

**BETWEEN: Public Prosecutor**  
Prosecutor

**AND: Chen You, Yang Da Chao, Huang Jian & Huang Yiji, Li  
Deqin, Li Yang, Li Yawang, Yang Xing, Yang Wenguo,  
Zhang Jianxin, Zou Ronghai, Bu Heping and Li Pinch**  
Accused

**Date of Judgment :** *9th day of August, 2022 at 2:00 PM*

**Before:** *Justice Aru*

**In Attendance:** *Mr. S. Blessing for Public Prosecutor*  
*Ms. S. Mahuk for defendant (Chen You)*  
*Mr. N. Morrison for defendant (Yang Dachao)*  
*Mr. D. Yawha for defendant (Huang Jian &  
Ors)*

---

**JUDGMENT  
(VERDICT)**

---

**Introduction**

1. The accused are Masters and crews of two foreign fishing vessels, namely Dongangxing 13 (D13) captained by Chen You and Dongangxing 16 (D16) captained by Yang Da Chao.
2. Both vessels were apprehended by RVS Tukoro on 21 January 2021 near the island of Hiu on allegations of fishing without a foreign fishing licence and failure to stow their gear in a manner that showed they were not readily available for fishing. Upon their arrest the vessels and their crew and captains were escorted to Santo then onto Port Vila where they were detained by the authorities.

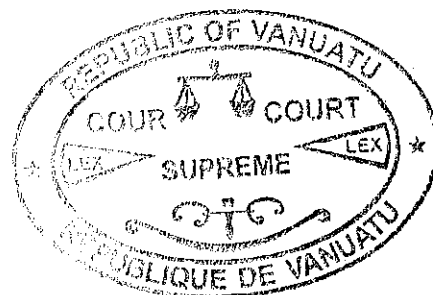
**The charges**

3. The charges arise under Part 10 of the Fisheries Act No 10 of 2014 (the Act) which specifically provides for Foreign Fishing Vessels. The relevant provisions state:

**“PART 10 FOREIGN FISHING VESSELS**

**Division 1 Foreign Fishing vessels**

**53 Obligations of foreign fishing vessels**



- (1) The operator of a foreign fishing vessel must not use the vessel for fishing or related activities in Vanuatu waters or for any other activities provided for by this Act.
- (2) Despite subsection (1), the operator of a foreign fishing vessel may use the vessel for fishing or related activities in Vanuatu:
- (a) For a purpose recognised by the provisions of the United Nations Convention on the Law of the Sea, 1982; or
- (b) In accordance with an access agreement or a licence issued under this Part.
- (3) A person who is:
- (a) On board a foreign fishing vessel; or
- (b) A member of the crew of a foreign fishing vessel; or
- (c) Attached to or employed on a foreign fishing vessel, must not, while in Vanuatu waters, engage in fishing or related activities except as is provided for in this Act.
- (4) An operator and each member of the crew of a foreign fishing vessel must comply with all applicable laws and with any applicable access agreement.
- (5) An operator of a foreign fishing vessel must ensure that when the vessel in Vanuatu waters, all fishing gear on board the vessel, is to be stowed in such manner that it is not readily available for use for fishing.
- (6) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT1, 000,000,000, or by a term of imprisonment of not more than 5 years, or both. ”
4. Section 56 provides for the penalty for any contravention of s53 (3), (4) and (5) and states:
- “A person who contravenes subsections 53(3), (4), (5) or section 55, commits an offence punishable on conviction by a fine not exceeding VT700,000,000.”
5. The charges against the defendants are contained in the Amended Information filed on 31 May 2022 which contains five (5) counts namely:

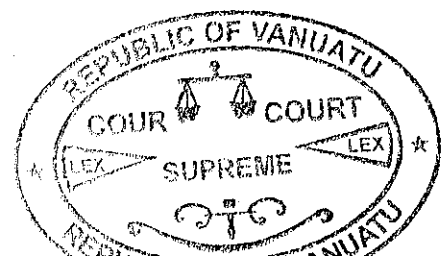
**Count 1**

**Statement of offence**

Use of foreign vessel for fishing and related activities in Vanuatu waters – contrary to section 53(1) of the Fisheries Act No 10 of 2014.

**Particulars offence**

That Mr Chen You, you are the operator of the foreign fishing vessel Dong Gang Xing 13 and that sometimes between 1 December 2020 and 21 January 2021 you used the said vessel for fishing and /or related activities within Vanuatu’s territorial waters without a foreign fishing licence and for a purpose not recognised by the provisions of the United Nations Convention on law of the Sea.



**Count 2****Statement of offence**

Use of foreign vessel for fishing and related activities in Vanuatu waters – contrary to section 53(1) of the Fisheries Act No 10 of 2014.

**Particulars offence**

That Mr Yang Da Chao, you are the operator of the foreign fishing vessel Dong Gang Xing 16 and that sometimes between 1 December 2020 and 21 January 2021 you used the said vessel for fishing and /or related activities within Vanuatu's territorial waters without a foreign fishing licence and for a purpose not recognised by the provisions of the United Nations Convention on law of the Sea.

**Count 3****Statement of offence**

Use of foreign vessel for fishing and related activities in Vanuatu waters – contrary to section 53(3) (b) of the Fisheries Act No 10 of 2014.

**Particulars of Offence**

That you Messrs Huang Jian, Huang Yija, Li Deqin, Li Yang, Li Yawang, Yang Xing, Yang Wenguo, Zhang Jianxin, Zou Ronghai, Bu Heping, Bu Lai, Li Pinche are the crew of foreign fishing vessels Dong Gang Xing 13 and Dong Gang Xing 16 and that sometimes between 1 December 2020 and 21 January 2021 you used the said vessels for fishing and /or related activities within Vanuatu's territorial waters without a foreign fishing licence and for a purpose not recognised by the provisions of the United Nations Convention on law of the Sea.

**Count 4****Statement of the offence**

Failure to stow fishing gear – Contrary to section 53 (5) of the Fisheries Act No 10 of 2014

**Particulars of offence**

That Mr Chen You, you are the operator of the foreign fishing vessel Dong Gang Xing 13 and that between 1 December 2020 and 21 January 2021 you failed to ensure that all gear on board the vessel was stowed in such manner that they were not readily available for use for fishing.

**Count 5****Statement of offence**

Failure to stow fishing gear contrary to section 53 (5) of the Fisheries Act No 10 of 2014.

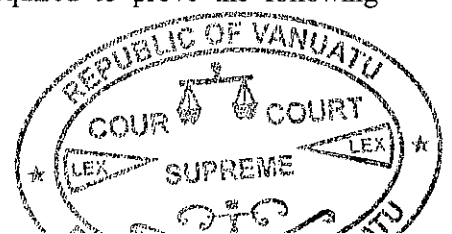
**Particulars of offence**

That Mr Yang Da Chao, you are the operator of the foreign fishing vessel Dong Gang Xing 16 and that between 1 December 2020 and 21 January 2021 you failed to ensure that all gear on board the vessel was stowed in such manner that they were not readily available for use for fishing.

