

PUBLIC PROSECUTOR

-v-

**HOLI SIMON
API JACK MARIKEMPO
PAUL WILLIE REUBEN
PATU LOUIS
ERIC PAKOA
TARIMAS PAKOA
JEAN YVES KALI
ROY SEULE**

JUDGMENT

A. Introduction

At 3.15 a.m. on 4th August 2002 the Commissioner of Police Mael Apisai was arrested. At 5.45 a.m. the Attorney General Hamilson Bulu was arrested. At 7 a.m. the Chairman of the Police Service Commission was arrested, as were the President's private secretary, the Prime Minister's private secretary, the Force Legal Officer and others. That evening they were brought before a Court, charged with seditious conspiracy. They were all bailed. On 19th August the charges were dismissed.

There are eight defendants. They are before this Court on the following charges:-

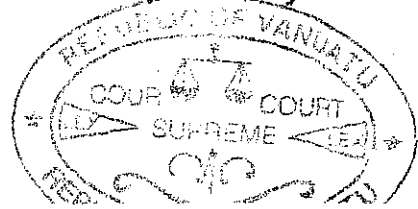
"COUNT 1

STATEMENT OF OFFENCE

*Inciting Mutiny contrary to Section 60 of the Penal Code Act
[Cap.135]*

PARTICULARS OF OFFENCE

Holi Simon, Api Jack Marikempo, Paul Willie Reuben, Patu Louis, Eric Pakoa, Tarimas Pakoa, Jean Yves Kali, and Roy



Seule, between 4 July 2002 and 31 August 2002 at Port Vila, being police officers who owed allegiance to the Republic did for mutinous purpose endeavour to seduce other members of the police force from their duty and allegiance to the Republic, and did incite such persons to commit an act of mutiny."

COUNT 2

STATEMENT OF OFFENCE

Mutiny contrary to Section 46 of the Police Act [Cap. 105]

PARTICULARS OF OFFENCE

Holi Simon, Api Jack Marikempo, Paul Willie Reuben, Patu Louis, Eric Pakoa, Tarimas Pakoa, Jean Yves Kali, and Roy Seule did between 4 July 2002 and 31 August 2002 at Port Vila take part in a mutiny, or intended mutiny amongst the Force and knowing of any mutiny amongst the Force did not use their utmost endeavours to suppress such mutiny and knowing of any intended mutiny amongst the Force did not without delay give information thereof to their superior officer.

COUNT 3

STATEMENT OF OFFENCE

Kidnapping contrary to Section 105 of the Penal Code Act [CAP. 135]

PARTICULARS OF OFFENCE

Holi Simon, Api Jack Marikempo, Paul Willie Reuben, Patu Louis, Erick Pakoa, Tarimas Pakoa, Jean Yves Kali, and Roy Seule, on 4 August 2002 at Port Vila, did by force compel Hamlison Bulu, Nadine Alatoa, Michael Taun, Mael Apisai, Seule Takal, Navei Rikahi, Noel Amkory, Philip Natato, Daniel Bangtor, John Mark Bell, Anatol Coulon, Obed Nalau, Rex Bovenga, Ben Bani, and Jessie Temar, to go from their place of residence to the Port Vila police station.

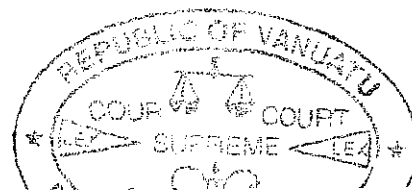
COUNT 4

STATEMENT OF OFFENCE

False imprisonment contrary to Section 118 of the Penal Code Act [CAP. 135]

PARTICULARS OF OFFENCE

Holi Simon, Api Jack Marikempo, Paul Willie Reuben, Patu Louis, Erick Pakoa, Tarimas Pakoa, Jean Yves Kali, and Roy Seule, did on 4 August 2002 at Port Vila without lawful authority arrest detain and confine Hamlison Bulu, Nadine Alatoa, Michael Taun, Mael Apisai, Seule Takal, Navei Rikahi, Noel Amkory, Philip Natato, Daniel Bangtor, John Mark Bell, Anatol Coulon, Obed



Nalau, Rex Bovenga, Ben Bani, and Jessie Tamar, against their will."

When the case first came before the Supreme Court there were twenty-six defendants so charged. The prosecution was discontinued against eighteen. The prosecution informed the Court that they had signed documents saying they would cooperate with the prosecution. None has given evidence. I disregard these facts when considering the cases of the eight before the Court.

At the close of the prosecution the charges against Jean Yves Kali were dismissed. There was no evidence to show he was other than a junior officer obeying orders and, in his case, no evidence to say his orders were manifestly unlawful.

B. The Prosecution Case

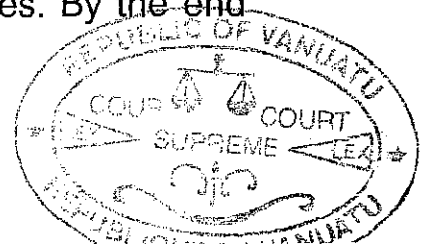
The prosecution case is this. From early July 2002 there was growing unrest in the Police Force over the process for selection and appointment of a new Commissioner. There were meetings on 3rd and 4th July. The previous Commissioner had retired over a year earlier. The defendant Api Jack Marikempo had been acting Commissioner until March 2002. A legal challenge was mounted to his appointment. He returned from an overseas trip to find his appointment had been quashed by a Court for irregularities.

The defendant Holi Simon became acting Commissioner until the permanent appointment of Mael Apisai on 19th July and his swearing in on 24th July.

From mid July there was unrest about how Mael Apisai himself was appointed.

There was a rumour which became a belief that Mael Apisai intended to suspend most senior police officers, the executive, and some 34 or 35 other officers.

The prosecution say the senior officers ignored Apisai, when he sought to take up his job. They refused to obey him and hand over command. They "grabbed" that power for themselves. By the end



of July and the first few days of August the officers had no faith in Apisai or his appointment. Further they expected to be suspended.

On 20th July Holi Simon made an official complaint "to the police" alleging irregularities in the selection process. He asked for police action. That letter was addressed to Eric Pakoa, District Commander Southern.

The official complaint was passed to the defendant Paul Willie Reuben. He was assistant Commissioner (Crime) at that time.

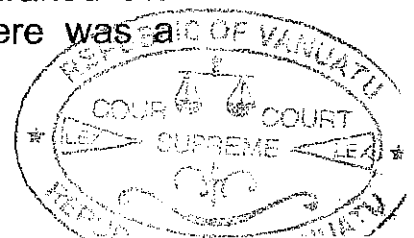
Holi Simon filed civil proceedings in the Supreme Court requesting judicial review of the process of Apisai's appointment and that it be quashed.

The 30th July is Independence Day. There are celebrations. Police mounted Operation India Alpha to ensure peace and security during the celebrations. There was some unrest over the imprisonment of the former prime minister for forgery and the actions of a group called Freedom Fighters. The prosecution say there was no problem from either after 30th July yet Operation India Alpha was extended. They say it was a cover for the arrests. In particular, when arms were drawn on the night of 3 – 4 August, the Minister was told it was in respect of the unrest, and not for the arrests, a deliberate deception.

On 31st July and 1st August, the prosecution say Paul Willie Reuben at the instance of Api Jack Marikempo, the Commander of the Mobile Force, draw up the draft of Operation Procedure 2002 (exhibit P8). That was a Snap Operation Order; no prior operation warnings were issued. There were meetings going on between senior officers. In the evening of 3rd August those orders were formalised and signed by Api Jack Marikempo. The operation was put into effect a few hours later.

It was a joint criminal enterprise.

The prosecution say each one of the defendants was involved. Holi Simon was a prime mover. He had been acting Commissioner and had apparently been recommended by the Police Service Commission selection Panel for appointment as Commissioner. Reuben and Marikempo planned the operation and drafted the Orders. Eric Pakoa put the operation into effect. There was a



meeting at Ma Barkers restaurant, another meeting at a nakamal. There was a briefing of the arrest team commanders including John Tarimas and Kali not in the police station but at Teouma bridge. Patu Louis, another member of the executive, the assistant Commissioner, for logistics and support, was part of the plan. Roy Seule drew the arms, John Tarimas headed the team which arrested the Commissioner, the Attorney General and others.

The prosecution say it must have been obvious to all that the orders were manifestly unlawful. The officers planning the operation had no evidence to make arrests without a warrant. The best they had was Holi Simon's complaint, and some rumours. Nothing in writing. No witness statements. The consent of the Public Prosecutor is required for a prosecution. No such consent was ever obtained.

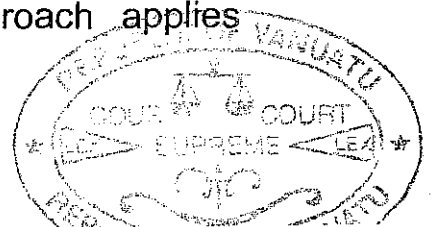
Even after the arrests Holi Simon, Eric Pakoa and Api Jack Marikempo gave radio and television interviews, or talks to officers in Santo associating themselves clearly with the operation. Patu Louis sent an email doing the same on 4th August.

The prosecution say all the elements of mutiny were present. In particular, referring to my ruling of 18th November, they all acted in disregard of the discipline or authority to which they were subject. They incited others to do so, and kidnapped and falsely imprisoned those arrested. The arrests could not be lawful.

That in essence is the prosecution case.

C. The Defence Case

All the defendants deny all the charges. Holi Simon says he made his complaint, he took legal advice and lodged a civil case. He then distanced himself from his colleagues whilst they followed up the complaint. He handed over temporary command to Api Jack Marikempo. His presence at Vansec House (the offices and conference rooms of senior officers and administration) was purely to be on hand if needed. His statements to the press and officers afterwards were to shew unity and responsibility. Paul Willie Reuben and Api Jack Marikempo stated they had a complaint and normal procedures were followed. Information was received and an ordinary operation mounted. The same approach applies



whatever the position of suspects and persons to be arrested. Patu Louis and Eric Pakoa said they received instructions and orders and carried them out. There was no reason to disobey them. John Tarimas and Roy Seule said they obeyed their orders. It was not for them to question them. They were not manifestly unlawful.

