

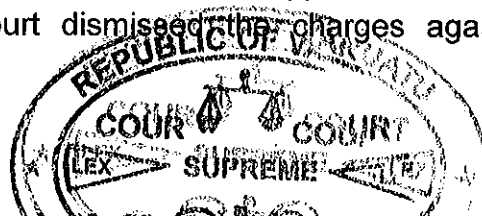
PUBLIC PROSECUTOR - v - DON KEN

Coram: *V. Lunabek CJ*

Counsel: *Mr Simcha Blessing for the Public Prosecutor*
Mr Colin Leo for the Defendant

JUDGMENT ON THE VERDICT

1. This is the judgment of this case. The Accused Don Ken and two (2) others, namely Kenneth Sheddrack and Apia Buktan were charged in the Magistrate's Court as follows:
 - (a) Count 1 – intentional assault, contrary to section 107(b) of the Penal Code Act against Don Ken alone;
 - (b) Count 2 – abusive language, contrary to section 121 of the Penal Code Act against all three accused; and
 - (c) Count 3 – drunk and disorderly, contrary to section 148(b) of the Penal Code Act against all three accused.
2. On 16 January 2012, the Magistrate's Court dismissed the charges against the three accused because of significance delay caused by the prosecution to the extent of amounting to an abuse of the process for the case to remain.
3. The Public Prosecutor appealed the decision of the Magistrate's Court and the appeal was dealt with and allowed by the Supreme Court on 25 May 2012 as there was fault contributing to the delay attributable to the defendants as well as the prosecutors involved.
4. Following the appeals being allowed, the case was retained in the Supreme Court instead of remitting it back to the Magistrate's Court.
5. The three accused were called for pleas on 25 May 2012. On the same date, each of the accused entered not guilty pleas as charged against each of them.
6. An order for separate trials was made to deal with the case of the accused Kenneth Sheddrack in order to accommodate his departure to the Philippines to take up an academic scholarship. The Supreme Court dismissed the charges against the



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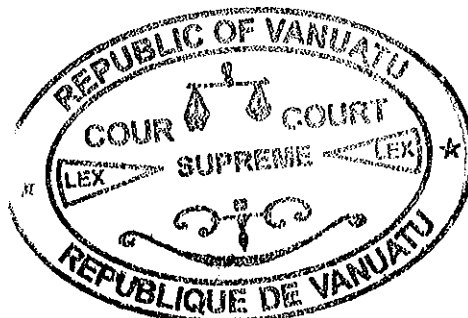
accused Kenneth Shedrack on 13 June 2012 [see reasons in the MINUTE of Spear J of the same date].

7. Accused Don Ken and Apia Buktan were tried together and their trial began on 26 June 2012. Before the commencement of the trial, the prosecution informed the Court that they did not intend to proceed with the charges of drunk and disorderly in count 3 and they were so dismissed and the two accused (Don Ken and Apia Buktan) are discharged of the said offence accordingly.
8. At the end of the prosecution case and upon an application being made of a no case to answer submissions, the Court dismissed the charges laid against the accused Apia Buktan. The charges against the accused Don Ken were maintained in counts 1 and 2.

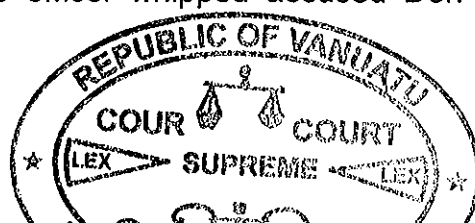
THE CASE FOR PROSECUTION

9. The prosecution case against Mr Don Ken is summarised in this way. Sometimes in the early hours of 30 July 2011, Mr Don Ken and his two colleagues were heavily intoxicated with alcohol liquor. At the Pakaroa Church junction road at Agathis, Port-Vila, Mr Don Ken and his two colleagues uttered abusive words to the police and accused Don Ken assaulted a police officer by the name of Steve Tete.
10. The prosecution said sometimes between 12.00am and 1.00am on 30 July 2011, some youth disturbed the peace at Agathis area. The police was called. A group of police officers attended the scene with two police trucks. The cage truck stopped on the side of the road opposite the Jehova Witness Temple. The other police truck stopped in the middle of the road at the junction of Pakaroa Church.
11. The accused Don Ken drove his official ministerial vehicle G11 and stopped at the Pakaroa junction at the road leading to Agathis behind a police vehicle. When the accused stopped, the occupants of the G11 shouted to the police to remove their truck from the middle of the road.
12. On seeing the police not responding, the occupants of the G11 swore at the police. Police officer Tete saw that the accused's car was a government vehicle, he went and removed the police truck from the middle of the road.
13. The prosecution said accused Don Ken advanced toward police officer Tete and said few words to him and assaulted the police officer.
14. Police officer Tete responded for his self-defence by assaulting Mr Don Ken. Police Officers arrested Mr Don Ken and his two colleagues and brought them at police station for temporary detention.

THE CASE FOR DEFENCE



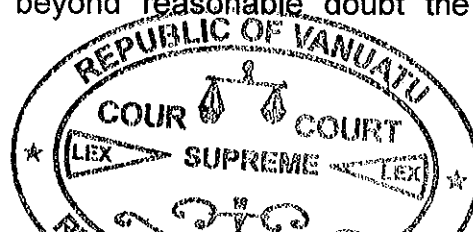
15. The defence case is that on 29 July 2011 at about 8.00pm o'clock, accused Don Ken and the two others (Kenneth Shedrack and Apia Buktan) made some shopping at Au Bon Marché Tebakor.
16. After the Shopping, they went to Man Ples celebration and they then attended a fund-raising activities and they came back to Man Ples celebration.
17. At about 11.00pm to 11.30pm o'clock, they decided to return to the accused Don Ken's house at Agathis area, Port-Vila. Mr Don Ken as a Minister drove his official vehicle G11. His two colleagues were also with him in the vehicle.
18. Accused Don Ken drove his G11 and arrived at Pakaroa road junction and then realised that there were lots of people on the road from Agathis to Vila North. He could not go further because a police vehicle stopped in the middle of the road and there was no room for passing it.
19. Accused Don Ken applied the horn of his vehicle toward the police officers to remove the police truck stopped in the middle of the road so that he could drive to his home which is not far from the junction. He applied the horn three (3) times. He asked police officer Steve Tete if he could remove the police truck so that he could get to his house. Police Officer Steve Tete removed the police truck from the middle of the road and parked it on the side of the road.
20. Accused Don Ken drove his G11 passed the police truck and he heard police Steve Tete swore at him using words to the following effect: "Fuck you Minister..." At that time he lowered the window of his vehicle and heard the abusive words uttered at him.
21. He then stopped his vehicle G11, opened the door of his vehicle and walked towards the police officers and enquired as to who swore at him.
22. At that time police officer Patricia stood with Steve Tete. Officer Patricia told Accused Don Ken words to the effect: "Minister Steve nao i swear long you."
23. Accused Don Ken walked toward Officer Steve and asked why he swore at him as he was just asking officer Steve to remove the police truck which was stopped in the middle of the road. He told Officer Steve: "You no save se mi wan State Minister?"
24. When accused Don Ken talked to officer Steve, one of the two other accused, Kenneth Shedrack came out of the G11 and followed accused Don Ken. Accused Apia Buktan was in the vehicle G11 with the windows of the vehicle opened and he observed.
25. When Mr Don Ken enquired as to why police officer Steve Tete swore at him, it happened so quickly in that police officer Steve Tete assaulted Minister Don Ken. Mr Don Ken felt on the road. Then police officer whipped accused Don Ken with a truncheon.



