

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

Criminal Case No.58 of 2014

**PUBLIC PROSECUTOR**

**-V-**

**WILLIE APIA**

**Coram:** Mr. Justice Daniel Fatiaki  
**Counsel:** Mr. T. Karae for the State  
Mr. Saling Stephens the for defendant  
**Date of Decision:** 12 June 2015

**VERDICT**

1. The defendant Willie Apia was originally charged in May 2014 with an information that contained 166 counts – 83 counts of Forgery and 83 related counts of Obtaining Money By Deception. By order dated 6 June 2014 the prosecution was directed to elect and separate from the information ten (10) representative counts to be tried by the Court.
2. By an information dated 2 December 2014 the prosecution elected and charged the defendant with 6 counts as follows:

**Count 1**

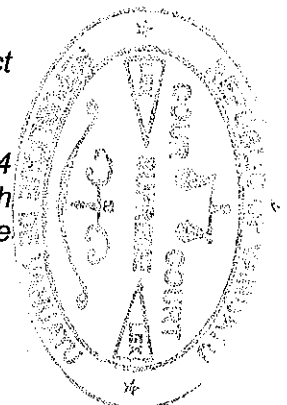
***Forgery*** contrary to Section 139 and 140 of the Penal Code Act [CAP. 135]

*Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, you made several document, knowing it to be false, with the intent that it shall be used or acted upon as genuine or that some other person shall be induced by the belief that it is genuine to-with: you created fake Annual Road Tax Stickers on your personal computer knowing it to be false with the intent that the annual road tax sticker be used and is genuine.*

**Count 2**

***Forgery*** contrary to Section 139 and 140 of the Penal Code Act [CAP. 135]

*Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, you made several document, knowing it to be false, with the intent that it shall be used or acted upon as genuine or that some*



other person shall be induced by the belief that it is genuine to-with: you create fake Government receipts on your personal computer knowing it to be false with the intent that the Government receipts be used and is genuine.

Count 3

**Forgery** contrary to Section 139 and 140 of the Penal Code Act [CAP. 135]

Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, you made several false document, knowing it to be false, with the intent that it shall be used or acted upon as genuine or that some other person shall be induced by the belief that it is genuine to-with: you created fake Drivers Licence on your personal computer knowing it to be false with the intent that the Drivers Licence be used and is genuine.

Count 4

**Forgery** contrary to Section 139 and 140 of the Penal Code Act [CAP. 135]

Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, you made several document, knowing it to be false, with the intent that it shall be used or acted upon as genuine or that some other person shall be induced by the belief that it is genuine to-with: you created fake Public Transport Permits on your personal computer knowing it to be false with the intent that the Public Transport Permit be used and is genuine.

Count 5

**Forgery** contrary to Section 139 and 140 of the Penal Code Act [CAP. 135]

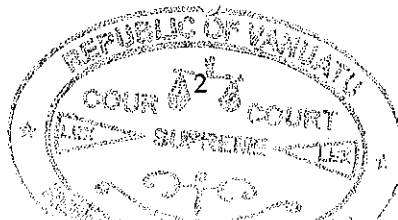
Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, you made several document, knowing it to be false, with the intent that it shall be used or acted upon as genuine or that some other person shall be induced by the belief that it is genuine to-with: you created fake Certificates of Insurance on your personal computer knowing it to be false with the intent that the Certificate of Insurance be used and is genuine.

Count 6

**Obtaining Money by Deception** contrary to Section 130B of the Penal Code Act [CAP. 135]

Willie Apia, samtaem between the 1<sup>st</sup> of January – 31<sup>st</sup> of May 2014 at Port Vila, by deception you obtained for yourself money to-with: you created on your personal computer; Fake Annual Road Tax stickers; Fake Drivers Licence; Public Transport Permits; Certificate of Insurance and Government receipts and you salem mo obtainem wan amount of VT1,440,220 wei yu usem long own personal use blong yu.”

(my underlining)



3. In summary on each of the Forgery counts the defendant is charged with forging a specific document namely:  
Count 1 – Annual Road Tax Stickers;  
Count 2 – Government Receipts;  
Count 3 – Drivers Licences;  
Count 4 – Public Transport Drivers Permits; and  
Count 5 – Certificates of Insurance  
and Count 6 charges the defendant with obtaining a sum of **VT1,440,220** from dishonestly selling the forged documents.

4. Forgery is defined in **Section 139** of the Penal Code as:

*“... making a false document knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine ... or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything ...”; and*

**subsection (3)** defines a *“false document”* as:

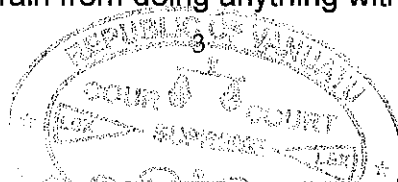
*“... (a document) of which the whole or any material part purports to be made by any person who did not make it or authorize its making”.*

5. This is a criminal trial and in accordance with **Section 8** of the **Penal Code** (“PC”) the prosecution bears the burden of proving the defendant’s guilt beyond a reasonable doubt by means of admissible evidence. If the prosecution fails to establish the defendant’s guilt to the required standard he shall be deemed to be innocent and shall be acquitted.

6. Furthermore in accordance with **Section 81** of the **CPC**, the defendant is presumed innocent of the charges unless and until his guilt is established beyond a reasonable doubt by the prosecution. The defendant has no duty to prove his innocence nor is he obliged to call any evidence, but, in this case, the defendant elected under **Section 14** of the **PC** to give evidence on oath and in accordance with **Section 88** of the **CPC** he was cross-examined by the prosecution.”

