IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Criminal Appellate Jurisdiction)

Criminal Appeal Case No. 25/2417 COA/CRMA
[2025] VUCA 40

BETWEEN: SIMEON SEULE
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Date of Hearing:	***3 November 2025***
Before:	***Hon. Justice Oliver A. Saksak*** ***Justice Ronald Young*** ***Hon. Justice Richard White*** ***Hon. Justice Dudley Aru*** ***Hon. Justice Edwin P Goldsbrough***
Counsel:	***Willie K. Daniel for the Appellant*** ***Lenry Young for the Respondent***
Date of Decision:	***14 November 2025***

JUDGMENT OF THE COURT

Introduction

1. Mr Seule was charged with the theft of a Mitsubishi L200 Double Cab Ute and in the alternative obtaining the vehicle by deception. The trial judge convicted Mr Seule of theft.

2. The judge found the Mitsubishi was owned by the Government but that Mr Seule when he was the Minister for Youth & Sports took the vehicle dishonestly intending to deprive the Government of the vehicle.

3. Mr Seule was sentenced to 2 years 6 months imprisonment. The Judge refused to make orders under the Leadership Code (Section 41) relating to dismissal from office and disqualification from standing for election and accordingly no s.42 disqualification from holding a leadership office for 10 years.

4. Mr Seule now appeals against his conviction and sentence. The Public Prosecutor appeals against the Judge's decision to refuse orders under the Leadership Code.

5. Trial counsel for Mr Seule filed an appeal against conviction and sentence on 18 August 2025 after the verdict on 6th August 2025. New counsel was instructed and amended the appeal grounds and an appeal memorandum was filed on 18 September 2025. Then on 3 October 2025 an application for leave to file amended further grounds of appeal was filed. Counsel for the Public Prosecutor did not suggest any prejudice arose from the proposed filing of the further amended grounds of appeal. The Public Prosecutor was able to file relevant reply submissions to the additional grounds of appeal. In the circumstances therefore we grant leave to file the amended grounds of appeal and accompanying memorandum.

Background Facts

6. The prosecution's case accepted by the trial Judge was that the Mitsubishi was purchased by the Government in 2011. It was allocated the number plate G934. The use of the letter "*G*" in a number plate in Vanuatu indicates a Government vehicle. The vehicle was intended for use by the Ministry of Youth & Sports. At some stage the Mitsubishi went to Tongoa. There its condition deteriorated. During this time Mr Seule was the Minister for Youth & Sports. In 2018 he arranged for the Mitsubishi to be shipped to Port Vila at Government expense. A member of his staff was sent to Tongoa to facilitate the shipping of the vehicle. When the Mitsubishi returned to Port Vila it was taken to the Public Works Department.

7. Mr Seule then instructed that a report be prepared assessing the condition and valuing the vehicle. This was prepared with the object of a tender process being considered for the sale of the Mitsubishi. Before the tender process was held however Mr Seule told Mr Fred (who then worked for Mr Seule) that he, Mr Seule, had purchased the vehicle. And so on Mr Seule's instructions Mr Fred and another employee of the Ministry of Youth & Sports, Mr Kalo, removed the Mitsubishi from the PWD on a Sunday and took it to a private address for repair. Once the vehicle could be driven Mr Seule instructed Mr Kalo to deliver the vehicle to his address in Port Vila.

8. The vehicle was repaired mechanically and had rust removed including panel beating. The vehicle had been a grey colour but on Mr Seule's instructions it was repainted green. All of this mechanical and body repair work was at Mr Seule's cost. On Mr Seule's instructions a new number plate was placed on the Mitsubishi. The new number plate was not a Government plate but a public transport plate. Subsequently the vehicle was shipped to Mr Seule's village on Epi where it was used by his son and for commercial transport.

9. Mr Seule's case at trial was that given the poor condition of the vehicle and the neglect it had suffered by the time it was brought back to Port Vila from Tongoa it had been abandoned by the government. Mr Seule appears to have meant, when he said the vehicle had been abandoned, that the vehicle was no longer owned by the government. At trial he disputed two elements of theft; ownership by the Vanuatu Government; intention to permanently deprive the Government of the vehicle.

10. Given his claim of abandonment he was therefore free to deal with the vehicle as he wished. Mr Seule said in fact he hadn't intended to do any more than repair the vehicle and once it was repaired return it to his Ministry for its use. He said he was not intending to keep or sell the vehicle. He denied knowing anything about the vehicle being used by his son or for commercial purposes in Epi.

11. The judge at trial rejected Mr Seule's evidence and saying it was "*unconvincing and implausible on the key issues*". She identified in detail why she had reached that conclusion. She accepted the evidence of the witnesses for the Prosecution on the key issues. Again she identified why she accepted them as credible reliable witnesses.

12. At trial and in counsel for the appellant's written and oral submissions in support of this appeal it was not clear which of two possible factual scenarios relating to the Mitsubishi vehicle Mr Seule had been relying upon to support his not guilty plea. The two possibilities were: that throughout the relevant time the Government had owned the Mitsubishi. In submissions at the appeal Mr Seule claimed that he had taken the Mitsubishi from the PWD and repaired it at his own cost (expecting reimbursement from his Ministry) because the Ministry was not in a financial position to repair the Mitsubishi. Once repaired Mr Seule said he intended that the vehicle would be returned to the Ministry for its continued use. In those circumstances Mr Seule said he hadn't acted dishonestly or intended to permanently deprive the Government as owner of the vehicle. He accepted at the appeal the Government had owned the Mitsubishi throughout.