26. Officer Titus and two other police officers held on the accused Don Ken and put him in the police cage truck which is parked on the side of the road.
27. Inside the cage truck, there was a police suspect that the police arrested him at Anaburu. The suspect was Mr Roger Tasso.
28. The police arrested also Kenneth Shedrack and threw him into the cage vehicle. The police took accused Don Ken and Kenneth Shedrack and Mr Roger Tasso in the cage truck to Vila police station.
29. Mr Apia Buktan was still sitting inside G11 vehicle. Mr Buktan was surprised to see that police officer Steve Tete opened the door of G11 vehicle and saw him in the vehicle G11.
30. Police officer Tete called on police officer Titus and another and they assaulted Mr Buktan inside vehicle G11. They also pulled him out of G11 vehicle and assaulted him before they put him in the other police truck.
31. At the police station, police officers assaulted accused Shedrack and Buktan while accused Don Ken repeatedly told the police officers to stop assaulting the two accused. Accused Kenneth Shedrack lost one of his teeth as a result of the assaults on his body by the police officers at the police station.
32. Police officers also removed the shopping of accused Don Ken from his G11 vehicle and they never returned them back to him. Police officers broke the keys of Mr Don Ken's official ministerial vehicle G11.

CRIMINAL TRIAL REQUIREMENT

33. This is a criminal trial. The law is for the prosecution to prove each essential element of the offences charged against accused Don Ken beyond reasonable doubt. The accused is not required to prove anything. It is not his task to prove his innocence. In law, he is presumed to be innocent until the prosecution prove all essential elements of the offences charged against him. If at the end of the trial, there remains a reasonable doubt, I must dismiss the charges laid against the accused and acquit him of these charges accordingly. Prove beyond reasonable doubt means that if on the evidence at the end of the trial, I am sure of the guilt of the accused Don Ken, I must convict him as charged. If there is a reasonable doubt, I must acquit him of the charges. When the accused elected to give evidence as in this case, I must consider and assess his evidence and the evidence of his witnesses on the same footing as the evidence of the prosecution witnesses.
34. For accused Don Ken to be found guilty of the offences of intentional assault, contrary to section 107(b) and abusive language, contrary to section 121 of the Penal Code Act, the prosecution must prove beyond reasonable doubt the following essential elements:

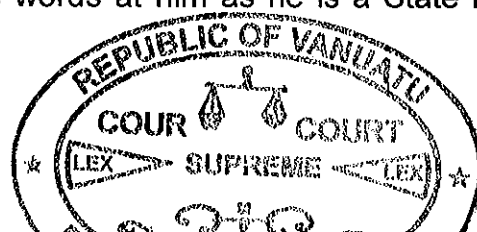


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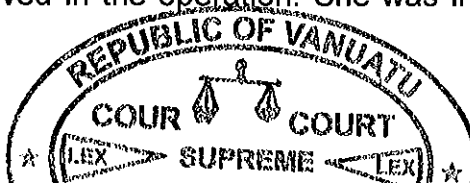
- Intentional Assault-
 1. Accused Don Ken assaulted a person (police officer Steve Tete).
 2. The assault was intended.
 3. The assault is of a temporary nature.
- Abusive language-
 1. Accused Don Ken uttered abusive words to the police.
 2. Abusive words uttered were said in a public place.

THE PROSECUTION EVIDENCE

35. The prosecution called three witnesses.
36. Mr Titus Thompson is the first prosecution witness. He is a police constable. He served as a policeman for 4 years and he is under police general duties and attended crime scenes and participated in the arrest operations.
37. He gave evidence that between 29-30 July 2011, he was on duty from 10.30pm. He was with other police officers under operation at that time. They have an operation at Anaburu Park about 12.00am. They arrested a suspect at Anaburu who was drunk.
38. They received information via police radio that there was a big fight on the road from Pakaroa Church to Vila North School.
39. They arrived at Pakaroa road junction. The road was stranded. There were too many people on the road. They saw there was a fight and they tried to arrest some suspects. They stopped the police truck in the middle at the junction of the road. Time was about 1.00am in the morning on 30 July 2011.
40. He gave evidence of a truck at the road junction. He recognised the vehicle to be the official vehicle of the Minister of State who is responsible for Ni-Vanuatu Business. The official vehicle was G11. G11 could not pass. The driver of G11 applied the vehicle's horn and asked to let him pass. Police officer Steve Tete removed the police truck from the road junction.
41. A young man who moved his head from G11 shouted and uttered abusive words towards the police saying: "Deep skin yufala i muvumaot truck long road." He recognised the young man to be Kenneth Shedrack.
42. He then said Minister Don Ken got out of his vehicle G11 and walked towards Steve Tete. Steve Tete saluted him. Don Ken held Steve Tete by the neck of his shirt and assaulted Steve Tete on the left side of his face. Steve stood and his body went against the body of the police truck. After he assaulted Steve Tete, Don Ken was still arguing and aggressive and he did not understand.
43. He said he was standing 1 meter from Steve Tete. Don Ken argued with the police by asking the police why they uttered abusive words at him as he is a State Minister. Police officers arrested accused Don Ken.



44. Titus said he observed the face of Constable Steve and saw that it was red and Steve cried because he was too angry.
45. Titus Thompson was cross-examined. He was challenged and he said there were lots of abusive words uttered toward the police truck. There were lots of people swearing it was not too dark as they had the police head lights on. He heard and saw Kenneth Shedrack swore at the police.
46. He was asked, and he denied that Minister Don Ken stopped his vehicle because police officer Steve Tete swore at him. He confirmed that Don Ken moved forward his vehicle after Steve removed the police truck from the middle of the road and then stopped it next to the other police truck.
47. He heard Minister Don Ken arguing that one of the police officers uttered abusive words at him and Don Ken asked who swore at him. He was asked and he denied that police officer Steve Tete assaulted Minister Don Ken and he felt on road. He said he did not see police officer Steve assaulted Minister Don Ken. He said he saw Don Ken assaulted Steve Tete first.
48. He further said at that time Steve Tete arrested Don Ken because he uttered abusive words at him but he then corrected his answers by saying because the Minister assaulted Steve.
49. It was put to him that when Don Ken enquired as to who swore at him, Constable Patricia Pakoa told the Minister that police officer Steve swore at him, this witness said he could not answer this question.
50. It was put to him that Minister Don Ken did not assault Steve Tete but he was arguing with Steve Tete as to why he swore at him and Steve Tete assaulted the Minister. He replied that the Minister assaulted Steve Tete.
51. Patricia Pakoa is the second prosecution witness. She is a police Constable. She served in the Police Force for about 4 years in the general duties front line at Port-Vila police station. She attended Crime scenes and participated in the arrest operations. She was on duty on 29 July 2011 from 11.00pm to 700am in the morning of 30 July 2011.
52. She gave evidence to the following effect. She confirmed the police attended the crime scene at Anaburu and arrested a suspect who tried to cut his wife's neck with a bush knife. She said they received a call and instructions to intervene at Agathis because there was a big fight on the road there.
53. She was part of the intervening police officers. They arrived at Agathis at about 1.00am o'clock on 30 July 2011. There were too many people on the road. Police did not know what happened. They asked questions of what exactly happened. At that time, there were two police trucks involved in the operation. She was in the second



police truck. The police cage truck was in front parked near some Epi family house there. Then the second police truck stopped in the middle of the junction road at Pakaroa Church.

