

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

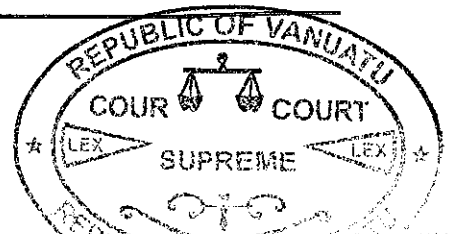
Criminal
Case No. 17/1005 SC/CRML

BETWEEN: Public Prosecutor

AND:
Marcellino Pipite
Paul Telukluk
Silas Yatan
Tony Nari
John Amos
Arnold Prasad
Tony Wright
Sebastien Harry
Thomas Laken
Jonas James
Jean Yves Chabod
Wilson lauma

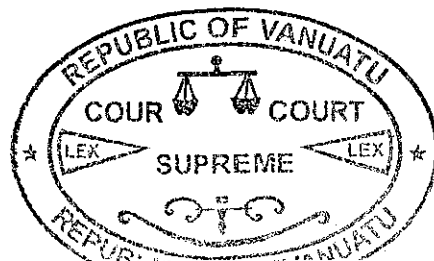
Trial Dates: 3-6 and 9 April, 13-15, 18-21 and 28 June 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr J. Naigulevu for the Public Prosecutor
Ms C. Thyna for Pipite
Mr L. Napuati for Yatan
Mrs M. Nari for remaining defendants
Mr N. Morison subsequently for lauma

VERDICTS

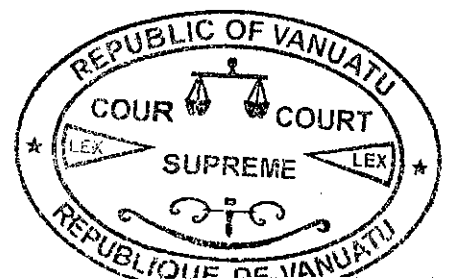


A. INTRODUCTION

1. The trial of *PP v Pipite and 11 Others* (as named above) commenced on 3 April 2018. The defendant Wright, was absent due to his medical condition – he was receiving treatment for his heart condition in New Caledonia. By consent with the prosecution, he was not required to be present. A *nolle prosequi* was tendered by Mr Naigulevu, which ended the proceedings against Wright.
- ~~2. The trial was adjourned by agreement so that counsel could take full instructions from the remaining defendants prior to arraignment at 9am on 4 April 2018.~~
3. I was advised at 9am on 4 April 2018 that counsel had taken instructions and that counsel were ready to proceed. I queried what issues the Court would have to determine – to be met by looks of confusion and incomprehension. I elaborated that given the admitted facts document I had been given, there could surely only be two issues to determine. Given that numerous Court decisions had determined that Pipite was in a position of conflict, his acts in giving pardons to himself and the others were unlawful. If so, then all that needed to be determined was whether or not each alleged conspirator was party to an agreement to achieve pardons by unlawful means; and if he was, whether that was in the face of full knowledge of Pipite's position of conflict?
4. I adjourned further so these issues could be discussed – to 2pm. At 2pm, Mrs Nari asked for a further full day to discuss the issues and get final instructions from her various clients. She was supported by other counsel, including Mr Naigulevu. I acceded to that application.
5. At 2pm on 5 April 2018, counsel asked to see me in Chambers to advise that there was no general agreement between them. I advised them that I would arraign all the defendants and commence hearing the evidence, but that I expected it to be tailored only towards the issues I needed to determine. Upon arraignment, defendants **Pipite, Yatan, Nari, Amos, Laken and James** pleaded guilty. The other defendants pleaded not guilty. I checked with defence counsel that those pleas were in accordance with their instructions - and they confirmed that was so. I duly entered convictions against those whom had pleaded guilty, and remanded them for sentence until the end of the trial.
6. Mr Naigulevu wanted time to further perfect the agreed facts document he was preparing and narrow down the focus of the trial, so he sought an adjournment until 9am on 6 April 2018. Mrs Nari agreed. I acceded to the request.
7. Overnight Mr Naigulevu presented an amended Information – Mrs Nari had no objection to that; and I granted leave accordingly. The remaining defendants were re-arraigned, as the charge was slightly different, in particular as to the accusation relating to Mr lauma. All the defendants maintained their not guilty pleas.



8. Mr Naigulevu then opened his case, and that was translated. Mr Naigulevu then sought more time prior to calling his first witness to agree his suggested amended facts document with Mrs Nari – she agreed. I therefore adjourned the case until 2pm.
9. At 2pm, Mrs Nari advised that defendant lauma wished to make an application. When asked why she wasn't doing so as his counsel, Mrs Nari advised that she was no longer lauma's counsel. I therefore permitted lauma to address the Court. He signalled an application for severance, based on his position as an officer of the Court. I questioned why he was raising this at such a late stage, but did not receive a satisfactory answer. I further indicated his prospects of achieving severance, given that the allegation was that he was a co-conspirator, did not look bright.
10. lauma also sought an adjournment to re-instruct Mr N. Morrison – who had acted for him in the first running of this trial. Mr Morrison was then overseas, and not due to return until sometime that weekend. I did not accept lauma's assertion that Mr Morrison had agreed to act for him in this trial – the e-mail tendered by lauma did not demonstrate that; and I could not accept that Mr Morrison, as an officer of the Court, would have absented himself all week if he were acting. Mrs Nari and Mr Naigulevu supported an adjournment.
11. I reluctantly granted lauma's request for yet another adjournment so he could try and get Mr Morrison to act for him in this matter – it was a serious allegation, and he was a practising lawyer, so the potential consequences were grave. Further, Mr Naigulevu and Mrs Nari indicated they would attempt to further refine the evidence that was to be called. The case was to resume at 9am on Monday 9 April 2018. I indicated that lauma would be acting in own stead should Mr Morrison not be there or unable to act – he understood that.
12. Over the weekend, lauma filed his application for severance, and also a further application for an adjournment. He wanted Mr Morrison to act for him in respect of both the pre-trial application and the trial; and the e-mail correspondence he provided indicated that Mr Morrison was available to act. Mr Naigulevu appeared to be understanding of both applications; and Mrs Nari supported both.
13. In the circumstances I vacated the trial. I further directed that the trial would now be held from 9am Wednesday 13 June 2018 (8 days were available – either for one trial, or 2 consecutive trials). I directed that the issue of severance was to be argued at 9am on 16 May 2018. Any written submissions were to be filed one week prior to that date.
14. lauma was meeting with Mr Morrison that week, and he was to advise the Court in writing by 4pm Friday 13th April 2018 of Mr Morrison's availability in respect of both dates.
15. I also directed that those defendants who had pleaded guilty were to be sentenced at 9am on 8 June 2018 – there was no need to wait until after conclusion of the trial. I remanded all the defendants to those dates on existing bail terms.



16. Subsequently, Mr Morrison abandoned the severance application.

17. Sentencing of those who had pleaded guilty actually took place from 9am on 13 June 2018. At about 11am, after a short break, the trial involving only the defendants **Telukluk, Prasad, Chabod, James** and **lauma** commenced. Mr Naigulevu sought an adjournment to settle the agreed facts document with Mr Morrison – it had already been signed by Ms Nari. I adjourned the trial to 2pm.

~~18. At 2pm Mr Morrison asked to see me in Chambers – he had put forward a proposal to the prosecution regarding lauma which he believed might shorten the trial. Mr Naigulevu needed some time to consider it. We therefore adjourned until either 2pm the following day, or 9am on 15 June 2018 if Mr Naigulevu needed that additional time. He did – and when the trial resumed at 9am on 15 June 2018 Mr Naigulevu reported that he had filed a *nolle prosequi* in favour of lauma. I dismissed the charge against lauma, and he and Mr Morrison were permitted to withdraw. Mr Naigulevu tendered a further amended Information, without objection from Ms Nari.~~

19. I suggested to Mr Naigulevu that having already heard his opening and having some knowledge of the case as a result of the sentencing exercise completed earlier that day that he might forgo much or all of his opening address – to save time. He agreed, and called 7 witnesses to give *viva voce* evidence. He also tendered a number of agreed witness statements, some agreed exhibits, and a memorandum of agreed facts. That was the prosecution case.

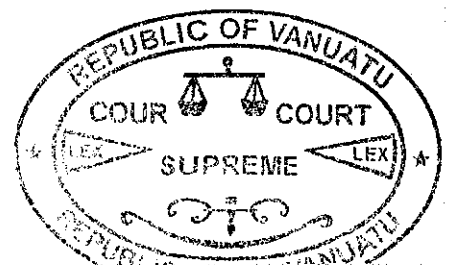
20. Ms Nari submitted that there was no *prima facie* case established. I ruled against her in relation to all four remaining defendants. She then called her clients and other witnesses. That comprised the defence case.