13. The alternative scenario, which was the claim by Mr Seule primarily at trial, was that the Mitsubishi had been abandoned by the Government when it was in Tongoa. Abandonment in that context meant that the Government no longer owned the vehicle. When the vehicle came to Port Vila Mr Seule said he took possession of what was an abandoned vehicle with no owners and had it repaired. And so Mr Seule said he could not be convicted of theft from the Government because the Government did not own the vehicle given it had abandoned the vehicle. Given there was no "owner" it could not be said he was permanently depriving anyone of the vehicle.

14. Initially, counsel before this Court, said that Mr Seule's position was that the vehicle had been abandoned by the Government and therefore not owned by it and that he was therefore entitled to take the vehicle, repair it, repaint it and use it as his. There was nothing unlawful in him doing so.

15. However after discussion with the Court counsel advised that Mr Seule's position was that the vehicle had always been owned by the Government and that his actions were no more than the repair of a Government vehicle with the intention of returning it to the Government for the use of the Ministry of Youth & Sports.

16. Given the acceptance by counsel before us that the Government had always owned the vehicle, counsel's written submissions to this Court relating to the concept of abandonment are no longer relevant.

17. Section 8 of Appellant's submission was headed "*Judicial Bias, Conflict of Interest and Breach of Natural Justice right*". Counsel also sensibly abandoned these appeal grounds, as it was obvious that they lacked merit.

Appeal Grounds and Discussion

Procedural Error

18. The first ground of appeal relates to a claim of "*procedural error*". The particulars of the offence alleged that Mr Seule "*...without the consent of the Government of Vanuatu represented by the Director General of the Ministry of Finance and Economic Management ...*" took possession of the Mitsubishi. Counsel submitted that if the vehicle was owned by the Government of Vanuatu (which is now accepted) it belonged to the Ministry of Youth & Sports and not the Ministry of Finance through the Director General of the Ministry of Finance. In those circumstances, counsel said the information was fundamentally flawed and as a result Mr Seule could not have been lawfully convicted.

19. We reject the submission that the particulars of the offence are somehow fundamentally flawed. We have no evidence who within the Government is identified as the owner of Government vehicles. Further, even if the Director General of the Ministry of Finance does not represent the Government of Vanuatu as the owner of the Mitsubishi vehicle, that does not support a submission the charge is defective. The prosecution's case was that the Mitsubishi was owned by the Vanuatu government. It was clear that Mr Seule and his counsel at trial understood that aspect of the charge. The particulars of the charge make it clear that the Government was the owner of the vehicle. Whether the Government is indeed represented by the Director General of the Ministry of Finance or not, makes no difference to the integrity of the charge.

20. No objection was taken to the charge in the form presented at trial, with the inference that the appellant did not object to the form of the charge.

21. Section 74 of the Criminal Procedure Code [CAP136] provides that an information will not be open to objection as to its content if the information is framed in accordance with the Code. We are satisfied the information does follow the specification in the Code and no objection can be taken to the information.

22. We are satisfied therefore that there was no defect in the form of the charge and it adequately informed Mr Seule of the allegation of theft by the Public Prosecutor.

Evidence supporting reasonable doubt

Credibility and Reliability of Witnesses

23. The second ground of appeal is a list of reasons (18) as to why the appellant should have been acquitted. It is primarily based on claims that his evidence should have been accepted by the trial judge and the important witnesses for the Public Prosecutor disbelieved. Part of this submission raises issues relating to the adequacy of evidence as to whether or not the vehicle was to be sold by tender or otherwise disposed of. But given the concession by the Appellant that the vehicle was owned throughout by the Government, those observations have no relevance to the appeal.

24. The Judge was particularly careful in the way in which she considered the credibility and reliability of witnesses. She instructed herself on the appropriate approach to such assessment. She identified in detail the evidence of the particularly relevant prosecution witnesses including Mr Nalwang, Mr Kalo, Mr Fred, Mr Juliano and Mr Fiji. She gave reasons why she was satisfied that each of those witnesses gave credible evidence. Other witnesses' evidence, where relevant, was admitted by consent without challenge by defence counsel.

25. Mr Fred gave important evidence relating to the removal of the vehicle from PWD. He had originally been charged with complicity in the theft. He was given immunity from prosecution. The Judge rightly warned herself that Mr Fred could therefore have a motive to lie. She was cautious in deciding whether to accept his evidence and the weight to be given to it. In the end she reached the conclusion that she could trust Mr Fred's evidence.

26. As far as Mr Seule's evidence was concerned the Judge noted that Mr Seule did not have to prove anything and he was not required to give evidence. The Judge concluded that significant parts of Mr Seule's evidence were inconsistent with other evidence which she had accepted. She acknowledged that some inconsistency, particularly minor inconsistencies, did not mean that the evidence was untruthful. However, she described a series of inconsistencies in Mr Seule's evidence on important matters which impacted on the truthfulness and reliability of his evidence. She also noted that at times Mr Seule's evidence was not internally consistent.

27. The Judge was careful to acknowledge that Mr Seule did not need to prove anything. After an analysis of his evidence the Judge concluded that at times Mr Seule's evidence "*evolved*" as he was being questioned.

28. Finally relating to credibility and reliability there were a number of aspects of the defence case through Mr Seule's evidence that were not put to prosecution witnesses for response. This was also a relevant factor relating to credibility. Again, the Judge gave a list of examples of those failures.