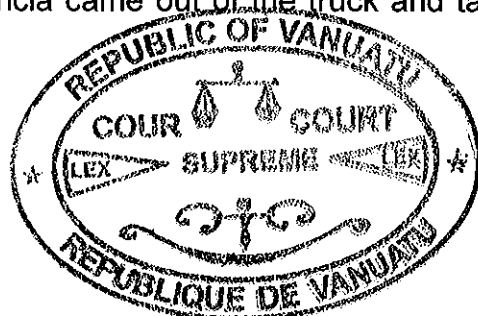
54. The Minister's car came and stopped behind the second police vehicle stopped in the middle of the junction road into Agathis road.
55. They then recognised that it was a government vehicle which stopped behind the police truck. She gave evidence that when the government truck stopped, a young man shouted and he was shouting at her and said "fuck you". But she said she did not see the Minister. Police removed the truck and allowed them to go. But the accused said that police officers swore at them.
56. She explained that the Minister's truck tried to go through and the police truck also tried to go ahead and then police Constable Steve Tete swore by saying words to the effect: "Fuck be yufala I save stop fastaem. Mifala stap wok ia."
57. After this, the Minister opened the door of his truck and acted towards them in aggressive manner enquiring as to who swore at him and why police officers uttered abusive words at him.
58. She said the Minister walked towards police truck and she realised it was Minister Don Ken. She stood with Constable Steve Tete and PC Steve saluted the Minister. The Minister argued with them as to why police officers swore at him and said words to the effect: "fuck yufala ino save se mi wan Minister of State."
59. The Minister came toward Steve and then back up again and went toward Steve again. She said this time the Minister grabbed PC Steve Tete by his shirt on his neck and punched PC Steve on his mouth. PC Steve felt pain and he wept and his lips were swollen. She was standing with PC Steve about 50 centimetres from him.
60. She said PC Steve punched back the Minister as a reasonable cause of self-defence. Police officers then arrested the Minister after the incident and brought the Minister and the other suspects to the police station.
61. She was cross-examined. She confirmed her evidence in chief. The suspect arrested from Anaburu was too drunk and remained in the cage truck.
62. At the police station she saw blood coming from the mouth of Kenneth Shedrack she took a T-shirt and she wiped the blood from Kenneth Shedrack's mouth. She said she did not know what happened to him. She said Kenneth was one of her school mates.
63. She was asked and she replied that PC Steve did not utter abusive words directly at the Minister. She said Steve said words to this effect: "fuck yufala ino save stop fastaem." Police saw the ministerial car while they were in mid of an operation. She also said when asked that Kenneth Shedrack said "fuck yufala ol police" and she



7 *[Handwritten signature]*

added further that Minister Don Ken said "fuck, yufala ino save se mi wan Minister blong State".

64. However, she finally clarified that when the accused Minister said "fuck...", he did not direct specifically to someone. She confirmed her evidence that the Minister grabbed the shirt of PC Steve on his neck and assaulted him on his mouth.
65. She confirmed she was with PC Steve she saw that the Minister assaulted PC Steve on his mouth, PC Steve assaulted the Minister on his face. The Minister fell on the road and got up again. He was so aggressive and ready for fight. She said they were frightened of him.
66. She saw the Minister refused to go into the cage truck and so 4 police officers held him into the cage. She described that she saw the Minister's behaviour like he was drunk and he did not know what he was doing. She admitted it was not proper for the police to say "fuck..." to the Minister of State but it was not intended at him.
67. Steve Tete was the third prosecution witness. He is a police Constable and served the Police Force for 3 years. He works at the general duties. On 29 July 2011 he resumed duties at 11.00pm o'clock. He gave evidence that they were doing the picks ups and drops up and they also needed to attend to report of the crime scenes.
68. He gave evidence of an operation taking place at Anaburu Park. They received information about drunken people disturbing peace near the Pakaroa Church area, Agathis.
69. After they arrested a suspect at Anaburu, they came straight at Agathis area. He drove police truck No. POL 610. The other police truck is the cage and it is registered POL 901 and it was driven by another police officer.
70. They arrived at Agathis about 1.00am o'clock on 30 July 2011. When the police arrived, people saw the police trucks and they run away. They put on the spot light for safety reason. The cage truck was in front. He stopped his police truck down on the road at Pakaroa junction. His truck was about 10-15-20 metres from the cage.
71. Police officers in the truck (cage) followed suspects running towards Vila North School. Police Officers in his truck run after the suspects who ran towards Au Bon Marché Man Ples.
72. He said when all police officers went after the suspects, he was in the truck with Patricia and Titus and the driver of the cage truck was in his truck.
73. He said the situation was starting to calm down a little. He did not realise that his truck stopped in the middle of the road. Patricia came out of the truck and talked to people and he came out of the truck too.



74. Another truck came behind his truck and applied his horn. There were lots of noises and he did not hear the horn signals of the truck. Patricia told him if he could move the police truck on the side of the road because a truck was behind the police truck.
75. He heard abusive words uttered at them to the effect: "Fuck long yufala police, yufala i come out long road." Then he recognised that the truck was a ministerial official truck. Then he said he recognised Kenneth Shedrack in the ministerial truck. Kenneth was one of his school mates.
76. He said when the ministerial truck passed his truck, he swore by saying words to the effect: "fuck, yufala i traem blong gat respect. Mifala igat one operation."
77. He saw the Minister stopped his truck, opened the door of his truck and came out of his truck. He saluted him to apologise to him.
78. The Minister asked him who swore at him. He told the Minister that he swore but the words were not directed to him. He said he used abusive language because of what happened.
79. The Minister told him: "fuck, yufala save se mi wan State Minister. Yufala i wantem fight." He said he was trying to explain to the Minister. The Minister approached him and grabbed his shirt on his neck and the Minister repeated again: "You save se mi wan State Minister".
80. He said at that moment, the situation was tense. Things happened so quickly and were in disorder in his mind. The Minister grabbed him by the shirt on the neck and punched him on his mouth. He protected himself with his two hands.
81. He said he punched the Minister and he fell on the road. Four or five police officers came and arrested the Minister and held him in the police cage truck. They brought the Minister and the others at the police station and detained them.
82. Constable Steve Tete was cross-examined. He confirmed his evidence that in the early hours of 30 July 2011, they proceeded to arrest operations at Anaburu and then Agathis area. At Agathis, when the police arrived, there were plenty people on the road and when they saw that the police trucks put on their spot lights, they ran away and the police officers ran after them. He was near the police trucks with Patricia and Titus and the driver of the police cage truck was in the cage truck.
83. He confirmed also that when the Minister's car arrived, he was not in the police truck. He was outside talking to the people trying to find out who are the complainants there. He confirmed also that he stopped his police truck at the middle of the road and no cars or trucks could pass. He then moved the police truck and put it on the side of the road after Kenneth swore at the police. He said Kenneth swore at him by saying "fuck you police, remove the truck".