21. After hearing final submissions from Mr Naigulevu and Ms Nari, I reserved my decision. This is my decision and the reasons for arriving at the verdicts contained therein.

B. THE LAW

22. The Information alleges that the four defendants on and throughout 10 October 2015 at Mangoes Resort, the Ministry of Infrastructure and Public Utilities ("MIPU") and elsewhere, together with others, conspired to prevent and defeat the course of justice.

23. The particulars pleaded adverted to the defendants, by various activities including signing letters of request for pardon, to have jointly or severally assented to, devised, contrived or assisted in the issuance of pardons to the named defendants and others, which pardons were to be issued by Marcellino Pipite, the Acting President of Vanuatu, who had been convicted together with the defendants in the same bribery case.



24. The particulars further pleaded that these acts were done to defeat the pending proceedings in the bribery case and its final outcome, against the defendants and others, in which convictions for bribery and corruption of public officials had been entered on 9 October 2015.

25. Section 29 of the Penal Code [Cap 135] sets out what a criminal conspiracy comprises:

"29. Conspiracy

(i) Conspiracy is an agreement, express or implied, between two or more persons to do an act, which, if done, even by one person, would constitute a criminal offence."

26. Section 79 of the Penal Code [Cap 135] sets out what a conspiracy to defeat justice comprises:

"79. Conspiracy to defeat justice etc

No person shall –

(a) Conspire with any other person to...do anything to obstruct, prevent, pervert, or defeat the course of justice:"

27. The legal elements involved in the charge can therefore be easily gleaned. The prosecution must prove that:

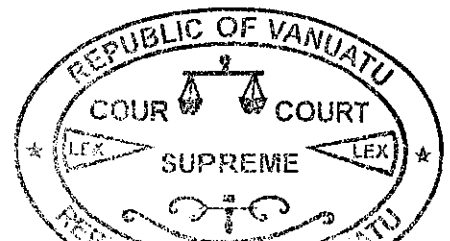
- There was an agreement between 2 or more persons;
- To do an act which constitutes a criminal offence;
- Which act involves preventing and/or defeating the course of justice; and
- Each defendant was a knowing party to that agreement.

28. There is ample authority for the proposition that to defeat the course of justice involves not only an intention to achieve that but also, further, that the act(s) involved have a tendency to achieve the desired goal: see *R v Murray* [1982] 75 Cr App R 58.

29. I noted that the Court of Appeal in *Pipite and Others v PP* Criminal Appeal Case No. 17/583 put it this way:

"20. The essence of the alleged offence is that the conspiracy involved the application for a Presidential pardon to be made very quickly to Pipite as Acting President and to be decided by him before the President returned on 11 October 2015.

21. It is accepted by the Public prosecutor that it was necessary to prove that the alleged conspirators knew of those facts, and understood or expected that Pipite as Acting President would be likely to grant a pardon to each of the applicants for a pardon, and that each of the alleged conspirators knew or understood that Pipite as Acting President, in the particular circumstances, would have a clear conflict of



interest and would be acting unlawfully in granting the Pardon and in that context agreed that the request to Pipite as the Acting President for a pardon would be made.

22. There can be no doubt that Pipite as Acting President was in breach of the duties placed upon him by Article 66 of the Constitution. Article 66(1)(a) obliged Pipite to conduct himself so as not to place himself in a position in which he had or could have had a conflict of interest, or in which the fair exercise of his public duties (as Acting President and as Speaker) might be compromised. Section 24 of the Leadership Code Act [Cap 240] provides a definition of "conflict of interest". It is not necessary to refer to that Act in detail."

~~30. I noted that, as in all criminal cases, the onus and burden of proof lay with the prosecution. The standard of proof required, for each of the elements identified, is beyond reasonable doubt.~~

31. The defendants did not have to prove anything, even though they took on the task of giving and calling evidence.

32. I reminded myself that if I were to draw inferences, they could not be guesses or speculation, but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.

C. THE EVIDENCE

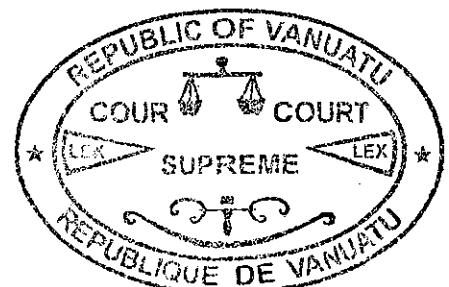
33. There are 7 days over which events of consequence occurred, **from 9 to 15 October 2015.**

34. On **Friday, 9 October 2015**, in the afternoon, Justice Sey handed down her decision in the bribery and corruption case involving the 15 Members of Parliament, convicting all bar one of them (including the four remaining defendants) of offering and accepting substantial bribes. They were remanded on bail to re-appear for sentencing on 22 October 2018.

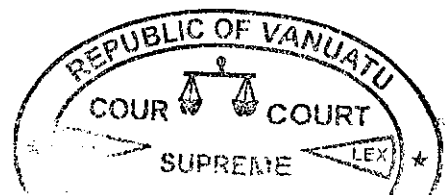
35. There was a gathering outside the Supreme Court at Dumbea immediately after the verdicts had been pronounced, which involved a number of the convicted persons and their lawyers – and the discussions generally were about matters to do with appealing the decision and sentencing.

36. Most or all of those convicted, and several of their lawyers, went from the Courthouse at Dumbea up to the Prime Minister's Office in the early evening to report on what had occurred, and to then drink kava before going off in their different directions. The relevant evidence includes the following accounts:

- Mr Molbaleh: he did not appear in the bribery and corruption trial, but he was assisting in keeping notes and typing documents. He went with those convicted to the PM's office and told me there had been talk of an appeal and possibly a QC assisting. He denied any mention of pardons, although that was specifically put to him.



- Mr Takau: he had acted for 7 of the defendants in the trial, including Harry, Chabod and Prasad. His advice to his clients that evening at the PM's office centred on getting an appeal underway. Mr Takau said there was no talk of any pardons on Friday evening; either at the PM's office or at defendant Nari's house where he and Mr Molbaleh went for kava afterwards.
- Mr Kapapa: he had acted for 3 of the defendants in the trial, including Telukluk. He told me that at the PM's office that Friday evening, one of the defendants Vohor was speaking to Pipite and referred to the pardon given to Mr Barak Sope – none of the present defendants were within hearing of that discussion. Vohor had suggested that Pipite "...think along the lines of getting one of those. Our lives are in your hands." Pipite stated that he would seek some legal advice about that possibility.
- Mr Siri: he was Pipite's driver at the time. He told me that he had heard Vohor, at the PM's office prior to them all drinking kava, say to Pipite that "...their lives were in his hands".
- Mr Leo: he had acted for 3 defendants, Wright, James and Vohor. He was unhappy with them, as he'd advised them to give evidence, which advice had been ignored. However, he was prepared to act on their appeals if they wished. He told them that outside Court and then left and went downtown.
- Chabod: he agreed he had spoken with Mr Takau outside the Court, asking for a copy of Justice Sey's decision – there was also talk regarding a possible appeal. Chabod did not go directly to the PM's office – he went to meet his family at ABM first, and when he later turned up there the kava drinking was already underway. He gave no evidence that pardons were mentioned on the Friday evening.
- Telukluk: he spoke with his counsel outside Court. Mr Kapapa told Telukluk he should go to the PM's Office to brief him on the verdicts. They agreed to meet again on Sunday, and Telukluk went home, nowhere else, as he was not feeling well. In cross-examination he revealed he had gone to the PM's office, and when asked why he was mentioning that so late in his evidence he said he must have missed that. He agreed he had seen Vohor at the PM's office, but said there was no talk of a pardon.
- Harry: told me that there was only talk of an appeal at the PM's office – they were all in the room where the Council of Ministers meets. He accepted in cross-examination that he had seen Vohor at the PM's office, but said there was no mention of a pardon at that time.
- Prasad: he agreed there was some talk of an appeal immediately after the verdicts had been given. He too went to the PM's office, where he said the lawyers



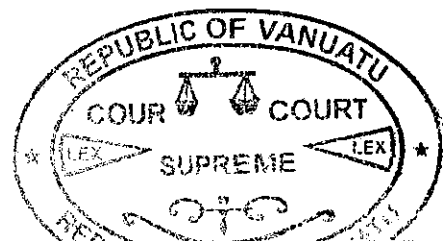
reported to the PM. He said defendant Kalosil had mentioned to others getting a QC to assist with the appeals. He was one of the last to leave – just prior to leaving the PM told him they should wait and see the outcome of the appeals.