7. The elements or ingredients of Forgery which the prosecution must establish against the defendant are:

- (1) The defendant made a *“false document”*;
- (2) Knowing that it was false; and
- (3) With the intention that the false document would be used or acted upon as genuine; or
- (4) That some person believing the false document to be genuine would be induced to do or refrain from doing anything within the Republic.



8. The prosecution's case against the defendant on the five (5) Forgery counts is that over a period of 5 months between January and May 2014 the defendant knowingly used his personal computer to create and make five (5) different types of fake documents that he knew were false in that they were not signed, authorized or issued by the appropriate official, or relevant government or municipal authority or by the insurance company concerned with the intention that the fake documents he made would be used as genuine documents or, at the very least, would induce the recipients of the fake documents to refrain from paying for and obtaining genuine documents from the relevant authorities or insurance company concerned.
9. As for elements (1) and (2) above ie. knowingly making false documents – the defendant in his own sworn testimony in court frankly admits making fake Road Tax Stickers; Government Receipts; Drivers Licences; Public Transport Drivers Permits and Insurance Certificates. Both elements are therefore admitted and may be taken as established. The defendant, however, denies ingredients (3) and (4) which refers to his intention at the time of making the forgeries.
10. In particular, the defendant claims, on oath, that he made the fake documents with the intention of "*exposing*" the recipients of the fake documents to any Police and Customs officer who might stop and inspect the recipient's fake documents during spot-checks and at vehicle check-points. I shall deal later in greater detail with the third and final element which the prosecution must establish before the defendant can be convicted of Forgery.
11. In respect of Count 6 – Obtaining Money By Deception the prosecution must establish two (2) elements against the defendant:
  - (1) That he dishonestly obtained money;
  - (2) By means of deceptive conduct or words.

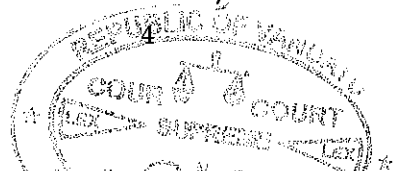
In this regard the prosecution's case is that the defendant dishonestly obtained money by knowingly selling fake documents that he had created on his personal computer and which he passed-off as cheaper genuine documents.

12. In order to better understand the context and motivations behind the present case it is necessary to briefly consider the relevant provisions of the **Taxis Act** [CAP. 49] and the **Road Traffic (Control) Act** [CAP. 29] as follows:

**ROAD TRAFFIC (CONTROL) ACT** provisions:

**34. Annual tax**

***(1) The owner of every motor vehicle using a public road shall pay the annual tax set out in Schedule 10 and no person shall drive, or, being the***



owner, permit any other person to drive such motor vehicle on the public road unless the prescribed taxes have been paid **to the Director of Customs and Inland Revenue.**

### **35. Payment of annual tax**

- (1) **The tax prescribed in Schedule 10 shall become payable in full for 1 year on 1 January of each year, and shall be paid by 31 March of that year:**

**Provided that, if the said tax is not paid by 31 March aforesaid, but is paid in April, it shall be increased by 25 per cent and, if paid in May, by 50 per cent.**

- (2) Any person who fails to pay the said tax and the amount by which it has been increased before 31 May of the year in which it becomes due shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding VT 50,000.

### **38. Display of sticker**

**Every owner of a vehicle being used on a public road shall display or cause to be displayed in a conspicuous position on the right hand side of the said vehicle, the sticker provided by the Director of Customs and Inland Revenue.**

#### **38A. Sticker not to be issued without roadworthy certificate and payment of fee**

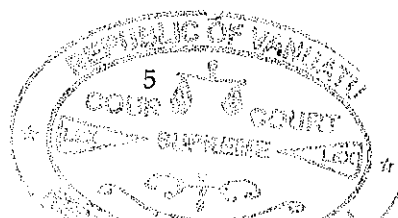
A sticker referred to in section 38 must not be issued to the owner of the vehicle unless –

- (a) a valid roadworthy certificate is available for the vehicle at the time the sticker is issued; and
- (b) **the prescribed tax under section 34 for the vehicle has been paid.**

## **SCHEDULE 10**

### **ANNUAL MOTOR VEHICLE TAX**

- (b) Motor Cars which expression includes any vehicle adapted for the carriage of up to eight passengers on permanent seats:
- (i) with an engine capacity of 1,100 c.c. or less VT 11,220;
  - (ii) with an engine capacity exceeding 1,100 c.c. but not exceeding 1,500 c.c. VT 14,586;
  - (iii) with an engine capacity exceeding 1,500 c.c. but not exceeding 2,000 c.c. VT 19,635;
  - (iv) with an engine capacity exceeding 2,000 c.c. but not exceeding 2,500 c.c. VT 25,245;
  - (v) with an engine capacity exceeding 2,500 c.c. VT 38,000;



- (c) Other vehicles (including vehicles designed or adapted for the carriage of more than eight passengers):
- (i) designed to carry a payload of less than 1 ton VT 10,659;
  - (ii) **designed to carry a payload of 1 ton but not exceeding 2 tons VT 21,318;**
  - (iii) **designed to carry a payload exceeding 2 tons but not exceeding 3 tons VT 31,416;**
  - (iv) **designed to carry a payload exceeding 3 tons but not exceeding 5 tons VT 40,392;**
  - (v) designed to carry a payload exceeding 5 tons but not exceeding 10 tons VT 60,000;
  - (vi) designed to carry a payload exceeding 10 tons VT 85,000.