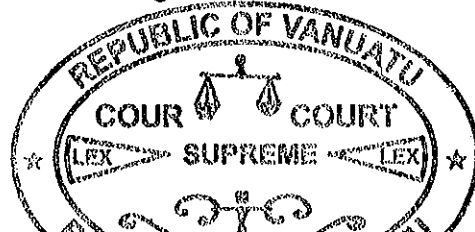


84. This witness admitted that he also uttered abusive languages after the Minister asked the police to remove the police truck from the main road. He admitted then that it was true the police truck was stopped at the middle of the junction of the road and he also said that it was true that no truck could move ahead or passed.
85. He was asked and he said when the Minister stopped his truck G11, the Minister approached him. They talked and he thought that the Minister will help the situation but he said he realised that the Minister would not help it. He repeatedly said he saluted the Minister for the Minister to understand that he (Steve Tete) was in a very difficult situation.
86. He was confronted as to whether or not when the Minister came toward him whether he asked him of the reason why Kenneth swore at the police. He replied in the negative. He explained then that the Minister came towards him. He said he thought the Minister was going to assault him because he swore at him. He then said he must control the situation as they practiced it in the training exercise by apprehending the accused before the situation got out of hand.
87. Less than 10 minutes, the Minister asked who swore at him. The witness said he attempted to tell the Minister that he was the one who said abusive words but they are not directed to him but he said he could not say so because Minister Don Ken grabbed his shirt by his neck and punched him on his mouth and he said he used his two hands to protect his face and after the punch of the Minister on him, his body laid against the truck as he was standing near the police truck.
88. He said he used self defence and assaulted the Minister. The Minister fell on the road and he and other police officers arrested him. He said his lips were swollen and broken.
89. He got medical treatment about 6.00am o'clock of 30 July 2011 not from a doctor but from a nurse from Pentecost Island.
90. Mr Ioan Bororoa was the final prosecution witness. He gave evidence that he is a senior nurse at Vila Central Hospital since 1980 until the present. He was on duty on 30 July 2011.
91. He recalled he had received one specific patient who was a police officer by the name of Steve Tete. He observed that on arrival, the police officer had injuries on his lips. He gave him treatment as they were minor injuries.
92. He confirmed in his cross-examination that he received the police officer around 5-6 o'clock in the early morning of 30 July 2011. He was shown a report and he said the report is not his but he said what was said in the report was true. He was asked as to who made the report, he said he believed that it was made by a police officer. He accepted that what is put to him is not a medical report. That is the end of the prosecution evidence.

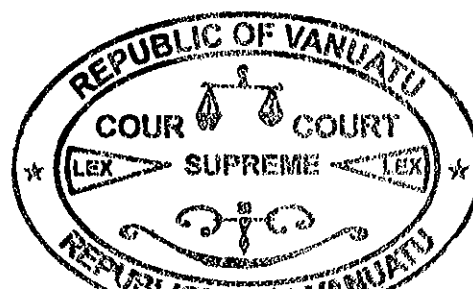


THE DEFENCE EVIDENCE

93. Accused Don Ken was required to put in his defence. The accused's rights under s.88 of the Criminal Procedure Code [CAP.136] were explained to him. He elects to give evidence himself and also calls witnesses. The defence calls five witnesses including accused Don Ken.
94. Accused Don Ken gave evidence that he is a Government Minister responsible for Ni-Vanuatu Business. He is 43 years of age. He testified about what happened to him and his two colleagues – Kenneth Shedrack and Apia Buktan in the early hours of 30 July 2011.
95. He said on 29 July 2011 after they did some shopping, they went to the Man Ples Celebrations and they stayed there until about 11.00pm o'clock and they decided to go home. He drove his official ministerial vehicle G11. He drove on the road and stopped at the road junction at Pakaroa Church. He described that there is a cross-road – one road leads to Tebakor, the other to Agathis. He said his house is about 20 metres from the junction. At the junction, he stopped his G11 behind a police truck which was stopped in the middle of the road junction. He saw two police vehicles there.
96. He saw police officers ran after people with torch lights. He watched them and then he applied the horns of his vehicle and asked police officers who were near the police truck if they could remove the police truck to allow him to go to his house. He was talking to Steve Tete when he asked if the police truck could be removed from the middle of the road. The distance was about 3 meters. Constable Steve Tete removed the police truck and parked it on the side of the road.
97. Then he said he drove his G11 and passed the police truck and then stopped because he heard that a police officer uttered abusive words at him. He then enquired as to who abused him with words. He said Constable Patricia Pakoa told him that Steve Tete uttered abusive words at him. He went towards Steve Tete and asked him. At that time Patricia was standing next to Steve Tete. Titus climbed the nalalas fence and had a piece of wood in his hands.
98. While he walked toward Steve Tete, Steve Tete assaulted him. He fell on the road. Another police officer whipped him with a stick. This was close to his G11. He explained he asked Steve Tete why he swore at him. He said he told Steve Tete that he is a State Minister. He said people heard that Constable Steve Tete swore at him. He said Steve Tete tried to deny it but then when Patricia confirmed that Steve Tete swore at him, then Steve Tete assaulted him. He fell on the road. Another police officer who had big body kicked his leg from behind to destabilise him. He said he wanted to get up in order to ask police officers why they assaulted him. He was covered with blood. The police officer who kicked his legs by the back told him that he is a "fuck Minister". He was then put into the cage truck. He then saw Steve Tete walking toward his official vehicle G11.



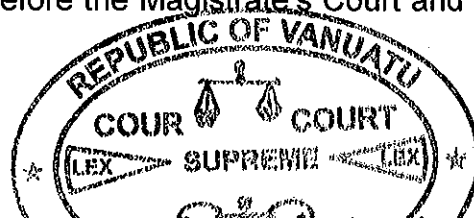
99. In the cage truck, there was also a man who was arrested by the police officers earlier. Police officers took Kenneth Shedrack into the cage truck. They were taken to police station into a room which is not cell No.6. Police officers then took Apia Buktan in the same room. He was sitting there with Kenneth and Apia. A member of Vanuatu Mobile Force (VMF) was there with them.
100. Then he saw Constables Steve Tete and Titus assaulted Apia Buktan and Kenneth Shedrack. He tried to talk to these police officers and asked them to stop assaulting Apia Buktan and Kenneth Shedrack. Then Steve Tete went outside and came back in and assaulted Kenneth again. The member of the VMF who sat there in the room with them assaulted Kenneth Shedrack again.
101. Don Ken tried to defend Kenneth and Apia by asking those police officers to stop assaulting the two. But he said Steve Tete swore at him by saying: "fuck you Minister". Then he said Constable Patricia Pakoa came inside the room and took Kenneth Shedrack away from him. He said Patricia told these police officers to stop assaulting Kenneth and Apia otherwise she will file a complaint against all of them. Patricia then took a shirt and cleaned the body of Kenneth which was covered with blood.
102. Two police officers one of whom is named Malsongi told him to remove the keys of his G11. When he went to remove the key of his G11, he discovered that the keys of his G11 were broken. He said he told the police officers of this fact. He said he told police officers also that his shoppings are behind his G11. He said he asked police officers as to who drove his G11. He was informed Constable Steve Tete drove his vehicle G11.
103. At the police station, his daughter visited them. He said he told the police officers to give all his shoppings to his daughter. He said police officers refused to do so. He went back inside the room. Kenneth and Apia were lying there covered with blood over their bodies. They needed medical treatment.
104. Kenneth and Apia were taken into cell No.6. He was in another room. From where he was he could hear Apia and Kenneth crying loudly. He was taken to cell No.6 about 3.30am. Later on, Kenneth and Apia were moved into the room he was kept in. Shedrack told him that he lost one of his teeth.
105. They were released on 30 July 2011 at about 10 – 11.00 am o'clock. Police officers took their pictures. He said he asked police officers about medical certificate. Police officer told them to come after. He went to his G11 and found out that all his shoppings were no longer in his vehicle. He enquired about them and he was told that police officers will bring his shopping later on. Police officers never returned his shoppings.