37. On Saturday, 10 October 2018, there were two significant events. The first involved a breakfast meeting at Mangoes at something like 7.30 – 8 am in the morning:

- Mr Molbaleh: he rang Nari at some stage between 8 - 9am to see if he could assist with his appeal against conviction. He was instructed to go to Mangoes Restaurant. After some shopping he did that, arriving there at between 9 - 10am. On his arrival he saw Nari, Pipite, and Chabod having coffee with the lawyers Mr Takau, Mr Kapapa and Mr lauma. Mr Molbaleh was told to go to MIPU – he was at Mangoes for all of 5 minutes. His impression was that there'd been some kind of meeting.

- Mr Takau: he told me Nari called him at about 7am and asked him to meet him at Mangoes Resort. While on his way there, Yatan rang and Mr Takau suggested he too go to Mangoes. On arrival at Mangoes, at between 8.30 – 9am, Mr Takau saw Nari, Pipite and some others. He learnt there had been discussion about pardons – they asked if it was possible for Pipite to pardon the others. Mr Kapapa was also there and he advised that only the President could issue pardons – Mr Takau agreed and told Nari his view. Nari wanted to know if the Acting President could pardon – Mr Takau suggested not, pointing out that Pipite had also been convicted and was therefore conflicted. At that point Kalosil left, as he did not agree with the idea of a pardon – he considered the best plan of action was an appeal. Nari then told the others: "We should not be listening to Moana anymore, because he's the one who put us in this mess." Mr Takau was asked if any of the current 4 defendants was present at Mangoes, and he said "No." Mr Takau heard Pipite say we should go to his office to prepare the instrument of pardon. However, instead, they went to Nari's office – Mr Takau did not know why.

- Mr Kapapa: he told me that although Saturday was a day of rest and worship, Mr Siri arrived at his house at 7 – 8am and asked Mr Kapapa to go to Mangoes Resort – he said it would not take long. At Mangoes he saw Pipite, Kalosil, Nari, Yatan, Laken and several lawyers: Mr lauma, Mr Takau, and Mr Molbaleh. Pipite asked Mr Kapapa for legal advice in relation to pardons, and asked for the Sope case that Vohor had mentioned the night before. Pipite said they had had a meeting and talked about pardons, and they wanted legal advice. Mr Kapapa said he'd get the Sope case but he needed written instructions prior to being able to give legal advice – he said his initial view was that Pipite could not give pardons. He told Pipite that as he was one of those convicted, he was conflicted and could not do it. Mr Kapapa went to his office, retrieved the Sope case, and gave it to Pipite at MIPU. Pipite gave him written instructions (Exhibit 3) to advise on

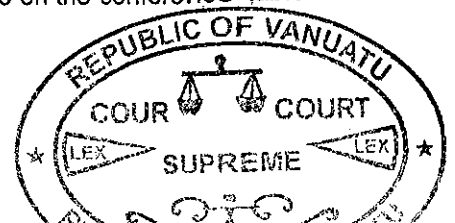


pardons, and Mr Kapapa said he would give him his opinion, but Pipite would also need to get advice from the State Law Office.

- Mr Siri: he confirmed he collected Mr Kapapa early in the day and took him to Mangoes. He heard it said that it wasn't safe to talk at Mangoes, so they were going to talk at MIPU. He saw Pipite, Nari, Kalosil and Yatan there then.
- Mr lauma: he told me that Pipite rang early on Saturday morning and told him a car would pick him up and bring him to Mangoes. He had breakfast there with Pipite, Nari and Kalosil – they had been talking about pardons before he got there. They talked about the appeal and Kalosil spoke of getting a QC to assist – Kalosil said pardoning should not occur. Pipite asked Mr lauma to give him advice regarding pardons – he refused as he had not acted as counsel during the bribery case, so Pipite called for Mr Kapapa. Later they were joined by Yatan and Laken, as well as his immediate boss Mr Kapapa. Mr lauma saw a discussion between Pipite and Mr Kapapa but did not hear what was said.
- Chabod: he told me he did not go to Mangoes.
- Telukluk: he said was not at Mangoes.
- Harry: he told me he'd been to several drinking and kava establishments over night; and he only got home at 11 to 11.30am, after which he went to sleep.
- Prasad: he went to Church at Pango on Saturday morning.

38. The second significant event on **Saturday, 10 October 2018** was the **assembly at MIPU** from something like mid-morning until later in the afternoon:

- Mr Molbaleh: he advised he went to MIPU in Nari's Government car – there was no discussion on the way; and Mr Molbaleh was not told why they were going to MIPU. Several vehicles travelled from Mangoes to MIPU; and fairly soon there were Nari, Laken, Harry, Chabod and Prasad gathered at Nari's office in MIPU at about or just after 10am. Chabod left at one stage to attend a football match, but he returned later in the day. Telukluk joined them there much later in the day – at 3.30 – 4pm. Nari asked Mr Molbaleh to prepare a letter of request to the Acting President for a pardon for all the convicted MPs. Although he thought he was at MIPU to assist in preparing for an appeal, as Mr Molbaleh and Nari come from the Penama province and because Mr Molbaleh had respect for his elder and a Minister of Government, he did as asked by Nari. Having drafted a suitable letter, Mr Molbaleh prepared a copy for each of the defendants – he identified those at Exhibit 5 as being evidence of his handiwork. Once done, Nari gave him a flash drive to store the letters on, and asked him to take that to Amos' office and print off copies. He did as asked and left the final copies in a file on the conference table in

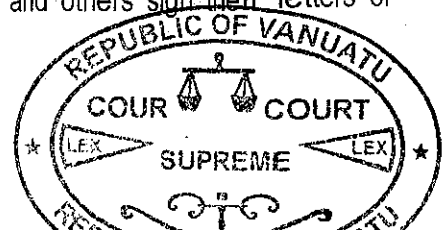


Nari's office near to where Mr lauma was seated – after he had got all the defendants to sign them. Mr lauma dealt with them thereafter. Next, Mr Molbaleh attended to drafting the pardon instrument – at Nari's request. When first asked to do this, Mr Molbaleh pointed out that he had no experience in this, but he was given a precedent to work off – that of Mr Barak Sope. Mr Molbaleh testified that he did not think pardons were a good idea – and he explained that to his client Nari. Mr Molbaleh considered there was a conflict of interest for Pipite and that it would not be right for him to sign the pardons. Nari did not respond to that advice. Mr Molbaleh completed the draft pardon instrument by about 1–1.30pm. He was again taken to Amos's office to print it off and then return to MIPU with the hard copy. Once he returned to MIPU, Mr Molbaleh was asked to accompany Mr Kapapa to the President's Office at State House to print off the final version of the pardon instrument on the President's letterhead – he identified Exhibit 6. At State House Mr Molbaleh met Mr Bethual Solomon to print off the document. Mr Solomon said he felt it wasn't a good idea – Mr Molbaleh told Mr Solomon it was now a matter for his office to deal with. Mr Solomon also suggested State Law should be required to give some advice; and although Mr Kapapa was right there, Mr Molbaleh could not now recall if he answered. Mr Molbaleh went back to MIPU, but was soon dismissed – he thought that was at about 4.30pm.

Mr Molbaleh was challenged as to why he was acting for all the defendants, and whether he did so on instructions. He replied that his client had given instructions, and the others had their own lawyers – no one objected or protested to what was happening; and everyone was aware of what was going on. He was not challenged on his statements that he got all the defendants to sign letters of request; nor that Chabod had returned later in the afternoon after the soccer match to sign his letter.

I also questioned Mr Molbaleh – I wanted to be sure that what I thought might be the defence was properly put to him. He told me that there was conversation at MIPU between the defendants, but as he was concentrating on what he was doing he could tell me nothing of what they spoke about. He told me the defendants wanted things done as quickly as possible – as it was Saturday and the President was returning the next day. He also told me that Mr Takau was using a computer in an adjoining room; and that Mr lauma was in Nari's room throughout.

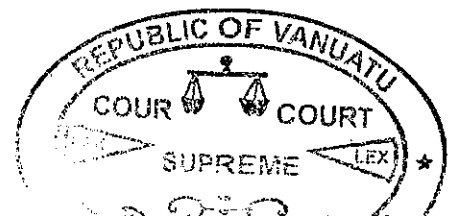
- Mr Takau: he told me they were seated in the conference room at Nari's office at MIPU having arrived first – him, Nari, Pipite, George Siri, Mr lauma, and Mr Molbaleh. Mr Takau had been there before – they had based themselves there during the 2 weeks bribery trial. Nari and Pipite instructed them to prepare the instrument for pardon. Mr Takau admitted to a lack of experience in drafting such document, so Mr Molbaleh was asked and he agreed to do it as well as the letters of request. Mr Takau went to an adjoining room and researched possible appeal issues. Later when all the request letters were completed, Mr Takau called Chabod, who was at a soccer match, to come to MIPU and sign his letter of request. Later he saw Chabod, Harry, Prasad and others sign their letters of



request. Mr Takau gave the letters of request to Prasad and Harry to sign, and explained to them what it was before they signed. Other lawyers were doing the same with their clients.