#### **41. Compulsory third party insurance**

- (1) **No person shall use or cause or permit any other person to use any motor vehicle on a road unless there is in force in relation to that vehicle a policy of third party insurance covering liability arising from the use of such vehicle by any person on a road for the death or bodily injury of any person, other than a passenger in such motor vehicle issued by an insurance company.**

### **PART 6 – DRIVING LICENCES**

#### **42. Driver of motor vehicle to have driving licence**

Every driver of a motor vehicle other than a learner driver must be in possession of a driving licence delivered according to the provision of section 44. All learner drivers must be accompanied by a holder of a valid driving licence:

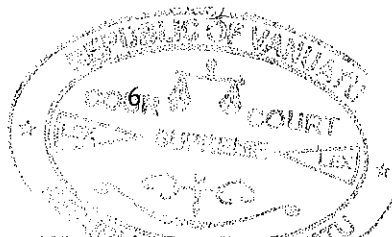
#### **43. Driver to present driving licence and vehicle documents at request of police officer**

Every person driving a vehicle on a public road must, upon request by a police officer, present within 5 days his driving licence, the vehicle registration book, the certificate of insurance and the certificate granted under section 32(2).

#### **44. Driving licences**

Driving licences in the form prescribed in Schedule 3 shall be granted by the licensing authority upon payment of the fee prescribed by the Minister by Order to any applicant for such in the form prescribed in Schedule 4, provided that –

- (a) in the case of applications for a licence to drive a common vehicle, the applicant has attained the age of 21 years and produces a certificate of medical fitness issued not more than 6 months previously;



- (b) in the case of applications for licences to drive cars or motor cycles exceeding 125 cubic centimetres capacity, the applicant has attained the age of 18 years;

#### **46. Duration of driving licences**

A driving licence referred to in section 44 is to be granted by the licensing authority for a period of one year. In the case of loss or destruction, a duplicate may be delivered by the licensing authority upon payment of the fees prescribed by the Minister by Order.

#### **46A. Renewing driving licences**

- (1) Subject to subsections (2) to (4), a driving licence is to be renewed by the licensing authority for a period of one year on or before the expiry of the driving licence.
- (2) A driving licence is not to be renewed unless the holder of the licence pays to the licensing authority the renewal fee prescribed by the regulations.
- (3) A driving licence is not to be renewed unless the licensing authority is satisfied that the holder of the licence does not suffer from any disease or physical disability of such a nature to render his or her driving of a vehicle a source of danger to the public.
- (4) A driving licence is not to be renewed unless the holder of the licence produces to the licensing authority a medical certificate in the prescribed form within 28 days before the second anniversary of the date of the grant of the licence and every second anniversary thereafter.

### **ROAD TRAFFIC (FEES) (CONSOLIDATION)**

#### **1. Definition**

"Act" means the Road Traffic (Control) Act [Cap. 29].

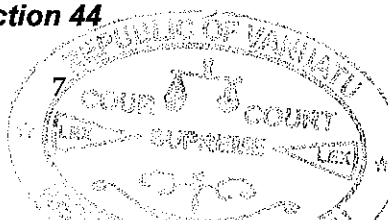
#### **2. Fees for certificates of roadworthiness**

- (1) The fee payable for a certificate of roadworthiness under section 32 of the Act is:
- (a) VT 5,500 for a certificate of roadworthiness issued by an appointed person for a heavy vehicle or public vehicle; or
- (b) VT 3,000 for a certificate of roadworthiness issued by a vehicle examiner for any other vehicle.

#### **3. Prescribed fee under section 40**

The prescribed transfer fee under section 40 of the Act for a motor vehicle is 4% of the purchase price of the vehicle, excluding any tax or duty payable under any Act or instrument.

#### **4. Prescribed fees under section 44**



For the purpose of section 44 of the Act, the prescribed fees are as follows:

- (a) **VT 3,000 for a driver's licence;**
- (b) VT 2,000 for a replacement driver's licence.

**5. Prescribed fee under section 46A(2)**

The prescribed fee under section 46A(2) of the Act for the renewal of a driving licence is VT 2,000 and is payable each year on or before the expiry date of the licence.

**54A. Power to stop vehicles**

- (1) Any police officer may challenge and summon to stop any driver of any vehicle for the purpose of determining whether or not –
  - (a) **the vehicle has on display a sticker provided as required by section 38;** or
  - (b) the vehicle is registered in accordance with the requirements of this Act.
- (2) The police officer may detain the vehicle if he or she is satisfied that –
  - (a) **the vehicle does not have on display a sticker as required by section 38;** or
  - (b) the vehicle is not registered in accordance with the requirements of this Act.
- (5) Upon a request from the owner of a vehicle detained under this section, the vehicle is to be released temporarily to the owner for the sole purpose of obtaining a roadworthy certificate (see section 32(2)) in order to obtain a sticker under section 38.

**TAXIS ACT provisions**

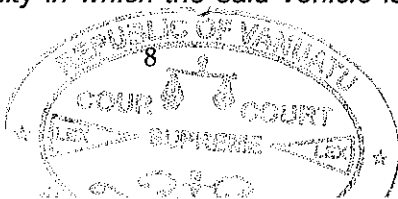
**"public vehicle"** means a vehicle being used for the purposes of carrying passengers for hire or reward; and shall include a vehicle driven by the hirer;

**"licensing officer"** means a person appointed as such by the Minister for the purposes of this Act;

**DRIVER'S PERMIT**

**2. Public vehicle driver's permit**

- (1) **No person shall drive a public vehicle unless he is in possession of a valid public vehicle driver's permit issued by the licensing officer for the region or municipality in which the said vehicle is to be driven after**





obtaining the advice of the Commissioner of Police or an officer authorised in that behalf.