29. When counsel on appeal challenges a Judge's findings as to credibility and reliability they will have a significant hurdle. The trial Judge had seen and heard the witnesses. Typically, such challenges are only likely to be successful if it can be shown there was a significant legal or procedural error or a mistake of relevant facts. Here the Judge instructed herself on the relevant law relating to credibility

and reliability. She gave herself the appropriate warnings when required and she dealt with issues of credibility and reliability not by making conclusory statements but by a detailed consideration of the evidence of each of the witnesses. There is nothing in the submissions of counsel which in our view undermines her findings of credibility.

30. Some examples will illustrate the point. Counsel submitted that the "*overwhelming evidence*" was that Mr Seule intended to repair the vehicle to help his Ministry and provide them with a vehicle for their use. However Mr Seule's own evidence was that it was Mr Kalo's and Mr Fred's idea to have the Mitsubishi repaired.

31. Counsel submitted that there was nothing wrong with Mr Seule as the Minister of Youth & Sports ordering the removal of the Mitsubishi from the PWD. However the evidence accepted by the Judge was that the Mitsubishi was released from the PWD when Mr Seule untruthfully told Mr Fred that he had purchased the Mitsubishi. There was no evidence that Mr Seule had purchased the vehicle. As a result of being provided with that information Mr Fred and Mr Kalo went to PWD and told the PWD worker that Mr Seule had sorted the matter out with the Government vehicle arm, Fleet Management and as a result the vehicle was released to Mr Fred and Mr Kalo. The evidence accepted by the Judge is inconsistent with the idea that Mr Seule was simply taking the vehicle to repair it and return it to the Ministry.

32. Counsel's submission repeats the claim by Mr Seule that he did not know the vehicle had been sent to Epi (his home constituency). The Judge for compelling reasons rejected that claim. She said at paragraph 151 of her judgment, "*It is not in dispute that the vehicle went to Epi, although Mr Seule disavows knowledge as to how the vehicle got there, which I do not accept. The vehicle was seen parked at Mr Seule's house at Sara Village, Epi by Mr Fred and Mr Kalo. According to Mr Fred, he saw Mr Seule's son, Fredson driving the vehicle. Mr Kalo also said that the vehicle was used for transport on the island and had a CT plate on it.*"

33. Finally this section of the appeal claimed that the Prosecution had not shown in evidence that the Mitsubishi was registered in Mr Seule's name. That illustrated that there was no evidence that Mr Seule intended to permanently deprive the Government of the Mitsubishi. Mr Seule was simply using the vehicle as Minister for Youth & Sports.

34. There is no evidence that at any time after the vehicle was repaired it was used by the Ministry of Youth & Sports.

35. The evidence that Mr Seule intended to permanently deprive the Government of the Mitsubishi did not include any vehicle registration information. The Judge therefore did not focus on what evidence she did not have but what evidence she did have and tested whether or not that evidence proved an intention to permanently deprive. There was ample evidence that the Judge accepted as truthful showing that Mr Seule intended to permanently deprive the Government of the Mitsubishi vehicle.

36. Finally with regard to this submission the fact that the vehicle no longer had a "G" plate but a public transport plate was inconsistent with the claim that Mr Seule had simply repaired the vehicle to return to the Ministry of Youth and Sports.

37. These are examples of some of the reasons why Mr Seule's evidence was rejected as neither credible nor reliable.

38. Counsel submitted that the Judge was wrong to reject Mr Seule's evidence given some of the inconsistencies alleged relating to his evidence were not accurate. The Judge concluded that one of the inconsistencies in Mr Seule's evidence was that Mr Seule claimed that he did not see the registration plate "*G934*" on or in the Mitsubishi. The Judge said that she did not find that credible because Mr Seule had seen the vehicle at the PWD and had made detailed observations as to the vehicle's condition. Counsel submitted that the trial Judge's notes did not record that Mr Seule had made a detailed observation about the condition of the truck. We reject that submission. It is clear from Mr Seule's evidence that he did make a detailed inspection of the vehicle. He gave significant detail about the condition of the vehicle (both mechanical and body) from his inspection at PWD. A number of witnesses gave evidence that when the vehicle was at PWD they saw the vehicle plate on the vehicle or inside the vehicle. The Judge was entitled to weigh Mr Seule's claim he hadn't seen the licence plate as inconsistent with the evidence of other witnesses she accepted and therefore relevant to Mr Seule's credibility.

39. The Judge identified another inconsistency in Mr Seule's evidence relating to a denial that he had ever been interested in a tender process. The Judge concluded that there was evidence Mr Seule had been interested in a possible tender given the Judge accepted the evidence of two staff members of Mr Seule who took steps towards the tender process for the vehicle at Mr Seule's direction. Counsel challenges this part of the evidence on the basis that there never was a tender process completed for the Mitsubishi.

40. The Judge did not say that there was a tender process. The Judge said that she was satisfied on the evidence she had heard that Mr Seule had initially expressed interest in a tender process because he wanted to purchase the vehicle. He ordered a valuation and assessment of condition of the vehicle which was the first part of the requirements for a tender process. The Judge found that the report was provided to Mr Seule although Mr Seule denied that. Once the report was obtained the Judge accepted the evidence of Mr Nalwang that Mr Seule had been provided with the report. Counsel's challenge therefore does not undermine the Judge's conclusion.