6. Counts 1, 2, 4 and 5 concern the Master/Operator of both vessels and Count 3 relates to their crew.

**Elements of the Offence**

7. In relation to each charge, the prosecution is required to prove the following elements:



Count 1

- a) That the defendant is an operator/Master of a foreign fishing vessel;
- b) That the defendant used the vessel for fishing or related activities;
- c) That the defendant used the vessel for fishing or related activities in Vanuatu waters;
- d) That the defendant was not issued a licence issued under Part 10 of the Fisheries Act No 10 of 2014 (the Act)
- e) And that the defendant fished in Vanuatu waters for a purpose not recognised by the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).

Count 2

- a) That the defendant is an Operator /Master of a foreign fishing vessel;
- b) That the defendant used the vessel for fishing or related activities;
- c) That the defendant used the vessel for fishing or related activities in Vanuatu waters;
- d) That the defendant was not issued a licence issued under Part 10 of the Act and;
- e) That the defendant fished in Vanuatu waters for a purpose not recognised by the provisions by the provisions of UNCLOS

Count 3

- a) That the defendants are members of the crew;
- b) That the defendants are members of the crew of a foreign fishing vessel;
- c) That the defendants engaged in fishing or related activities; and
- d) That the defendants engaged in fishing or related activities whilst in Vanuatu waters.

Count 4

- a) That the defendant is an Operator of a foreign fishing vessel;
- b) That the vessel was in Vanuatu waters; and
- c) He failed to ensure that all fishing gear on board were stowed in such manner that they were not readily available for use for fishing.

Count 5

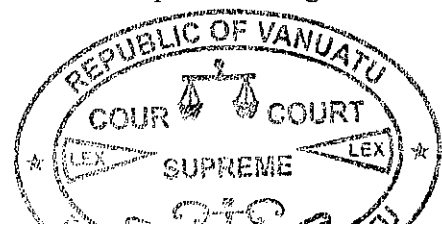
- a) That the defendant is an operator of a foreign fishing vessel;
- b) The vessel was in Vanuatu waters; and
- c) He failed to ensure that all fishing gear on board were stowed in such manner that they were not readily available for use for fishing.

**Burden of Proof**

8. The burden of proof rests with prosecution as required by s8 of the Penal Code [CAP 135]. They have the onus of proving the defendants' guilt and must prove all the elements of each offence beyond reasonable doubt. The defendants have nothing to prove.

**Law**

9. Part 10 of the Act aims to regulate the activities of foreign fishing vessels in Vanuatu waters. Parliament intended that their entry into Vanuatu waters must be regulated to protect Vanuatu's marine resources. Section 53 puts the obligation on



foreign fishing vessels not to use their vessels to fish in Vanuatu waters without a licence.

10. Fishing is broadly defined by the Act as:

“**Fishing** means:

- (a) Searching for, catching, taking or harvesting fish; or
- (b) Any attempt to search for, catch, take or harvest fish; or
- (c) Engaging in any activity which can reasonably be expected to result in locating, catching, taking or harvesting fish; or
- (d) placing, searching for or recovering any fish aggregating device or associated equipment, including radio beacons; or
- (e) Any operation at sea in support of, or in preparation for, any activity described in this definition; or
- (f) The use of any aircraft in relation to any activity described in this definition;”

11. Four different types of fishing activity are defined in the Act. Artisanal fishing which is fishing by customary resource owners, drift net fishing using driftnets, commercial fishing and recreational fishing. To be clear, there are no issues arising in this matter that concern artisanal fishing or driftnet fishing.

12. Commercial fishing is defined as:

“**Commercial fishing** means any fishing resulting in, or intended or appearing to result in, the sale or trade of any fish that may be taken, caught or harvested during the fishing operations, but does not include recreational fishing”

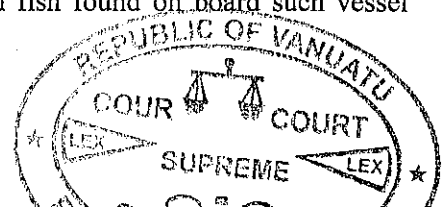
13. The definition of commercial fishing specifically excludes recreational fishing which is defined as:

“**Recreational fishing** means fishing done for leisure and without regard to earnings, gain or profit”

14. Any fishing done for leisure and not for sale or profit is recreational fishing. On the other hand, any fishing intended for the sale or trade of fish for profit would be termed commercial fishing which requires a licence. Section 53 in my view relates to commercial fishing activity as it obliges foreign fishing vessels to have a licence issued pursuant to s59 to conduct such fishing activity. The penalties for any breach are extremely high which again is reflective of commercial operations.

15. Section 54 (1) requires Operators of foreign fishing vessels not licensed and navigating through Vanuatu waters to report their name, international radio call sign, flag registration, date and time, position, complement, intended activity and catch on board to the Director of Fisheries or his nominee. Subsection (3) states:

“(3) If the operator of a foreign fishing vessel navigating through Vanuatu waters refuses or otherwise fails to report the information described in subsection (1), there is be a rebuttable presumption that all fish found on board such vessel

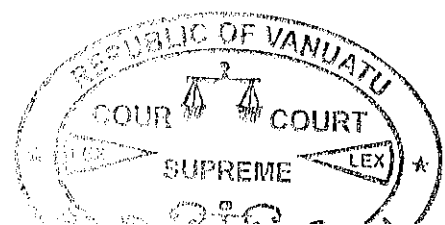


have been caught within Vanuatu waters in contravention of this Act.”

16. The law is specific that, if subsection (1) is not complied with, there is a rebuttable presumption that all fish found on board such vessel were caught in Vanuatu waters. In this case, no reports were made by the Operators of D13 and D16 about matters specified in subsection (1). They therefore have the onus to rebut the presumption by proving on the balance of probabilities that the fish found on board their vessels were not caught in Vanuatu waters.

### **Agreed Facts**

17. Some facts were agreed and are undisputed and are set out in the Memorandum of Agreed facts signed by Counsels and filed on 31 May 2022.
18. Part of these agreed facts are that on 24 January 2021, two Chinese foreign fishing vessels were detained. On board the vessels were the defendants who are all Chinese nationals. Mr Chen You is the Master and Operator of the foreign fishing vessel D13. Mr Yang Da Chao is the Master and Operator of the foreign fishing vessel D16.
19. The crews of D13 and D16 are:
- a) Huang Jian
  - b) Huan Yijia
  - c) Li Deqin
  - d) Li Yang
  - e) Li Yawang
  - f) Yang Da Chao
  - g) Yang Xing
  - h) Yang Wenguo
  - i) Zhang Jianxin
  - j) Zou Ronghai
  - k) Bu Heping
  - l) Bu Lai
  - m) Li Pinche
20. The fishing vessels D13 and D16 are registered as foreign fishing vessels and are registered under the Western & Central Pacific Fisheries Commission (WCPFC). They are not licenced to fish in Vanuatu waters. Both fishing vessels are owned by Zhuhai Dongangxing Ocean Fishery Co. Ltd and are registered in the People’s Republic of China. They have their Port of Registry at Zhuhai, China.
21. According to the WCPFC registry, the Master of D13 is Chen You. Specific details of the ship show that the vessel has a length of 45.33 meters with a tonnage capacity of 576.00 with two ice freezers. The gear type as identified in the WCPFC registry is basket and pot/hook line. The vessel is registered to fish only for grouper and sea cucumber from 3 August 2020 to 31 March 2025.
22. The fishing vessel D16 is a pole and line vessel type and according to the WCPFC registry information, the Master of the vessel is Mr Yang Da Chao. Specific details of the ship show that the vessel has a length of 46.79 meters, with tonnage capacity

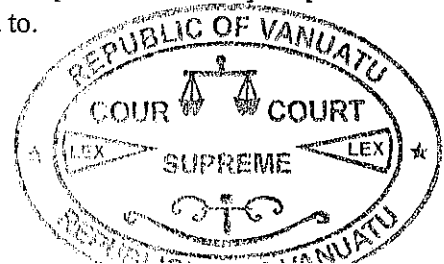


of 577.00 with two ice freezers. The gear type as identified in WCPFC registry is basket and pot/hook line.