On their behalf it was argued that this is not the first time in the history of Vanuatu that arrests of people at this level have been effected. The case must be approached in the context of Vanuatu and not other jurisdictions. There was something seriously wrong with the appointment of Mael Apisai, and that appointment was quashed by the Supreme Court. It is easy to imagine extreme circumstances when an order should be disobeyed, but not so easy in circumstances like these. It was said none of them actually disobeyed any order of Mael Apisai. There was nothing sinister in extending India Alpha. Operation Procedure could have taken place without it. The consent of the Public Prosecutor was not required for arrest and interview.

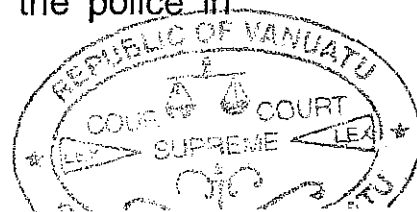
At all times they wished to follow the law and correct procedures. They say that is evident from the documents, particularly the Snap Order, and their actions and subsequent statements, in particular bringing those arrested before a Court within twenty-four hours.

Even on the prosecution case a fundamental question runs through this whole proceeding. Were the actions of the defendants misguided and in gross disregard of proper considerations and procedures or were they genuinely mutinous? It is for the prosecution to prove the latter beyond reasonable doubt.

D. General

This is a criminal prosecution. It is for the prosecution to prove their case and do so beyond reasonable doubt. They must do so in respect of each defendant and each count. If they fail to do so for any or all then verdicts of not guilty must be entered. It is not for these defendants to prove anything.

Although there are four joint charges and seven defendants, I must consider each defendant and each count separately. Evidence might be admissible against one defendant on a count, but not against another. For example Holi Simon talked to the police in



Santo about what the executive had decided. That was not admissible against other members of the executive, unless adopted in evidence, by them. It wasn't.

Counsel for some of the defendants warned about the danger of assuming guilt by association. That is something a Court must not do. There must be a clear assessment and analysis of the evidence in relation to each defendant and each count.

It is pertinent to set out Sections 12 and 22 of the Penal Code. These were relied upon to a greater or lesser degree by all defendants.

Section 12 of the Penal Code states:-

"A mistake of fact shall be a defence to a criminal charge if it consists of a genuine and reasonable belief in any fact or circumstance which, had it existed, would have rendered the conduct of the accused innocent."

Section 22 of the Penal Code states:-

"No criminal responsibility shall attach to an act performed on the orders of a superior to whom obedience is lawfully due, unless such order was manifestly unlawful or the accused knew that the superior had not authority to issue such order."

Each of these two sections has been considered when assessing the evidence, particularly that of the defendants and whether they were acting under such a mistake of fact and whether orders were manifestly unlawful.

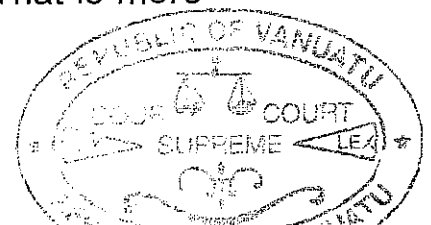
It is important also to note Section 64 and 67 of the Penal Code.

*"64. No person shall enter into any agreement between two or more persons to carry into execution any seditious intention.
Penalty: Imprisonment for 15 years.*

67. No prosecution shall lie for an offence under sections 64, 65 or 66 unless the consent in writing thereto of the Public Prosecutor shall have been given and the prosecution is commenced within 6 months of the date on which the offence is alleged to have been committed."

I examine and assess the evidence of all witnesses including the defendants in the same way. The fact a witness is a defendant does not mean in itself that his evidence has any less value than that of any one else.

The Vanuatu Police Force organization and command structure are set out in P15. There is a Vanuatu Mobile Force. That is more



a military then a police body. Its principal functions are external defence of the country and to act in support of the police. The defendant Api Jack Marikempo was Commander of that force.

Counsel for Holi Simon, Eric Pakoa, John Tarimas and Roy Seule gave a written "*Matters of Facts conceded*". Much of the evidence was read unchallenged. In closing counsel for all defendants accepted all defendants owed allegiance to the Republic of Vanuatu, that they were subject to the discipline and authority that comes with being in the police force and that they acted together or collectively in these matters.

The central question on the mutiny is has the prosecution proved beyond reasonable doubt that they acted "*in insubordination or defiance or disregard of that discipline or authority or by refusing to obey it*". The emphasis is clearly upon "*defiance or disregard of that discipline or authority*".

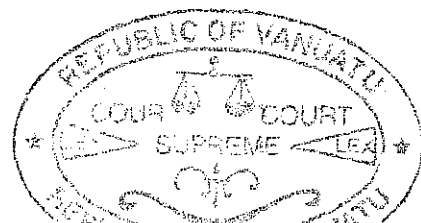
Although the defendants and counts must be considered separately, to a large extent they stand or fall together. No objection was taken as to whether counts 1 or 2 were duplicitous. I will look at this aspect later. I must also look carefully at the alleged activities of these defendants and the dates when actions took place. (See Section E, The Charges).

It did not, and could not, form part of the defence of any defendant that the mutiny and incitement charges could not succeed because Apisai's appointment was later quashed.

I judge this case on the evidence heard in Court. Nothing else. People will have heard things and told others. A Court must act on what witnesses themselves have seen and heard and not what they were told. Rumours and speculation are dangerous. They have no place in a Court of law.

E. The Charges

Careful consideration must be made of the charges Inciting Mutiny and Mutiny. Further the dates in those two charges must be considered particularly in relation to the actions of two of the defendants towards the end of the period covered.



At the start of the trial, upon enquiry by the Court, Count 1 was amended to include "*for mutinous purpose*". This necessarily excluded any "*traitorous purpose*".

This is very important for sentencing purposes if there are convictions. The maximum penalty for treachery is life imprisonment, for mutiny it is five years. Sentence in a case of incitement will, in practice, usually be limited to the maximum for the offence incited.

Count 2 was amended to change the second and third "*or*" to "*and*".

The Court further drew counsels' attention to the charges on the questions of their wording and duplicity. No further submissions were made by either counsel in this regard.

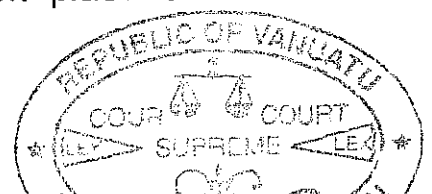
Section 60 of the Penal Code, Incitement to Mutiny has two parts "*(a) endeavour to seduce any member of the police force from his duty ...*" and "*(b) incite any such person to commit an act of mutiny...*".

It is clear from the way the prosecution put its case and lead its evidence that it was part (b) that was being pursued. I delete part "*(a)*" from the charge.

There are three offences in section 46 of the Police Act, Mutiny. There is (a) taking part in any mutiny or intended mutiny, (b) knowing of any mutiny failing to use best endeavours to suppress it and (c) knowing of any mutiny failing to give information thereof to a superior officer. All three are included in Count 2. The word "*or*" in the original charge was changed to "*and*". This did not resolve the problem. The prosecution case and its evidence clearly intended (a) only. I delete the other two parts.

The time covered by Counts 1 and 2 is from 4th July to 31st August. Time will usually not be a material averment. In this case there is a particular importance. The principal events happened on 4th August and the days immediately before and after. There can be no complaint at the fixing of 4th July as the initial time parameter.

The prosecution put their case against the defendants as one of joint criminal enterprise. The central events took place on 4th



August. However, the prosecution sought to lead evidence of events on and about 27th August. There is reference in the witness statements and the videos produced to these.

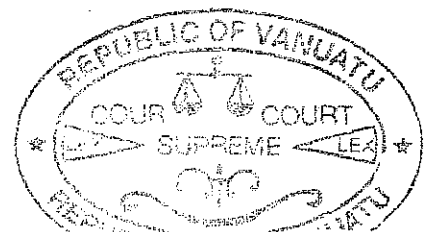
The question arises as to whether these latter events were part of the joint enterprise of incitement to mutiny and mutiny or a separate matter. The defendants Eric Pakoa and Roy Seule were involved. Holi Simon appears in the background on one of the videos. The actions of Pakoa would certainly appear to be a defiance of authority, for example his refusal to accept the Prime Minister's notice of suspension. It was those events that eventually gave rise to the risk of a gun battle around the Central Police Station.

The defence took objection to the admissibility of these latter events. That was done on the basis they were separate and involved a different grouping of officers. They said as there was no separate charge for such action evidence of them was inadmissible. The prosecution opposed this saying it was all part of one joint action or evidence thereof. Not everyone had to be involved in every part.

I find the evidence is inadmissible. There is no evidence that other defendants were involved. It was a different enterprise. There is a space in time between the events surrounding 4th August and the 27th August. The actions in contemplation as amounting to mutiny are different for the two dates. There should have been one or more separate charges for the latter events. There were not.

A chronology of essential events would have assisted in the overall trial of this case. It would also have shown the separate nature of these latter events. A fully prepared, paginated and indexed bundle of exhibits upon which the prosecution relied would also have assisted.

It is on the basis of what I have set out above that I consider the evidence in relation to each charge for each defendant. In this context I would add one other matter. In opening and closing the prosecution did not gather together and state the specific evidence on each count against each defendant nor set out a narrative of alleged events. The Court has necessarily had to look at the evidence in this regard, but ensuring it did not take on the role of the prosecution.



F. Findings

Was there a mutiny as defined in my ruling of 18th November? I find there was a mutiny in that police officers subject to the discipline and authority of the police force acted collectively in defiance and disregard of that discipline and authority.

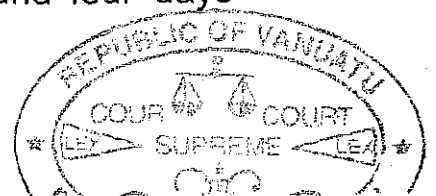
By 1st August some senior officers were ignoring Mael Apisai and his appointment. There was a strong belief they were about to be suspended. P8, the draft for Operation Procedure 2002 was drawn up. The only tangible evidence there was a seditious conspiracy was the complaint of Holi Simon, (Page 1, Defence Bundle). There was much talk of intelligence and reports. The police file for the operation was obtained and placed before the Court. No-one could refer to anything prior to 4th August, (save for one minor matter concerning Seule Takal, and he denied that). There was no warrant.

