum penalty for the offences, we considered the least sentence that should be imposed was one of 12 months on each charge, the sentences to run concurrently.

*Frederick G. Cooke*

(FREDERICK G. COOKE)

CHIEF JUSTICE



Dated at Vila this 23rd day of March, 1982.