Mr Takau was cross-examined and gave very evasive answers to questions he had previously easily responded to – such as “I can’t recall”. He told me he had asked his clients to go to MIPU and sign, even though he did not agree with it, due to being pressurised by Nari. He attempted to tell me that he hadn’t understood the questions in cross-examination; and later he said he’d made a mistake, effectively the same mistake again and again. He was particularly evasive when I asked him why he’d asked his clients to sign even though he thought the idea of Pipite pardoning his clients was wrong – the question was put, then at his request translated into Bislama, and his lame answer was “Sorry, I can’t recall”. He maintained his clients had not asked him why there was a change from appealing to pardoning – he just told them to sign and they did. He was again completely stuck when I asked if that was discharging his professional duties to his clients. He maintained also that all the defendants signed their letters of request in the room with Nari – he, Nari, was also pressurising the other defendants to sign. Mr Takau told me that first he had told his clients to sign, then Nari also did that, and finally Pipite also. It was not put to him that Chabod had not signed a letter of request; nor that he did not return to MIPU after the soccer match.

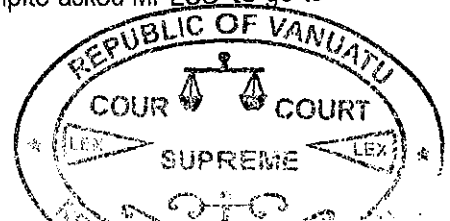
- Mr Kapapa: he provided Exhibit 4 to Pipite at MIPU – also then present were Laken, Yatan, and Nari. Before preparing that advice he had informally consulted another lawyer, Ishmael Kalsakau – his advice had been that Pipite was not able to pardon. He also told Pipite informally that he should wait for the President to return the next day and sort this out. Pipite replied: “This is none of your business.” Mr Kapapa told me it was not unusual for Pipite to not accept advice he did not agree with. Mr Kapapa returned home to continue his worship. Mr Kapapa told me that at about 1.30 – 2pm Mr Siri again collected him to accompany Mr Molbaleh to the President’s office, as Mr Molbaleh was afraid to go alone. They were to take the pardon document on a flash drive. On arrival at State House, the CEO refused to print the pardon document as it had not been prepared by the State Law Office. Pipite overheard this and said; “What are you talking about? Just bring it here and print them.” Mr Solomon told them that they had to get legal advice from State Law Office before they were printed. However, Pipite wanted the document brought to him. He said: “It’s not your business. Give me the documents to take to State Law Office.” Mr Solomon had also told Pipite: “This is not correct. You have to wait for the President.” Mr Kapapa stated he agreed with that – that Pipite had to get SLO advice and wait for the President. Mr Kapapa told me he saw Pipite sign the pardon document. Then he went back home.
- I questioned Mr Kapapa regarding exactly what advice was sought/given – was it whether or not Pipite could give pardons given his particular circumstances or whether an Acting President could do so? Mr Kapapa maintained the advice centred on what Pipite was able to do.



- Mr Siri: he told me he took Mr Kapapa to get the Sope decision and then they went to MIPU, after stopping off on the way to see Mr Ishmael. Mr Siri went off to an election campaign but returned to MIPU later to take Mr Kapapa back home. He was asked by Pipite to get some drinking water for those at MIPU. When he delivered it he saw Pipite, Nari, Amos, Yatan, Laken and Telukluk, and some lawyers, Mr Molbaleh, Mr lauma and Mr Leo. present there. As Mr Siri was leaving he came across James who was entering, and Chabod who was leaving for a football match. In the carpark he met Wright who asked: "Are they all upstairs?" Mr Siri replied they were. Much later, after he'd gone back to the election rally, Mr Siri returned to MIPU to take Mr Kapapa home. He was not challenged as to his evidence that Telukluk was at Mipu between 1 and 2pm.

- Mr lauma: he told me he needed some cash and asked his boss Mr Kakapa. He was told Mr Kapapa had no cash, so he called Pipite – he said he frequently obtained legal fees in cash from Pipite, which he would use for his own purposes. Pipite told him to go to MIPU and wait until Pipite was finished. He did so, and he saw Nari, Mr Takau, Mr Molbaleh, and Mr Leo at Nari's office at MIPU. He waited there from between 11am and 4pm – while waiting at the conference table he saw all the former MPs except for Kalosil, Kalsakau, and Telukluk. He saw Mr Molbaleh working on a computer. The former MPs did not arrive as a group – they came and they went. They came in to sign the requests for pardon – the letters were in a folder Mr Molbaleh had prepared and put on the conference table. He told me he sat there and watched. He told me the folder containing the letters of pardon remained on the desk at the time he left, which was about 4pm. I questioned Mr lauma – I did not think Ms Nari had done enough in her cross-examination. The whole scenario of Mr lauma waiting in Nari's office for up to 5 hours to get VT 10,000 did not strike me as likely. And to be present while such momentous events were occurring while paying scant attention to them seemed to me to be quite incredible. He had nothing else to do, but watch and listen according to his version – yet he was unable to say anything about what conversations took place and other details.

- Mr Leo: mid-morning he received a phone call from Pipite who wanted to meet with him at MIPU. On arrival he was shocked to see all the MPs except for Wright, Kalsakau, Vohor, Willy Jimmy and Kalosil; and all the lawyers there. He could feel the tension in the room. He saw Mr lauma writing at the table, and Mr Molbaleh was typing. The ex-MPs were sitting on a sofa and around the table – they were joking. Nari approached and said he'd been thinking about things all night – the only answer was a pardon. He told Pipite about it in the morning, and that's how they ended up at Mangoes. The MPs told Pipite he could not pardon himself because of his conflict of interest, but he should pardon all the MPs. Pipite replied that he had to pardon himself because the President wouldn't pardon him on his return. Mr Leo heard them talking about why not pardon Willy Jimmy too – but Willy Jimmy said he didn't want a pardon. Laken and Pipite asked Mr Leo to go to

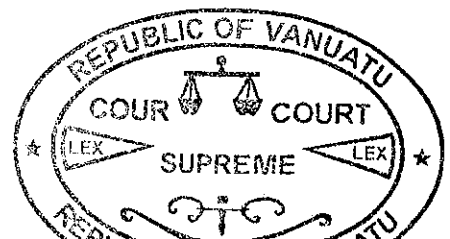


State House to get some letterhead paper, but Mr Leo refused. Mr Leo advised James to not sign the pardon request before leaving.

I asked some questions: Mr Leo said Pipite had told him to go and see Mr Kapapa as he intended "to do some pardons". When Mr Leo spoke to Mr Kapapa he was advised Pipite had asked Mr Kapapa to give him advice regarding the President's power of pardon, and that the advice given was that only the President was able to issue pardons, not Pipite, under the Constitution. He agreed with that advice – hence his advice to James. He knew Mr Molbaleh was typing pardon requests.

In cross-examination, he explained he'd gone to MIPU at Pipite's request as he was the Acting President and Speaker of the House – he held him in high regard. Mr Leo said he'd seen MPs signing the pardon request letters – all the ones present did that. It was put to him he was part of the planning to get pardons issued – he denied that. He challenged the validity of Pipite's pardons subsequently – on the instructions of clients, and to clarify whether the pardons were lawful or not. It was not put that Chabod did not sign a letter of request; nor that Telukluk also did not sign his letter.

- Mr Rarua: he contacted Telukluk on Saturday morning and interviewing him between 10am to 12 noon, for the purposes of preparing a Pre-Sentence Report for him. After that he went to Harry's home. Harry took a phone call, shortly after they had started, and then ended the interview, as he'd been advised by his lawyer to not take part. Mr Rarua did see an interview report involving Prasad on that Saturday – Prasad had thought on Saturday that it would be alright to be interviewed even though he thought he'd been pardoned. He was unchallenged about timings.
- Chabod: He was instructed to go to MIPU by Mr Takau. When he asked for a copy of Justice Sey's judgment, Mr Takau told him to forget about an appeal as they were now working on another project, namely seeking a presidential pardon. Chabod told Mr Takau that he'd just got out of one problem and he wasn't sure he wanted to get involved in another. Mr Takau told him to wait, but he had no time and left. He said at no time did he give Mr Takau instructions to seek a pardon. He did not sign a letter of request – he did not want or seek a pardon. He returned home about 4pm and took a call from Mr Rarua who wanted to interview him for the PSR. Chabod told him he'd been pardoned, and Mr Rarua then said if that was the case there was no point in interviewing him. I noted that much of what Chabod told me had not been put to Mr Takau.
- Telukluk: he was interviewed for the PSR in the morning. At about 3pm he was asked to go to Mr Kapapa's home, which he did. He was then told to go to MIPU to see Mr lauma. He went to MIPU and saw Mr Molbaleh arriving – he asked if Mr lauma was there but was told he'd already left, so he returned home. He was at MIPU between 3 – 4pm. He insisted that Mr Leo was wrong in saying he was at

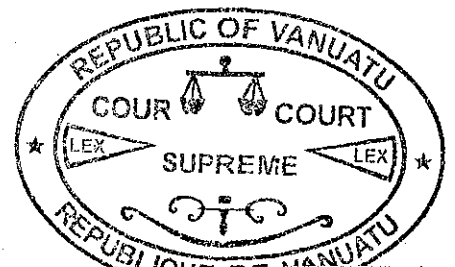


MIPU at about 1pm, and that he signed a letter of request for a pardon – he had signed nothing.