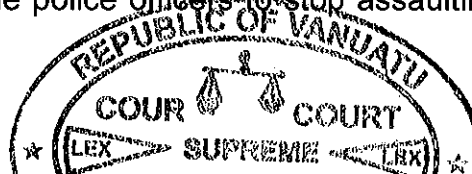
106. They went to Vila Central Hospital for medical examination because they sustained injuries on their bodies. After medical examination, he went back to the police station, made up keys for the vehicle G11 and drove his G11 back home.
107. Don Ken was cross-examined. He was asked and he denied that on 29-30 July 2011, he was under the influence of alcohol. He said he did not consume any alcohol liquor at that time.
108. He confirmed the position of the two police trucks and his G11 behind a police truck at the junction road. He said Man Ples celebrations activities stopped at 11.00pm. They arrived at the road junction at 11.30pm – 12.00am o'clock. He confirmed after he stopped his G11 then, he applied the horns of his G11 for the police truck in the middle of the road junction to be moved so that he could drive to his home. He was asked and he clarified that he went out of his G11 after that Steve Tete swore at him. He was asked and he denied that Tete had ever saluted him. He said to his knowledge, that is the protocol but at that time, Steve Tete did not salute him because if Tete saluted him, he would salute him already when he spoke to him in the first place to move the police truck to allow him to drive pass the police truck.
109. He was asked he denied he said words to the effect:
"Fuck you no save se mi wan State Minister." He also denied that he grabbed the shirt of Steve Tete by the neck. He also denied that he ever punched Tete. But he said he knew that Steve Tete assaulted him and other police officers kicked him. He was asked and he confirmed that as a State Minister, police officers should respect him.
110. He was asked he said he asked the police officers to move the police truck to allow him to go home. He was not angry at that time. He denied he disturbed police officers on duty and he denied he was aggressive at that time. He further denied he was consuming alcohol liquor that night. He clarified that all of his shoppings were in his G11.
111. It was put to him and he denied he was so aggressive and assaulted Steve Tete because police officers did not give consideration to allow him to go. He denied he was drunk. He said he knew all what happened at that time. He denied he assaulted Steve Tete. He gave detailed evidence that it was not too dark. Police officers had torch lights. The place where he was kicked by police officers was dark.
112. He confirmed Constable Steve Tete stood near the police truck when he talked to him and asked if he could remove police truck. He confirmed Patricia was with Steve Tete and he saw Titus climbed a fence wire with "nalalas" plants around the place.
113. He was asked he confirmed that at that time he was assaulted by the police officers, he had received two kicks with police shoes on his face. His nose was bleeding. One of his teeth was unstable.



114. He was asked and he confirmed that Steve Tete did not salute him in the first place when he applied the horns of his truck and asked him (Tete) to move the police truck from the middle of the road. He said it was after he drove his G11 and passed the police truck moved to the side of the road that Steve Tete swore at him in the following terms: "Fuck you Minister". He also said that Steve responded to his enquiries as to who uttered abusive words at him by saying: "you who ia". It was at that time that he came out of his truck G11.
115. Alex Steven was the next defence witness. He is from Ambrym Island. He resides at Agathis area, Port-Vila. He is a kava producer and other local root crops produces.
116. On 29 July 2011-30 July 2011 at about 11.00pm-12.00am he was walking on the road toward Jehovah Witness Temple. He said there was an incident occurring. A dispute arose on the opposite side of the road. He saw police officers were involved in that incident. Then he said they got up with another incident which then happened.
117. He described at that time, there were lots of people witnessing what occurred. He saw the police truck parked. He saw vehicle G11 of Minister Don Ken. He heard the bip noise of the horn of the Minister's vehicle 2 or 3 times. He saw the Minister called on Steve Tete to move the police truck out of the middle of the road to allow him to drive his G11 to his house. He was about 6-7 meters from the incident. 2-3 meters from family Dickinson on the side of the road there.
118. He saw Constable Steve Tete went to the police truck and removed it from the middle of the road. Don Ken drove his ministerial vehicle G11 passed the police truck. Then he heard Steve Tete swore at the Minister saying: "Fuck you Minister". He said it was loud and clear. He was on the same position. He said because the abusive words were said loudly, they got the attention of the Minister to stop. The Minister queried as to who swore at him and why.
119. He said he saw Steve Tete assaulted Minister Don Ken and he fell on the road. Two police officers intervened. A police officer who has a big body hooked the Minister and put him inside the police cage truck. He saw the other police truck remained at the scene while the police cage truck moved away.
120. He saw Steve Tete went inside vehicle G11. He noticed that there was somebody at the backseat of the vehicle G11. He saw Officer Steve Tete opened the door of G11 and another officer came with him (Tete) and together, they assaulted the young man who was in the vehicle G11 and they took him to the other police truck which was still there. He saw Steve Tete started the engine of G11 and drove it off and he left. Time was about 1.00am or 1.10am o'clock in the morning.
121. This witness was cross-examined. He knew Don Ken. He was asked and he said he knew Don Ken as friend. But he denied he will always assist him. He was asked by the accused to testify. He was present before the Magistrate's Court and he came to testify by giving evidence.

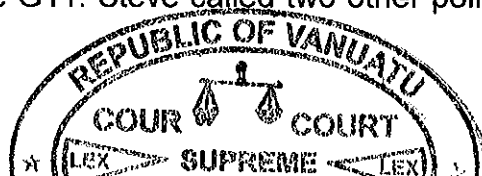


122. It is put to him and he denied that he will tell the Court of what he was told to say. It was put to him and he denied that he lied to the Court. He confirmed his evidence that Steve Tete swore at the Minister. He was asked whether he saw Constable Patricia talking to the accused Don Ken. He replied that from the place he was, he saw three police officers. He did not see Patricia. He was focussing on moving things but not on comfortable walking police officers.
123. He said from the place he was he saw that Steve Tete assaulted the Minister. He was asked and he admitted drinking kava but at the early part of the evening as he owns a nakamal. He was asked whether that would be the reason he did not see Patricia. He replied that it could be but that was not the focus of his attention.
124. Mr Roger Tasso was the next defence witness. He is from Ambrym Island. He lived in Port-Vila at Anaburu. He is 47 years of age and he is an electrician by profession. He testified that on 29 July 2011 he had an argument with his wife at home. Police authorities were called to intervene. They arrested him and put him in the police cage truck. Police truck went to Pakaroa junction at Agathis.
125. A Pakaroa junction, he saw that the police officers chased people who ran into the yards. He was in the cage truck which was stopped there at the side of the road. There was a big crowd.
126. He said the police truck was stopped in the middle of the road. There was no room for a truck to pass. When the Minister arrived he could not move ahead. He applied the horns of his vehicle three times and also talked to police officers there asking them to move the police truck so that there was a space for him to go with his vehicle G11. The cage truck was not far away from the other police truck. The distance was estimated to be 3 meters. He said the Minister talked to police officer Steve Tete to move the police truck.
127. He said Steve Tete moved the police truck and the Minister drove his G11 passed the police truck. Then Steve Tete used abusive words at the Minister to this effect: "fuck you minister".
128. Then the Minister stopped his vehicle. He had an argument with Steve Tete. The Minister told Tete whether or not he knew that he is a Minister of State. Then he said Steve Tete assaulted the Minister. He said he saw that. He saw Steve Tete assaulted the Minister and he fell on the road. He saw a police officer hold the Minister by his back and hooked him while two other police officers assaulted him and threw him into the cage truck where he was observing. He described the movement of the police officers as if they were drunk. He saw that the police officers took another young man into the cage truck. They were driven to police station.
129. At the police station, he was with two young men. He saw that the police officers assaulted the two young men very badly. He said he felt sorry for them. He said Patricia came inside the room and told the police officers to stop assaulting the two