- (2) The said permit shall be in the form prescribed in Schedule 1.
- (3) **Every such permit shall be carried by the person driving a public vehicle and shall be produced on the demand of a police officer.**
- (4) **Every public vehicle driver's permit shall expire on 31 December of each year.**
- (5) Every application for the renewal of a public vehicle driver's permit shall be made before the expiry of the said permit.

### **3. Issue and renewal of a public vehicle driver's permit**

A licensing officer may issue or renew a public vehicle driver's permit on application being made in the form prescribed in Schedule 2 if he is satisfied that the applicant for the said permit –

- (a) **has passed a test conducted by the Commissioner of Police**, or by persons authorised by him in that behalf, for the purpose of satisfying himself as to the applicant's
  - (i) ability to drive a public vehicle;
  - (ii) knowledge of the topography of the area in which he intends to drive the said public vehicle; and
  - (iii) knowledge of simple English, French or Bislama;
- (b) **is in possession of a medical certificate to the effect that he is medically fit to drive a public vehicle** dated not more than 6 months before the date of the said application;
- (c) has been in possession of a valid current driving licence for a period of not less than 1 year;
- (d) has not been convicted of any offence under the provisions of sections 12, 13, 14 and 16 of the Road Traffic (Control) Act [Cap. 29] within the previous 2 years;
- (e) has not been convicted of any offences involving drunkenness on his part within the previous 2 years;
- (f) **is over the age of 21 years.**

### **4. Fees**

No issue or renewal of a public vehicle driver's licence shall be made until the fees prescribed in Schedule 3 shall have been paid to the Controller of Taxes or a person acting on his behalf.

### **SCHEDULE 3**

#### **Fees**



**On issue of a public vehicle driver's permit - VT 2,000**  
**On renewal of a public vehicle driver's permit - VT 2,000**

**INSURANCE**

**20. Compulsory insurance**

No person shall use or cause or permit any other person to use a public vehicle unless there is in force relative to the user of the vehicle by that person or that other person as the case may be, a policy of third party insurance in accordance with the provisions of section 41 of the Road Traffic (Control) Act [Cap. 29].

**PENALTIES**

**21. Detention of vehicles**

(1) If any person –

- (a) drives or causes or permits to be driven any vehicle as a public vehicle in respect of which there is no public vehicle licence; or
- (b) drives a public vehicle in contravention of the provisions of section 16 of the Road Traffic (Control) Act [Cap. 29];

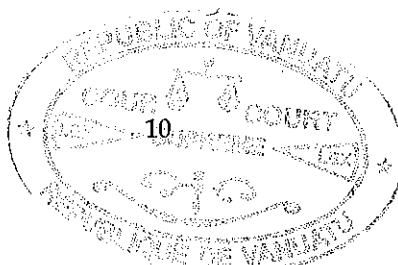
the said vehicle may be detained by a police officer and may be impounded for a period not exceeding 10 days.

**APPLICATION**

**27. Application**

This Act shall apply to the **Municipality of Port Vila, ....**"

13. From the foregoing legislative provisions, it is sufficiently clear that driving and operating a taxi or public vehicle is a costly and cumbersome annual exercise. It is also a highly regulated and bureaucratic activity where vehicles are required to have valid road worthy certificates and public vehicle licences and drivers are required to undertake annual competency tests and medical examinations as well as have a valid third party insurance policy for the use of the vehicle.
14. Additionally under the law drivers can be subjected to police spot-checks where their vehicles may be detained and impounded for non-compliance with the above provisions. Whatsmore owners and drivers also face possible criminal prosecution and sanctions for such non-compliance including the cancellation of their permits to operate and drive taxis and public vehicles.



15. Given that onerous statutory regime, the temptation to save on time and to cut costs is ever-present and amply demonstrated by the prosecution's evidence which may be conveniently divided into 3 groupings:

Group 1: comprises drivers and operators of taxi and bus services;

Group 2: comprises Customs and Tax Dept. officials and the Manager of Dominion Insurance; and

Group 3: is made up of Police officers.

16. It is plain that all drivers and operators who bought fake documents and used them in their vehicles succumbed to both "*temptations*" and have committed offences against the above provisions, and although none of the drivers or operators are charged as co-offenders who actually took part in making the forged documents they are all complicit in providing the defendant with a ready and willing market for his forgeries.

17. The offences first came to light when **Tony Mansale** a bus driver of 4 years' experience was persuaded by a relative to buy his 2014 Road Tax Sticker through his relative instead of buying it from the Rates and Taxes Office. He agreed and gave his relative VT18,000 and after a week he received a Road Tax Sticker No. **1956** and a Government Receipt No. **658126** [**Exhibits P(1) (a) and (b)**]. Tony Mansale noticed that the Road Tax Sticker could not be peeled and affixed to the front window screen of his bus as required, and, the Government Receipt was for an amount of VT25,245 whereas he had only given his relative VT18,000. His suspicions were aroused and so he took the Road Tax Sticker and Receipt to the Rates and Taxes office for verification and learnt that the documents were not genuine ("*kiaman*").