- Harry: he was woken from his drunken slumbers at about 1pm by Correctional Officers at his home, wanting to prepare their PSR. He had a headache and was tired. He rang Justine Ngwele for advice, but was told to go to MIPU to see Mr Takau. He eventually got to MIPU and Mr Takau swore at the Correctional Officers and said "Don't worry about them. You come, we're preparing an application for a pardon for you." Mr Takau went inside and returned with a piece of paper which he told Harry to sign. Mr Takau explained it was simply a request for a pardon. The paper was not like Exhibit 5 – it was smaller. Harry returned home as he was tired. I noted that this evidence had not been put to Mr Takau.

- Prasad: he told me he received a phone call at about 11.30am from Mr Takau and was told to go to MIPU as there was something for him to sign. When he got there he was told they were in the process of preparing letter for a presidential pardon – but it wasn't ready yet. He had some food, but couldn't wait any longer as he needed to pick up his family from Church, so he left after 10 – 15 minutes. At that time he only saw Mr Takau and Mr Molbaleh.

39. On Sunday, 11 October 2015, other significant events occurred – the pardons were formally Gazetted, and in the early afternoon Pipite held a press conference advising that he had granted pardons to all the convicted persons but for Mr Walter Jimmy (who had pleaded guilty to the bribery allegation against him). Most or all the ex-MPs were present.
40. On Sunday, Mr Rarua spoke with Chabod at around 9 – 10am to try and set up a PSR interview. Chabod told him he had been pardoned and that a PSR was therefore not required. Chabod later told me this had occurred at 3pm, something which was not put to Mr Rarua.
41. Chabod was told by Mr Takau that he should go to Parliament at 2pm, to attend a Press Conference relating to pardoning. Chabod went to see what was happening. When he got there it was all over; but Pipite was there and he gave Chabod a copy of his pardon. Chabod was surprised as he'd not asked for a pardon.
42. Telukluk also went to Parliament on Sunday afternoon. He admitted in cross-examination that he already knew by then that he'd been pardoned, despite also telling me he'd never spoken to Pipite about a pardon.
43. Prasad also went to the press conference, and he said that was the first he knew that he'd been pardoned.
44. Subsequently, in the afternoon, the late President returned from his overseas trip to be met by Pipite at the airport.



45. In the morning of Monday, 12 October 2015, Chabod made an appointment to meet with the late President.

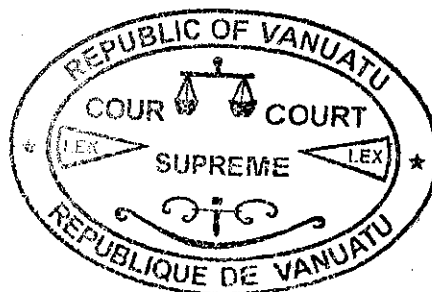
46. At 10am on Wednesday, 14 October 2015 Chabod met with and explained to the late President what had occurred, as best he knew it, and asked the President to revoke the pardon given to him. The late President thanked him and said he would think about what to do.

47. Mr Sovan, the former personal secretary to the late President confirmed that an appointment was made for Chabod to meet with the late President; and further that he was present at the meeting, keeping notes of what was discussed. Attempts were made to try and get access to those notes – without success. He did produce a note (Exhibit A) to the effect that Chabod had seen the President. Mr Sovan said that Chabod had apologised, explained that he was remorseful and was unhappy with the pardon – the President said he'd given everything over to State Law and that he'd leave it to the Courts to decide.

48. On Thursday 15 October 2015, the late President revoked all the pardons granted by Pipite.

49. Some additional supporting evidence by the defence also needs to be considered:

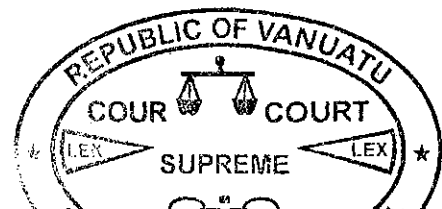
- Mr Alick Sandy gave evidence supporting Chabod's statement that he had not gone to Mangoes, and his attendance at a soccer match on Saturday afternoon, thereby eliminating any opportunity for Chabod to go to MIPU to sign his letter of request for a pardon. Mr Matthieu Duoc Laurent confirmed Chabod's attending a family function on the Sunday.
- Mr Daniel Meltecman, Rohe Timothy and Mrs Telukluk gave evidence supporting Telukluk's account as to the events over the weekend. They were unable to exclude Telukluk's opportunity to attend MIPU to sign the letter of request, and this evidence was quite contrary to the evidence of the prosecution witnesses as to when Telukluk had been at MIPU.
- Harry told me he'd been with his family all day Sunday – he only learnt about the pardon on Monday by his wife reading the newspaper.
- Harry called witnesses to support his account as to his whereabouts on Saturday – his brother Basan Morris, and the lawyer Justine Ngwele. Mr Ngwele was not involved in the bribery trail, but he employed Mr Takau. Due to this connection Mr Ngwele also went to the Prime Minister's office on Friday night; and he had contact with Mr Takau on Saturday. When Mr Ngwele learnt of the move to give everybody pardons, he discussed the matter with his partner and then instructed Mr Takau that he should leave MIPU and not be involved as it was clearly wrong. I noted that this had not been put to Mr Takau.



- Prasad told me he only learnt of the pardons after being told to go to Parliament on Sunday – at the Press conference given by Pipite, advising everyone they had all been pardoned.

50. The agreed statements of a number of witnesses were tendered. I summarise the more relevant parts of their evidence:

- Thomas Mael – a waiter at Mangoes, confirmed the presence at Mangoes on the morning of Saturday 10 October 2015 at around 9:15am, possibly 8:30 – 9am, of Kalosil, Pipite, Nari, Natan and Mr Siri. There were others there, whom he did not know, but in total there was something like 11 people present at the meeting. He recalls Kalosil and Pipite doing all the taking. They were there for 15 – 20 minutes.
- Delaila Kalwas – a waitress at Mangoes. At between 8 – 9am she saw Kalosil and 2 others arrive. They were soon joined by Laken and Yatan. There were others too, whom she did not recognise. Kalosil was doing most of the talking.
- Pakoa James – a security guard at MIPU. He saw people coming out of the building at 5.45pm on Saturday 10 October 2015, including Nari, Amos, and James.
- Dan McGary – he was present at Pipite's Press Conference, shortly before 3pm on Sunday 11 October 2015.
- Jenery Thompson – on 29 and 30 October 2015 he received police Search Warrant requests. Accessing Nari's computer, he located and copied an instrument of pardon and a letter of request for pardon. The documents were provided to the police.
- Sailas Yakar – he executed the Search Warrants looking for the original instrument of pardon and letters of request for pardon, but was unable to locate them. However, in his presence, Jenery Thompson located relevant documents: a pardon document without letterhead, letters of request addressed to Pipite by James, Kalosil, Yatan and Prasad. Subsequently Mr Yakar located further copies of the pardon and letters of request. He attached the documents to his statement.
- Yosef Atis – he was present during the execution of the search warrants and took some photos of Nari's office at MIPU. He produced them.
- Bethual Solomon – he was the CEO of State Office. He was instructed by Pipite to go to the President's office on Saturday 10 October 2015. Later, he went to see where security were and while checking at MIPU he saw Pipite there in the carpark. During the day Molbaleh and another lawyer went there and gave him a flashdrive containing the pardon instrument for Solomon to print off on letter head.

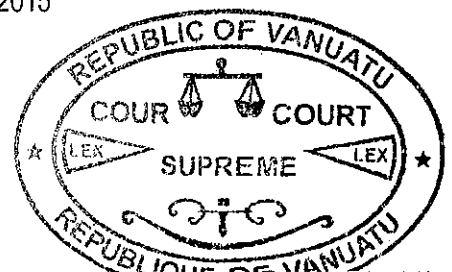


He kept a copy of the pardon which he later gave to the police. Solomon told the lawyers the process was not right as State Law was not involved. He said 4-5 times. Pipite heard Solomon arguing with the lawyers – Pipite called out to hurry up, so Solomon printed it off and gave it to Pipite. The lawyer Robin told Solomon that Angeline had cleared the document and that Pipite had the power to grant the pardons.