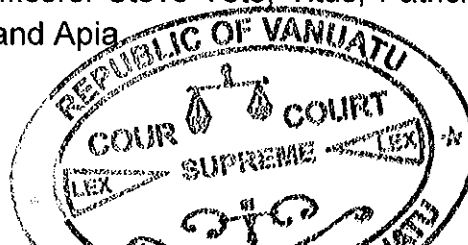
young men. The two young men were covered with blood on their bodies. He also saw a VMF officer kicking the two young men with his safety boots.

130. He said he saw the same police officers who assaulted the two. He was in the cell No.6 with the two young men. He lay down on 1 tooth and it was Kenneth's tooth which was lost as a result of the assaults he sustained on his body. He was released in the morning.
131. He was cross-examined. He denied he was very drunk. He was asked and he confirmed that he was an ex-prisoner but that was back in 2005. He confirmed he was inside the cage. He confirmed the other police truck stopped in the middle of the road and blocked the way. He was taken about 11.00pm-12.00am.
132. He confirmed the Minister's vehicle passed toward the cage truck. He was asked and he denied that the police held him and put him in the cage. He said that it was a lie because he walked by himself into the cage truck. He denied again of being drunk. He confirmed he was with the two young men in the same room at the police station.
133. He was challenged and he confirmed that he saw Steve Tete assaulted the Minister. He denied that he was told of this by Kenneth and Apia. He was asked and he denied he gave evidence because he felt bad when the police arrested him. He clarified that he came to Court because of what he saw happened. He said the cage truck had door wire around it so he could see what happened.
134. Arthur Valva Brenden was the second last defence witness. He is from Merelava Island in the Banks group. He works as a messenger. He is 24 years of age.
135. On 29 July 2011, he was at the Man Ples at a fund-raising and there he watched the first incident. He said there was a fight. Police came and tried to control the situation. He saw the police officers chased people who ran away when they arrived at the scene. Then the Minister arrived with his vehicle G11 at the junction road and stopped behind the police truck. He said the Minister applied the horns of his vehicle and asked police officer Steve Tete to move the police truck to the side of the road.
136. He was in front of the police truck about 2 meters. Then Steve Tete moved the police truck. The Minister drove pass the police truck. Steve swore at the Minister saying: "Fuck you Minister". It was loud and clear. Everyone in the public heard the abusive words. Then the Minister stopped his vehicle and asked Steve why he swore at him, Steve Tete threw his hands at the Minister and he assaulted the Minister.
137. He said two other police officers helped Steve to assault the Minister. Another police officer whipped the Minister with a truncheon. Another hooked the Minister behind by his neck and they put him inside the police cage truck. They then got Kenneth Shedrack, assaulted him and put him in the cage.
138. Then he saw Steve Tete went in the ministerial vehicle G11 started the engine while one person who was sitting in the vehicle G11. Steve called two other police officers



Titus and another came and pulled the person out of G11. They tracked him into the other police truck not the cage truck as at that time the cage truck had gone. The second police truck moved on and the G11 followed them to the police station taking Vila North School direction.

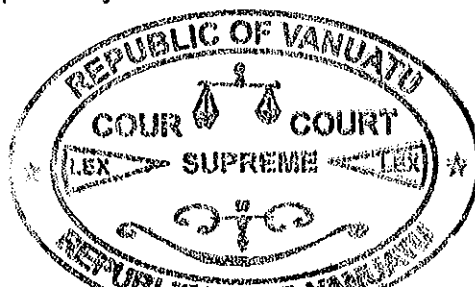
139. This witness was cross-examined and he confirmed his evidence in chief and his evidence was not disturbed.
140. Apia Buktan was the last defence witness. He is from Malekula Island. He resides at Agathis area, Port-Vila. In 2011, he was employed at the Ministry of Ni-Vanuatu Business. He ceased to work with the Ministry in 2012. He is 27 years of age.
141. On 29 July 2011, after working hours, the Minister asked him to do some shopping at Au Bon Marché. They went after that to a fund-raising and they returned at about 11.30pm. The Minister drove his vehicle G11 and they followed the road toward Pakaroa Church. The police truck stopped in the junction road. Minister Don Ken applied the horns of his G11 and asked Steve to let his G11 to pass. Steve Tete moved the police truck. The Minister drove his vehicle passed the police truck. Steve Tete said abusive words to this effect: "Fuck you minister". Then the Minister stopped his truck and asked police Steve why he swore, Steve Tete walked toward the Minister's vehicle. Then the Minister opened the door of his vehicle and came outside. Police officer Steve Tete assaulted the Minister. The Minister fell on the road. Two other police officers came and assaulted the Minister.
142. He repeated when the Minister came out of his truck, he said the Minister asked Steve Tete why he abused him with words. The Minister asked Steve whether he knew that he is a minister of State. He said he was sitting in the back seat of the vehicle G11. Then police officers held the Minister and put him inside the cage truck. They held Kenneth Shedrack and put him in the cage also.
143. At that time, he was still in the vehicle G11. Steve started the engine of G11 and saw him in the vehicle. He called two police officers. They assaulted him and put him in the other police truck. He repeated he saw Constable Steve and the two officers pulled him out of G11, assaulted him and put him inside the other police truck.
144. He explained before the incident, he did not consume any alcohol liquor. He had only eaten food. He said when the police took him to the police station in the other police truck, the two officers in the truck assaulted him until they arrived at the police station and they also assaulted him in the police station. In the police truck, he tried to ask them to stop assaulting him. It was not successful. They punched him. He protected his face until they arrived at the police station.
145. He was taken inside the police station with Kenneth Shedrack and they were assaulted by police officers. At the police station, he said the police officers asked them for fight. He saw the following police officers: Steve Tete, Titus, Patricia, who wiped blood on the face of Kenneth, Caulton and Apia