41. Counsel submitted that Mr Fred's evidence should be discounted because he had been dismissed by the Appellant for driving the Mitsubishi without authorisation from the Minister and using it to go to nightclubs. It was suggested therefore that Mr Fred may have had ill-feeling toward the Appellant and in those circumstances the Judge should not have given any weight to his evidence. There is no evidence recorded in the judge's notes that Mr Fred was dismissed by Mr Seule. We reject this challenge.

42. Finally on this ground of appeal, the Judge concluded that Mr Kemu's evidence about the circumstances in which the vehicle came to be repainted in a different colour was credible and reliable and Mr Seule's evidence was not. Mr Kemu's evidence was that the truck's condition was relatively poor, and significant filler had to be used to patch it up. In those circumstances parts of the vehicle were to be repainted. The existing colour of the vehicle was grey.

43. Mr Kemu's evidence was that Mr Seule told him to re-paint the whole of the vehicle green rather than the existing grey. In addition Mr Kemu said that he was told by Mr Seule to put a private number plate on the vehicle. Mr Seule in his evidence denied that he had instructed Mr Kemu to paint the vehicle green and denied that he said to him to install a private number plate on the vehicle. The Judge was entitled to accept Mr Kemu's evidence and reject Mr Seule's evidence on this point for the reasons she gave. The Judge understandably identified the importance of this evidence in assessing dishonesty and the intention to permanently deprive elements of the charge.

Rule in *Browne v Dunn*

44. The next ground of appeal relates to the fact that on a number of occasions Mr Seule gave evidence about matters that had never been put to the Prosecution's witnesses. The Judge concluded that in doing so Mr Seule had contravened the principle of fairness in *Browne v Dunn* and that this contravention was one factor that was relevant to her assessment of Mr Seule's credibility. As to this the Judge said:

> *"A number of aspects of the defence case were not put to prosecution witnesses for comment. The common law position is that the essence of contradictory material normally has to be put to a witness so they might have an opportunity to explain the contradiction.*[1] *This is to ensure fairness.*[2] *The Court gained the impression that Mr Seule's evidence evolved. I have difficulty giving these parts of Mr Seule's evidence much weight given that some of the witnesses did not have an opportunity to comment on Mr Seule's narrative. These matters include:*
>
> - *Neither Mr Fred nor Mr Kalo were asked about Mr Seule's evidence that the vehicle was moved from Elluk to Mr Seule's home at Dash Studio was because Mr Fred and Mr Kalo were misusing it, running around in it at night, going to clubs.*
> - *That vehicle G 934 was a write off and no longer a Government asset. Mr Letlet, who was the Director-General of Finance at the time, was not asked to comment on that proposition.*
> - *Mr Seule's evidence that it was Mr Fred and Mr Kalo's idea to fix the vehicle was not put to them.*

[1] *Browne v Dunn* 1893 6 R 67 HL

[2] The Vanuatu Evidence Bill has now been passed and is awaiting gazetting. Under s 59 of the Evidence Act, there will be various steps the Court can take if a party fails to cross examine a witness on substantial matters of the party's case.

- *As already mentioned, Mr Seule's evidence that he did not receive the report regarding G 934 was not put to Mr Nalwang.*

- *Mr Seule's evidence that the PWD did not have time to fix the vehicle was not put to Mr Juliano, who was a supervisor at the PWD at the time.*

- *Mr Seule's evidence that he told Mr Kemu to either find the G plate and put it on the vehicle or to wait and get a G plate from Finance was not put to Mr Kemu.*

- *Mr Seule's denial in evidence in chief that he told Mr Nalwang that he told Mr Nalwang the truck was paid for. Mr Seule said he told Mr Nalwang that he spent a lot of money on fixing the vehicle, so he needed reimbursement from the finance section of the Ministry of Youth and Sport."*

45. Counsel submits that the Judge in so concluding failed to take into account Sections 137 and 169 of the Criminal Procedure Code.

46. Section 137 provides as follows:

> *If the accused person adduces evidence in his defence introducing new matter which could not by the exercise of reasonable diligence have been foreseen, the prosecutor or court, as the case may be, may adduce evidence in reply to rebut such matter.*

47. And Section 169:

> *If the evidence for the defence introduces new matter which the prosecution could not, with reasonable diligence, have foreseen the court may allow the prosecution to adduce evidence in reply to rebut such matter. A witness called in rebuttal may be a previous witness recalled or a new witness.*

48. Counsel said that neither the Court nor the prosecutor had applied these sections at trial when Mr Seule gave evidence of matters not put to the prosecution witnesses. Counsel submitted that the use of S137 and S169 would have given prosecution witnesses, recalled to give evidence, the chance to comment on the matters not put to them when they gave evidence. If such a process had been used, then the prosecution witnesses would have had a chance to respond to Mr Seule's "new' evidence. In those circumstances issues of credibility and weight to be given to Mr Seule's evidence through the *Browne v Dunn* failure would not arise.

49. Sections 137 and 169 provide a process by which the Prosecution may call rebuttal evidence after a defendant gives evidence about any "*new*" matter. There is no obligation on the prosecution to apply to call such rebuttal evidence. The other way in which such evidence can be dealt with is by the application of rule in *Browne v Dunn.* That rule remains unaffected by the two sections referred to. The obligation on defence counsel to put significant contradictory evidence to be called to relevant prosecution witnesses remains a core part of a fair trial. Both prosecution and defence witnesses

should have the opportunity of commenting on important evidence. Then the Judge, faced with giving judgment knows the prosecution and defence case and how they relate to each other.