Seditious conspiracy is a cognisable offence. A warrant was not needed. However, there was no basis to go out and arrest. There were no witness statements, no documents which could begin to found a case. The operation seems to have been drafted on the basis of making arrests in the hope of getting evidence by way of confession. That is unacceptable. This in itself can be described as highly reprehensible police conduct but not mutiny. It is evidence tending to support the charge of incitement and mutiny.

The Public Prosecutor was not approached for advice. The Force Legal Officer was not approached. Indeed, he became a suspect on little more than the fact he upheld the President's appointment.

There was not even a suggestion of evidence against many of those arrested. The Attorney General was arrested because he swore in Apisai. The fact it was on a public holiday for some inexplicable reason added weight. The Attorney General was off sick the day before. There was not the slightest basis to arrest the President's private secretary nor the Prime Minister press officer.

Other applicants for the post of Commissioner were arrested. Whilst there was the strong belief that the appointment of Mael Apisai was defective, and indeed the Court so found four days



later, the actual basis for making arrests was slight in relation to Mael Apisai and the members of the Commission. In relation to others arrested it was a journey into speculation based at best on rumour and vague suspicion. That vague suspicion formed itself into a belief in the existence of a conspiracy in the minds of some senior officers. When that was coupled together with the rumour of suspension of senior officers, the moving in of the new Commissioner's place men and the idea that a further 34 or 35 would be suspended the concept of an operation to arrest those supposedly involved formed and was then carried out.

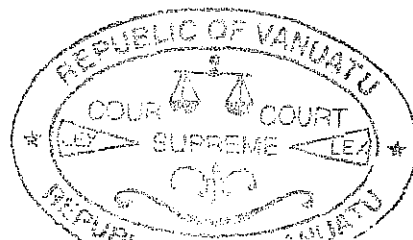
It was the duty of those senior and experienced officers to look at the law, check the correct procedures, ensure the evidence existed, to form the basis for an operation and arrests before drawing up and launching an operation. They failed to do that. They failed to act in accordance with the powers and authority vested in them and in accordance with the law. They arrested and imprisoned the Commissioner without any proper basis for doing so. There is no evidence of any attempt to see in confidence the Minister of Internal Affairs or the Prime Minister, about their concerns before the operation was launched. There is evidence that some senior and junior members of the force queried the legality of the operation. It was an action partly taken to forestall their own impending discipline or suspension. I do not find on the evidence it has been shewn that this was "a grab for power".

It was known a proper legal challenge was being made. Those involved did not wait the few days for that to be heard. The consent of Public Prosecutor was never obtained for the prosecution of charges of seditious conspiracy, as is required by section 67 of the Penal Code.

Section 34 of the Criminal Procedure Code Act [CAP. 136] states:-

"Proceedings shall be instituted by the making of a complaint or preferment of a charge".

Two weeks after first charge no consent had been obtained. I accept consent was not strictly required for arrest. However, given the nature of the charge and those to be arrested it was the duty of those involved, in the circumstances of this case to seek legal advice. Force Orders require that to be of the Public Prosecutor or Force Legal Officer.



It was said in evidence the Public Prosecutor might leak the information, so she was not consulted. The Force Legal Officer was a suspect for no discernible reason, and could not be approached.

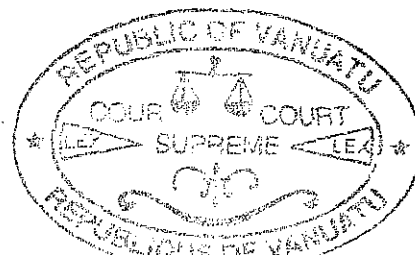
A private lawyer was consulted by Holi Simon concerning his challenge by way of judicial review. I do not know the extent of the advice he gave. I am satisfied it was not purely limited to personal advice to Holi Simon.

He attended a meeting with senior officers ostensibly to brief them on Mr. Simon's civil claim. He was present at Vansec House in the afternoon of the day of the operation. He took part in some of the negotiations with the Government representative to release people arrested. On 29th July he wrote to the Commissioner (P4) stating "*given the irregularities of your appointment ... and the current tension amongst the force members over your appointment, it would be best to maintain the status quo pending court ruling ...*" The status quo then was senior officers ignoring Mael Apisai and Mr. Simon failing to meet him or make a handover, as acting Commissioner. In his initial request Holi Simon asked Mr. Boar to act for the office of the Acting Commissioner. Throughout various documents (e.g. Operation Procedure paragraph 4, P8) and in speeches there is reference to advice being given by an outside lawyer.

A subpoena to produce documents was served on Mr. Boar. It required four appearances before they were all handed over. One of the documents included the police personal file of Mael Apisai. When giving evidence the Court informed Mr. Boar of his right to refuse to answer questions if his answers might incriminate him.

For a proper focus to be achieved when assessing the case of each individual defendant the prevailing atmosphere and state of understanding of officers at the time must be considered.

In early July there were concerns that people with little or no police experience whatever were being considered for the post of Commissioner. There was no secret about that. It was not for any police officer to question the appointment process, but for officers who had worked in the police for a few or many years it gave rise for concern.



It was known that Mael Apisai was not employed in any way at the Police Service Commission (P. S. C.) yet was spending significant periods at the Commission and in company of the Chairman. Application had been made for him and another to be appointed special constables. Apisai had been out of the police force for four years, after accepting redundancy. There was no evidence of what he had done since.

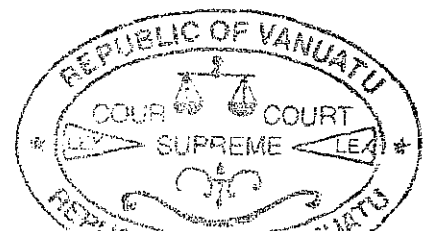
Apisai, Taun (the PSC chairman) and another had seen the Prime Minister twice about forming a private security service. Taun had asked for an expensive vehicle to be supplied on the police budget for his use. Taun had told Simon he could be Commissioner if he approved the vehicle. The chairman of the PSC was giving directions to the acting Commissioner. No legal basis for that has been cited.

John Bell, is an ex-police officer. He told Eric Pakoa that he was going to be made Deputy Commissioner (Intelligence) when the new Commissioner took office. There is no such post in the police structure.

The Police Service Commission set up an Interview Panel to consider applications. Five applicants were interviewed Simon was recommended for appointment. Their applications were rejected and Apisai was appointed without an interview.

The Public Prosecutor was not consulted because for some reason it was feared she would let others know about the impending arrests. Whilst it was not admissible evidence for the purposes of verdict she did later give consent to the bringing of the seditious conspiracy charge as a private prosecution then withdrew it (Defence Doc. 10 p. 16).

The role of George Boar is difficult to assess. I do not accept he was merely giving advice about Simon's civil challenge to the appointment. He says he gave advice on the definition of conspiracy. The defendants both in writing before and orally after made reference to having sought legal advice and having acted upon it. There is a strong suspicion he gave substantial, but incorrect, advice that went well beyond what he admits to or had authority to do.



Boar was present at the police station in the afternoon of 4th August. That could not be to advise Simon on his civil claim.

Whilst not treated properly at the police station, those arrested were interviewed and brought before a Court within 24 hours. They were bailed. There is no evidence of any attempt in any way to interfere with that bail or take further action against them when the charges were later dismissed.

G. The Prosecution Witnesses

I do not propose to assess the evidence of every prosecution witness in detail. To many, there was little or no challenge. Nor will I set out in detail the evidence of each.

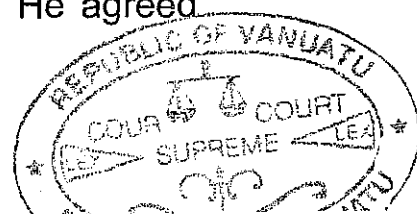
Mael Apisai

He applied for the post of Commissioner of Police and was appointed. He says he was ignored when he took up the post by all senior officers. Although they would have known of his arrival it could not be shown the senior defendants received notices or messages as to precisely when they were required to attend. He reported this to Mr. Taun, Chairman of the PSC. By a letter dated 2nd August (P6) he requested the Minister to suspend Holi Simon from duty.

He described his arrest and incarceration. He was stripped to his underpants and placed in a cell. In the evening he was taken to Court, charged with seditious conspiracy and bailed.

In cross-examination he agreed Eric Pakoa had carried out a written order sent to him. Apisai agreed he was in the Force from 1981 to 1998 when he left with the rank of major from the VMF. He gave details of his career. He agreed he had been working in the office of the PSC before his appointment and leading prayers and morning devotion. He was not appointed special constable but requested to go back in the force.

It was put to him that in April he approached Holi Simon and said he would assist Simon to become Commissioner if Simon would appoint him commander of the VMF. He replied "*That was the conversation that we had.*" (p. 20 Notes of evidence). He agreed



he was a good friend of Taun; but had no ability to influence him. He, Taun and Natato had approached the Prime Minister in April with a view to forming a private security service.

He agreed he was a friend of John Mark Bell. He was aware of the challenge in Court to him. He agreed he wanted officers occupying the top five positions to be suspended. He was not aware of the extension of Operation India Alpha. He was not aware of any proposal to suspend thirty-five officers.

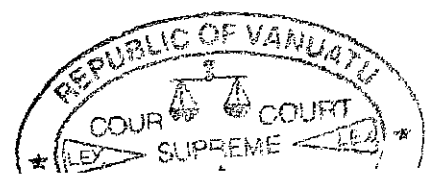
There was little of significance in contention in his evidence. I accept it.

Hamlison Bulu gave evidence of swearing in Mael Apisai. This was done on a public holiday as he was sick the day before. He gave evidence of his arrest and incarceration. I accept his evidence.

Rave Nikahi, private secretary to the President, Rex Bovenga and Daniel Bangtor private secretary to the Prime Minister gave uncontentious evidence of their arrests and incarceration.

Jessie Temar is the Force Legal Officer. He gave the structure of the Force. He regarded the extension of Operation India Alpha as a cover for Operation Procedure. He considered the actions of Pakoa and others in early July concerning a candidate for the post of Commissioner to be wrong. He regarded many of the acts of the more senior defendants to be unlawful or improper. He regarded the actions of George Boar to be wrong. The Force should look to him or the Public Prosecutor for advice. He tried to get into the room where Boar was advising, but couldn't. He described the procedure for handover to a new Commissioner. He described his arrest. He recorded the interview between Reuben and an ABC journalist.