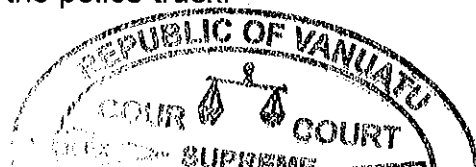
146. He clarified that police officer Patricia who wiped the blood running from Kenneth's face told the other police officers that they must stop assaulting him (Buktan) and Kenneth otherwise she will file a statement against them. He and Kenneth laid down there. They were covered with blood all over their bodies. Then police officer Malsongi took them into cell No.6. At that time, there was another person in cell No.6 with them. That person laid down on 1 tooth. He said Kenneth Shedrack cried and complained that he had lost one of his teeth while they were at cell No.6, another police officer came and assaulted them again. He did not recognise him because his face was swollen and he felt very painful at that time. They were in cell No.6 until 10.00am-11.00am o'clock on 30 July 2011. Then the police officers took their photos and took them in the hospital for medical examination and they returned home.
147. Apia Buktan was cross-examined. He confirmed he was inside the vehicle G11 at the time of the incident on 29-30 July 2011. He accepted that there were some bottle of wines in the vehicle G11 but he denied they are other alcohol liquors in the vehicle. He was asked he said he did not consume any alcohol liquor and he was not aggressive.
148. He was asked and he confirmed his evidence that the Minister did not assault Steve Tete. He said police officer did not tell the truth in their evidence in Court. He said he saw the Minister talking to Steve at the road junction and he saw police Steve there. Steve recognised the official ministerial vehicle and he removed the police vehicle from the middle of the junction of the road. He was asked he denied that Steve Tete saluted the Minister. He denied that the Minister said words to this effect: "fuck yufala ino save se mi wan State Minister."
149. He denied the Minister held shirt by the neck and denied again that the Minister punched Steve on his face. He confirmed his evidence that when the Minister drove his G11 passed the police truck, then, Steve said abusive words. He said he saw Patricia was talking to the Minister and told the Minister that Steve uttered abusive words.
150. He was asked and he said there were three persons inside the police cage. He was not happy because police officers arrested them and assaulted them. He said he is a political appointee. He confirmed he finished work as a messenger before the incident. He denied that because he worked with the Minister he is loyal to him. He specified that he gave evidence of what he saw at that time of incident.

DISCUSSION ON EVIDENCE

151. I have had ample opportunity to observe and listen to the evidence given by each and all witnesses in the witness box. I have also observed their demeanour in the witness box. The following are accepted by the Court as the relevant common ground facts.



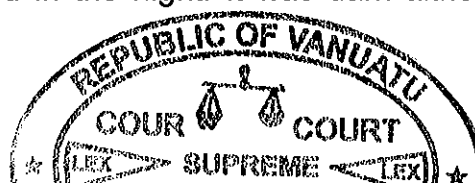
- Between 29 July and 30 July 2011, some members of the Vanuatu Police Force in Port-Vila proceeded with arrest operations in the areas surrounding Port-Vila.
- Police officers intervened first at Anaburu area. They arrested a suspect and took him as a result of a dispute with his wife. The suspect is Roger Tasso.
- Two police vehicles were involved in these operations. The first police vehicle is the police cage truck registered No.POL901. The second police truck is registered No.610 and is driven by Constable Steve Tete.
- These police operations occurred in the nights between 29-30 July 2011.
- After the police officers' intervention at Anaburu Park, they were called to attend an incident occurring at Agathis area. They then went straight away to Agathis.
- At Agathis, there was a cross-road or a junction at Pakaroa Church. One road leads to Vila North School. Another leads to Anaburu and Man Ples.
- On arrival at Agathis, there were lots of people on the road. A fight broke out as a result of theft of bags of kava by some individuals or groups of people in a local nakamal.
- The police cage truck stopped some 10-15 meters from the road junction. On the opposite side of the cage truck is the Jehovah Witness Temple.
- The police truck No.610 was stopped in the middle of the road right at the junction at the Pakaroa Church. There was no room or space for a vehicle to drive pass.
- The police vehicles put on their spotlights. People ran away when they saw the police trucks. Police officers chased and ran after them. Police officers ran after some of these people towards Vila North School, others towards Manples. Other police officers were near the police trucks and talked to people there to find out more and collect information related to the incident.
- Police officers did not have any suspect for the incident nor arrested any person for this incident. Some police officers proceeded back towards the police trucks.
- In the meantime, accused Don Ken drove his official ministerial vehicle G11 and stopped it behind the police truck PL610 which was stopped at the junction. There was no room or space for the accused to drive pass the police truck. The accused's residence is at Agathis area. His residence is not far from the junction road. Kenneth Shedrack and Apia Buktan were with accused Don Ken in his G11.
- When accused Don Ken stopped behind the police truck at the road junction, there was no driver of the police truck in the vehicle. Constable Steve Tete who drove that truck was not inside the truck. He was outside.
- Accused Don Ken applied the horns of his vehicle G11 and asked for the police truck to be moved so that he could drive home.
- Police officers who were near the police truck recognised that the truck behind the police truck was a government ministerial vehicle. Constable Steve Tete was one of those police officers near the police truck. Constable Patricia Pakoa was another.
- Constable Steve went into the police truck and moved the police truck to the side of the road.
- Then the accused drove his G11 passed the police truck.



- Constable Steve Tete uttered abusive words to the following effect: "Fuck be yufala ino save stop fastaem. Mifala istap long wan operation." As Steve Tete admitted in his evidence to that effect.
- The accused Don Ken heard that Constable Steve Tete said those abusive words as the windows of his vehicle were lowered. He believed that these abusive words were uttered at him. He then stopped his vehicle G11 and enquired as to who said those abusive words at him and why.
- Constable Patricia Pakoa admitted to accused Don Ken that Constable Steve said those abusive words.
- Don Ken asked Steve Tete as to why he uttered these abusive words at him.
- It is disputed whether these words were directed at the accused. However, it is accepted that Constable Steve Tete said abusive words after the accused applied the horns of his G11 and asked the police to move the police truck from the middle of the road to allow him to drive his G11 home. Then just as he drove passed the police truck, Constable Steve Tete said these abusive words. It is reasonable to infer that those words were uttered at the accused out of frustration by Constable Steve Tete. The accused inquired as he believed they were uttered at him.
- Arguments occurred and there was evidence of assault.
- Don Ken while still in his vehicle G11 enquired as to who insulted him when he was told that Constable Steve Tete swore at him, he asked Steve Tete why he insulted him, Don Ken Questioned Steve Tete if he knew that he is a Minister of State.
- At that time Steve Tete walked towards the Minister's vehicle G11 and asked the Minister "you who ia?" Don Ken opened the door of his G11 and came outside.
- On Steve Tete's evidence, he has to control the situation as he was practicing it in the training. Things happened so quickly in his mind. His mind was confused. Steve Tete thought Don Ken was going to assault him because he swore at him. This is a rational inference to find that that is the reason why Tete must act quickly to control the situation. Steve Tete did so by assaulting the accused on his face. The accused fell on the road and then other police officers assaulted him and tracked him into the police cage truck as the accused was then aggressive as a result of the insult and the assault on him.

152. That is the version of the fact that was found and accepted on that aspect of evidence as it is consistent with the basis on which the charges were laid against the accused that he and his two colleagues were obstructing the police in the execution of their duty.

153. The evidence of the prosecution witness also are inconsistent. Witness Titus denied that Steve Tete assaulted Don Ken. While Patricia and Steve Tete himself confirmed that Steve Tete assaulted Don Ken and he fell on the road. Titus gave also evidence that Don Ken assaulted Steve Tete on the side of his head (he showed the side of his head) while in the witness box. Further Titus said he saw the face of Steve was read. The evidence is that the incident occurred in the night. It was dark although there



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were lights from police spotlights. It is difficult to understand and accept the evidence of "red face" seen on the "light dark skin" of Steve Tete in the circumstances described. Titus' evidence is rejected as not believable.

154. Other parts of the prosecution evidence indicated that Kenneth Shedrack and Apia Buktan came out of G11 and were aggressive. There is evidence which is accepted that Kenneth Shedrack came out of the vehicle G11. But there was no evidence that Apia Buktan came out of the vehicle G11. The evidence which is accepted is to the contrary. During the arguments and alleged assault, Apia Buktan was inside vehicle G11. He was seen inside G11 after the police cage truck took Don Ken, Kenneth Shedrack and Roger Tasso to the police station and he was assaulted by the police officers.
155. Also the prosecution attempted to provide a medical report. However, the prosecution witness Bororoa gave evidence that the said report was made by a police officer and it was not a medical report. The Court rejects the prosecution evidence that Don Ken assaulted Police Constable Steve Tete on the night of 30 July 2011 as alleged. Quite the contrary is found and accepted as admitted by the prosecution witness Steve Tete that he thought the Minister will assault him because he swore at him. So he said he must control the situation as they did it in the training. That is a rational interference that Steve Tete by anticipation must act first to control the situation before it got out of hands. He did so by assaulting the accused. Police Constable Patricia Pakoa threatened to file complaints against other police constables if they continued assaulting the two young men at the police station. This is consistent with the Defence evidence.
156. On the evidence the Court accepts that the accused Don Ken said words to the following effect: "Fuck, yufala ino save se mi wan State Minister." However, Patricia admitted that they were not intended to anyone. There is no evidence that accused Don Ken uttered those words specifically at a person as no person believed so and reacted and breach the peace as a result of such abusive language by the accused.
157. There is overwhelming evidence that police officers assaulted Kenneth Shedrack and Apia Buktan after they were arrested and at the police station during their detention without lawful justification. Evidence of Don Ken are supported by the evidence of Apia Buktan and Roger Tasso on these acts of assault at Police station during their detention as a result of which Kenneth Shedrack lost one of his teeth.

APPLICATION OF THE LAW

158. On the facts as found by the Court, the prosecution failed to prove all essential elements of the offence of assault, contrary to section 107(b) of the Penal Code Act on the criminal standard in count 1.
159. As to count 2, the prosecution fails to prove the elements of the offence of abusive language contrary to section 121 of the Penal Code on the criminal standard.



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160. Before the verdicts are announced, it is important that the following observations are made:-

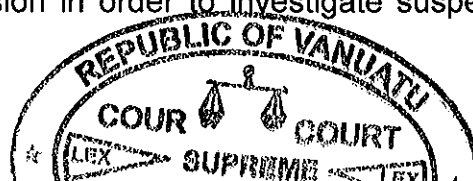
- (1) The premise of the charges laid against the accused germane from civil disturbances akin to obstructing the police in the execution of their duties.
- (2) Under section 73A of the Penal Code Act, it is an offence, punishable with up to six years imprisonment or a fine not more than VT300,000 or to both fine and imprisonment, albeit that in the present case, the accused was charged under ss.107(b) and 121 of the Penal Code Act. The offences are alleged to be committed against police officers and on evidence while they were executing their police duty in an operation.
- (3) The general duty of the police is to preserve public order and secure due observance of the criminal law; and police officers cannot divest themselves of these obligations. Police officers have other specified statutory duties and numerous powers.
- (4) The courts must attempt to strike a balance between facilitating the proper discharge of the functions of the police on the one hand and the maintenance of individual rights and freedoms on the other.

(5) Police powers and duties for securing public order have been widely interpreted. Following are some of the instances:

- The police have a duty to break up public gathering where serious disorders occur and to prevent reasonably apprehended breaches of the peace, and a refusal on the part of a member of the public to desist when called upon to do so is an obstruction of a police constable in the exercise of his duty.
- Again, unreasonable use of the public road amounting to a public nuisance or wilful obstruction should be stopped by the police, and it will be an offence to refuse to comply with a police instruction to disperse. In these circumstances, the police have an implied power to arrest without warrant; but it would seem that there is no general power of arrest merely for wilful obstruction of the police, though a summons may be issued.
- Deliberately attempting to prevent the apprehension of one guilty of an arrestable offence, or wasting the time of the police by making allegations one knows to be false, are separate statutory offences (Penal Code Act, ss.81, 83, 85 and 85A).
- To give other offenders prior warning of the approach of the police so as to enable them to escape detection is a wilful obstruction of a constable in the execution of his duty, and the same is probably true of the deliberate destruction or removal of relevant evidence, or giving misleading statements while under police interrogations.

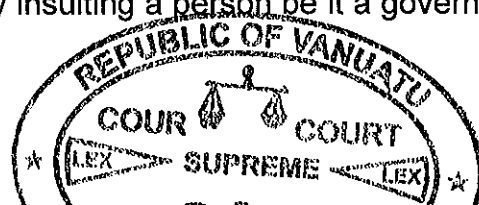
(6) It is to be noted that- following instances are held not to be an offence:

- It is not an offence simply to refuse to answer police questions or to resist with reasonable force detention for the purpose of being so questioned.
- Police officers do not have a general licence to enter upon private premises without the occupier's permission in order to investigate suspected crimes.



Even if police officers enter with permission, they become trespassers once consent is withdrawn, unless police officers have entered the premises in pursuance of a valid warrant or to effect a lawful arrest or of the prevention of a reasonably apprehended breach of the peace or under other ill-defined conditions furnishing justification for entry.

- (7) Further, it is to be noted that the general duty of the police to investigate suspected crime imports powers which are limited in scope; and a member of the public is not inevitably guilty of an offence by deliberately making it more difficult for the police to exercise those powers or effectively to discharge this general duty.
- (8) The circumstances of the present case at hand, germane from the request of the accused as a member of the public applying the horns of his vehicle G11 and requesting orally for the police officers to move the police truck from the road junction to allow a passage way as there was no driver in the police truck which was stopped in the middle of the road while police officers including the police truck driver talked to the people on the crime scene. This seems to be taken by police officers to be an obstruction to the exercise of their duty which is not such a case. Instead of dealing with the situation professionally and lawfully, police Constable Steve Tete uttered abusive words at the accused as a result of which the accused stopped his vehicle G11 and questioned the officers as to the reason of such abusive language to him. During the course of arguments, incident of assault and abusive words were alleged against the accused. On the factual assessment of the evidence, the Court found that the prosecution failed to prove the elements of both offences charged against the accused on the criminal standard of beyond reasonable doubt.
- (9) In the present case, even if convictions were secured by the prosecution against the accused, a discharge shall and must be entered, NOT because of the status of the accused as a Minister of the State BUT because when striking the balance between facilitating the proper discharge of the functions of the police on the one hand and the maintenance of individual liberty on the other, in the instance case, in the early hours of 30 July 2011 at the time of the incidents, the accused who was driving on the public road as a member of the public got insulted by a police constable which provoked the breach of the peace.
- (10) When the Public Prosecutor considered and laid charges in this type of case, the Public Prosecutor should be alerted by the circumstances of such cases as they would seem to indicate that during the execution of his duty, a police constable provoked the breach of the peace by insulting a person be it a government official



and it were alleged that that person reacted to the provocation by taking the law into his own hands to do justice. If it were the case, the Minister was not justified at all to do so and he should be convicted. But on the evidence that is not the case as found.

- (11) The circumstances of the type of cases such as the present indicated that, the criminal law is not the appropriate law to be used. Disciplinary law is the appropriate law to be invoked in order to attract disciplinary penalties on both sides after appropriate investigations were carried out.

161. VERDICT

1. Don Ken is found not guilty of assault contrary to section 107(b) of the Penal Code Act [CAP.135].
2. Don Ken is found not guilty of abusive language contrary to section 121 of the Penal Code Act.

DATED at Port-Vila this 8th day of August 2012

BY THE COURT