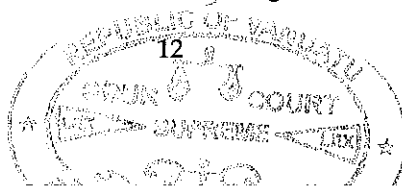
18. In cross-examination he confirmed always paying for his Road Tax Sticker at the Rates and Taxes office and he agreed that VT18,000 was cheaper than the usual cost of a Road Tax Sticker. He denied any intention to defraud the Government and said he expected a valid Road Tax Sticker. He was annoyed at being duped by the invalid documents and at wasting his hard-earned money and having to buy another Road Tax Sticker. The defendant's name was not mentioned by his relative.

19. The other bus drivers and operators called by the prosecution were:

- **Philip Kemu;**
- **Kendick George;**
- **Michel Kemu;**
- Meriam Nakit – who brought 2 sets of Road Tax Stickers and Insurance Certificates for her buses through Philip Kemu;



- Allan Samson – a building contractor who personally purchased a Driving Licence, Road Tax Sticker and Insurance Certificate from the defendant;
  - Lauren Isaac – who obtained a Road Tax Sticker **No. 1992** from the defendant at the Airport Police Post at a costs of VT10,000 [**Exhibit P(5)**];
  - Jack Iavilu – the driver of the Deputy PM who got a new Driving Licence for VT7,000 from Philip Kemu [**Exhibit P(6)**];
  - Isaac Kapi – a bus driver who gave his valid Drivers Permit to the defendant at the defendant's request [**Exhibit P(7)**];
20. Philip Kemu, Kendrick George and Michel Kemu testified that they all acted as “*middle-men*” at the defendant's request and they had got him many clients (mostly fellow bus drivers) for Road Tax Stickers; Drivers Licence; Drivers Permits and Insurance Certificates. All denied receiving any money or payment from the defendant and all testified that the defendant himself had fixed the prices for the forged documents and had received all the money they collected from “*clients*”. They all trusted and thought that what the defendant was doing was alright (“*hemi stret*”) because he was a police officer who also claimed to have links to a customs officer. All denied “*forcing*” the defendant to make the documents.
21. Philip and Michel also claimed to be “*good friends*” of the defendant and both paid for and acquired their 2014 Road Tax Stickers from him. Philip claimed he got the defendant about “**50 – 60 clients**” and Michel named 3 clients – Peter Ferry, Stephen Nakou, and Morrison Solomon who paid for several documents. Michel also testified that a week or so before his arrest, the defendant had unexpectedly left a carton at his home. He had opened the carton after the defendant was charged and saw a laminating machine, laminating paper as well as a computer hard drive in it. He later gave the carton to the police [**Exhibit P(15)**].
22. In the case of these 3 prosecution witnesses who bought and used fake documents not only have they committed offences against the Road Traffic (Control) Act and the Taxis Act but, further, as willing “*middle-men*” they could have been charged with counseling and procuring the defendant to make the forged documents (see: Section 30 and 35 of the Penal Code) and finding him paying “*clients*”. They are therefore “*accomplices*” in both offences and their evidence must be carefully scrutinized and should be independently corroborated before I accept and act on their evidence. Indeed without their activities the magnitude of the defendant's offending would have been considerably lessened.
23. The Customs and Government officers called by the prosecution were:
- Melton Aru – Manager Rates and Taxes in the Customs Dept. He confirmed that Tony Mansale's documents were not genuine and he directed a special



vehicle inspection operation to be carried out on 14 April 2014 at the main wharf area. The inspection uncovered a large number of forged Road Tax Stickers; Drivers Licence; Public Vehicle Drivers Permits and Insurance Certificates. In all, there were **52** forged Road Tax Stickers; **6** forged Drivers Licences and **4** forged Drivers Permits which represented a loss of about **VT1.4 million** in uncollected revenues;

Andrew Norwo – a Principal Compliance officer with Customs and Inland Revenue Dept. who played a leading role in the Customs Investigations into the case as well as assisting with police inquiries;

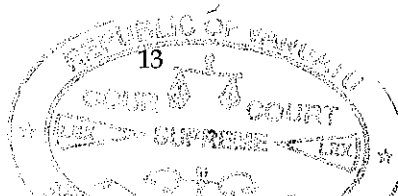
Linette Maseraban – a long serving cashier at the Customs Dept. who prepared a comparative table of fake Road Tax Stickers and Government receipts and the genuine Road Tax Sticker and genuine receipt information retrieved from the Government Smartstream database [**Exhibits P(9)**];

Brian Bob Mansale – a Customs Licensing officer who executed a search warrant at the defendant's home and assisted during the special vehicle inspection operation at the wharf. He seized **43** fake Road Tax Stickers; **3** fake Drivers Permits; **2** fake Drivers Licences and **33** fake Government Receipts. He described in some detail the differences between the fake items and the genuine. In cross-examination he frankly admitted not knowing who had made the fake documents ("*mi no save*");

Nick Donald Tavoasese – works in the Ministry of Finance as Acting Manager FMIS (Financial Management Information System). He described how government uses a centralized unitary receipting system called **SMART STREAM** which records all cashier receipts and payments made throughout Vanuatu. He confirmed the several discrepancies noted in the fake government receipts and firmly rejected the possibility of different cashiers issuing the same receipt numbers.

Patrick Fred – Acting IT Manager in the Customs Dept. He assisted with the Customs and Police investigations and, specifically, he retrieved the information on a hard drive marked "**23(a)**" which belonged to the defendant and was recovered from the defendant's carton left with Michel Kemu. Asked about the contents of the hard drive, he said it included: "*many files, personnel files and files of interest to the case, passport photos; copies of Drivers Licences; copies of Road Tax Stickers; Copies of Drivers Permits and Government Receipts as well as Insurance Certificates*".

With the assistance of a PowerPoint presentation the witness was able to demonstrate how the fake documents could be made using the information in the defendant's hard drives. Basically, in most instances the process begins with the scanning of a genuine document followed by its manipulation using



various computer software such as Adobe Photoshop, paint brush and textbot to delete unwanted information then isolating various elements eg. Coat of Arms and Customs stamp and signatures and creating a working publisher template into which drivers and vehicles details and photo (if required) can be inserted.

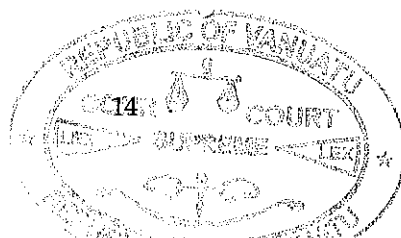
24. The last witness in this second group was Thelma Tapasei – the Manager of Dominion Insurance, Port Vila office. She assisted in the investigations by identifying the numerous discrepancies in the fake Insurance Certificates which she described as having been “photoshopped”. She identified font size differences in the years 2013/2014; differences in the Policy details including the colour of the shaded pattern on the certificate which should be “grey” instead of the red/orange colour of the fake certificates. When asked how the company had lost financially, she said: “*there was a client by name of Edward Kaloran in our system and he never came and renewed his policy because he used a fake insurance certificate like Exhibit P(8)(b) which was a fake policy issued to a non-existent client Sam Kathy*”.

25. The police officers who gave evidence for the prosecution were:

Sgt. Tony Berry – the crime scene officer who was part of the team that executed search warrants at the defendant’s residence and work place at the Bauerfield Airport Police post. He produced a brown Crime Scene folder he had compiled of photos he took [**Exhibit P(18)**] during the police investigations. He also identified a **Property Seizure Record** dated 25 April 2014 which recorded all the items seized from the defendant’s home [**Exhibit P(17)**]. In cross-examination he confirmed that the defendant’s office was searched on 29 April 2014 when the defendant was already remanded in custody;

S/Sgt Yoan Harris – he is attached to the Fraud Unit of the Vanuatu Police Force. On 25 April 2014 he arrested the defendant at the police station car park and they went and searched the defendant’s house. He confirmed the search of the defendant’s office at the Airport Police Post and he produced (without objection) 3 caution interview records of the defendant [**Exhibits P19(A); (B); and (C)**]. The first and second interviews concerned the fake documents under the control of the Customs Dept. and the third interview was about fake Dominion Insurance Certificates.

26. At the close of the prosecution’s case **Section 88** of the **Criminal Procedure Code** (CPC) was read to the defendant who elected to give evidence in his defence. After the defendant was sworn-in, defence counsel attempted to produce a pre-written sworn statement as the defendant’s evidence in chief. Prosecuting counsel objected and the defendant was required to give his evidence orally (see also: Section 83(1) and Kumar v. State [2014] FJCA 151).



27. The defendant began his evidence-in-chief by identifying his signatures on the last pages of his 3 caution interview records. He confirmed that he had made admissions in his third interview because **Lt. Roy Seule** (who was not called) had told him if he admitted the offences he would be made a prosecution witness. No similar suggestion was made concerning the first and second interviews where his answers were mostly: "*mi toktok nomo long court*". The defendant denied commissioning any drivers to be his "*sales agents*" or receiving any money from them for the forged documents he prepared. He described how Philip Kemu was the first driver to approach him at the Airport Police Post to forge a Dominion Insurance Certificate but he refused and merely photocopied it to get rid of him.
28. Philip Kemu returned 2 weeks later at his home and asked to make him a Road Tax Sticker. He told him to go and buy one from Customs but he "*entered my house and forced me to make him a Road Tax Sticker*". After that Philip Kemu came on many occasions ("*fulap taem*") and forced him to make other forged documents. He denied the evidence of Kendrick George and Michel Kemu was the truth. He confirmed however that the pictures in the PowerPoint presentation "*come out of my Hard Drive*". To the question:

**Q: What were your intentions in producing all those forged documents?**

The defendant answered:

**A: My lord when Philip Kemu came and forced me my intention was to produce fake documents in order to expose them when the spot check are done by police and customs at check points.**

At the end of his evidence in chief the defendant reaffirmed his intention in committing the forgeries when he said:

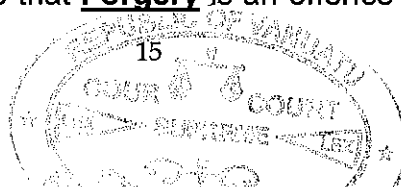
*"I did what I did just to expose nomo. During road checks I saw many discrepancies in documents and even most vehicles have road worthy stickers but aren't road worthy, many vehicles do not have insurance certificates and whenever there is an operation the information leaks out and many vehicles don't operate. Many vehicles operate illegally in Vila without proper documentation so when Philip came to me on behalf of his friends I decided he was dishonest so I produced all the fake documents to expose them when they are checked at road checks. Many vehicles don't have Road Tax Stickers and escape from "time lo check". So I risked my job to expose them."*

(my underlining)

With reference to **Count 6** the defendant said:

***"I never received any money and today I have no salary and am in trouble"***.

29. In cross-examination the defendant frankly admitted forging Drivers Licence; Government Receipts; Drivers Permits; Road Tax Stickers and Insurance Certificates. He was aware that **Forgery** is an offence against the Penal Code.



He also agreed that the Police Force had different sections dealing with different types of offences and that each section had a different investigating team. He agreed the investigators in his case were Sgt. Yoan Harris and officer James Zedrick. Lt. Roy Fred Seule had no part in investigating the case.

30. Although he denied that Philip Kemu, Frederick George and Michel Kemu were his "*friends*", he agreed receiving documents from them for him to forge. He denied using their vehicles to deliver the forged documents ("*mi no save how it go*"). He admitted he started forging documents in January 2014 and knowingly forged more than 1 copy of each type of document. He reiterated being "*forced*" by Philip Kemu to forge the documents at his house but he never made an official complaint ("*no mi no mekem complaint*") not even to his supervisor. He denied receiving any money for the forged documents.

31. **Section 26** of the **Penal Code** [CAP. 135] relevantly provides that:

*"Criminal responsibility shall be diminished in the case of an offence committed by a person acting –*

(a) *Under actual compulsion or threats, not otherwise avoidable, of death or grievous harm;"*

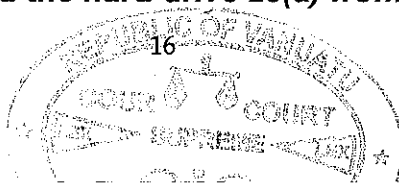
And **subsection (2)** clearly states:

*"Criminal responsibility shall not be diminished ... if the person acting has voluntarily exposed himself to the risk of such compulsion threats or coercion".*

32. I am satisfied the defendant's bare claims of being "*forced*" to make the forged documents cannot succeed under both limbs. Not only is there no suggestion that the "*force*" (if any) involved "*death or grievous harm*", but the gross "*inequality of power*" between the defendant (a computer literate experienced police officer) and Philip Kemu, Kendrick George and Michel Kemu (all ordinary, uneducated, bus drivers) makes the possibility of "*force*" being used on the defendant not only utterly fanciful, but, if "*force*" was indeed used as claimed by the defendant, then, that could only be because the defendant "*voluntarily exposed himself*" to the risk of such force. Needless to say persistent importuning and belligerent requests can never amount to "*actual compulsion or threats*".

33. On being shown the search list [**Exhibit P(17)**] of "*expensive*" items seized from his home, the defendant explained that he went on an overseas mission to the Solomon Islands and with the money he earned he could afford to buy the items. He denied buying the items to make forged documents, rather, they were "*to duplicate CDs*".

34. The defendant denied dropping a carton at Michel Kemu's house but agreed that Michel had "... ***picked the hard drive 23(a) from my house and the hard***





**drive was passed to police**". He denied defrauding the State and to several pointed questions he said he did not understand the question.

35. Although denying in his sworn evidence that he was a friend of Philip, Michel and Frederick or that they were his "agents" or "salesmen", the defendant when asked in his second caution interview [**Exhibit P19(B)**]:

**"Q31: Yu save confirmem long mi nem blong anyman we hemi stap helpem yu blong yutufala iprocessem kiaman documents ia 2014 road tax stickers, divers licence, drivers permit, customs dept. receipts mo insurance?"**

The defendant is recorded to have answered:

**"A: I gat some man ia bae mi jes reportem olgeta after".**

36. In this particular regard the defendant in his second caution interview [**Exhibit P19(B)**] whilst frankly admitting that the contents of the carton recovered from Michel Kemu's house belonged to him (the defendant) including a hard drive "23(a)"; a laminating machine and laminating paper; (**see**: Questions and Answers 140 to 147), nevertheless, the defendant denied taking the carton to or hiding it at Michel's house instead he claims:

**"A141: Michel Kemu ibin kam karem wan hard drive wetem laminating machine long house blong mi mo go putum long house blong hem taem oli stap pullum out ol sticker blong track long wharf be mi bin askem hem blong mi kam putum back be ino kam putum".**

37. In my view, even accepting the defendant's answer at face value, such behavior given the timing of the event is only consistent with persons who have a close trusting relationship trying to help each other avoid detection as opposed to mere non-friendly acquaintances as the defendant sought to portray.
38. It is clear from the defendant's evidence that his defence to the Forgery count is a denial of the necessary mental element in that he was "forced" to make the forgeries and merely intended to "expose" the drivers. In respect of Count 6, the defendant's defence is a complete denial of having obtained or received any money for the forged documents which is the physical element or ingredient of the offence of Obtaining Money.
39. Although the defendant is charged with six (6) counts and two (2) different offences in the one Information I am required to consider all the evidence and to determine each count individually and separately from any other count or offence. The defendant's guilt or innocence on each count depends solely and entirely on the evidence led on that count and on nothing else. In other words the court's verdict on one count cannot be used to strengthen or weaken the verdict on any other count(s) nor does it mean that all Forgery counts must be



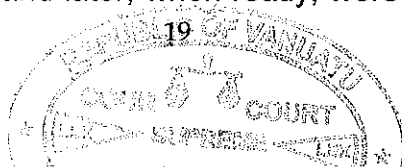
determined in the same way or that an acquittal on Count 6 means the defendant must be acquitted on the Forgery counts or vica versa.