In cross-examination he agreed Simon had handed keys of the Commissioner's office to him in April. He said Simon and Marikempo were fighting for the position of Commissioner. He didn't ask Simon why he didn't attend the 8 a.m. handover and didn't tell him of the rescheduling for 2 p.m. He answered questions concerning several of the documents in the case. He said the public should not pay for private legal advice to an officer. In the answers were he expresses an opinion, e.g. the reason for the extension of Operation India Alpha, I have formed my own



opinion. When he relates facts I found Jessie Tamar truthful and reliable.

Michael Taun described the events of 4th August and his arrest. He informed the Prime Minister and Director General of Internal Affairs before arrival at the police station. He was told by Pakoa he was a prime suspect. Pakoa was very aggressive. He was placed in the conference room, not a cell.

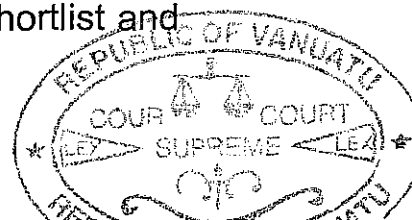
By letter dated 25th July he says he wrote to Simon telling him of Apisai's appointment. In May he had requested that Simon appoint Apisai and Natato as special constables. On 24th he received a letter from Tamar advising against that. Later, "*As Chairman of the PSC I wrote to Simon about his overseas trip to Hawaii. I ordered him not to go.*"

In cross-examination he agreed he had been in the Force from 1980 to 1996. He agreed he sought reinstatement as a police officer in May 2000. That was refused because of funds. He had left the Force because he was "*personally demoralised and he asked to leave.*" Whilst Marikempo was acting Commissioner, Taun had applied "*to be appointed in command of Southern Command*". Simon suggested he should be in command of Southern patrols.

Taun became Chairman of PSC at the end of 2001. He ceased to be chairman after 9th August. He described his role as chairman.

He received the letter P20 from Tamar. This set out the reasons for the refusal to appoint Apisai and Natato as special constables. He was angry about the way the letter was phrased. He denied saying to Simon that when Simon became Commissioner, his first job, was to sack Tamar. He denied Apisai and Natato were 'working' at the PSC. "*They were helping, but not paid.*" He agreed that he, Apisai and Natato had attended the office and house of the Prime Minister "*on numerous occasions*". It was about this proposed private security business. He said Apisai was not working at the PSC when he applied for the post of Commissioner.

Taun did not disclose to the PSC he had a personal financial involvement with Apisai. An Interview Panel was established and they were requested to interview a shortlist of five. Apisai was one. He was not interviewed. The Panel drew up their own shortlist and



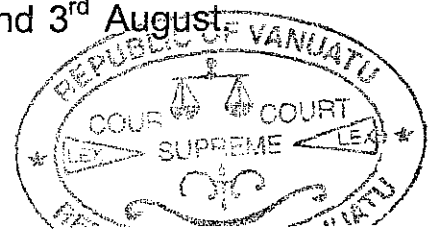
interviewed them. That list did not include Apisai. He received the Panel shortlist on 1st July. Copies were given to the other PSC members. They decided to disregard the Panel's recommendation and make their own. Apisai was recommended. He was never interviewed. One of the reasons the Panel's recommendation of Simon was rejected was because of his reaction when his trip to Hawaii was cancelled. Taun said he had consulted the Director General of Internal Affairs and he *"agreed he should be stopped from going to Hawaii"*.

The selection meeting was on 16th July. Taun denied telling the Commission what to say and do. He was aware of the 3rd and 4th July meetings and concerns of thirty-five senior officers. He recalled receiving the Minister's letter of 4th July suggesting doing away with the Selection Panel. He said when first questioned he had forgotten about it. He couldn't recall if the letter was shown to the rest of the PSC. He couldn't recall if he was asking for Nadine Alatoa to disqualify herself. There was a meeting to cancel the Panel's findings, but not as a result of the letter.

On 16th July Apisai's recommendation was decided upon. On 19th July the appointment was signed by the President. He was sworn in on 24th July. There appeared to be vagueness as to if and when the Prime Minister and Minister of Internal Affairs were told. Mr. Taun denied misleading the Prime Minister's office about what was happening.

Mr. Taun agreed he sought the provision of a three and a half million vatu (duty free) vehicle on the police budget for his use as Chairman and that of the Commission. He denied there was any question of recommendation for Commissioner in exchange for provision of the vehicle. The Court then informed him he need not answer questions if they incriminated him in any offence. He was then asked, *"Was the request for pro forma invoice (for the vehicle) a decision of the PSC or yourself."* He replied *"I won't answer that. The car is for the PSC."*

Mr Taun described the difficulties in running the PSC with the limited resources and personnel available. There was vagueness about letters and the sequence of some events. He could not recall the urgency for some actions. He first heard of the list of thirty-five on the day he was arrested. He denied telling Bell he and others had decided to sack thirty five officers around 2nd and 3rd August.



There was no deal for Bell to be reinstated as Deputy Commissioner in charge of Intelligence.

He said the defendants, Apisai and Bell were all his personal friends.

Whilst much of what Mr. Taun says is uncontentious I have reservations about accepting his evidence in total. There was a failure to ensure that his conduct and by him that of the PSC in selecting a person for recommendation was and was seen to be free from any suggestion of bias or corrupt practice. Given what was involved and the strong competition for the post of Commissioner it was essential the process was seen by all to be open and fair. That did not take place and was a major contribution to beliefs and suspicions in the police force.

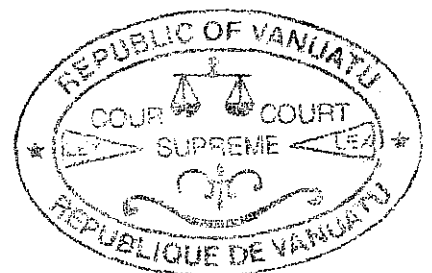
Noel Amkory described his arrest. He had worked with the PSC. Simon had transferred him out. Apisai then transferred him back on 27th July to work under Taun. He had been investigating some officers. I accept his evidence.

Philip Natato described his arrest. He agreed in May he was in the office of the PSC but didn't work there. He saw Apisai there. He says they saw the Prime Minister once about a security business. His evidence was uncontentious.

I also accept the evidence of Seule Takal, Obed Nalau and Anatol Coulon.

Nadine Alatoa was a member of the PSC with Taun, Anatol Coulon and Obed Nalau when Apisai's selection was made. She had never seen a list of thirty five officers to be suspended. In cross-examination she described the procedure used and said there was nothing untoward in the way things were done. She did say "*It seemed Taun and Simon were not getting along*". I accept her evidence.

John Mark Bell described his arrest. He had been in the police and left in 1999 after 15 years with the rank of inspector. He gave his current occupation as public relations consultant. He was an applicant for the post of Commissioner. He knew Pakoa.



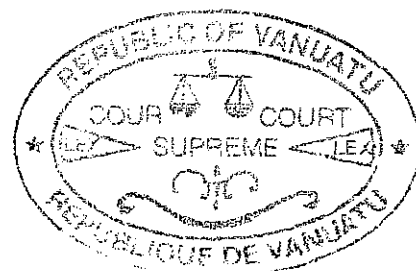
Bell agreed he had a conversation with Pakoa a day or two before his arrest and told Pakoa he (Bell) was going to be appointed Deputy Commissioner (Intelligence). He told Pakoa that Simon would be suspended at 4 p.m. on 2nd August. He wasn't sure if he said the same about Reuben and Patu. He said Pakoa told him of a list of officers to be arrested. He believed he, Bell, produced a copy of Simon's suspension letter. He believed he had been given a copy of the letter by Willie Abel as first political advisor in the Prime Minister's office.

Whilst there was no real dispute with the evidence of Bell there was the suspicion he knew more about these events and his involvement was greater than disclosed.

Joshua Bong is acting C.O. of the VMF. He described the difficulties and uncertainties in the VMF that followed the events of 4th August. He explained why the senior officers in the VMF did not attend Simon's meeting on 6th August. He attended and said by their speeches Simon, Marikempo, Reuben, Louis and Pakoa all made it clear they were party to the events of 4th August and what was intended. He described the procedure when firearms are issued. The prosecution did not rely on his second statement. This dealt with events at the end of August and the Government, Police, Mobile Force reconciliation ceremony and other matters.

Arthur Coulton is the current acting Police Commissioner. He was deputy commander of the VMF at the time of the events. He attended a meeting on 29th July with the other senior officers. Simon said he was challenging Apisai's appointment. Boar was present. Simon said he would take leave while the case was pending. There was no mention of arresting anyone.

On 4th August at 1 a.m. he was told by Arnold Vira there was a meeting that morning. He told Vira not to attend and no-one else should. At the VMF gate he saw the armourer who said Seule was asking for the issue of arms. He said no arms were to be issued unless authorised by Marikempo, the VMF Commander. Seule was talking but apparently didn't want him to hear. An arms issue form was signed by Reuben. Coulton wouldn't let an issue be made without Marikempo's signature. Seule returned later with that and arms were issued.



He attended 6th August meeting. He corroborated Bong's description of the meeting. There was nothing contentious in his evidence. I accept it.

Robert Mawa has been in the VMF for twenty-two years. He is based in Santo. He related how Simon on 13th August and Marikempo on 16th August addressed the VMF there. Each took responsibility for being involved, and said the operation was planned by the Police Executive. Simon said at first they intended arresting the Prime Minister but then decided to arrest the next highest level. Marikempo said there were three white men behind what they were trying to deal with.

There was no cross-examination.

John Martin, Andrew Charlie and Basil Wetau gave corroborating evidence.

David Takiau interviewed the defendants in relation to these matters. They exercised their right of silence. He said that Marikempo had told him that Marikempo, Simon and Pakoa had met at Ma Barkers to discuss Apisai's appointment. In cross-examination on behalf of Marikempo he disagreed it was said the meeting was at Vansec House not Ma Barkers.

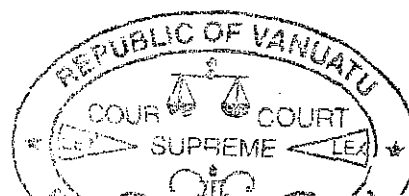
I accept Takiau's evidence, and in particular what he says Marikempo told him.

Feke Pedro gave peripheral evidence.

Louis Livo dealt with the issue of the firearms. His evidence corroborated that of Arthur Coulton.

John Tete is an administrative officer at Southern Command. He was given the lists of names for the two arrest groups, and who was to lead each. He said the Police Executive consisted of Simon, Marikempo, Reuben and Patu Louis. He described the arrests of the team he was in under the command of Tarimas.

On 27th August he described the arming of officers at Central Police Station if the VMF came to arrest them. Pakoa was in command and Seule was positioning armed officers about the



station. He told the men to put their arms down. George Namaka also urged this.

The defence objected to the admissibility of matters on 27th August as not being relevant to the mutiny as such. The prosecution said it was relevant and admissible and gave an indication of the control of Seule and Pakoa. The evidence was led, although a ruling delayed. In section E, the Charges, I have found this incident was outside the time and ambit of counts 1 and 2. It was a highly dangerous situation. It only involved these two defendants. It could not be said to be part of the joint enterprise contemplated by counts 1 and 2.

I accept the evidence of Tete

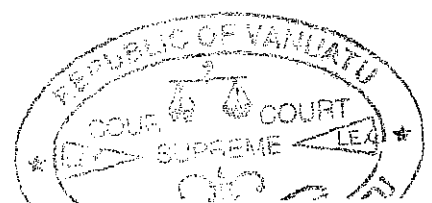
Daniel Nulak stated that about 7 p.m. on the evening of 3rd August he saw Simon and Marikempo together at a nakamal. Nulak was told to take a police vehicle there, give it to another officer and sleep at Vansec House. That he did and slept until the next morning at 5 a.m. He saw Nakou and Boar at the police station that day. His timing on that was not entirely certain.

Benjamin Mali gave evidence that on 1st August Seule drove off with a VMF car without permission. He later saw Seule who said it was done on Marikempo's order. The car was not returned the next day. He had the impression Seule didn't want him to know what was going on. He was not cross-examined.

Willie Abiut gave peripheral evidence. He is a VMF officer. A corporal asked "*Is this operation straight?*" Seule replied "Yes". He was not cross-examined.

George Nakou a lawyer from the State Law Office gave evidence about his liaising with the Government and the police on 4th August and talking to Boar at the police station to have those arrested released. He did not ask Boar if he thought the operation was legal. He did not suggest it was unlawful. I accept his evidence.

Gabriel Firiām gave evidence of his security patrols on the night of 3-4th August. He regarded Operation Procedure as a "*made-up*" one. He was not happy about it. Evidence he could give about 27th August was not led.



Maelep Hugues gave peripheral evidence. He said *“Regarding the Orders we just followed the instruction of Lieutenant Roy Seule but I do not know where Roy Seule got his orders from”*.

Songi George was not well enough to go to work in the early hours of 4th August. He expressed his concern later that morning about what was happening.

Ian Hava give peripheral evidence of the arrests. He thought Ifira people were going to be arrested. He said there was tension from the Ifira people.

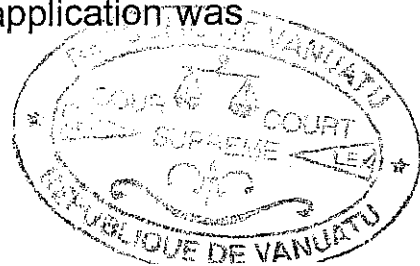
Arnold Vira gave peripheral evidence. He said Marikempo told them they were doing their normal work.

Selected parts of the radio broadcast and videos from VBTC and the Australian Dateline programme were played to the Court. Transcripts of some were available. I remind myself that what is said by a defendant is only evidence in relation to him. Further, the greatest care must be taken when assessing what defendants say in radio and television programmes, in particular as parts of original statements may have been edited out, hearsay is present, the programme will often have a particular purpose.

The statement of Joe Natuman, Minister for Internal Affairs, was read. He was aware of tensions with and potential for trouble from the supporters of Barak Sope and the “Freedom Fighters”. He gave authority for issue of the weapons. He was not told they would be used in connection with the arrests of the Attorney General and others. This was a serious deception. He first learnt of the arrest at 7.30 a.m. that morning.

Willie Vira produced the email (P66) sent by Patu Louis to a region wide security body. Louis used the word “we” when dealing with the activities of 4thg August.

George Boar gave evidence. He was called by the prosecution. He is a solicitor and barrister. He acted for Simon in the judicial review challenge to Apisai’s appointment. He stated he gave no advice other than concerning the judicial review. He said Arthur Coulton was not present at any meeting. At that point the prosecution applied to have the witness declared hostile. That application was



refused as the prosecution did not hold a prior inconsistent statement or indeed, a statement.

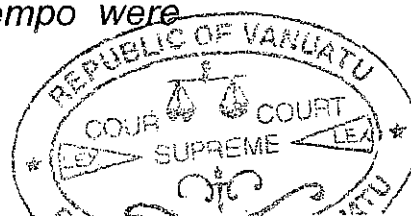
Mr. Boar says that on 15th July there was no mention of the arrest of fifteen people. Mr. Boar was informed that he need not answer any question if he considered it would incriminate him. He was then asked "After 29th July and before 4th August did you advise that group and Simon in relation to the arrest of the 15". He replied "Not the group, just Simon. Just in relation to the conspiracy. I advised in relation to the conspiracy. I advised in relation to the charge of conspiracy".

Mr. Boar was asked about the references in documents (e.g. Operation Procedure Document) and orally to advice being given by a lawyer. He said he only advised Simon. He was not aware of anyone else advising. He was asked "Patu says 'we had another meeting with our lawyer', was that you?" His reply was "I am not aware of that."

George Boar was present at Vansec House on 4th August at 5 p.m. "I didn't give advice to Simon about the charge. I came in to see George Nakou from the State Law Office. They came to me.... I was only aware of Operation Procedure at 5 p.m. on 4th August".

It was again put to him about the reference to legal advice in the Operation order. He replied "I only gave advice to Holi about the question of conspiracy. No advice about arrest. It was [given] just before the case was in court". He had not seen the Operation order. He was asked again when he gave the advice about the conspiracy. He replied "I can't recall, but after the civil case was lodged in court". He said the advice was that "conspiracy was an arrestable offence.... It was just general advice about conspiracy and if you could arrest for it. [Simon] gave no details about what he intended to do". He said he gave no advice about arresting and charging people with seditious conspiracy. He had no idea people were to be arrested.

In cross-examination he agreed he wrote and sent the letter to Apisai, as Commissioner, (P4) suggesting that it was "best to maintain the status quo". He agreed that meant Simon continuing as acting Commissioner. He accepted he did not advise them to apply for an interim injunction. He did advise they could arrest without warrant. It was put to him "Patu and Marikempo were



there". He replied "I only recall Holi Simon". He was asked "You attended at the police station on 29th July not then on 30th July, then on 4th August", he replied "Yes" "There at any other time at Vansec House?", "I can't recall". The question was repeated. The answer was then "No".

Boar said when giving the civil case advice on 29th July that Simon, Marikempo and Louis were present. It took about an hour. The only advice was to Simon. He did not advise Simon to take time off.

Mr. Boar was not asked why he was asked to attend Vansec House on 4th August. The events of that day did not relate to his acting as Holi Simon's personal legal adviser. Nakou found Boar in the conference room at Vansec House. When Nakou required on behalf of the Government, a quick release of those arrested, Nakou states "*Hemi reply say bae mi go back long ol officers ia blong harem wanem nao oli talem.*"

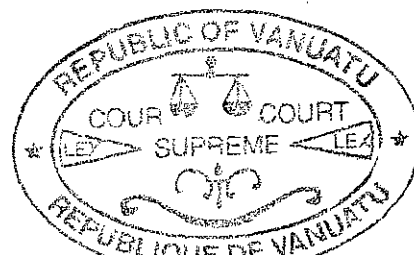
It is difficult to assess the evidence of George Boar. It might be he acted with extreme naivety. He should not have been giving advice on police as opposed to personal matters. That is for the Force Legal Officer or the Public Prosecutor. His answers varied when it came to exactly when and what advice he gave. He used no file notes or memoranda in giving evidence. His presence on 4th August is unexplained. His evidence is unsatisfactory.

Whilst I do not say Boar didn't do the things he did, there is a strong suspicion he gave more "advice" than he has told this Court about.

The prosecution then closed its case.

H. The Defendants

I will now consider each defendant and each count in turn. Necessarily the evidence of some witnesses will apply to more than one defendant. I do not approach the case of each defendant on the basis that there must have been mutiny, was he involved? The finding of a mutiny is based upon the findings I make in relation to individual defendants.



Holi Simon

Holi Simon, was acting Commissioner at the time of Mael Apisai's appointment. He has over 20 years service with the police.

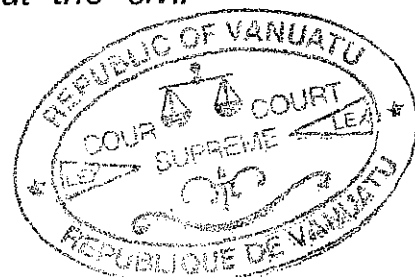
Holi Simon gave evidence. He outlined his career. He was acting Commissioner from 26th March 2002 until the appointment of Apisai. He had applied for the post of Commissioner. He had been, the Selection Panel's recommended candidate after interview. He was told he was the best candidate. The PSC instead appointed Apisai who was not interviewed.

On 1st July Mr. Taun, at the Waterfront Restaurant asked for a medical certificate from Simon. He was told he might be considered suitable for the post. He was acting Commissioner when Barak Sope was sentenced. On 19th July he was not aware of the revocation of his acting appointment, dated that day, (P19). He says he was not told on 20th when he had meetings with the Prime Minister and President. Indeed the latter "*congratulated*" him.

Between 20th and 24th he received nothing. Then he received an invitation to attend the Independence Celebrations on 30th, as "*deputy Commissioner*". At that time there were rumours Apisai was appointed.

On 25th he first read of Apisai's appointment in the newspaper. That day he received P24, the PSC Chairman's letter informing him Apisai would take over at 7.30 a.m. on 26th July. He said the PSC could not give orders to him. He said there was then a series of late informing of times and misunderstandings which meant he never saw Apisai to hand over. He didn't go to Vansec House on 27th or 28th, a weekend.

He received Apisai's letter of 29th July on that day (P3). He was required to report to the new Commissioner at 4.30 p.m. He didn't. He referred the letter to his lawyer, Mr. Boar, who wrote the letter of 29th July to Apisai, suggesting the "*status quo*" continued, pending the Court decision. He had no further order or communication from Apisai. He had already issued civil proceedings. He couldn't recall the date. There was a meeting on 29th when George Boar "*briefed senior officers about the civil proceedings*".

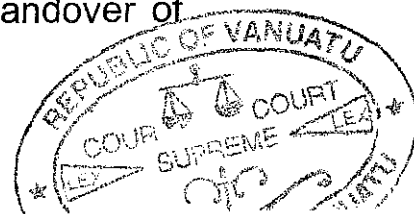


He was present with Marikempo, Reuben and Patu Louis. There was no discussion about arrests. He made formal complaint to Pakoa on 29th (page 1 DB). He left Vansec House and did not return until 3 a.m. on 4th August when he was called in as Operation Procedure was in action. It must be noted that 3 a.m. was the time of the briefing at the Police Station.

He denied any connection between the extension of India Alpha and Operation Procedure. He said he had to be there at 3 a.m. as the most senior officer, to be on hand if required. He didn't attend briefings. He had no discussions, he just slept there until 7.30 a.m. he took no part in the arrests. He stayed there till the arrested persons went to Court. When he addressed the television he was talking as a senior officer on behalf of the police. The use of the word "we" was to show unity of command and purpose. It did not mean he himself was involved in the operation. The same applied to his remarks in Santo.

In cross-examination he denied any involvement in Operation Procedure. He denied knowing Apisai was appointed until 25th. He agreed his complaint was first drafted on 20th July (p 1 DB). That stated Apisai was the new Commissioner. He said it was speculation at that time. He could not give any basis to his allegations in his complaint against persons he complained about. Matters came out in cross-examination which had not been mentioned before. e.g. Groups outside the PSC influencing it (pp. 145 – 146 notes of evidence). He agreed he asked Boar for a definition of conspiracy. No advice was given about arrest without warrant or seditious conspiracy. He denied any meeting in Ma Barkers.

I reject the evidence of Holi Simon. I do not accept he was not a part of this mutiny. On his own admission he knew of Apisai's appointment on 20th July. Also Pakoa said Simon telephoned on that day to complain of the appointment. He was disappointed because he was confident he would be appointed. He deliberately avoided the new Commissioner when he took up his office. He should have attended on 29th at 4.30 p.m. as required. He didn't. He knew he was so required before hand. His intention was, as put in Boar's letter, to maintain the "status quo", namely that from before Apisai was appointed. He did not inform the new Commissioner of taking days off or the existence of his complaint. He didn't inform the Commissioner of his temporary handover of



authority to Marikempo. On occasions in cross-examination he could not answer questions, or gave rambling replies that did not address the question.

His presence on 4th August at 3 a.m. was not precautionary. He could equally well have slept at home. He had a telephone there. His behaviour on the television was one of someone in charge of what had happened. His statements in Santo corroborate this.

I am satisfied beyond reasonable doubt he was a prime mover in this mutiny. By his words and actions he incited others. There was no proper lawful basis for the arrests and he knew that and as such they amounted to kidnapping followed by false imprisonment. I find him guilty and convict as charged of all four counts.

Paul Willie Reuben

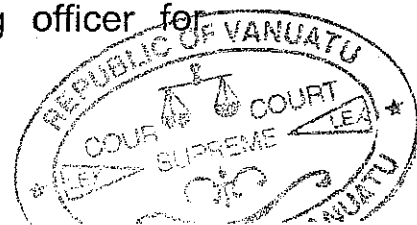
Paul Willie Reuben stated in evidence he is an assistant Commissioner. He has been in the police force over 25 years. He has been on courses, he is highly experienced. He was ACP (Crime) at the time.

He was not present at the meetings of 3rd and 4th July when concern was raised at applicants from outside the Force.

He is a member of the Executive. It meets about once per month. He authorised the extension of Operation India Alpha. He denied it was a cover for anything. He was aware of Holi Simon's complaint of 20th July. He said it had to be investigated. He was working with intelligence reports and trying to get a picture of what had gone on.

He had information Apisai would come in on 26th July for hand-over. Reuben was in his office but received no request to see him. He said handing over is a long process and also required a parade and some ceremony. He was not an applicant for the post of Commissioner. Between 26th and 29th July he had no reason to meet with George Boar. Between 29th July and 4th August the only day he saw him was 29th.

He said on 3rd August he was at Vansec House between 9 and 11 p.m. He then went home. Pakoa rang him at 4 a.m. on 4th August. He went in. Simon and Patu Louis were there. He was waiting to see George Twomey as he was the investigating officer for



Simon's complaint. He wanted Twomey to brief the Public Prosecutor and obtain consent. He knew of the arrests. The morning TV camera caught him, but the spokesmen were Marikempo and Pakoa. He knew of the arrests. He saw Boar about 5 p.m.

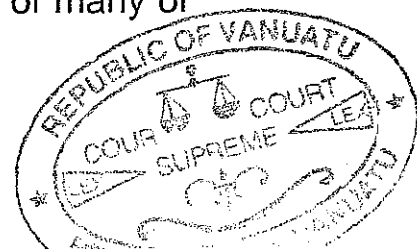
He agreed he did say the Public Prosecutor had given consent. What he meant to say was the Public Prosecutor had not given consent on the investigation but should give written consent on the prosecution. He said Twomey told him on 4th August he had seen the Public Prosecutor. Nothing was said to say she refused. The file was to be forwarded. He said he was told informally on 19th July that Apisai had been appointed.

He agreed he drafted Operation Procedure on 31st July and 1st August. That was done on the orders of Marikempo. They are equivalent ranks, Marikempo is in the VMF, but "*when Marikempo gave me the order he was acting under the authority given to him by Holi Simon*". It was a normal acting authority in the absence of the officer concerned.

In cross-examination he agreed he gave the draft order to Marikempo and Pakoa. On 3rd he received the final order signed by Marikempo.

He was briefed on 24th with the others by Boar about the civil proceedings. There was no discussion about arresting without warrant.

The extension of India Alpha was normal. He was closely cross-examined about what material he had before him when drafting the snap Operation order of Operation Procedure (P8). He said he had Simon's complaint against Apisai, Taun and the Commission. To many answers he replied he had "*intelligence*", we had "*reports*". He could not, in more than vague detail say what they were. He referred to the Police Operation file. When the prosecution said that was not in police possession it was produced by Mr. Reuben's lawyer. The file was examined. It was put to Mr. Reuben that apart from a minor matter involving Seule Takal, there was nothing predating 4th August. To many questions concerning what was the basis to draw up such an operation he could only give vague replies and cited nothing substantial in support. Names of many of



those arrested were put to him. He could not give a reason why they should be arrested.

When asked which legal firm was being referred to in the Operation Order he stated they were going to consult a firm. P8 paragraph 4 reads *"To put an end to these illegal practices the Force Headquarters has decided to launch this Special Operation mandated by the VPF Joint Command Group supported by a legal firm ..."*.

He denied knowing by 2nd August that Apisai intended disciplining him and others.

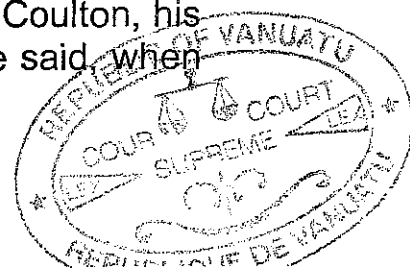
I do not accept the evidence of Paul Willie Reuben. He was one of those who decided to ignore the appointment of Mael Apisai. He was present at the meeting on 29th July with Boar. He received Simon's complaint. On 31st July and 1st August he drafted the Operation Order. There was no material before him on which he could base an operation involving such arrests. He was present at Vansec House on the evening of 3rd August and most of 4th August from early on. He signed the original order for the issue of arms. His activities were a direct incitement to others to mutiny and act in disregard of the discipline and authority to which they were subject. He was necessarily a party to the kidnapping and false imprisonment. I find him guilty and convict him accordingly.

Api Jack Marikempo

Api Jack Marikempo gave evidence. He has been in the force since January 1978. He has held various posts in the VMF. From June 2001 to March 2002 he was acting Commissioner. At the times in question he was commander of the Mobile Force. He was not at the meetings in early July, but knew of them.

He became aware Apisai was appointed Commissioner from the newspaper on 25th July. He was an applicant. He was not included in the short list. On 26th July he was in his office at Cooks Barracks. He didn't meet with George Boar. It was the final days before the Independence Celebrations. He received nothing from Apisai that day, there was no meeting of the executive.

On 29th he attended Vansec House at the request of Holi Simon for a briefing about the civil case. He came with Arthur Coulton, his deputy. There was no mention of arresting anyone. He said when



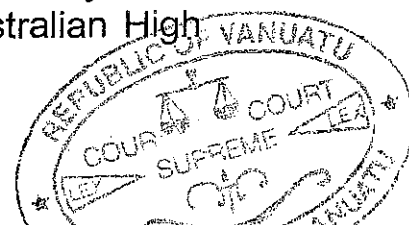
"George Boar went through the legal process for the appointment of Apisai, I realised something was wrong". He said his appointment had been challenged successfully when he was overseas. The first he knew of it was on his return. "I realised there was definitely something wrong with the legal process". He did not meet with Apisai on 29th or 30th, as Commanding Officer of the VMF he attended the celebrations with the Commissioner. He says he "accepted Apisai. I never disobeyed orders. If I realised his appointment was not legal, I wouldn't be in that position".

On 31st July he was in Cooks Barracks. There was no meeting of the executive. From 30th July he had taken over as the acting Deputy Commissioner (Operations) from Holi Simon to allow him to challenge the Commissioner's appointment. He had no meeting with Reuben on 30th July. He was aware of Simon's complaint. It was his duty as Commander of VMF to assist with operations. ACP (Crime) would brief him and say what were the issues and instructions on 31st July. As acting Deputy Commissioner he instructed Reuben to draft the operation order for Operation Procedure 2002. On 1st August there was a draft. He stated that just he and Reuben looked at the draft, *"and the Commanders to make sure they understand the content of the draft."*

Marikempo knew the content of the Order. He said it was important to specify the mission clearly. He signed the Order at 9 p.m. on 3rd August. He handed it to ACP (Crime), Paul Willie Reuben. He then left at 9.25 p.m. to give a copy to Patu Louis ACP (Management Services), for the logistical support.

Marikempo then said he needed ministerial consent to issue fire arms, and arranged that. He then went to his home at Cooks Barracks. He went to Vansec House at 7.15 a.m. on 4th August. His deputy Arthur Coulton and Reuben were there. They chatted. He told his deputy to brief the officers at Cooks Barracks about what was happening.

He stated *"law and the legal process must prevail. My duty is to take hard decisions to ensure the security of the nation is maintained".* He then said *"The TV people came and I asked ACP (Crime) that only two people be there. Pakoa, who is the field Commander should address the issues, and how the arrests are lawful".* He said it was done in the briefing room that was why other officers were there. After the TV he spoke to the Australian High



Commission. He wanted to allay fears there was a coup. He then went home.

On 6th August he attended a briefing at Vansec House for the officer corps. He told Coulton and Bong to attend. He said they disobeyed his order. He rang up Coulton and told him to attend. Coulton did so but brought no other officers with him. It was a debrief.

He agreed he attended Santo and briefed men there. He said between 30th July and 4th August he received no written order from Apisai. He was not telephoned either. He strongly denied any meeting between himself, Simon and Eric Pakoa at Ma Barkers.

In cross-examination he agreed signing the order for Roy Seule to draw arms. He gave him a copy of the briefing in the evening of 3rd August. When asked "*Did Roy Seule ask if the orders were lawful?*", he replied "*My officers never question my orders. He just went and executed them, like Commander Southern (Pakoa)*". He had no discussions with John Tarimas.

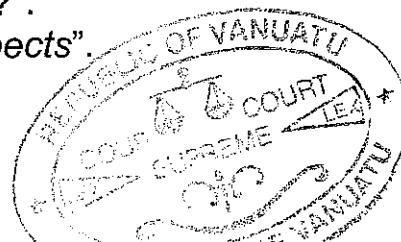
In cross-examination by the prosecution he said it was normal to have a short-term hand over of authority if Simon was away. He was asked why in his letter to the Minister to draw arms there was no mention of Operation Procedure. He replied "*why should I mention it*". It was put "*The reason you didn't mention it was because you didn't want to inform the Minister 15 people, including the Attorney General were to be arrested.*" He replied "*Operation Procedure was not a high priority for me. It was low*". It was the tension over Sope's imprisonment and so called Freedom Fighters that was the concern.

This answer was unbelievable. The operation included the arrest of the Commissioner of Police, the Attorney General and other senior people. It was not low priority. The intention was to deceive the Minister into signing for the issue of arms.

He was further asked why he didn't attach a copy of the Operation Order. He said it was important to maintain security in an operation. "*It is my duty to keep my enemies in darkness*".

Question, "*Your enemies weren't the 15 people arrested?*".

Answer, "*They were not my enemies, they were my suspects*".



Api Jack Marikempo was then questioned about his knowledge and experience when making arrests without warrant. He did not know the consent of the Public Prosecutor was needed for prosecution on the offence of seditious conspiracy. He could not give any basis for ordering the arrests of the 15 beyond Holi Simon's complaint and vague intelligence reports and suspicions.

I do not accept the evidence of Api Jack Marikempo. He was the most senior officer. He signed the order for the arrests. There was no basis whatever for that. The very list of people to be arrested and their positions would have made any officer in charge approach with the greatest care, checking all along he was acting properly. Marikempo failed to do that. He was at the time, the most senior of the senior officers who should have been acting with calm and wisdom. Instead he issued Orders running contrary to the authority given to him. He did not brief his deputy.

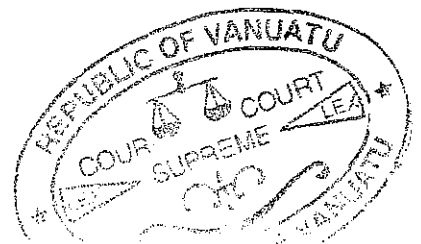
Marikempo shewed his involvement in interview on television. He went to Santo and spoke to officers there also showing his involvement in events and talking of wider conspiracies of three white men paying the Prime Minister. His words were inflammatory and in disregard of the authority and discipline vested in him. He spoke of a new prime minister being appointed. He said the operation was that of the police executive.

I find him guilty and convict as charged.

Louis Patu

Louis Patu stated in evidence that he had been in the police force since 1976. He was assistant Commissioner in charge of management services. He said he was related to Mael Apisai as Mael had adopted one of his children.

Between 12 and 23 July he was attending a conference overseas. Holi Simon was to have attended but Simon had been instructed by the Chairman of the PSC not to attend. He was not aware of the meetings on 3rd and 4th July. He became aware informally. He learnt of Apisai's appointment at the airport on return on 23rd July. He went to his office on 25th July and wrote up his overseas trip record. He briefed his staff on the overseas trip. He has 14 staff. He received information that Apisai had been sworn in on 24th.



He stated he is a member of the executive. He described his job as looking after police administration and giving logistical support to operations.

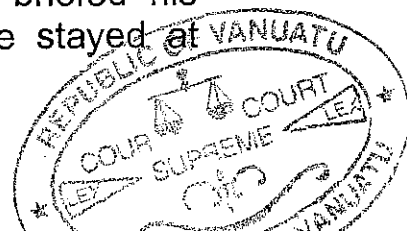
He did not recall seeing the new Commissioner or George Boar on 26th July. He did receive a message to attend to meet the new Commissioner on that day from the ADC to the deputy Commissioner. He asked what the purpose was and if other executive members were attending. He told the ADC when a time was fixed to tell him and he would attend. The ADC did not return. He received no further written or oral instructions to attend.

On 29th he attended the conference room. Marikempo, Reuben and Simon were there. George Boar arrived and briefed them about the civil case. There were discussions about the changes for the parade on 30th in view of the new Commissioner. There was no discussion of arrests. He asked no questions of George Boar. There were no other executive meetings on 29th. He was in his office on 29th and 31st. No meetings took place with the new Commissioner, or were requested.

Patu Louis first saw the draft orders for Operation Procedure on 2nd August at 15.20 hours. He called in his administrative officers to look at administration and funding issues, if they were called on to carry it out. The briefing took over an hour and he went home.

On 3rd August he was at home. At 21.00 hours he received the signed orders. It was delivered to him personally at home by Marikempo. He gave directions for three staff to be on duty at Vansec House in the early hours of 4th August. The structure of the orders accorded with the five principles required for such an operation. He says he regarded them as lawful orders, they appeared to be in order. Before 2nd August at 15.20 he did not know there was going to be an operation. He regarded the decision as being with Commander Crime, and Commander South.

On 4th August he arrived at Vansec House about 3.30 a.m. He contacted some of his personnel to come in. He was aware of the conference with VBTC in the morning. Major Coulton came in at 6.30 a.m. wanting to know what was going on. He said he was surprised the acting deputy Commissioner had not briefed his men. Patu Louis said he didn't attend meetings. He stayed



Vansec House, but did not recall seeing Holi Simon come in. He did see George Boar go there at 17.00 to 17.30 hours.

He was present at the debriefing on 6th August. He agreed he spoke loudly. He felt there was a lack of discipline in the VPF. *"I was very upset in the meeting because of the outcome of the operation. Some of us were doing our part while some are taking a joy ride."*

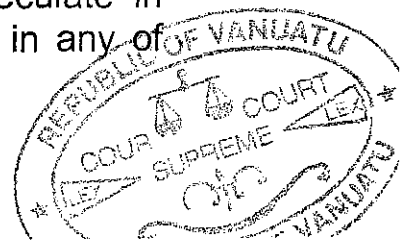
Patu Louis was aware of the Commission chairman's request for a car, an expensive one, and the issues over the appointment of Apisai and another as special constables. There were outstanding phone bills of the Commission. He recalled seeing Apisai with the Chairman of the Commission but was not aware he was acting in any official capacity.

In cross-examination by the prosecution he agreed he was very emotional on 6th August, and said some officers were like *"Judas"*. He said *"I carry out orders and complain after"*. He did not dispute the remarks he made, but stated when saying *"we"* he was talking collectively, as with unity of command.

He agreed he'd be upset if proper procedures for the appointment of the Commissioner were not followed. He was not aware Apisai wanted the executive disciplined. (There was no evidence to show he was aware). He agreed he sent an email to a colleague Mr.Kutzman, Chief of Asia/Pacific security activities. He said he was advising what the police had done, not specifically what he had done. He was given the information on the 4th. He denied having a meeting with George Boar on 3rd August.

It was put to him he was outraged at what was going on and joined in. He denied that. He only knew of the *'seditious conspiracy'* suggestion on 4th August.

There are several aspects of what Patu Louis did which are not fully explained, for example what he did all day on 4th August from his arrival at Vansec House, his remarks in his email. There is a gap as to what his reaction was upon seeing who was to be arrested. I am satisfied Patu Louis knew more about what was going on than he told the Court. There were relevant areas he was not questioned about by the prosecution. I cannot speculate in those areas. The actual evidence he was a participant in any of



these charges is strongly indicative but falls short of the standard of proof required.

In these circumstances I must find him not guilty.

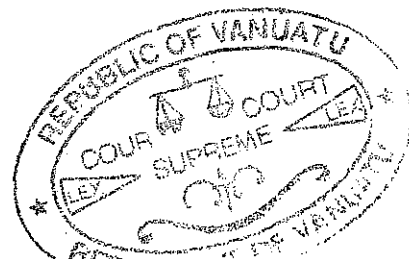
Eric Pakoa

Eric Pakoa gave evidence that he joined the police in 1981. He is a superintendent and was appointed head of Southern Command in 2000. He reports directly to Paul Willie Reuben, ACP (Crime). He outlined his training and experience. He said if Reuben issued a command to him he would have to obey. He had not applied for the post of Commissioner. He first heard of the appointment of Apisai in the evening of 20th July. This was when Holi Simon called him and lodged a formal complaint. He said he had no problems with Apisai being Commissioner. It was not his concern. He said Apisai never called him up. He did receive Apisai's letter of 27th July (P22 DB) and complied with it.

He said Simon's complaint of 20th July must have been handwritten, that was received on 22nd. He was tied up with preparations for the Independence Celebrations and the unrest following the imprisonment of Barak Sope. He called in his investigator, George Twomey and discussed the matter. (I have not heard evidence from Twomey). It was about a week between receiving the complaint and appointing Twomey. After that he concentrated on the Independence Day preparations. He denied Arnold Vira's evidence that there was a meeting on 1st August.

On 2nd August he received the Snap Order for Operation Procedure from Reuben, his immediate boss. It was signed by his superior Marikempo. "*I am obliged to obey his order. He is my boss.*" It was given to him on 2nd August. He called in Inspector Tete and Inspector Tarimas. (This is inconsistent with what Tarimas said). He told them he would issue tasking orders for an operation.

John Mark Bell called at the office at that time. He was excited about his appointment as Assistant Commissioner (Intelligence). Pakoa knew that was outside the formal VPF structure. He was told it was a pre-planned arrangement. Bell said Simon would be suspended that afternoon at 4.30 p.m. He said Pakoa was not in the suspension list. There was a suspension list of 35.



He didn't know why Bell was telling him that. He warned Bell to be careful he didn't go against the law.

Pakoa agreed he took the initiative as the senior officer in relation to the meetings of 3rd and 4th July. He said the extension of India Alpha was normal and lawful. He said it had nothing to do with Operation Procedure. Supord 5 (the extension) had been issued before Reuben came to him with Operation Procedure.

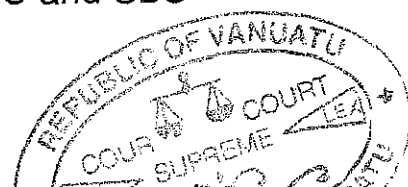
When he received the Snap Order he checked to see what his orders were from the joint command. He checked the law. Then he had the meeting with Tete and Tarimas. The warning order was oral.

Bell came in while Pakoa was looking through the formal complaint from Simon. *"That is when I decided to act the next day. I decided to look seriously at the complaint."*

On 3rd he arrived at 7.30 a.m. He had meetings with chiefs. There was rising tension about Sope. He briefed his officers about an actual operation. He said it was confidential.

At 4 p.m. he had a meeting at Teouma beach it finished at 8 p.m. On the way back he stopped at the bridge and briefed the few officers with him. *"I instructed them to get the boys together and report at 3 a.m."* He returned to Port Vila and called Holi Simon at 2 a.m., because he was the deputy commander, the senior member of the police, and the complainant. *"I just asked him to come to Vansec House so we could contact him at any time."* Pakoa was at the police station not at Vansec House. At 2 a.m. he rang Reuben to tell him about the operation and he came to Vansec House. At 3 a.m. he briefed his men. They understood the allegations and were told of police powers. Simon was not present.

The arrests were made. He denied being aggressive and abusive to those detained. He said he was *"expressing himself"*. He was closely questioned as to what was the basis for the arrests. He could supply nothing more than other defendants had on this topic. When asked where was his evidence he replied *"I was relying on these orders"*, referring to Operation Procedure. The Snap Order was *"an order I'm obliged to comply with."* When put to him *"you were a planner of the operation"* he replied *"I complied with orders given to me."* It was put to him that he made out to VBTC and SBS



he was a prime mover and fully involved, but when he was arrested, he changed and said he was acting on orders. He replied I don't understand. He denied any intention to arrest the Prime Minister or President, when asked why arrest their secretaries he replied because their names were given to me.

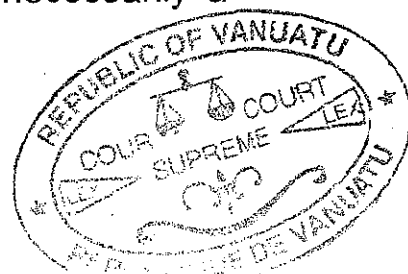
He said in planning the operation he wasn't receiving legal advice. When he mentioned this in public, "we" meant the force, the organization. It was put that on the date line program he appeared to be the leader. He replied I was not aware it was only me speaking. When asked why he didn't say he was only obeying orders on TV he replied "*That is not for the general public. I only give the TV what I thought was operative.*"

He agreed he issued the arms and ammunition on 27th August. He said "*my assumption was they (the VMF) were going to shoot us. We have to defend ourselves.*" I disregard the evidence about those particular events. (See E The Charges)

The actual question is whether the prosecution have proved beyond reasonable doubt that Eric Pakoa was part of this mutiny or whether he was a senior officer obeying orders.

I am satisfied he was a party to those offences. He was closely involved with the investigation and could ascertain know how much or how little material there was to base the operation upon. His behaviour at the police station on the morning of 4th August was of an angry man, not a professional policeman carrying out orders. He specifically closely associated himself with the operation in the days that followed. He remained defiant. The suggestion of only following orders came later. He said in clear terms that if anyone "*Touches my officers*" then action will be taken against them. Marikempo said he signed the Snap Order at 9 p.m. on 3rd August. Pakoa was giving his briefing at 8 p.m. That was at Teouma bridge and not at the police station. Some senior and junior members of the force were anxious about the legality of the Operation. Eric Pakoa had greater access than nearly everyone to the material which could decide that. I am satisfied beyond reasonable doubt that Eric Pakoa was an important part of this mutiny. He incited others by his actions and commands and he was necessarily a party to the kidnapping and false imprisonment.

I find him guilty and convict him accordingly.



Roy Seule

Roy Seule told the Court he is a full lieutenant in the VMF. He was second in command of the surveillance and response force, about 60 men. His immediate superior was Joshua Bong and then Api Jack Marikempo.

He attended the meetings of 3rd and 4th July over the concern about the process for the selection of a new Commissioner. About 15 officers were present including Eric Pakoa and John Tarimas.

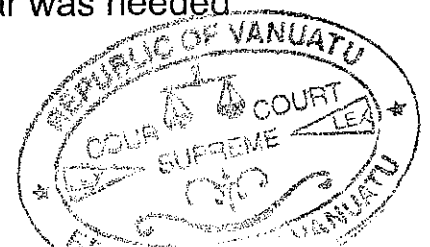
On 3rd August he was not aware of any operation. He first became aware of Operation Procedure about 10.30 p.m. He had earlier been with Pakoa and a few others to a meeting with Chiefs at Teouma bush. On the way back they stopped at Teouma bridge. He said Pakoa, Tarimas and others were discussing something. Nothing was said to him.

Marikempo gave him a copy of the Snap Orders later at his home at the barracks. It appeared legal and he went and picked up his men. He said the issue of weapons has to be approved by the Commander VMF. He went to Vansec House. Marikempo was not there, but Reuben signed. When he first presented the order to release arms it was refused. After getting Marikempo's signature they were released to him.

He and his men then patrolled and waited to be called upon if back up was needed. He said he had been in support operations like this before. The arms were later returned. That was his involvement.

In cross-examination he said his boss was Marikempo he was not briefed at the bridge, but at 10.30 p.m. He agreed he was present on the morning of 4th August when there was the TV interview. He said it was just after a meeting. It was suggested he was an important part of the Operation. He replied "*No, it was my duty to execute orders*". It was suggested he was playing down his role and that he was one of those most involved on 3rd and 4th July and he knew about what was going on and participated.

Evidence was led by the prosecution that he took and wrongfully held a VMF vehicle (the green starlet). He said the car was needed by Marikempo for surveillance.



He was questioned about events on 27th August when the VMF surrounded the police station. It was suggested he positioned officers around the police station to resist and this was part of the mutiny.

Defence counsel objected to this evidence as not forming part of the allegations of incitement and mutiny. I have dealt with this in the section E The Charges.

It is likely that Roy Seule was happy to go along with the orders he was given on 3rd August. He appears to have been closer than others to those propelling these events. That in itself does not mean he was part of the mutiny. On the evidence before me there is insufficient to be satisfied that Roy Seule was doing other than obeying what appeared to him to be lawful orders. I find him not guilty.

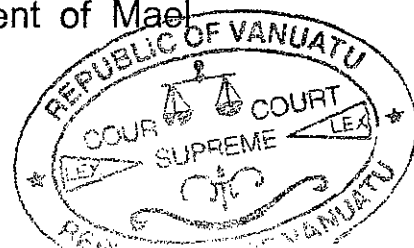
John Pakoa Tarimas

John Pakoa told the Court he is an inspector. He has been in the police force since 1981. Superintendent Eric Pakoa was his immediate superior. He was involved in Operation India Alpha. He carried out Pakoa's day to day commands.

He attended the meeting of 4th July. He didn't discuss Apisai's appointment with anyone. He first heard of Operation Procedure on 3rd August in the evening at Teouma Bridge from Eric Pakoa. (This is inconsistent with what Pakoa said). Tarimas said that was a warning order. He collected his men and went for a briefing at 3 a.m. on 4th August at Pakoa's office. He was in charge of Unit 1, which included arresting the Commissioner, the Attorney General and the Chairman of the Commission. He did not query the orders. He said "*I have never disobeyed a lawful order.*" He regarded the orders as lawful.

After the briefing he then arrested the people assigned to his unit for arrest.

In cross-examination it was put to him that the very list of names must have made him query the lawfulness of the order. He denied that. He cited examples of when he had made similar arrests. He denied being angry over the process and appointment of Mael Apisai.

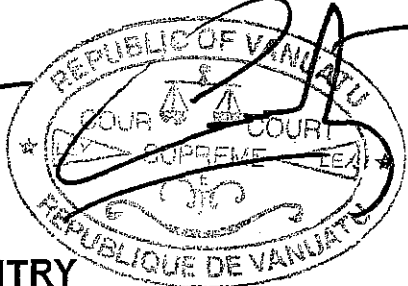


There is not sufficient evidence before me to show that John Pakoa was doing other than obeying orders, and orders which as far as he was concerned could not be described as manifestly unlawful. I find him not guilty.

This is the full judgment. A synopsis was delivered in Court on Thursday 5th December 2002.

Dated at Port Vila, this 27th day of January 2003.

R. J.



R. J. COVENTRY
Judge.