50. Here the Judge concluded that Mr Seule's extensive failure to comply with the rule across a number of witnesses was a serious failure. When assessing these failures the Judge remarked that it appeared Mr Seule's evidence had "*evolved*". The Judge was entitled to and indeed properly took into account the failure to cross-examine Prosecution's witnesses on the evidence given by Mr Seule as one factor in assessing credibility and what weight to give his evidence on these matters. The fact that S137 and S169 were not triggered did not affect the Judge's entitlement to apply the rule in *Browne v Dunn* to Mr Seule's credibility.

51. The Appellant submitted it was not fair for the Judge to take into account in assessing credibility the defence failure to cross-examine some prosecution witnesses when there were a number of witness statements admitted without the witness having to give oral evidence. And so full compliance with the rule in *Browne v Dunn* was impossible. This submission misses one fundamental point. The only basis on which a witness' statement may be admitted in evidence, rather than a witness give oral evidence and be subject to cross examination, is if the defendant through counsel agrees to this course of action. That was the situation in this case.

Trial Counsel Conduct

52. Counsel for the appellant complained about the conduct of the case by trial counsel. Appellant's counsel submitted that trial counsel should not have consented to the admission of statements by witnesses.

53. Later in this judgment we record other complaints about trial counsel's conduct. We reminded counsel for the appellant that where an appeal is based in whole or in part on a complaint about trial counsel's conduct then the process previously identified by this Court must be followed. A waiver of privilege must be signed and provided both to trial counsel and to the Public Prosecutor. The expectation then is that the Public Prosecutor will interview trial counsel who will provide all relevant information of his or her instructions and discussions with the offender. Trial counsel may give evidence and the defendant will be free to give his or her own evidence relating to the communications and instructions with trial counsel. That process was not followed by the appellant and in those circumstances therefore we do not propose to consider in this appeal complaints about trial counsel's conduct.

Executive Power

54. The next ground of appeal relates to the proposition that as a member of the Executive arm of Government Mr Seule was entitled to direct the repair of the truck and move it around Port Vila and Efate without any breach of law. This proposition was based on Section 6(3) of the Government Act that provides as follows:

Each minister shall assume and be responsible for:

(a) the functions imposed on him or her by the Prime Minister under section 4(4); and

(b) the effective and efficient management of any ministry, department, State appointed office, agency, instrument, authority or corporation under his or her direction.

55. No doubt Mr Seule was entitled to direct how vehicles under the management of the Ministry of Youth & Sports were to be used. Counsel for the Appellant accepted that the exercise of that power must not be inconsistent with the law. The Judge did not conclude that simply moving the vehicle around Port Vila or repairing it by itself was unlawful or an element of proof of dishonesty. The judgment set out the relevant context for these actions and how they were relevant to the charge. The Judge found Mr Seule had asserted ownership of the vehicle in that he took the vehicle from the PWD, had it repaired at his cost, had a non-Government plate fixed to the vehicle and used it privately, all inconsistent with the legitimate exercise of his power. The judge was entitled to reach that conclusion. Mr Seule's actions were therefore not within the exercise of his lawful power.

Improper Inferences

56. Section 4 of the Appellant's submission alleged an erroneous finding by the judge that the vehicle was owned by the Government throughout. That challenge is now withdrawn; Mr Seule accepts that the Government maintained its ownership of the vehicle throughout.

Erroneous Finding of Dishonest Intent

57. Mr Seule's actions subsequent to the unlawful taking of the vehicle was used by the Judge as relevant to her assessment of dishonest intent. Counsel submitted that it was improper of the judge to use Mr Seule's actions after it was alleged he had committed the theft to infer dishonest intent at the time of the alleged theft. The judge concluded from evidence, which included; taking of the vehicle from the PWD before any tender process was undertaken, the dishonest claim that Mr Seule had paid for the vehicle, the attempt to disguise the vehicle by painting it green, the fixing of a non-Government number plate to the vehicle, having the vehicle delivered to his Port Vila residence, and having it transported to Epi on a ship he had chartered and using it privately, showed dishonest intent at the time he took the vehicle from PWD when the crime was committed. This was a proper and indeed appropriate exercise by the Judge in identifying the defendant's actions after the alleged crime to assist in assessing intent at the time. The Judge was entitled to draw inferences from this evidence that were logical and reasonable as she did. We reject this ground of appeal.

58. Counsel for the Appellant submitted that the Judge was wrong to reject the proposition that the Appellant's injection of personal resources to restore the vehicle was objectively more consistent with an intention to benefit the Government owner, by creating increased value from its assets, than dishonesty. This is a difficult submission to make. Counsel submitted that we should accept Mr

Seule's view that when he took the vehicle and repaired and repainted it, he did it to provide a valuable asset for the Ministry of Youth & Sports. And he was prepared to spend his own money because the Ministry didn't have sufficient funds but that he would look to them for reimbursement.

59. There was no independent evidence that the Ministry of Youth & Sports had insufficient funds to repair the vehicle or they were asked to reimburse Mr Seule. In fact a tender process was proposed to sell the vehicle. Nor was there any evidence to support the proposition that there was any arrangement for the Ministry of Youth & Sports to reimburse Mr Seule for the money he had spent.