23. On 12 January 2021 the Deputy Director Offshore from Vanuatu Fisheries Department requested the Forum Fisheries Agency (FFA) in Honiara to activate the Mobile Transmitting Units (MTUs) for five (5) of the Dongangxing fishing vessels. The MTUs were switched on and they discovered that the fishing vessel D16 was also in Vanuatu waters. These two vessels the D13/BZXG4 and D16/BZXG6 were located within 10-24 nautical miles off Hiu Island in the Vanuatu EEZ. This allowed the Vanuatu Fisheries Department to maintain a 24/7 monitoring of the two vessels of interest and analysed their movements from 18 January 2021 to 21 January 2021. In addition, the FFA vessels Monitoring System showed that fishing vessel D16 was broadcasting its location as being in Vanuatu waters on 18 January 2021.
24. Natives on the island saw the two vessels from a short distance. They saw people walking on the decks of the two vessels. A small craft was fitted with a Yamaha engine. Oak tree leaves that can be found around Hiu Island was seen in the small craft on board the vessel D13. Mackerel scad which is a common bait fish for fishing were also found on board.
25. Vanuatu was under a state of emergency at that time so there were COVID -19 restrictions on vessels and aircrafts entering Vanuatu. RVS Tukoro was deployed on 19 January 2021 at the request of the Director of Fisheries Mr William Naviti. On 20 January 2021, Lieutenant Jerome Lang, Captain of the French Navy Guardian, in New Caledonia did a fly-by. The Guardian positioned the two vessels at the following coordinates S13 59'- E166 02' and S14 00'- E166 01'. This gave an aerial surveillance confirmation of the location of the two vessels which also assisted the RVS Tukoro during its voyage to coordinate, locate and apprehend.
26. The vessels were then apprehended after establishing communication with the captains of the two foreign fishing vessels. The apprehension by RVS Tukoro was on 21 January 2021 inside Vanuatu's Exclusive Economic Zone. According to the FFA VMS, the GPS coordinates show D13 -12 42'.840S and 166 06.799'E and D16 - 12.43.760'S and 166 07.120'E.
27. One vessel was 33 nautical miles from Hiu Island and the other was 31 nautical miles from Hiu Island. The two vessels were escorted back to Luganville, Santo then on 24 January 2021 they were escorted to Port Vila. The defendants were then cautioned and interviewed.
28. Both vessels were located and detained in Vanuatu waters and neither vessel had a Vanuatu issued fishing licence.

### Summary of the evidence

29. Quite a number of documents were agreed to be tendered by consent. In brief these documents relate to meetings with the Minister of Agriculture and Fisheries, registration of Mega East Ocean Fishing Co Ltd with VIPA and VFSC, various documents about the two vessels and documents about actions taken once the vessels were detained in Vila. They are marked as [Exhibit OPPA] to [Exhibit OPPWW]. These will be identified when referred to.



30. A number of Prosecution witness statements were also agreed by consent to be entered as part of the prosecution evidence without having to call them. These witnesses were he Jimmy Maillorok [Exhibit OPP1 and Exhibit OPP2], Sompert Gereva [Exhibit OPP3], Dorah Winnie Moses [Exhibit OPP4], Fredson Julien [Exhibit OPP5], Kalo M Pakoa [Exhibit OPP9], Carina Mulonturala [Exhibit OPP6], Cynthia Wombur [Exhibit 15], Feongha Kalto [Exhibit OPP7], Jeyalda Ngwele [Exhibit OPP8], Leisei Sope [Exhibit OPP10], Royline Charlie [Exhibit OPP11], John Roy Douglas [Exhibit OPP12], Darol Vutinamoli [Exhibit OPP13] and Olivier Napuat [Exhibit OPP14].

31. The following prosecution witnesses were called to give oral evidence:

*Jino Suaki*

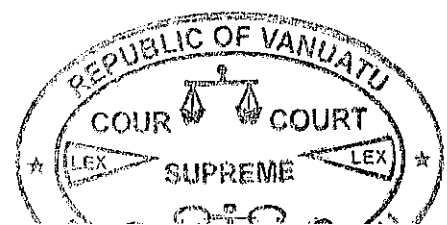
32. His evidence is that he is employed by the Department of Fisheries (DoF). His duties include monitoring fishing vessels inside Vanuatu waters. He confirmed that all fishing vessels carry vessel monitoring systems and automatic identification systems to indicate the location of the vessel. The DoF requested the Forum Fisheries Agency to switch on VMS to identify the location of the two vessels. He boarded the two vessels to check the memory cards for the automatic identification system but were removed. He was cross examined.

*Joby Siba*

33. He is employed by the DoF as the Senior Monitoring, Control and Surveillance officer. As a fisheries observer his job is to board vessels fishing within Vanuatu's EEZ to do compliance and record data of catch on board and area where the fish is caught. He was with Silas Yakar and they were the first to board the two vessels. On D16 he saw some food in the freezers and fish, scad and juvenile snapper. He also saw squid lure on a fishing line. On D13 he saw frozen fish on white trays inside a freezer. He said that's were fish were stored before processing. He was familiar with bait fish used for fishing but they are not in trays but packaged. The weight, fish type and number would be clearly identified on the package and the fish would be cleaned and wrapped in plastic before packaging. One package can only contain one species of fish. He took photos marked as **Exhibit OPPQQ**. (Photos 2 to 5 are photos of fish: scad or mangrou, and juvenile snapper and scad/mangrou dried junk. Photo 13 is of nets removed from a fish well D13.) He confirmed it was a trawler net he never saw used before. He said when a ship is on an innocent passage through territorial waters of a state all fishing gear must be properly stored so that they are not ready for use. He was cross examined.

*Lucy Joy*

34. She is employed by DoF as the Principal Data Officer. She said she was part of the investigation team on the two vessels. On 25/1/21 they boarded D16 first and went to the wheel house. She took photos of navigation equipment, radio, vessel monitoring system and charts of Vanuatu inside captains' room. She saw a freezer with food wrapped in plastic but did not identify. She entered a room on the wet deck and saw containers of strings with boxes of hooks and packaged monofilament lines. Inside the room were three (3) freezers some with fish underneath and food rations on top. The meat was chicken wings, pork and dried octopus in plastic and freshly caught squid. She took photos of the food and fish and went outside and took photos of a fibre glass blue boat fitted with Yamaha engine and had a container of





fuel and two (2) jerry cans of fuel. Inside the boat was a bamboo pole with a hook tied to one end.