- Viran Molisa Trief – she was the Solicitor General and Acting Attorney General on 10 October 2015. She saw and spoke with Pipite during that afternoon. She was not asked to give legal advice regarding the pardons – that subject was not even raised with her by Pipite. At around 5pm she saw Mr lauma, who handed over two copies of the signed pardon instrument for gazetting.
- Joseph Edwards – he discussed the process of gazetting with Pipite, Nari and Amos between 1 to 2pm in the afternoon of 10 October 2015.
- Jason Pakoasongi – he was Principal State Counsel at the State Law Office. On 10 October 2015, Mr lauma gave 2 copies of the signed and sealed pardon instrument to him for gazetting. That was actioned the following day as the news had already gone international by then. He was present on Sunday, when Ms Dovo challenged Mr Kapapa regarding him telling Mr Solomon that she had advised Pipite regarding the pardon – Mr Kapapa said he'd not mentioned Ms Dovo but had mentioned Ishmael as having given Pipite the advice.
- Angelyne Dovo – she first heard about pardons, via Mr Leo, in the early afternoon of 10 October 2015. She did not give any advice regarding pardons, and even though she met with Pipite, the subject was never raised by him. When she asked Pipite about pardons, he did not answer her. She was involved with the request to gazette the pardons. She challenged Mr Kapapa as to why he used her name wrongly when telling Mr Solomon that the pardon had been passed by SLO – he denied doing that.

51. The agreed facts memorandum set out a number of matters, the relevant ones of which I have condensed:

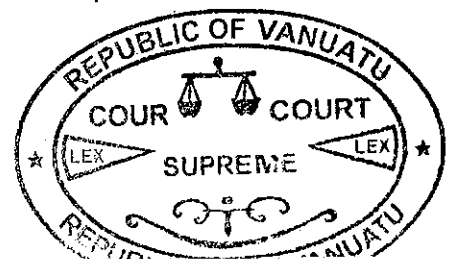
- The defendants were Members of Parliament at the time
- The defendants, with others, were convicted of corruption and bribery of public officials offences on 9 October 2015
- They were released on bail prior to being sentenced on 22 October 2015
- Pipite was Acting President between 5 and 11 October 2015



- On 10 October 2015 Pipite sought legal advice from Mr Kapapa about his ability to grant pardons to himself and the others convicted with him. Mr Kapapa gave Pipite advice that same day
- On 10 October 2015 Pipite signed the instrument of pardon for himself, the defendants, and others
- The instrument of pardon was Gazetted on 10 October 2015, and published the following day
- Pipite gave a press conference regarding the pardons on 11 October 2015
- The President revoked all the pardons on 15 October 2015
- Constitutional Cases 6 and 7 challenged the pardons, and the issue went to the Court of Appeal.

52. The agreed exhibits were:

- 1. Judgment of Justice Sey in *PP v Kalosil and Others* Crim Case no. 15/73, which detailed the convictions of some 15 MPs for bribery charges;
- 2. Judgment of Court of Appeal in *Kalosil and Others v PP* Crim Appeal no. 15/12, which upheld those convictions and sentences;
- 3. Letter from Pipite as Acting President to Mr Kapapa seeking advice regarding his powers as President to pardon;
- 4. Letter from Mr Kapapa to Pipite, containing legal advice to the effect that the President could pardon;
- 5. Copies of some of the letters requesting pardons – for Kalosil, James, Yatan and Prasad. All are addressed to Pipite as Acting President; and all are unsigned. They are all couched in the same terms, seeking a pardon due to their service as MPs;
- 6. Instrument of Pardon, dated 10 October 2015, and signed by Pipite. It purports to pardon 14 persons, including all four defendants;
- 7. Gazette containing the pardon, dated 11 October 2015;
- 8. Press release issued on 11 October 2015 advising of the pardons – the reasons set out are to avoid civil unrest and riots, and the need for political stability and governance in Vanuatu;



- 9. Letter of Pipite's appointment, as Acting President between 7-11 October 2015, dated 5 October 2015;
- 10. Instrument of Revocation of all 14 pardons, dated 11 October 2015; with accompanying press release, and a copy of an address by the President – it appears it was delivered via many media on 16 October 2015;
- 11. Sentencing decision in *PP v Kalosil and Others* Crim Case no. 15/73; and
- 12. Judgments in *Natuman v President* Constitutional cases 15/6 and 7 and the Court of Appeal decision in Appeal no. 15/40 which upheld the majority of Justice Saksak's conclusions. I particularly noted what Justice Saksak said:

"23.3. Clearly Mr Pipite as Speaker of Parliament and as a Member of Parliament having been convicted a day earlier on 9th October, 2015 and granting a pardon on himself and his 13 other colleagues on the very next day which was a Saturday, and caused the pardon instrument to be published on 11th October 2015 which was a Sunday, not only demonstrate haste, desperation and bad faith contrary to what his Counsel argues, but an obvious conflict of interest, demeanor [sic] of his office and position, and question about his integrity. Clearly in my view Article 66 was infringed."

I note from the Court of Appeal's decision the following:

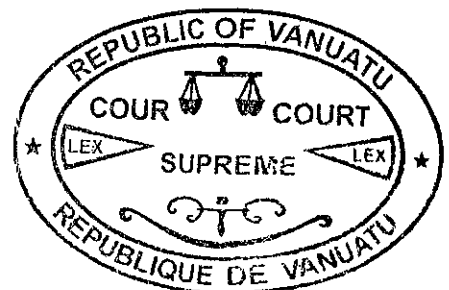
"23. Under art 66(i)(a) of the Constitution, Mr Pipite had the duty to conduct himself so as not to place himself in a position in which he had or could have had a conflict of interest, or in which the fair exercise of his public duties might be compromised. Moreover, his duties as a leader required him under s13(1)(a) of the Leadership Code to "comply with and observe the law".

D. THE RULE OF BROWNE V DUNN

53. In New Zealand this old (1894) common law rule has now been codified (and slightly enlarged) in the Evidence Act 2006 as follows:

"92. Cross-examination duties

- (1) In any proceeding, a party must cross-examine a witness on significant matters that are relevant and in issue and that contradict the evidence of the witness, if the witness could reasonably be expected to be in a position to give admissible evidence on those matters.
- (2) If a party fails to comply with this section, the Judge may –
 - (a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or
 - (b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been able to explain the contradiction, was not questioned about the evidence; or
 - (c) exclude the contradictory evidence; or
 - (d) make any other order that the Judge considers just."



54. Essentially, what must be done is to put contradictory matters to all witnesses, so that they have the opportunity to respond. That is not only fair to the witness, but it can greatly assist the fact-finder in determining which version is to be accepted. The obligation is mandatory.

55. Unfortunately, throughout the prosecution case, this rule was observed in the breach. So much so, that I wondered if it was a deliberate tactic. Numerous aspects of each defendants case was not fairly put to the prosecution witnesses – in particular whether individuals were at the various events earlier described or signed letters for request.

56. Given that this was a criminal trial, with individual liberties at risk, I decided not to simply exclude the later contradictory evidence given by the defendants and their witnesses. I also decided there was little to be gained by re-calling each of the witnesses called by the prosecution to specifically put the contradictions to them – I was confident they would maintain their earlier evidence that certain things had occurred; and that as the fact-finder I would be no better placed in deciding what to accept. I therefore admitted the evidence over the objections of the prosecution, but reduced the weight I was able to place on that body of evidence.

57. While it is the primary duty of counsel to properly deal with this, each of the defendants sat mutely observing the cross-examination and did not give instructions to their counsel to deal with the contradictory aspects of the evidence which they were each well aware of. I consider they felt the way matters were progressing was to their advantage.

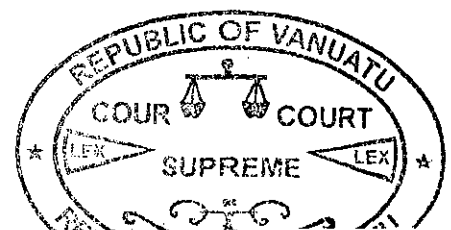
E. ANALYSIS OF WITNESSES

58. I accept the agreed statements, agreed evidence and exhibits.

59. I looked closely at each of the witnesses who gave evidence before me. I was more concerned with their consistency than the manner in which each testified. I reminded myself that body language and assessments of witness demeanour are but a very small part of an overall analysis of whether a witness is telling the truth and is an accurate reporter of facts that occurred some time ago.

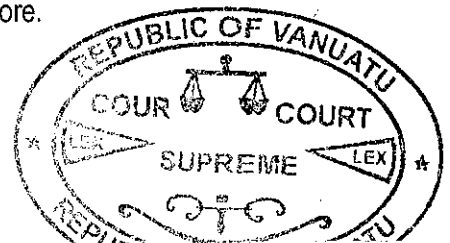
60. I set out now some observations as to how I found each of the witnesses:

- Mr Molbaleh: I noted that he gave his evidence having been granted immunity. I felt he was concealing much of what actually went on – I did not accept that he was concentrating so hard on his typing that he was unable to follow any of the conversation in the room at MIPU. I determined I could safely only accept what he said if it were corroborated by other evidence, as I considered he was able to assist the Court much more than he did. His unsupported evidence needed to be very carefully scrutinised.
- Mr Takau: I noted that he gave his evidence having been granted immunity. He was a very poor witness in my view. I found it very difficult to believe what he told

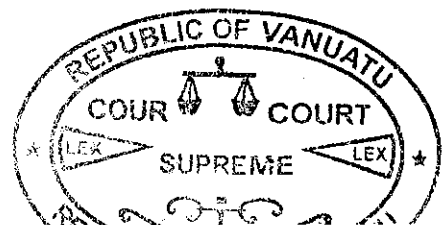


me. Where his evidence was corroborated, I could place weight on it – where it was just his version, I rejected his evidence as unreliable and incredible.

- Mr Kapapa: I noted that he gave his evidence having been granted immunity. I was unconvinced that he was telling me everything he could. If the legal advice sought was solely regarding whether or not Pipite could issue pardons, I would have expected more relevant and precise language, spelling out what he told me orally but had not included in the letter. I looked for consistency with the evidence of other witnesses prior to accepting this account as complete, honest or reliable.
- Mr Siri: What a pleasant change – to have a witness obviously just telling the Court what he could remember without any apparent biases or desire to assist any individual. I thought he was an extremely good witness – accurate and reliable. I accepted his evidence.
- Mr Iauma: I noted that he gave his evidence having been granted immunity. His account was inherently unlikely, and I found it difficult to accept his evidence as being truthful or accurate. He should have been able to say much more about what went on, especially at MIPU. His incomplete account was very difficult to accept. I accepted his evidence only when it synchronised with that of other more reliable witnesses,
- Mr Leo: I noted that he gave his evidence having been granted immunity. Other than that qualification, he came across as a witness of the truth. His evidence was consistent, both internally and when comparing it with the evidence of others. I was impressed that he was able to relate some of the conversation taking place at MIPU, which I considered to be compelling evidence of the discussions about what could and should be done – I noted he was the only prosecution witness able or willing to provide this level of detail. I accepted his evidence.
- Mr Rarua: a thoroughly believable witness, with no reason to exaggerate or embellish his evidence. I accepted him as an accurate witness of the truth.
- Chabod: I simply could not accept his evidence. The version of events he told me had not been put to the prosecution witnesses and was at variance with that body of material. I noted also that his supporting cast had not given evidence at the previous trial, and the matters he raised before me had not been put forward at the earlier trial. His account was an easy way out, distancing himself from culpability at all possible times. The story lacked credibility. I did not accept his evidence relating to being surprised at having been pardoned, thinking it not right and therefore arranging for and meeting with the late President and asking him to revoke the pardon. Not only was this not raised at the previous trial, but when I heard from Mr Sovan, the nature of the discussion with the President related to something else altogether – it was an apology, and no more.



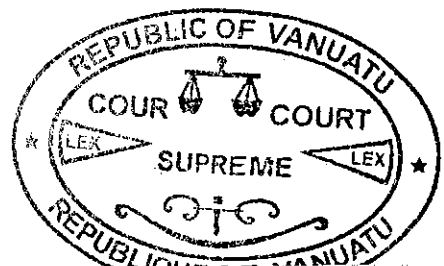
- Telukluk: His evidence in relation to the events immediately following the verdicts and at the PM's office was inconsistent and unsatisfactory. His whole account smacked of attempting to extricate himself from a situation he knew was precarious. I could not accept his statement that he did not ask for a pardon and had never asked Pipite for a pardon or spoken to him about it, and yet believe that he went to the press conference on Sunday already knowing that he'd been pardoned. It appeared to me that a man of his experience, and stature within the community, was happily driving all over town for absolutely no good reason. I'm sure he is more used to getting others to report to him than to meekly take orders. I accepted the evidence of Mr Rarua – which undermined Telukluk's credibility. Telukluk's evidence was tailored, inconsistent and I rejected it.
- Harry: his evidence amounted to being so affected by alcohol and kava in the day(s) following his conviction that he really had no idea what was happening. He told me he was woken up by PSR report writers and then wanted legal advice so, rather improbably, he drove to MIPU. He said he just signed a letter of request for pardon because it was put before him and he did not know what it was. I noted that despite his stated efforts, he did not get what he went there for. He says he first realised he'd been pardoned when his wife advised him after reading Monday's newspaper. I noted that some of his explanation was new – it had not been previously raised in the earlier trial. I also noted that he had remarkably good recall of details despite allegedly being in a poor state due to his alcohol and kava consumption. I rejected his account as being unbelievable.
- Prasad: I rejected his evidence. His account of not having signed a letter of request was not put to Mr Leo. His inconsistent evidence with Mr Rarua's account diminished his credibility. His extensive explanations to me, as to why Pipite should not have pardoned himself and the others, was not matched by any actions by Prasad to extricate himself at the time – but it probably reflected what a number of the defendants believed at the time. I did not accept his account of neither asking for nor not wanting a pardon. I did not find him to be a credible or accurate witness.
- Mr Sandy: I did not accept him as a witness of the truth. I considered he'd been schooled – and his account was readily made up to fit in with Chabod's current evidence. He was a long-standing friend of Chabod's with an obvious motive for coming forward.
- Mr Laurent: He had a clear motive to assist his uncle; but no good reason to recall the events of the day he testified about. His story of having photographic records to support his testimony was exposed as being unreliable and unacceptable – he'd lost his records 8 months prior to giving evidence. I did not accept his evidence.



- Mr Sovan: I accepted his evidence. However, it concerned me that what he began to tell me, before the case was adjourned to see if his notes of Chabod's meeting with the later President were available, became much watered down after the trial resumed with the benefit of Exhibit A. In the end, he was able to confirm that Chabod had met with the late President and apologised to him – that was the full extent of the discussion.
- Mr Meltuman: he obtained his employment through Telukluk, and was obviously just trying to assist his benefactor. He had no reason to recall the events of the day he testified about. I did not find him to be a credible or terribly helpful witness.
- Mr Timothy: when it was put to him that he'd discussed his evidence with Mr Meltuman and that's the reason their two accounts dove-tailed so well, he agreed. It was obvious he too owed Telukluk for his livelihood and was trying to assist him. The one answer that I've noted completely took away all his credibility.
- Mrs Telukluk: I accepted Mrs Telukluk was a credible witness; but I had concerns regarding the accuracy of her account. I determined it was not safe to rely on her evidence, except where it was supported by other credible evidence.
- Mr Morris: His evidence was of little import, other than confirming the state of Harry on Saturday morning; and confirming his short visit to MIPU. I was prepared to accept that, as far as it went.
- Mr Ngwele: he was an impressive witness. I accepted his evidence without hesitation.

F. DEFENCE SUBMISSIONS

61. Ms Nari submitted that as the letters were still on Nari's desk when the pardon instrument went to State House and was signed by Pipite, they were unimportant and irrelevant. She is able to make that submission on the basis of Mr lauma's evidence. I did not accept that evidence, and the submission is therefore rejected. Further, it was a busy day trying to get everything done. To prepare the letters and get everyone to come in to MIPU and sign them and to then ignore the letters thereafter really takes some believing – it is inherently unlikely.
62. Ms Nari also submitted that it could be implied that the lawyers involved were responsible for the file of signed letters of request for pardon disappearing. That is one possibility, but there are several other possibilities of equal strength. I am not prepared to speculate on what happened to that file or who caused that to happen.



63. Ms Nari submitted that Harry had signed his request for a pardon under a false misrepresentation by Mr Takau. This was not put to Mr Takau – and accordingly there is no evidence to support this submission.
64. Ms Nari cast strong aspersions about the conduct of the lawyers involved, going so far as accusing them of perjury, having been improperly granted immunity, and suggesting that their conduct be considered by the Disciplinary Committee. I agree with many of her observations, but not all. I agree also with Justice Ghetwynd's disparaging comments regarding the conduct of many of counsel involved. However, my task is not to judge their conduct – it is to judge the alleged conduct of these 4 defendants.

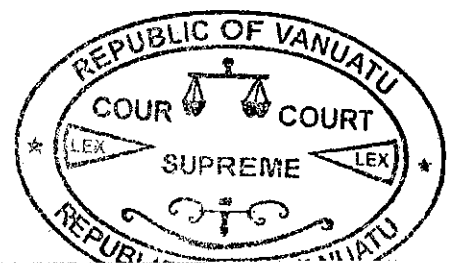
G. FINDINGS OF FACTS

(i) Was there a Conspiracy?