60. Counsel submitted that it was a reasonable hypothesis that the Appellant was acting to restore an abandoned asset for the ultimate benefit of the government. That claim could not be excluded and therefore should have raised doubt about the prosecution's case and an acquittal. The Judge did exclude that claim as a reasonable hypothesis and indeed it is inherently improbable. If Mr Seule was proposing to act in a generous way to repair the vehicle for someone else's benefit but was expecting to be reimbursed it would be reasonable to expect the trial evidence to show that. The other difficulties he faced were the Judge's conclusion regarding the circumstances following the Mitsubishi being taken from PWD. Those circumstances included the non-Government number plate and the private use of the vehicle excluded the hypothesis that he was simply restoring a Government asset for the benefit of the government. We reject this ground of appeal.

Delay

61. Counsel submitted that the delay in this prosecution was a violation of his constitutional rights at Article 5(1)(d),(k) and 5(2)(a) of the Constitution. Article 5(1)(d) and (k) are concerned with ensuring equal protection by the Law. Article 5(2) provides for the protection of the law to include a fair hearing in a reasonable time.

62. The vehicle was returned to PWD sometime in 2018 and was shortly after removed on Mr Seule's instructions. This was the date when the offence was alleged. A complaint was lodged with the police in July 2020. The file then came to the Public Prosecutor's Office in April 2022. In 2024 preliminary inquiry documents and a draft information were filed in the Magistrate's Court and the trial commenced in July 2025.

63. Counsel for the Public Prosecutor submitted that there was complexity in the facts of this case which required a number of witnesses to be interviewed and investigations to be made.

64. While the delay is less than ideal, Mr Seule would have been aware that it was alleged he had stolen the vehicle when he was initially interviewed by the police in February 2022.

65. Counsel for the appellant could not point to any specific prejudice from the delay in this case. The appellant did not raise any complaint about delay before the trial.

66. We are not satisfied that there has been a breach of the Constitution and the fundamental rights and freedoms of Mr Seule. The delay, as we have said, was less than ideal but this was a complicated case involving a need for significant care in the gathering of evidence. We do not consider in this case the delay was unreasonable. No actual prejudice has been shown in the delay. Even if we had been satisfied the trial was outside a reasonable time, this was not a case of extreme delay where a stay of proceedings would have been the appropriate remedy.

67. For the reasons given the appeal against conviction is dismissed.

Appeal against sentence

68. The Judge sentenced Mr Seule to 2 years and 6 months imprisonment. She did not consider it was an appropriate case for a suspension of that sentence.

69. The Judge considered that this case involved a significant breach of trust, planning and concealment of the vehicle to avoid detection. She acknowledged the relatively modest value of the Mitsubishi but considered "*the damage caused to Vanuatu and the diminished public trust and confidence in the government*" were dominant features of the offending. On that basis the Judge considered 3 years imprisonment was an appropriate start sentence. As to personal factors the Judge recognised the significant contribution Mr Seule had made to his community and the responsibility he had looking after his vulnerable 12 years old son. The Judge did not consider a reduction in sentence for remorse was appropriate given Mr Seule displayed little insight into the damage he had done to trust and confidence in government. Nor did the Judge consider Mr Seule's health or the money he had spent on repairs on the Mitsubishi required a further reduction of sentence.

70. The Judge therefore reduced the start sentence of 3 years imprisonment by 6 months for the personal mitigation as we have identified. Although Mr Seule had two previous dishonesty convictions in 1997 and 2001 the Judge did not consider an uplift to the sentence was required for those convictions.

71. The Judge was invited to suspend any sentence of imprisonment. She reconsidered the facts as she had identified when imposing the sentence and applied those to S 57 of the Sentencing Act criteria. She considered a strong deterrent sentence was required which would not be met by any suspension.

72. Counsel for the Appellant challenged the sentence of 2 years and 6 months imprisonment describing it as crushing and disproportionate. In particular it was submitted the fact that the Government suffered no actual financial loss "*drastically reduced the seriousness and the Appellant's moral culpability*". The Judge in her sentencing remarks acknowledged the value of the vehicle stolen was low. However she correctly identified the fact that the modest value was of much less importance

than the very serious breach of trust. In her view the value of the Mitsubishi did not reduce the Appellant's moral culpability.

73. We agree with the Judge this was a gross breach of trust affecting "*the integrity of the Government and the public's faith in government's ministers*". We therefore reject the claim that the fact of no financial loss drastically reduced the seriousness of the offending and the Appellant's moral culpability. The Appellant's moral culpability and the serious breach of trust remained. We reject this ground of appeal.

74. Counsel submitted that the starting point of 3 years was too high and wrongly based on authorities (see *PP v Apia* [2015] VUCA 30, *PP v Ravolu* [2003] VUSC 53 and *PP v Tureleo* [1995] VUSC 16) which involved greater quantum of loss and lower sentences. Counsel in analysing these cases has wrongly equated the final sentences with the start sentence in this case. In *Apia* this Court identified the start sentence as 4 years imprisonment. As the Judge pointed out, the dishonesty in *Apia* was more extensive than this case but significantly here Mr Seule was in a senior leadership role. Mr Apia was a senior sergeant without the senior nationwide leadership responsibilities of Mr Seule.

75. The Judge considered a range of Supreme Court and Court of Appeal decisions regarding theft where the defendant was in a position of responsibility. She appropriately considered the relevant features of each while acknowledging that none were directly on point. We see no error in the Judge's approach. The start sentence of 3 years imprisonment was well within the range available to the Judge given the very serious breaches of trust combined with the fact that this was not a spontaneous crime but one that involved significant planning and the involvement of a number of public servants.