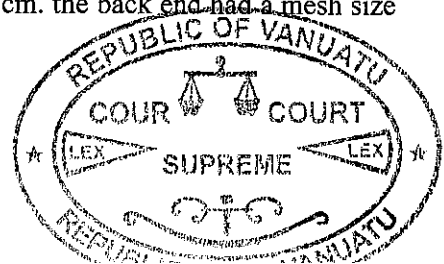
35. On D13 there were four (4) fibreglass blue boats on the deck with one bound by a rope connected to a winch. The boats had fish wells capable of storing goods. In the fish well of the boat connected to the winch were some oak tree leaves. Inside the wheel house and captains room she took photos of the navigational equipment and charts of Vanuatu. She then joined other officers removing fish from D16. On 29/1/21 she went back to the two vessels starting with D16, on the wet deck she saw a net similar to a parachute net with a small dried fish. The freezers were empty but she saw a squid hook in the freezer. On the quarter deck she joined John Valia to identify a basket containing branch line ready for use. She then boarded D13 to join Feeongka looking at the fish in the freezers. On 1/2/21 she was tasked to return to D13 to remove the fish for destruction with Yakar Silas. The fish were taken outside, weighed and recorded then loaded onto the tug boat for dumping at sea. Different species were put on different trays. In total 640.1 kilograms of fish were dumped. She recalled that a total of around 15 trays of fish were dumped. On 2/2/21 at the Fisheries office she assisted Jeyalda and Bianca to remove some of the fish stored in the freezers for the researchers to identify. Ada Sokach instructed them to put the fish on white paper and to prepare labels for identification purposes. She recalled there were crabs of different species including spider crabs, mackerel and scad, eels squids mixed with pieces of wood and pieces of fishing lines and also sea shells. The photos she took were tendered by consent as **Exhibit OPPRR**.

*Feeongka Kaltu*

36. She is employed by DoF as Senior National Data Officer. Her evidence is she boarded both vessels on the 25 January 2021 and took the photos tendered by consent as **Exhibit OPPNN** containing photos which included those of charts of Vanuatu, navigational equipment, hooks in boxes, frozen fish in trays inside freezer and nets removed from fish well and four fibre glass boats and some oak tree leaves seen inside the fish well of a blue boat. She was cross examined.

*Joseph Jacob*

37. He is employed by the DoF as a fisheries observer .His evidence is that as an observer he boards fishing vessels to verify catch data and do compliance checks on the fishing vessel and verify catch species. He also does surveillance of other fishing vessels in a fishing ground. He worked on long line fishing vessels use fishing lines with hooks attached to fish. Next he worked on purse seiners using seine nets. He also worked on trawlers which use cone shaped nets dragged by the vessel to catch fish and last a refer carrier vessel which enters the fishing grounds to collect fish from long line vessels and brings them back to the boat. He said a trawler drags its net behind it and can catch other species of sea creatures like crabs. On 29/1/21 he boarded the two vessels as part of the investigation team with Jobby Siba and John Valia. First they boarded D13 and came across three (3) nets stored inside a fish well which he identified as trawl nets. He identified the vessel as a trawler because it had a trawl net, a power winch on quarter deck, a roller at the back of the vessel and the vessel had an electronic fish finder. On 14/2/21 the nets were taken to Korman stadium and measured. There were more than three (3) nets and all were found on D13. The first net was fully constructed with float lines attached to small buoys. It measured 60meters in length with a mesh size of 7cm. the back end had a mesh size



of 3.5cm. The opening at the back end of the first net was 1.4meters and its float line was 50 meters.

38. The second net measured 35meters with a mesh size of 6.3cm. He said these types of nets were used for commercial fishing. During innocent passage he said the nets must be properly stored on the quarter deck in a way that they are not ready to use. They must be folded and tied up and covered by tarpaulins so observers on other vessels can see that no fishing is being done and any air surveillance can also confirm the vessel is no fishing. During fishing activity, he has observed fishing vessels using mackerel scad, big eye scad and squid as baitfish. These are purchased in packages which clearly identify the fish species and weight and the bait fish are cleaned and wrapped in plastic before packaging in boxes. One box can only contain one species of fish. He also said with a trawl net crabs can also be caught with other fish. He was cross examined.

*Ada Sokach*

39. She is employed by DoF as the Senior Fisheries Biologist and researcher. She was part of the investigation team and her role was to identify the fish samples taken from D13 which she did on 2/2/21. What she found was groups of fish, crustaceans, crabs, debris and assorted fishing lines. The fish included moray and conger eels, file fish (grunters), armoured gurnard fish, cardinal fish, assorted squids and octopus, mackerel scads, assorted scads, big eye scad, Indian mackerel, sardines and assorted snappers. Following her findings she produced a report tendered as **Exhibit OPPSS – Fish Identification**. She was cross examined.

*Joe Lauru*

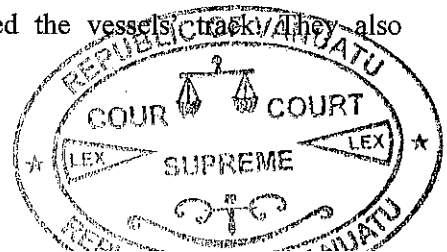
40. He is employed by DoF as ICT officer. On 29/1/21 he boarded the two vessels with D13 first to do inspections. He saw a CCTV decoder at the front of the ship and obtained copies of video footage of activities on board the vessel. He also obtained copies of video footage from D16. These showed activities of people on board the two vessels using a net and fishing lines. Video 1- On10/1/21 a fishing line is thrown behind D16. Video 2- shows crew pulling back a fishing line with squid at the back of ship. Video 3 – a crew member standing at the back of ship with fishing line on 10/1/21 and fish being put in a basket behind the men. On 14/1/21 fishing with net preparing and dropping net into the sea. Some crew standing at the back of vessel fishing as well. The video footage was tendered as **Exhibit OPPXX** and **Exhibit OPPYY**. He was cross examined.

*Roy Daniel*

41. He is a Police Corporal with the Vanuatu Maritime Wing. On 19/1/21 he was part of the team on board the patrol boat Tukoro when they arrested the two vessels in the Banks & Torres islands near the island of Hiu. His statement was tendered by consent and he was not cross examined.

*Yakar Silas*

42. He is employed by the DoF as the Principal Monitoring Surveillance and Control Officer. He liaised with authorities in New Caledonia for assistance with their surveillance aircraft to locate the two vessels. He was the first to board the two vessels with Jobby Siba after they were detained to do a general sweep check. They checked navigation equipment on the bridge. Both vessels did not have SD cards in the navigation gear which would have recorded the vessels track. They also



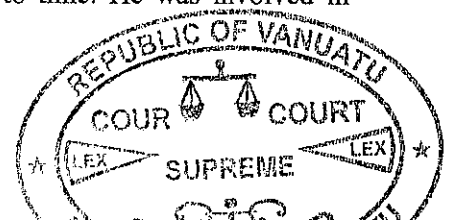
checked the fish wells and freezers. A full inspection was done after that in two groups. Their roles included looking for documentary evidence and information on the vessels' route, vessel registration and licences. Some of the documentation found were VIPA Certificate, a letter from the Minister of Agriculture and Fisheries. He supervised both investigation teams and was involved in the disposal of some of the fish. These were weighed to be 640.1 kilograms before disposal. A further 311 kilograms was authorised for disposal. As for the gear, on one of the vessels he saw a small boat equipped with a 30 horsepower engine. His officers obtained a big net from the fish well on D13. On 25/1/21 he went back to the vessels On D16 he saw a small boat with ropes. It had a big capacity in its fish well. He was cross examined.