65. I take judicial notice that six other defendants pleaded guilty to this charge. What I take from that is that there is clear evidence to the effect that the alleged conspiracy was on foot at the time alleged. Apart from that, there is a plethora of evidence to confirm the existence of the alleged conspiracy from the testimony of the many lawyers called. I noted also, that the defence was based on the acceptance of a conspiracy but a denial of participation by each of these defendants.

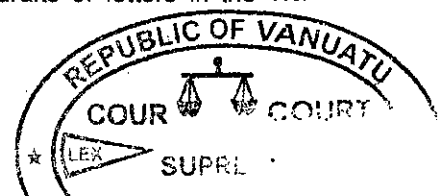
(ii) What was agreed?

66. The overwhelming evidence here is that there was a conspiracy on foot. It was first contemplated on the Friday evening, when Vohor reminded everyone of Mr Sope's pardon a number of years previously. I accept the evidence of Mr Siri as to this, supported by the testimony of Mr Kapapa. The plan or agreement developed further from there.
67. The plan was for Pipite to grant pardons while he could, as Acting President, even though he was in an unprecedented position of conflict. It is not possible, given the backgrounds of these defendants as well as their knowledge of the Leadership Code, for each to not realise the position Pipite was in, and to know that what it was contemplated that he would do for their benefit, as quickly as possible prior to the President returning from overseas, was just wrong, morally and legally. Pipite's knowledge of his wrong-doing is well demonstrated by his various statements to others that he had, or was going to, seek legal advice from SLO as to the validity of what he intended to do; yet his actions were entirely to the contrary. It is difficult to see any of the defendants being truly ignorant of Pipite's conflicted position.



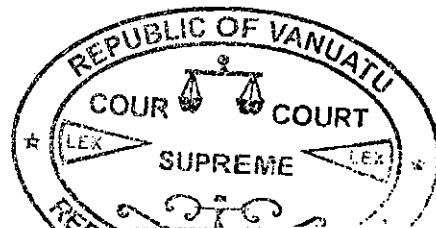
(iii) Did they Join?

68. It is entirely inconceivable that those present at the various meetings and discussions did not realise what was happening and did not clamour to also be involved. Having all been convicted on the Friday, the possibility of evading all the consequences that ordinarily would flow from those convictions, including the very real possibility of lengthy sentences of imprisonment, must have been hugely tempting to embrace. The conversations regarding all the possibilities can only have been a mixture of relief, a lifting of enormous stress, the joy of discovery and general elation – the loss of the trial had very quickly turned into a quite unexpected victory. I have no doubt that pardons were fervently if only briefly discussed at the PM's office on the Friday night, again more extensively at Mangoes the first thing the next morning, and that it was the central topic of all the rushed activity at MIPU at elsewhere thereafter. It beggars belief that all of that went on without each of these defendants being aware of it:
69. They were a large team. They had been together during the bribery trial; and went up to the PM's office as a team – to report unfortunately that their corrupt actions (which had led to the PM being in office) had resulted in criminal convictions which would almost certainly mean they could no longer remain in Government with the PM. Reality and sadness could well have turned to anger – as they had been told by their lawyers their prospects of avoiding convictions were good. And suddenly, there was a ray of hope. Vohor had the answer. All the problems could be eliminated – if only Pipite got on with issuing each of them a pardon while he remained Acting President. That's why there was urgency to get everything started and completed on Saturday – and publicly announced and formally Gazetted, so that there was reduced chance of things being later unravelled.
70. As Saturday drew on, with Pipite and Nari damping down all suggestions of not being able to extricate themselves from their then predicament, I am sure that the belief that each defendant was doing the right thing by joining in and signing the necessary paperwork to obtain pardons grew exponentially. Effectively, even though the various lawyers expressed their doubts about the effectiveness of Pipite granting pardons before me, I do not accept that all the lawyers did so at the time. All the evidence points to many of them actively striving and pushing for the pardons to occur – save for Mr Leo. As well, the defendants persuaded each other that what they were doing was the right thing. Incredibly, that belief still holds for these remaining defendants – even after the numerous statements by the Court of Appeal and various Supreme Court judges. What they now seem to be saying is that Pipite could have legitimately pardoned them if only he had not also pardoned himself. I disagree with that sentiment entirely.
71. All four defendants denied having joined the conspiracy.
72. There are no original signed "request for pardon" letters in evidence – despite every effort it appears they cannot be located. The prosecution has produced a draft letter of request in the name of Prasad – and others not involved in this trial. The uncontroverted evidence is that Mr Molbaleh prepared an identically worded letter for each of those convicted by Justice Sey. The fact that despite strenuous efforts to locate the original or drafts of letters in the names of



others tends, if anything, to show the subterfuge in this whole escapade employed by Pipite and Nari, in particular, and with the assistance/connivance of some of the lawyers involved – it does not diminish the prosecution allegations. I do not accept the statements by 3 of these defendants that they did not sign such letters – neither do I accept Prasad's statement that the document he signed is quite different to the drafts prepared by Mr Molbaleh (Exhibit 5).

73. The evidence of Mr Leo, Mr Molbaleh and Mr lauma has all these defendants signing letters of request – there was no challenge to Mr Molbaleh's evidence that he prepared a separate letter for each of the defendants, and no challenge to the evidence relating to all the defendants being at or attending MIPU to sign their letters. Mr Takau also gave unchallenged evidence that he saw Chabod, Harry and Prasad sign their letters. This body of evidence trumps the individual statements of the defendants to the contrary.
74. Chabod says he neither wanted to, nor did, actually sign a letter of request – and his subsequent conduct in seeking to explain his position to the late President demonstrates a consistent pattern of conduct on his part. However, his subsequent acts are also consistent with a realisation that what he did was wrong, as can be seen by his belated apology to the late President. This later explanation lies at the heart of Chabod's *volte face*. I find it proved that he signed a letter of request for pardon.
75. Telukluk gave evidence of being at MIPU but not having the time to wait for a letter of request for pardon to be prepared and just going home instead. As he went to MIPU to get a copy of Justice Sey's decision, and didn't get one due to his lawyer having already left, his account for his presence at MIPU holds no credibility. I accept it proved that he too signed a letter of request for pardon.
76. Prasad also says he did not sign any letter of request. I do not accept that. He went to MIPU and waited around for such a letter to be prepared for him. To have left before it was completed for him to sign runs against the other evidence. And, of course, the draft document indicates it was prepared – the possibility of Prasad announcing he was leaving without being able to wait and then the draft document being completed anyway is inherently unlikely.
77. By signing a letter of request for Presidential pardon, each defendant has demonstrably joined the conspiracy. That act illustrates not just an intention to obtain a pardon for themselves signed by Pipite in the dire conflicted position in which he found himself; but it demonstrates each defendant's tendency to pervert the course of justice, as each knew the letter of request would be highly likely to be favourably considered by Pipite – he had already made that plain to them all.
78. The timings of when each defendant told me he first became aware of being pardoned by Pipite is another facet of the evidence that I do not accept. I am satisfied that each defendant knew on Saturday that he had been pardoned. Those who went along to the Press Conference were not surprised either by the general subject-matter nor by their names also being read out as having been pardoned.



(iv) The Effects of the Agreement

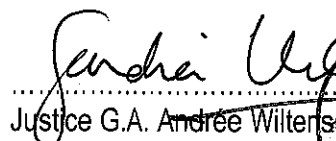
79. The reasons put forward for the grant of the pardons are significant – they are set out in the Instrument of Pardon as: "...to maintain the stability in the Government." The Press Release suggests "...a great likelihood of civil unrest and riots" and also refers to the "...great need for political stability and governance". Both justifications lack credibility and demonstrate starkly the lack of independence Pipite exhibited. The pardons were given out of pure self-interest; ~~and they were completely unwarranted given the conduct condoned by their issuance.~~ The late President demonstrated that on his return to Vanuatu by promptly revoking the pardons.
80. The pardons, if they had been legitimate and remained in place, would have had the effect, as intended, of prematurely ending the bribery/corruption trial without sentencing having occurred. That exhibits both the necessary intention and the tendency to pervert and/or defat the course of justice on the part of each of these defendants.

H. VERDICTS

81. The prosecution has proved beyond reasonable doubt that there was an agreement between at least 2 or more persons to do an act which constituted a criminal offence, namely preventing and/or defeating the course of justice.
82. The prosecution has further proved beyond reasonable doubt that each of these 4 defendants was a knowing party to that agreement, who intended, and whose acts tended, to prevent and/or pervert the course of justice.
83. It follows that each of the defendants Chabod, Telukluk, Harry and Prasad is found guilty and is convicted as charged.

Dated at Port Vila this 6th day of August 2018

BY THE COURT


Justice G.A. Andree Wiltens