76. Mr Seule submits that the Judge did not adequately consider a suspended prison sentence as an alternative to imprisonment. Counsel submitted that suspension was appropriate given the fact that this was a property offence and Mr Seule's deep community ties.

77. The Judge did turn her mind to the possibility of community work and a fine. She did not consider that such sentence would meet the seriousness of the offending. We agree. She considered a strong deterrent sentence was required in the special facts of the case.

78. As to a suspended prison sentence the Judge considered that the serious breach of trust and planning weigh heavily against suspension. We agree a suspension of the sentence of imprisonment would send the wrong message to leaders of the community and to the community itself. We are satisfied the sentence was entirely proper given the serious breach of the community expectation of the highest conduct by the MPs they serve. In the theft of motor vehicle Mr Seule fell well below that expectation.

79. The appeal against sentence is therefore dismissed.

Cross-Appeal

80. Mr Seule's conviction for theft meant he was in breach of the leadership Code (s.27(1)(a)) and liable to be dealt with under s.41 and s.42 of the Leadership Code. At sentencing the Public Prosecutor invited the judge to conclude the breach of the Code was serious (s.41(1)) and as a result make an order dismissing the leader from office. At the time of his conviction Mr Seule was a Member of Parliament but no longer a Minister. Article 67 of the Constitution of Vanuatu includes a Member of Parliament in the definition of a Leader. And so the Public Prosecutor's application was to remove Mr Seule as a Member of Parliament.

81. No application for an order under s.42 is required nor any order by a judge. Section 42 provides:

> ***"Disqualification from future office***
>
> *Where the leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction."*

82. The wording of the provision makes it clear once a s.41 order is made the consequences identified in s.42 follow.

83. Chapter 10 of the Constitution identifies expectations about the way leaders should conduct themselves in public and in private. Section 2 of the Leadership Code summarises these expectations in this way:

> ***"Summary of obligations imposed on leaders by Chapter 10 of the Constitution***
>
> *(1) In Chapter 10 of the Constitution, Article 66 provides that a leader must conduct himself in such a way, both in his public and private life, so as not to:*
>
> *(a) place himself in a position in which he has or could have a conflict of interest or in which the fair exercise of his public or official duties might be compromised; or*
>
> *(b) demean his office or position; or*
>
> *(c) allow his integrity to be called into question; or*
>
> *(d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.*
>
> *(2) Article 66 also provides that, in particular a leader must not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article 66(1).*

(3) Article 68 requires Parliament by law to give effect to the principles of Chapter 10."

84. Section 3 of the Act reinforces those obligations. It provides:

> ***"Leader's behaviour***
>
> *A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership."*

85. There are two alternative ways in which a Leader may become vulnerable to s.41/42 sanctions. At s.27(1)(a) a Leader is in breach of the code if he is convicted of a wide range of criminal offences including theft and the Leader is liable to be dealt with under s.41 and s.42 as is the case with Mr Seule.

86. If however the Leader is not convicted of a crime then Part 5 of the Code provides for a prosecution of a Leader if there is evidence they have breached the Code. In those circumstances a charge for such a breach may be filed (s.39(1)). The process for bringing charges under the Leadership Code therefore arises when it is alleged there has been a breach of the Code but there is no background criminal conviction as here.

87. The Judge refused the Public Prosecutor's application. She gave four reasons; that Mr Seule did not face a charge for breach of the Leadership Code; the amount involved in the theft was low; punishment must be proportionate and given a sentence of imprisonment was imposed dismissal would be overly punitive; and finally that there were other processes that would assess Mr Seule's suitability to be a politician and leader.

88. The Public Prosecutor appealed the refusal to make the Section 41, Order. We consider each of the challenges to the judge's reasoning.

<u>No Charge</u>

89. The Prosecution did not file a charge alleging a breach of the leadership code. In supporting her views of the relevance of the failure of the prosecution to lay charges under Sections 41 and 42 the Judge said:

> *"The relevance is simply that if you face a charge it may have alerted to the fact that there may have been consequences beyond the sentence being imposed by this Court."*

90. The Public Prosecutor's sentencing submissions filed and served two weeks before sentencing included the submission that the Judge should dismiss Mr Seule under Section 41 of the Leadership Code. The submission identified the relevant law and the Public Prosecutor identified the relevant facts that would trigger Section 41. Mr Seule would therefore have been alerted to the Public Prosecutor's submission before sentencing and was in a position to prepare a response (as was done).

91. Section 27(1)(a) and (b) provides as follows:

> *(1) A leader who is convicted by a court of an offence under the Penal Code [Cap. 135] and as listed in subsection (2) is:*
>
> *(a) in breach of this Code; and*
>
> *(b) liable to be dealt with in accordance with sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.*

92. The jurisdiction to invoke Section 41 arises in Mr Seule's case as a leader he has been convicted of a Section 27(2) offence. Conviction for theft qualifies under S 27(2).

93. No "*charge*" under Section 41 therefore could have been filed until after conviction. We do not consider any form of allegation of a crime or the filing of charges was required or indeed appropriate for the jurisdiction under Section 41 of the Leadership Code triggered by a criminal conviction covered by s.27(1). Once there is a conviction of a relevant offence the Leader is in breach of the Leadership Code (see Section 27(1)(a)). The consequence of the breach is that a Leader is liable to be dealt with under Section 41 in addition to any other punishment (Section 27(1)(b)) if the judge concludes the breach is serious.