40. At the end of the defendant's evidence both counsels made final addresses. Prosecuting counsel emphasized that all its witnesses were unshaken in their evidence whereas the defendant should not be believed in his claim that his intention in forging the documents was "*to expose the drivers*". Defence counsel for his part submits that the forged documents were never used as genuine because they were confiscated before they could be used. Further the prosecution witnesses should be disbelieved about giving money to the defendant because they were unable to produce a receipt from the defendant. The prosecution also failed to establish that Government had lost any money as a result of the forgeries.
41. As already pointed out the only remaining issues in this case are – whether the defendant was "*forced*" to make the forged documents as he claims? or did the defendant when making the forged documents, intend for them to be used as genuine? or did he do so with the innocent motive of "*exposing*" the users of his forgeries? On Count 6 however, given the defendant's defence the sole issue that the Court needs to be satisfied on is – whether the defendant charged and received money to make the forged documents.
42. As to Count 6 – Receiving Money by Deception although the defendant denies charging or receiving any money for the forged documents, I prefer and accept the evidence of the prosecution witnesses whose evidence was not only detailed and given in a fortnight manner but also had a "*ring of truth*". Philip and Michel Kemu impressed me as honest, unsophisticated ordinary men who were duped into helping their "*friend*" in his fraudulent scheme. They did not try to down-play their roles and I accept their evidence that they received no personal benefits and had always trusted the defendant because he was a police officer.
43. The defendant on the other hand was quite unbelievable in his evidence. He was conveniently selective in his answers and feigned ignorance with uncomfortable questions when cross-examined. I found his claims of being "*forced*" to make the forged documents untruthful, unbelievable, and exaggerated for a law enforcement officer with 22 years of experience in the police force. Neither do I accept that his intention in making the forged document was purely to "*expose*" dishonest drivers. Needless to say in order for dishonest drivers to be "*exposed*" they must actually carry and use the forged documents as if they were genuine.
44. I remind myself that Philip Kemu, Kendrick George and Michel Kemu are "*accomplices*" and that it is dangerous to act on their evidence unless it is independently corroborated in a material particular implicating the defendant. Furthermore accomplices cannot corroborate each other. Nevertheless, if I am



fully satisfied of the truth of the accomplice's evidence then I can act on it in the absence of corroboration.

45. In the present case not only am I satisfied that Philip Kemu, Kendrick George and Michel Kemu are credible and trustworthy witnesses but their evidence is materially confirmed by the defendant's own sworn testimony that he knowingly made forged documents at their request.
46. Furthermore their evidence of receiving and giving money to the defendant as payment for the forged documents is fully corroborated by the evidence of **Allan Samson** who personally dealt with the defendant and paid him VT3,000 for a forged Drivers Licence and Road Tax Sticker. Similarly **Lauren Isaac** paid the defendant VT20,000 for a forged Road Tax Sticker No. 1992 [**Exhibit P(5)**] and Insurance Certificate which he received at the Airport Police Post where the defendant worked.
47. I find that the defendant realizing that there was a large and ready-market, took the opportunity to make a quick profit by making and selling forged documents. Whatsmore, the making of forged Government Receipts was quite unnecessary and inconsistent with an intention to "expose" dishonest users of forged Road Tax Stickers. If anything, the forged Government Receipts are, in my view, an attempt by the defendant, to lend some credence and official sanction or facade to his fraudulent activities.
48. I accept the overwhelming evidence that the defendant charged and received money not just from Philip and Michel Kemu and Kendrick George for the forged documents and I reject any suggestion that in order to expose criminal activity, a person (least of all a police officer) is justified in committing serious criminal offences. It needs hardly to be said that - "*two wrongs can never make a right*".
49. In a vain attempt to distance himself from the carton of items found at Michel Kemu's house [**Exhibit P(15)**] and to deny any close friendship with him, the defendant falsely claimed that Michel had himself come and taken the carton from the defendant's house including the highly incriminatory hard drive "**23(a)**" which the defendant admitted was his personal property.
50. I do not accept for a moment that the differences or discrepancies on the forged documents were intentionally created by the defendant with the innocent motive of "*exposing*" the holders or users of the forged documents, rather, they are the rushed handiwork of an amateur forger not fully proficient in the use of the relevant computer software, without access to the correct inks and paper and motivated by a desire to make money as quickly as possible.
51. The largely undisputed evidence is that all the forged documents were made by the defendant in private and later, when ready, were uplifted by Philip Kemu or




Michel Kemu or Kendrick George. In the case of **Allan Samson** his forged documents were personally delivered by the defendant and **Lauren Isaac** picked up his Road Tax Sticker No. **1992** from the defendant's work place at the Airport Police Post. In these latter 2 cases the defendant did not claim that he was "*forced*" to make the forged documents or that any "*middle-man*" was involved.

52. Further the nature, type and quantities of equipment, inks and stationary items seized from the defendant's home including several laptops; printers; hard drives; ink cartridges; and blank A4 paper of various colours and thicknesses as well as the items in the carton seized from Michel Kemu's home suggests to my mind that the defendant's activities was not an adhoc "*one-off*" operation to "*expose*" dishonest drivers but a continuing business enterprise with ready supplies of stock-in-trade.
53. In light of the foregoing I am satisfied beyond a reasonable doubt that the defendant is guilty of each of the offences and I enter convictions against the defendant on Counts 1 to 6 of the Information as charged.
54. By way of post-script it would be remiss of me not to record and acknowledge the thoroughness of the investigation undertaken in this case by the police and especially the officers of the Customs and Inland Revenue Department whose efforts should be commended.

**DATED at Port Vila, this 12<sup>th</sup> day of June, 2015.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