*Albert Nasak*

43. He is employed by the DoF as fisheries observer .On 25/1/21 he boarded the vessels with the investigation team to identify the fishing gear on board. First he boarded D16 and assisted with the transfer of the fish trays. He entered the fish wells and saw some unused trays as well as used trays and took photos of them. On 29/1/21 he returned with others and boarded D13 to remove the nest from the fish well. On 5/2/21 they took the nets from D13 to Mala base. In his work as observer he has seen how vessels stow their gear. During innocent passage through territorial waters all gear must be stowed. He said usually they are tied up and covered by tarpaulin and placed on the quarter deck. The reason for doing that is to make easy for any aerial surveillance to see that no fishing activity is being done and secondly, observers on other fishing vessels can report that the vessel is not doing any fishing activity. He said fish bait are packaged and stored in freezers. The package would identify the species, weight and number of fish. One package would contain one species of fish.
44. Food rations are kept separately and enough is loaded before a vessel departs for the fishing grounds. He observed the fish on white trays on both vessels and could tell they were mackerel. Some trays had blood on the edges and some fish had blood stains and were not cleaned properly. He confirmed these were photographed in photo 43 and 44 of **Exhibit OPPRR**.
45. In relation **Exhibit OPPNN** photos 25, 26 and 27 concerning D13 he confirmed this was the correct way to store fuel tanks, outboard motors and small boats on the quarter deck. In his observations all gear on D13 were stowed properly. On D16 Exhibit OPPRR gear were not stowed properly as a small boat had ropes tied to it with engine attached ready for deployment photo 62 and 63. He stated that the blue boats are not for rescue but are used during fishing operation. He was cross examined.
46. For the defendants, their witness statements were agreed by consent to be entered as part of the defence evidence namely statements of Chen You, Yang Da Chao, Huang Jian, Huang Yijia, Li Deqin, Li Yang, Li Yawang, Yang Xing, Yang Wenguo, Zhang Jianxin, Zou Ronghai, Bu Heping and Li Pinche.
47. The defendants also called a number of witnesses to give oral evidence namely:

*Andre Kasso*

48. He was a fisherman for 18 years and worked on foreign fishing vessels in the Pacific Ocean, Indian Ocean and Atlantic Ocean from time to time. He was involved in



fishing using line and drift nets. He explained that when going ashore in China to get bait fish, these can be bought in the open markets or from the factory as packaged product. In the open markets fish is bought in open eskies or poly bags. When crossing borders in innocent passage, all fishing gear must be stowed in a place which cannot be accessed for fishing when checked by the Coast Guard. If fishing gear is stowed in a fish well as opposed to the quarter deck it will be very difficult to access for use. If a trawl net was stowed in such a manner, to access it for use a metal pole must be used to straighten the mouth of the net before deployment. He identified **Exhibit D2** as a trawling net with the metal pole stretching the mouth of the net to begin trawling. Such a net is stowed on deck with the metal pole. He was shown **Exhibit D3** and commented that the nets were not stowed and ready to be used for fishing. He was cross examined.

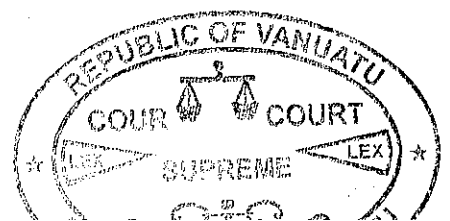
*Yang Da Chao*

49. He is the captain of D16 and has been a fisherman for over 20 years. He has been a captain for 7 years but not internationally. Before departing China he was present during the loading of his vessel when bait fish as well as personal effects were loaded. He confirmed the fish in the freezers is the bait fish. He said there were three ships D13, D16 and D17 travelling together but D17 sunk in the Philippines with all personal belongings only the crew were rescued by D13. D17 was also loaded with baitfish before departure. When arriving in Vanuatu waters they were meant to go to Santo but drifted awaiting instructions from the company. Those were their orders from the company. Part of these instructions was not to engage in commercial fishing as it would be illegal and that's why they were drifting. It took 23 days to get to Vanuatu and they drifted for 29 days making approximately 52 days in total. The baitfish bought in China all went bad and was still on board. About the video footage of one or two people with a small net he said that was on his boat D16 and the men were fishing for fun. He said some crew fished and caught squid and they ate it. In photo 15 of **Exhibit OPPNN** he agreed that was the bait fish bought in China and received in the containers shown.

50. As for oak three leaves found inside a fibreglass boat he said the area they came from had a lot of oak trees. The boat on the quarter deck of D16 with the engine was prepped in this manner before leaving China and was used to move people as they had no other boats to travel between the two vessels. The fish hook attach to a bamboo pole in one of the blue was used to retrieve things blown overboard by strong winds and also has other uses as well. He was cross examined.

*Chen You*

51. He is the captain of D13 and has been a fisherman for 40 years and captain for 8 years but not internationally. It was his first time when he was arrested. Before they left he took delivery of the bait fish for his vessel and was delivered to him in white plastic trays as shown in photo 15 of **Exhibit OPPNN**. The baitfish was distributed to three vessels and his carried the most around 1000 kilograms. When they left China they travelled through Philippine waters where one of the vessels D17 sunk. After arriving in Vanuatu they drifted for 29 days and were instructed to drift until they were instructed to go to Santo. The video footage showing people fishing were some of the crew fishing for fun. He agreed that the net in the fish well was from his vessel and it was a waste net used for cutting up for use on the floor of the small fibre glass boats when operating. He confirmed that these nets could not be used to



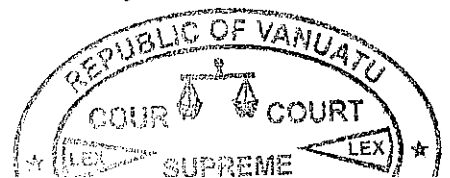
catch fish as they are waste nets. He said the primary fishing gear for D13 was lines and strings. He was cross examined.

*Li Qi Tu*

52. He is the owner of the three vessels D13, D16 and D17. His ID document was tendered as **Exhibit D4**. He sent the three vessels to Vanuatu around 27 or 28 November 2020. D17 sank in the Philippines during a cyclone. The vessels were sent after his company received assurances that their licences will be issued in Vanuatu. In April 2019 he accompanied the Minister of Agriculture and Fisheries to China to sign a contract and in May signed an MOU and he also received letters of support from various government departments. His company Mega East Ocean Fishing was locally registered in Vanuatu with VIPA and is the owner of the two vessels. The Minister of Agriculture introduced him to Pakoa Kalo to help obtain the fishing licence. The plan was that the licences would be issued by the time the vessels arrived in Vanuatu but when D17 sunk everything got delayed by dealing first with the disaster. COVID 19 pandemic hitting Vanuatu added to the delay. He instructed the operators not to enter Vanuatu waters as they are yet to be issued a licence and not to do any commercial fishing until all relevant documents are obtained. This is what Pakoa Kalo was supposed to do.
53. When the vessels left China they had been registered with WCPFC and registration with FFA was in process. For the Vanuatu fishing licence, Mr Kalo recommended that he be appointed to be the company's local agent in Vanuatu in order to process the application and quoted the company USD2000 for his services. After the payments were made they were not able to contact Mr Kalo and no documents were received from him.
54. As for the bait fish on the vessels these were bought in China before the vessels left port, they were not caught in Vanuatu waters. The baitfish were purchased at wholesale prices from suppliers at a very cheap price. The process he explained begins usually with the placement of a bulk order with their supplier. They prepare the fish and payment is done through Wee Chat an online payment system. All transactions are notarized and these are used to pay their supplier Li Peng Sheng. The payment was done in two separate transactions to Mr Sheng then they took their phones to the notary to show the payments made to Mr Sheng which were confirmed and notarized with the issue of a certificate. The Wee Chat transaction was tendered as **Exhibit D8**.
55. The bait fish are packaged and delivered in two ways. The better quality fish are processed and packaged in factories and labelled for sale. The other type is baitfish purchased directly from fishing vessels which are not washed, not separated or categorised, not packaged and are put in trays and sold as is and delivered to the vessels which are then placed in the freezers. He confirmed photo 15 in **Exhibit OPPNN** is the baitfish purchased from their supplier to stock vessel D13, D16 and D17. He was cross examined.

*Cai Li Yun*

56. Her ID document was tendered as **Exhibit D9**. She is an Accountant employed by Mr Li Qitu's company. She confirmed that the baitfish on D13 and D16 were not caught in Vanuatu waters. She stated that she ordered the baitfish and paid for them before the vessels departed China. She purchased the baitfish from their supplier Li Peng Sheng who has been their supplier for the last three years. The order was



placed through Wee Chat and payment was made through Wee Chat as well. The Wee Chat history from November 2020 was notarised as evidence of the transactions. The second notarial certificate by the Accountant was tendered as **Exhibit D10**. The total weight of the baitfish ordered was around 1,200 kilograms. She was cross examined.

*Li Peng Sheng*

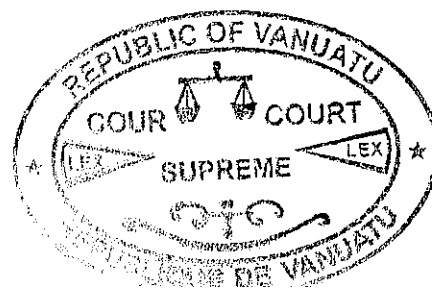
57. He is a business man trading in the fishing industry and has been in the business for over 20 years. He tendered his ID as **Exhibit D11**. He recalled supplying D13, D16 and D17 with baitfish in November 2020. The company contacted him that they needed some baitfish and he supplied them. He said Cai Li Yun the company Accountant contacted him. Payments were made in two instalments one by Li Qitu and the other by Cai Li Yun. He confirmed that the transactions referred to in the notarial certificates were done with him .He supplied mackerel to the three vessels. He said he would gather these fish from various fishing vessels as they are very cheap. Sometimes the fish contain mixed fish species and are not categorised therefore they are cheap. The bait fish are put in fish trays and delivered to the buyers. He confirmed photo 15 of **Exhibit OPPNN** is the manner in which the fish are put in white fish trays for delivery. Each tray contains around 20 kilograms of fish. When referred to **Exhibit OPPSS** with pictures of fish samples he confirmed that all the fish shown are also found in the South China seas and he is familiar with them. Because the fish is very cheap it's not sorted before sale and sometimes contains pieces of drift wood or strings. Sorting would increase costs. He sourced his fish all the time from the cheapest places. He was cross examined.

*Yang Jian Hui*

58. He works in the transport industry as a delivery man. He is self-employed and tendered his ID as **Exhibit D13**. He said he knows the Dongangxing Company and recalls doing deliveries for them in November 2020. As a delivery person he delivered fish to the Dongangxing company vessels in November 2020. He picked up the fish from the supplier Li Peng Sheng and delivered it to the Dongangxing Company and the captain Chen You received the delivery. He was cross examined.

**Prosecution Submissions**

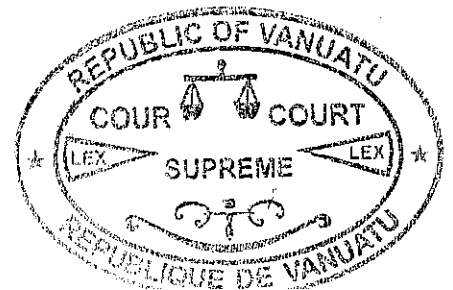
59. The prosecution submissions in summary are that that the offences are of strict liability in nature and the prosecution relies on circumstantial evidence to prove beyond reasonable doubt that the defendants were engaged in commercial fishing and that the gear on board D13 and D16 were not stowed in a manner that were not readily available for use for fishing, To satisfy the requirements to rely on circumstantial evidence as proof they rely on what the Court of Appeal said in **Boihilan v PP** [2002] VUCA 6 adopting the principles set out by Brennan J in **Chamberlain v The Queen** (No2) [1984] HCA 7 and what the Court of Appeal said in **Swanson v PP** [1988] VUCA 9.
60. It was submitted that the following facts were proved beyond reasonable doubt. The two foreign fishing vessels D13 and D16 came to Vanuatu to do commercial fishing pursuant to an MOU signed with the Government as agreed in the agreed facts. The vessels were built for commercial fishing and had maps of coastal areas of northern Vanuatu in the wheel house on both vessels.



61. It was submitted that upon sighting the patrol boat Tukoro, both vessels switched off their lights for 15 minutes then switched them on again and raised the Vanuatu flag. The operators told Roy Douglas Johns that they came to Vanuatu to fish. The fish found on board were stored in trays and some were freshly caught which is consistent with video footage obtained by Joe Lauru. It was submitted that if the bait fish were bought in China, they would have been stored in packages which would have clearly identified the species and weight of the fish. It was also submitted that it was not possible for some of these fish to have been eaten by the crew out of the total weight bought in China and the remainder having been found on both vessels. As they were not marked as such and not packaged it was submitted that the fish were caught in Vanuatu waters which is consistent with the video footage of fishing activity obtained by Joe Lauru.
62. It was also submitted that the Operators of the two vessels failed to ensure that all gear were stowed so as to ensure they were not readily available for fishing. An outboard motor was attached to a blue boat with fish wells which had water and some pine leaves in it at the rear of D16. Fuel tanks were located in the boat in addition squid hooks were found in the chief engineers' room.
63. On D13 video footage obtained by Joe Lauru showed a trawling line in the water and a net with dirt in it indicating that it was used.

#### Defence submissions

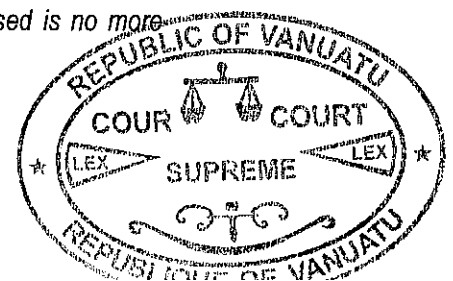
64. In summary, Ms Mahuk and Mr Morrison on behalf of Chen You and Yang Da Chao submitted that there was no evidence of commercial fishing. The only evidence of any fishing activity captured by video footage was recreational fishing or fishing for fun not commercial fishing. With regards to the baitfish on board their vessels it was submitted that the presumption that the fish were caught in Vanuatu waters was discharged by the evidence of Chen You, Yang Da Chao, Li Qitu, Li Peng Sheng, Cai Li Yun and Yang Jian Hui. With regards to stowage of fishing gear, it was submitted that the test is that fishing gear must be stowed in such a way that it was not readily available for fishing. It must be visible to air surveillance and observers on other fishing vessels. It was submitted that the French Navy aircraft **Exhibit D1** confirmed that there was no fishing activity observed and the prosecution's own evidence confirmed there was no fish in the fish wells where fish caught in commercial fishing operations are kept.
65. It was submitted that before the vessels left china, Li Qitu instructed the defendants to drift and not to do any commercial fishing until such time their licence was approved.
66. Mr Yawha submitted that the crew did not use the fishing vessel for fishing activities. Although bait fish was found on board both vessels, Ada Sokach in cross examination agreed that these fish were not exclusive to Vanuatu. It was submitted that video footage tendered by Joe Lauru did not reveal any commercial fishing activity but showed a number of people in their night attire with one or two fishing lines at night having fun or engaging in recreational fishing rather than any commercial activity. It was submitted that there was no evidence identifying each of them.



67. It was also submitted that the bait fish found on board were purchased in china before departure. Finally it was submitted that the prosecution evidence showed recreational fishing not commercial fishing.

### Discussions

68. In view of the agreed facts in relation to counts 1 and 2, the defendants accept that Mr Chen You and Yang Da Chao are the operators of D13 and D16 and that both vessels were within Vanuatu waters and that they were not issued with a foreign fishing licence at the relevant time.
69. In relation to count 3, the defendants accept that the defendants charged are the crew of D13 and D16 and that D13 and D16 are foreign fishing vessels which were in Vanuatu waters at the relevant time.
70. In all three counts (1, 2, and 3) the defendants deny that they were engaging in any commercial fishing at the relevant time although they agree that mackerel scad, which is a common bait fish for fishing were found on board D13 and D16. The sole issue (**Issue 1**) relates to the element of fishing, whether the defendants in counts 1, 2 and 3 were conducting any commercial fishing activity at the relevant time.
71. In relation to counts 4 and 5, the defendants accept that Mr Chen You and Yang Da Chao are operators of foreign fishing vessels D13 and D16 respectively and at the relevant time both vessels were in Vanuatu waters. They deny that all fishing gear on board both vessels was not stored in a manner that it was not readily available for use for fishing.
72. The only issue (**Issue 2**) relating to these two charges is whether the operators of D13 and D16 failed to ensure that all fishing gear on board both vessels were stowed in such manner that they were not readily available for use for fishing.
73. During the trial, a site visit was undertaken by the Court on board both vessels at the request of the prosecutions and accompanied by all three Counsels and the Operators of the two vessels. This was helpful in my general understanding of the overall purpose and layout of both vessels.
74. The whole prosecution case relied on circumstantial evidence to prove the charges against the defendants. The requirements that need to be met for a Court to use circumstantial evidence to convict, were accepted by the Court of Appeal in **Boihilan v PP** [2022] VUCA 6 to be:
- a. *First that the primary facts from which the inference of guilt is to be drawn must be proved beyond reasonable doubt;*
  - b. *Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts which the Judge finds;*
  - c. *Thirdly, inferences may be drawn from proved facts if they follow logically from them;*
  - d. *Fourthly, if they do not, then the drawing of any conclusion is speculation, not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution.*





**Issue 1- whether the defendants conducted any in commercial fishing activity?**

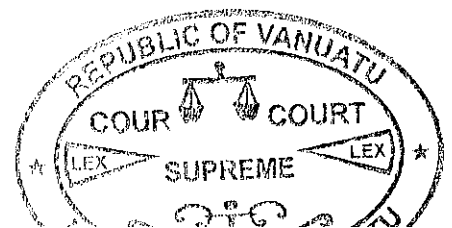
75. At the outset there was no evidence that the fish wells on both vessels contained fish. The fish wells are the storage facilities for fish caught during fishing operations. Li Qitu who owned the vessels signed an MOU with the Minister of Agriculture which obliged him not to conduct any fishing activity until he had a foreign fishing licence issued. Accordingly, he instructed the operators of the two vessels not to undertake any fishing and to wait for his instructions. He was in the process of applying through Kalo Pakoa in Vanuatu. Chen You and Yang Da Chao in their evidence confirmed they were told not to fish but to drift and wait for Li Qitu's instructions.

*Bait fish*

76. The only evidence of any fish on board the vessels was bait fish. These were stored in white trays in freezers on board both vessels where the crew's food rations were stored but not in the fish well. This was noted by Jobby Siba, Lucy Joy and Feeongha Kaltu. Ada Sokach who identified the fish species said they could be found in the waters of Vanuatu. Under cross examination she agreed that the fish species she identified were not exclusive to Vanuatu. The only explanation how the fish came to be there in the first place was offered by the defendants.
77. Li Peng Sheng said the fish species are also found in the South China Sea and he is familiar with them. His evidence is as a supplier of bait fish to Mr Li Qitu's company, he purchased the bait fish direct from fishing boats to supply Li Qitu and is very cheap compared to package fish and is supplied in the white trays. Li Qitu confirmed the process of ordering the bait fish. Cai Li Yun the company Accountant placed the orders with Li Peng Sheng who has been their supplier for the last three years said the payments were made in two instalments by herself and Li Qitu via Wee Chat. These Wee Chat transactions were confirmed by notaries in notarised certificates tendered as **Exhibit D8 and D10**. Andre Kasso as an experienced fisherman of many years overseas confirmed that bait fish can be purchased from factories or in open markets in China.

*Nets in fish well*

78. It was suggested by the prosecution that the nets found in the fish well of D13 were trawler nets and were used to catch the baitfish. Jobby Siba saw the nets in the fish well. Joseph Jacob a fisheries observer said that the nets were trawler nets dragged behind a fishing vessel to catch fish and all kinds of sea creatures including crabs. He assisted Jobby Siba and John Valia to measure the nets at Korman stadium. One net had a length of 60 meters and the other was 35 meters long. Chen you who is the operator of D13 said the nets in the fish well were waste nets which is why they were put there. The nets would be cut up to size for use on the floor of the fibre glass boats during fishing operations. They are useless for fishing. Andre Kasso confirmed that the nets could not be used as a trawler net requires a long metal pole to be placed at its mouth before it's dropped into the water. He referred to **Exhibit D2** as an example of a trawler pulling a trawler net using the metal pole. The prosecution did not lead any evidence on the existence of a metal pole for the nets in the fish well. I accept that the manner of storage was an indication that the nets were no long used for fishing.



79. Furthermore, in the Agreed Facts it was agreed that D13 was registered with WCPFC with gear type as basket and pot/hook line therefore the prosecution could not dispute that its gear is a trawler because of the existence of a waste net in a fish well. The defendants' evidence is consistent with the WCPFC registration.

*Video footage*

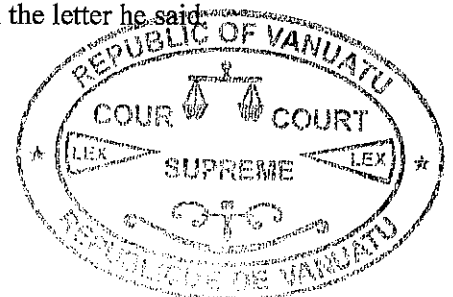
80. The only evidence of fishing offered by the prosecution was video footage obtained by Joe Lauru from the two vessels and tendered as **Exhibit OPPXX and OPPYY**. The video footage shows a couple of people standing at back of the vessels at night in their night attire. One pulled in a fishing line with a squid and the other standing with fishing line in hand. It also showed one with a small net. The defendants submitted that no commercial fishing is conducted in night attire and the men were fishing for fun or recreation. I accept that submission.

**Issue 2** – whether the Operators of the two vessels failed to ensure that all fishing gear on board D13 and D16 were stowed in such manner that they were not readily available for use for fishing?

81. The defendants submitted that the test must be that the gear is stowed in such a way that it is not readily available for use for fishing. The evidence for the prosecution given by Jobby Siba is that during innocent passage through territorial waters all fishing gear must be properly stowed so that they are not readily available for fishing. Joseph Jacob as a fisheries observer said the nets must be tied up and placed on the quarter deck so observers on other vessels can confirm that no fishing activity is being undertaken and also air surveillance can confirm no fishing activity. This was also confirmed by Albert Nasak.
82. Yakar Silas said in evidence that he is the Principal Monitoring, Surveillance and Control Officer. He liaised with authorities in New Caledonia for assistance with their Surveillance aircraft .On 20 January 2020 LTT Lang Jerome, Captain of the Falcon 200 Gardian, the surveillance aircraft from New Caledonia confirmed his surveillance to Yakar Silas and Tony Taleo by email that they located the two vessels and saw “*No reported activity on board*”.
83. This confirmed that all gear on board the two vessels were stowed in a manner which were not readily available for fishing. The gear including fibreglass boats on deck were adequately stowed. Lucy Joy gave evidence that a fibreglass boat on D16 had a Yamaha engine fitted with fuel container and a bamboo pole with a hook tied to one end lying in the boat. Yang Da Chao, the operator of the vessel said the boat was prepped in this way before departing China and is used for moving people between the two boats. The bamboo pole with hook was used to retrieve anything which is blown overboard. I accept that the boat was prepped before departing China. It is prudent to do so also as preparation for any emergency.

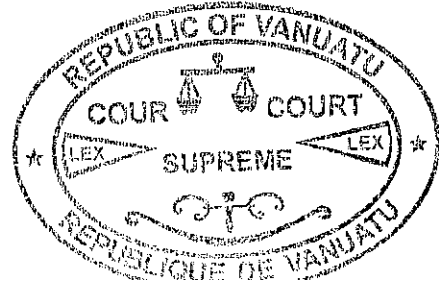
**Findings**

84. The history of the matter begun with the Government approaching Dongangxing Ocean Fishery Co Limited to support investment in Fisheries in Vanuatu. On 17 May 2019 the Minister of Agriculture Livestock and Fisheries (the Minister) issued a letter of support for such investment [**Exhibit OPPC**]. In the letter he said



“I would like to assure your company of the support of the Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity to ensure that your company’s approved type of fisheries investment in Vanuatu is smoothly implemented with relevant technical services provided through the Department of Fisheries ...”

85. On 22 May 2019 Mega East Ocean Fishing (Mega) was registered with Vanuatu Financial Services Commission as a registered business name [Exhibit OPPJ]. On the same date, the Minister’s private secretary informed the Vanuatu Investment Promotion Authority (VIPA) by letter supporting Mr Li Qitu and Mega [Exhibit OPPG] that the *“relevant provisions of the Fisheries Act particularly s 59 (foreign fishing licence) will apply before Mr Li Qitu or his company commence wish to actually commence investment.”* Again on the same date, Mr Li Qitu was informed by the Acting CEO of the VIPA by letter that their investments in fishing, fish processing and export was approved [Exhibit OPPF].
86. On 24 May 2019 a Memorandum of Understanding (MOU) [Exhibit OPPB] was signed between the Minister and Mr Li Qitu as Director of Mega. Under the MOU, Mega undertook to form a joint venture company with the Vanuatu Primary Producers Association (VPPA) in the development of the fisheries sector. The parties acknowledged that the Director of Fisheries will facilitate and process the relevant fishing licences and Mega pledged to abide the terms of any fisheries licence issued.
87. The Government was fully aware of the contents and intention of the MOU signed with Mega ie Mega was to supply 20 fishing vessels, three of which were D13, D16 and D17. Mr Li Qitu was aware his ships were not allowed to fish unless they had a foreign fishing licence .This is confirmed by the exchange of emails between Kalo Pakoa and Mr Li Qitu on behalf of Mega. Mr Pakoa’s statement was tendered by consent [Exhibit OPP9]. He is the advisor to the Minister of Agriculture and Fisheries and was the Director of Fisheries from 2015 to 2019. On 5 July 2019 he was introduced to Mr Li Qitu by the Minister to assist Mr Li Qitu with the setting up of his fishing investment business in Vanuatu at Palekula Santo.
88. Upon retiring as Director he established his own consultancy in the area of fisheries .In 2020 he was in constant communication with Mr Li Qitu as a consultant and was retained by Mega to obtain their fishing licence.
89. Through exchange of emails he advised that the company send 3 long line vessels one of which sank. The company made several enquiries as to the time frame to process their licence and he gave them assurances that the licences would be issued. He informed Mega he needed to be registered as their local agent in order to process their application and requested payment before proceeding. In the meantime he knew that the vessels had left China for Vanuatu and continued enquiring about updates on their licence. He delayed the processing of their licence due to non-payment of his fees. In the meantime the vessels had arrived in Vanuatu waters and were drifting awaiting confirmation of approval of their licence when they were arrested and detained.
90. Mr Li Qitu was assured by Mr Kalo that the licences would be issued and agreed to send the three vessels as advised by Mr Kalo.



91. In relation to **Issue 1**, I find that the defendants did not engage in any commercial fishing .In relation to **Issue 2**, I find that Operators of the two vessels ensured that all fishing gear on board D13 and D16 were stowed in such manner that they were not readily available for use for fishing. In relation to Counts 1, 2 and 3 the prosecution has not proved beyond reasonable doubt that the defendants engaged in any commercial fishing activity .In relation to Counts 4 and 5 the prosecution has not proved beyond reasonable doubt that the Operators of the two vessels D13 and D16 failed to ensure that all fishing gear on board their vessels were not stored in a manner that they were not readily available for use for fishing.
92. Furthermore, I find that the presumption in s54 (4) of the Act was discharged by the Operators of D13 and D16.

### Verdict

93. I return the following verdicts:

- Count 1 – Not Guilty
- Count 2 – Not Guilty
- Count 3 – Not Guilty
- Count 4 – Not Guilty
- Count 5 – Not Guilty

94. The defendants are therefore acquitted on all the charges. I also order that the defendants' passports including any personal effects be returned to them. In addition, I direct that any parts of the two vessels removed to disable the vessels be returned to the vessels immediately.

**DATED at Port Vila this 9th day of August, 2022.**

**BY THE COURT**

**Dudley Aru**

**Judge**