94. As we have noted (para. 86) the process for bringing charges under the Leadership Code arises when it is alleged there has been a breach of the code but there is no background criminal conviction as here.

95. Section 41(1) provides as follows:

> *(1) Where a leader is convicted of a breach of this Code the court may, if it regards the breach as serious make an order dismissing the leader from office.*

96. Section 41(2) provides as follows:

> *(2) In determining whether the breach of this code is serious, the court may have regard to:*
>
> *(a) in the case of a breach involving a financial matter, the amount involved;*

(b) whether the conduct of the leader was significantly below what would be expected of a leader;

(c) where it is possible to discern, the motives of the leader;

(d) the extent to which the breach diminished the respect or public confidence in the leader's position; and

(e) whether the leader has been previously convicted of a breach of this Code.

97. Once the qualifying conviction is entered (as here) the Public Prosecutor should identify for the sentencing judge the jurisdiction to consider whether orders under Section 41 should be made and whether they are inviting the Court to consider that the breach was serious in terms of s.41. Adequate notice of the Public Prosecutor's view as to whether section 41 should be invoked by the Court, should be given to the defendant in such cases before sentencing. Typically consideration of the application of sections 41 and 42 should be made at sentencing assuming adequate notice is given.

98. We do not consider the fact that Mr Seule did not face a charge of breach of the leadership code is relevant to an assessment as to whether the breach was serious triggering s.41 and s.42. We are satisfied that Mr Seule had adequate notice of the fact that the Public Prosecutor was asking the Court to invoke s.41 of the Act before sentencing and therefore asking the Court to dismiss Mr Seule.

Low value of vehicle

99. The Court's function is to decide if the breach is serious having regard to relevant factors. We note that the Judge in her remarks considered that the offending was "*quite serious*" but concluded that the amount involved was low and that was a factor which convinced her not to exercise her discretion under s.41(2). She acknowledged that the seriousness of the offending was primarily the gross breach of trust exhibited by Mr Seule. The Judge said that if the dishonesty had involved a significant quantum then the position might have been different.

100. While it is correct that the value of the Mitsubishi was low, we do not consider that fact detracts from the serious circumstances of this offending. The facts found by the Judge involved Mr Seule as Minister of Youth and Sport stealing a vehicle which belonged to the Government and which had been used by his own Ministry. Significant planning was involved. Mr Seule arranged for the vehicle to be returned to Port Vila when it was left at the Public Works Department. He told those assisting him he had paid for the vehicle. This false claim enabled his assistants to remove the vehicle from PWD. He then arranged for the vehicle to be repainted green when the existing colour was grey, and he arranged for non-Government licence plates to be installed on the vehicle when he knew it had Government plates. Finally, he arranged for the vehicle to be shipped back to Epi, his home Island where members of his family used the vehicle for commercial and private purposes.

101. Mr Seule was a senior leader. It was theft of an asset of the Vanuatu Government and so theft of an asset of the people of Vanuatu. We consider the value of the vehicle has only modest significance given the seriousness of the breach of trust.

Proportionality

102. The third ground on which the Judge refused to invoke s.41 was the question of proportionality. The Judge said that given Mr Seule had already been subject to a full-time custodial sentence without suspension that meant the need for accountability and denunciation was met. She considered that a dismissal under s.41 would be overly punitive and in that regard she placed weight on the low value of vehicle.

103. We do not think that proportionality is relevant to a decision under Section 41 of the Leadership Code. The Leadership Code is intended to provide a separate regime of accountability for those in leadership positions, who commit criminal offences, beyond the criminal law. Section 27(1)(b) provides that the leader is liable to be dealt with under Section 41 and 42 "...in addition to any other punishment...". Parliament in using this phrase has made it clear the extra consequence from a breach of the Code will not be disproportionate.

104. A proportionality test undermines the importance of the Leadership Code and the expectation of the people of Vanuatu that their elected members of parliament will conform to the highest standard of behaviour. We therefore reject the concept of proportionality as relevant in assessing whether behaviour is serious under Section 41.

Other Processes

105. Nor do we think that the fact that there may be other processes to address Mr Seule's suitability as an elected politician and a leader is relevant. The Leadership Code has been specifically enacted to deal with exactly the situation that the Court faced in this case.

106. The facts found by the Judge illustrate in terms of s.41(2) that his conduct was significantly below that expected of a leader. Further, such a breach will have inevitably diminished the respect and public confidence in Mr Seule's position.

107. We are satisfied the breach was serious in terms of Section 41. And therefore in terms of Section 41 we make an order that Mr Seule be dismissed from office. We are conscious that our decision to remove Mr Seule as a Member of Parliament has potential political effect. However Parliament itself has set the standard for the conduct of Members of Parliament in the Constitution and in the Leadership Code and contemplates the kind of order we have made. We have applied that law to Mr Seule's circumstances.

108. The cross-appeal is allowed. Mr Seule is dismissed as a Member of Parliament. By operation of s.42, he will thereby be excluded from standing as a Member of Parliament for a period of 10 years from the date of delivery of this decision, 14 November 2025.

109. In summary, the appeal against conviction is dismissed; the appeal against sentence is dismissed; the cross-appeal against the refusal to make orders under s.41, of the Leadership Code is allowed and we make orders under s.41 dismissing Mr Seule as a Member of Parliament.

DATED at Port Vila, this 14th day of November, 2025.

BY THE COURT

Hon. Justice Ronald Young

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU