

**SYDNEY PATRICK McGREAL - v - DAVID MOSES**

**Coram:** V. Lunabek CJ

**Counsel:** Mr. Sydney Patrick McGreal, Private Prosecutor assisted by Mrs. Marie  
Noelle Patterson  
Mr Daniel Yahwa for the Defendant

**SENTENCE**

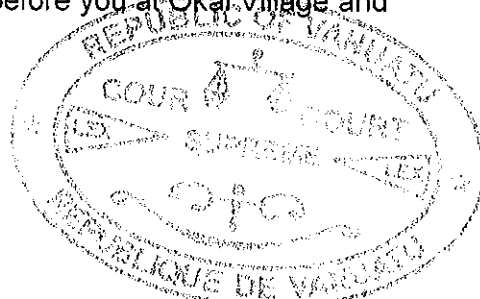
This is the sentence of the Defendant David Moses. David Moses, you were initially charged with three (3) counts [Counts 1, 2 and 3] of making statement knowing it to be false, with intent to obtain for another a valuable benefit, contrary to section 13 0C of the Penal Code Act [CAP.135]. Your prosecution was initiated and carried out by Mr. Sydney Patrick McGreal, a private prosecution. On 9 September 2010, the Private Prosecutor applied to amend the information with additional charges. By consent the Private Prosecutor's application to amend the information was granted by the Supreme Court on the same date.

You were then charged with the following three (3) additional counts and the particulars of which are set out below:

**COUNT 4: FRAUDULENTLY MAKING A DOCUMENT RELATING TO AN  
INTEREST IN LAND, WITHIN SECTION 109(2) OF THE LAND LEASES  
ACT, CAP 163**

**PARTICULARS**

- ( i) On or about 28 August 2,008 at Port Vila, at a time unknown, you did complete an instrument, being a lease over Awei Island, with designated registered No.09/1823/002, by certifying in writing, as an Acting Principal Lands Officer in the space provided in the instrument, to the matters required by s.78 of Cap 163 so that registration of the instrument could occur.
- ( ii) Your making of the said certification was fraudulent for the purposes of section 109(2) of Cap-163 because:-
- (a) You certified that the 13 lessors appeared before you at Okai Village and voluntarily signed the instrument but:-
- (1) You have never been to Okai Village



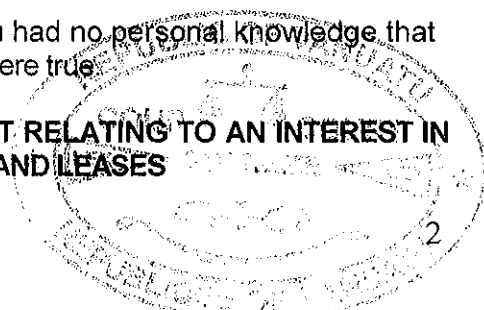
- (2) You have never met any of the 13 lessors
- (3) One of the lessors had died on 10/01/2,008
- (b) You certified that the 13 lessors were identified to you by Starkey Charlie and that they appeared to fully understand the instrument but
  - (1) They were not identified to you by anyone
  - (2) You had no idea whether, if they signed the instrument, they fully understood it.
- (c) You knew when you so certified, that you had no personal knowledge that the matters you were certifying to be true, were true.

**COUNT 5: FRAUDULENTLY MAKING A DOCUMENT RELATING TO AN INTEREST IN LAND, WITHIN SECTION 109(2) OF THE LAND LEASES ACT, CAP 163**

**PARTICULARS**

- (i) On or about 02 October, 2,008 at a time unknown you did complete an instrument, being a Consent to Transfer, required by section 35 of Cap 163 to enable registration of a transfer of the registered lease over Awei Island, being registered title 09/1823/002, from Starkey Charlie and George Kaloa to Brenton and Sharon Wiese for VT35 million by certifying in writing, as an Acting Principal Lands Officer, in the space provided in the Consent to Transfer form, to the matters required by section 78 of Cap 163 so that the transfer could be registered.
- (ii) Your making of the said certification was fraudulent for section 109(2) of Cap 163 because:-
  - (a) You certified that the 13 lessors of 09/1823/002 appeared before you at Okai Village and voluntarily signed the instrument, but:-
    - (1) You have never been to Okai Village,
    - (2) You have never met any of the 13 lessors,
    - (3) One of the lessors had died on 10/01/2,008
    - (4) You did not see any of the lessors sign if, indeed, they did
  - (b) You certified that the 13 lessors were identified to you by Starkey Charlie and that they appeared to fully understand the instrument but:-
    - (1) They were not identified to you by anyone,
    - (2) You had no idea whether, if they signed the instrument, they fully understood it
  - (c) You knew, when you so certified, that you had no personal knowledge that the matters you were certifying to be true, were true.

**COUNT 6: FRAUDULENTLY MAKING A DOCUMENT RELATING TO AN INTEREST IN LAND, WITHIN SECTION 109(2) OF THE LAND LEASES**



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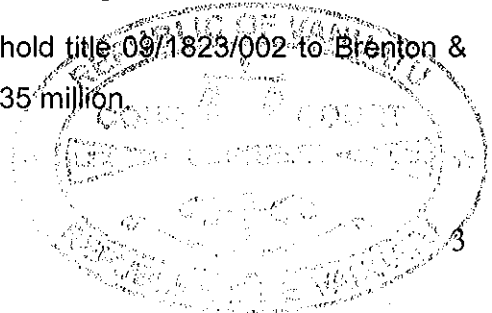
## PARTICULARS

- (i) On or about 14 January, 2,009 at a time unknown you did complete an instrument, being a lease over about 358 hectares of land on the coast of South East Malekula called Maheh Land, having designated registered number 09/1823/001 by certifying in writing as an Acting Principal Lands Officer, in the space provided in the instrument, to matters required by Section 78 of Cap 163, so that registration of the instrument could occur.
- (ii) Your making of the said certification was fraudulent for the purposes of S109(2) of Cap 163 because:-
- (a) You certified that the 13 lessors appeared before you at Okai Village and voluntarily signed the instrument but:-
1. You have never been to Okai Village,
  2. You have never met any of the 13 lessors
  3. One of the lessors had been dead for over a year on 10/01/2,008.
  4. You did not see any of the lessors sign, if, indeed, they did
- (b) You certified that the 13 lessors were identified to you by Starkey Charlie and that they appeared to fully understand the instrument but:-
1. They were not identified to you by anyone,
  2. You had no idea whether, if they signed the instrument, they fully understood it.
- (c) You knew, when you so certified, that you had no personal knowledge that the matters you were certifying to be true, were true.

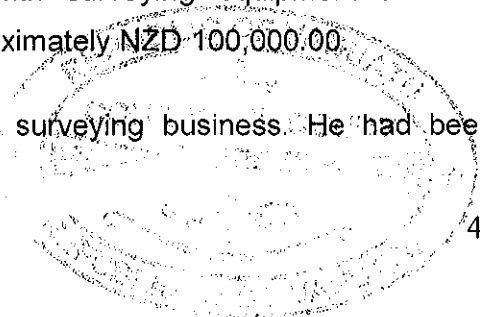
On 9 September 2010, you entered guilty pleas to the three additional counts and you were convicted of each of them accordingly. On 9 September 2010, the Supreme Court dismissed the three (3) counts (of making of statement knowing it to be false with intent to obtain for another a valuable benefit, contrary to section 130 C of the Penal Code Act [CAP.135]), you were initially charged with as no evidence is tendered in respect to each of them.

The prosecution statements of facts and the background fact leading to your offending are set out below:

1. This prosecution concerns three documents:-
  - (1) A lease having registered title 09/1823/002 of Awei Island.
  - (2) A lease, unregistered, of over 358 hectares of land on South Malekula known as Maheh Land and intended to have registered title 09/1823/001.
  - (3) A Consent to Transfer registered leasehold title 09/1823/002 to Brenton & Sharon Wiese for a consideration of VT35 million.

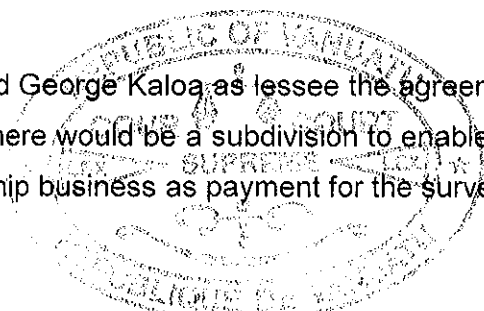


2. Section 78 of the Land Leases Act (Cap 163) applies to each of these documents requiring a Verification Certificate from one of the persons specified in the form set out in section 78 to be given verifying that when the signatories to those documents signed, they appeared to understand the document and freely and voluntarily executed it.
3. At the relevant times, you were a senior lands officer and a person able to give a section 78 verification certificate.
4. The lease of Awei Island (09/1823/002) shows on its face that it was signed at Okai Village on South Malekula on 28 August, 2008 by the 13 named lessors and the Verification Certificate for the purposes of section 78 of Cap 163 is signed by you.
5. The Verification Certificate is false because you have never been to Okai Village and you have never seen any of the lessors except, possibly, Starkey Charlie and George Kaloa. Moreover one of the lessors was dead on 28 August, 2008 having died in January 2,008 over 8 months previously.
6. The Consent to the transfer of the Awei Island lease to Brenton Ernest Wiese and Sharon Wiese for VT35 million shows on its face that it was signed by the same 13 lessors at Okai Village on 2<sup>nd</sup> October, 2008 and the Verification Certificate for their signatures *is* signed by you.
7. This Verification Certificate is false for the same reasons as given in 5 above.
9. This Verification Certificate was given by you for the benefit of Starkey Charlie and George Kaloa by enabling them to obtain registration of the document as a lease of Maheh Land.
10. It is a fact that the late Starkey Charlie introduced the three documents to you Mr. Moses for you to verify for the purposes of section 78 of Cap 160.
11. Before your offending, it is part of the facts that a business partnership was established by Mr. Robert Sudgen with Mr. Patrick Sydney McGreal and Sandra Andrews to conduct surveying business with surveying equipment that Mr. McGreal and Mr. Sugden purchased for approximately NZD 100,000.00.
12. Starkey Charlie had been employed in the surveying business. He had been



dismissed just prior to the ending of the partnership.

13. During the partnership's operation, Starkey Charlie representing the people of Okai village on South Malekula, approached Mr. McGreal and asked the partnership business to survey their custom lands which turned out to be Awei Island and the land within the other lease in this case. They also wanted Mr. McGreal to introduce investors to create employment.
14. They had no money to pay for a survey and wanted to pay with the land and offered the whole Awei Island. After discussion, the price was settled.
15. The price was a 10 hectare piece of land on Awei Island and a similar piece of land in the other land (Maheh Land).
16. The survey was carried out but huge delays occurred in obtaining registered titles.
17. After Starkey Charlie was terminated Mr. McGreal continued to work with him as representing the Okai people to obtain the registered leases so that, ultimately the partnership business would be paid for the survey work and the survey work would be utilized.
18. At the end of 2007, the lease documents were ready for signature by the 13 lessors most of whom were at Okai village and Mr. Moses was to witness their signatures for section 78.
19. Starkey Charlie proposed to the partnership business that he go to Okai village, obtain the signatures and then you, Mr. Moses would sign in your office in Port Vila at the Land department.
20. The Court is informed that there was an argument about this in Mr. Robert Sugden's office in December 2007. It was explained to Starkey Charlie and George Kaloa that the lessors had to sign in front of Mr. Moses.
21. Arrangements were made to fly you, Mr. Moses, to Okai village for this to be done but then in early January 2008 one of the lessors, Mr. Manse, died so that the new arrangements had to be made after Mr. Manse's inheritor was named in the Certificate of Registered Negotiator and named as a lessor in the lease documents.
22. The lease that was to be registered named George Kaloa as lessee the agreement being that after he obtained registration, there would be a subdivision to enable the pieces of the land to come to the partnership business as payment for the survey.



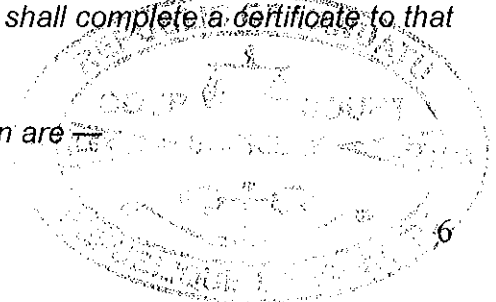
23. The court was informed that nothing happened after that until January, 2009 the leases that contain the verification certificate that are the subject matter of this prosecution were brought to Mr. Robert Sugden's attention and it became clear that Mr. Moses, you had signed the documents the consequence of which is that one of the signatures, purported to be that of the dead, Mr. Manses.
24. A complaint was made to the police because it is believed that crimes had been committed by more people than you, Mr. Moses.
25. The court was informed that when the police did nothing to investigate it the partnership paid for their own investigation and supplied the evidence to the police but they still did nothing so the evidence that would perhaps have implicated other people was never gathered.
26. The police and the public prosecutor were asked to commence prosecutions but still nothing happened so Mr. McGreal instructed Mr. Robert Sugden to commence the prosecution against you, Mr. Moses, as there was sufficient evidence for that prosecution. Mr. Robert Sugden was ordered by the court to remove himself as a counsel for the private prosecution because of his partnership relation with the Private Prosecutor and so as to ensure that the Prosecution of the Defendant is independently carried out (see Court Ruling dated 18 march 2011- Mr. Robert Sugden filed a sworn statement on 11 May 2011, among other matters, admitted his personal fault and apologize to the court ).

Sections 78 and 109(2) of the Land Leases Act are the relevant provisions. They are set out for ease of reference.

Section 78 provides:

**"78. Verification of execution**

- (1) *Subject to subsection (5), a person other than a body corporate, executing an instrument required to be registered under this Act shall appear before an authorized officer for the purposes of this section and, unless he is personally known to the authorized officer, he shall be accompanied by a credible witness for the purpose of establishing his identity.*
- (2) *The authorized officer shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed and appeared fully to understand the instrument and shall complete a certificate to that effect.*
- (3) *Authorized officers for the purpose of this section are*



- (a) *within Vanuatu —*
  - (i) *the secretary to any local government council;*
  - (ii) *a magistrate;*
  - (iii) *the Registrar of the Supreme Court;*
  - (iv) *the Registrar and Receiver General;*
  - (v) *persons for the time being registered as legal practitioners;*
  - (vi) *Notaries Public;*
  - (vii) *Commissioners for Oaths;*
  - (viii) *managers for the time being of any bank or branch thereof;*
  - (ix) *surveyors in the Department of Surveys;*
  - (x) *such other persons or class of persons as the Minister may by notice published in the Gazette approve;*
- (b) *in any foreign country —*
  - (i) *consular officers or proconsular officers of Vanuatu;*
  - (ii) *Notaries Public;*
  - (iii) *such other persons or class of persons as the Minister may by notice published in the Gazette approve,*

(4) *Every certificate of verification required for the purpose of this section shall be in the following form which may be printed on or otherwise incorporated in any instrument presented for registration —*

*'I certify that the above-named.....*

*Appeared before me at..... on this .....*

*day of ..... 20 .....*

*\*being identified to me by.....*

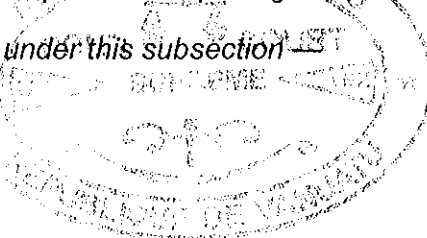
*Of .....*

*\*(or) being personally known to me and, that \*he/\*she/\*they freely and voluntarily signed and appeared fully to understand this instrument.*

*\*delete the underlined alternatives inapplicable.*

*..... Signature, name,  
designations and seal/stamp of office  
of person completing certificate'*

(5) *The Director may dispense with verification under this subsection*



- (a) *if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or*
- (b) *in cases in which to his knowledge the document has been properly executed, and shall record on the document his reasons for dispensing with verification."*

Section 109 provides:

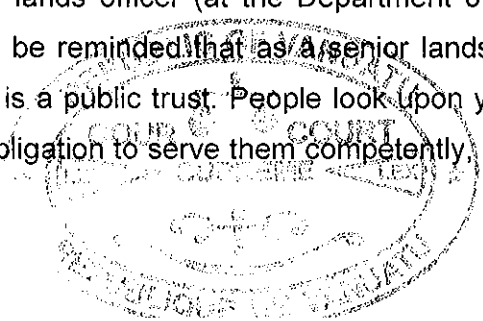
**"109. Offences**

- (2) *Any person who —*
  - (a) *fraudulently issues or makes or fraudulently procures the issue or making of any document relating to a registered interest in land or any registration, or any erasure or alteration in any document as aforesaid or in any register; or*
  - (b) *removes from the Land Records Office any register or any part of any register or any instrument or plan filed in the Land Records Office; or*
  - (c) *causes any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instrument,*  
*shall be guilty of an offence and shall be liable on conviction for a term of imprisonment not exceeding 3 years or to a fine not exceeding VT 300,000 or to both."*

On perusal of the offending section, the maximum penalty imposed by law for offences under section 109(2) of the Land Leases Act ( Cap 163) on conviction are for a term of imprisonment not exceeding 3 years or to a fine not exceeding VT 300,000 or to both.

It is clear that offences under section 109(2) of the Act (Cap 163) are serious offences as reflected by the maximum penalty imposed by law.

In considering your sentencing, the court assesses the particular circumstances of your offending (i.e. the degree of your culpability at the time of offending and after your offending), your antecedent (character) and personal history. The Court condemns in the strongest terms your behaviour as a senior lands officer (at the Department of Lands) within the Public Civil Service. You need to be reminded that as a senior lands officer, you were appointed in a Public office which is a public trust. People look upon you. You owe your allegiance to them. You have an obligation to serve them competently, honestly





and with dignity.

In the present case, the following aggravating features are present:

1. As a qualified and senior land Officer within the Public Service, you knew that what you did was wrong; and
2. Although you Knew that what you did was wrong , you instead continue with the irregularities which is a defiance to the legal requirements; and
3. It is a breach of Public trust in a Public office.

In mitigation, your counsel told the court that you are a first time offender; you do not have previous convictions; you cooperate well with the police authorities. Your counsel also told the Court of the following:

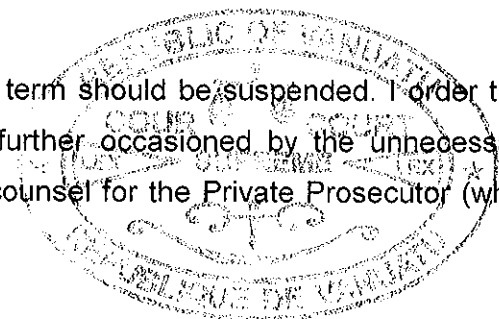
You were born on November 24, 1963. You originate from the village of Bongabonga on the island of Tongoa in the Sherpards Group. You are married with 7 children (3 of your children are adopted by you and your wife). You are the sole bread winner of your family. You commence employment with the government of Vanuatu in 1987. You then obtain scholarship to study at the University of Technology in Papua New Guinea where you obtain a Bachelor degree in Land Management in 1997. You continue with your employment with the Department of Lands up until 2010. You served the government and the people of Vanuatu for 23 years.

I take all that your lawyer told the court in mitigation when I consider your sentencing. I observe that in his submissions, your lawyer asked the Court to consider allegations made against Mr. McGreal as a mitigating factor. These submissions are rejected as they are not relevant for your sentencing consideration.

In balancing between the aggravating and the mitigating factors, and after cross-referencing with and to each other, the aggravating factors outweigh the mitigating ones.

I sentence you to two years and six months imprisonment.

The last question is whether your imprisonment term should be suspended. I order that due to the circumstances and delay which is further occasioned by the unnecessary involvement of Mr. Robert Sugden acting as a counsel for the Private Prosecutor (while



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he should not be), your imprisonment sentence for 2 years and 6 months is suspended for a period of 2 years.

During the suspension period of 2 years, you must not re-offend. If you re-offend before the end of the suspension period, you will be charged and dealt with according to law in addition to your suspended term of imprisonment be re-activated.

Your have 14 days to appeal against this sentence if you are unsatisfied with it.

**DATED at Port-Vila this 9th day of April 2012**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**

