

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

**Criminal**  
**Case No. 23/3376 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**DONALD RESTUETUNE**

*Date of Trial:* 5 March 2025 & 17 March 2026  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Ms J. Tete  
Defendant – Mr R. Willie; Defendant present  
*Date of Decision:* 20 April 2026

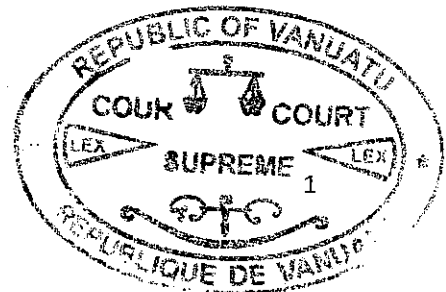
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**JUDGMENT AS TO VERDICT**

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A. Introduction

1. In 2008, the Defendant Donald Restuetune became involved with securing a registered lease for the school Listair Advent Training Institute Committee (Inc.) ('LATI'). He obtained the registration of leasehold title 03/0G52/004 at Melcoffee Sawmill area at Luganville on Santo island (the '004 lease') in his name alone. After proceedings in the Court of Appeal in 2015, a declaration was made by way of consent orders that Mr Restuetune held the 004 lease as trustee for LATI and would forthwith do all things necessary to record LATI as registered lessee of the 004 lease in their own right.
2. Mr Restuetune is charged with misappropriation contrary to s. 123 and para. 125(b) of the *Penal Code* [CAP. 135]. It is alleged that he committed this offence



when he was entrusted with VT1.6 million to acquire a lease for the LATI school premises and then to transfer the lease to the school once the school was registered. Further, that after the school was registered, that Mr Restuetune failed to transfer the 004 lease to the school.

B. The Law

3. Section 123 of the *Penal Code* provides as follows:

123. *A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption).*

4. Paragraph 125(b) of the *Penal Code* provides as follows:

125. *No person shall cause loss to another –*

- (a) *by theft;*
- (b) *by misappropriation; or*
- (c) *by false pretences.*

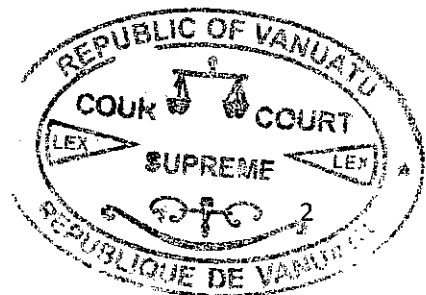
*Penalty: Imprisonment for 12 years.*

5. The charge of act of misappropriation has 3 legal ingredients or elements which must be proved in order for a conviction to be entered, namely that on the occasion alleged:

- (i) Mr Restuetune was entrusted with property capable of being taken;
- (ii) The property was entrusted to Mr Restuetune for the purpose of a particular dealing; and
- (iii) Mr Restuetune converted the property entrusted to him, that is, he used the property for a different purpose than its intended purpose.

6. The Prosecution is required to prove all the elements of the charge beyond reasonable doubt before a finding of guilt could be made. On the other hand, Mr Restuetune was not required to prove anything, and was entitled to not give or call evidence without any adverse inference arising.

7. The Prosecution and defence witnesses have equal value, and each witness is to be considered on his/her own merits.



8. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within a witness' account; consistency with other witnesses' accounts; compared their account with relevant exhibits; and considered the inherent likelihood, or not, of the witness' account.
9. In *Boihilan v Public Prosecutor* [2022] VUCA 6, the Court of Appeal set out the following requirements that need to be met for a Court to use circumstantial evidence to convict an accused:

*First that the primary facts from which the inference of guilt is to be drawn must be proved beyond reasonable doubt;*

*Secondly, the inference of guilt must be the only inference which is reasonably open on all the primary facts which the Judge finds;*

*Thirdly, inferences may be drawn from proved facts if they follow logically from them;*

*Fourthly, if they do not, then the drawing of any conclusion is speculation, not proof.*

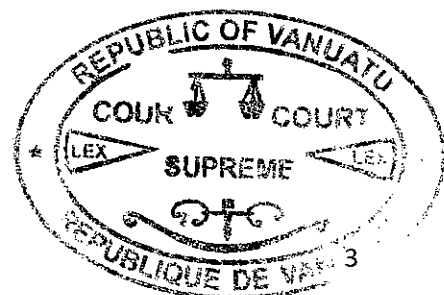
*Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution.*

10. I therefore reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if there is more than one inference available, the inference most favourable to Mr Restuetune must be drawn.
11. While the elements of the charge have to be proven beyond reasonable doubt, in a circumstantial case the facts relied on in combination to prove the elements only have to be proven on the balance of probabilities (*Thomas v R* [1972] NZLR 34 (CA), *R v Puttick* (1985) 1 CRNZ 644 (CA) at 647); *Kalosil v Public Prosecutor* [2015] VUCA 43 at [69] per the Court of Appeal.

### C. Evidence

12. The Prosecution called 6 witnesses:

- i) Mrs Jillian Macgillivray;
- ii) Mr Alistair Macgillivray;
- iii) Mr Elie John;
- iv) Ms Norah Dick;
- v) Mr Gibson Leeman; and
- vi) Mr Ernest Mathias.

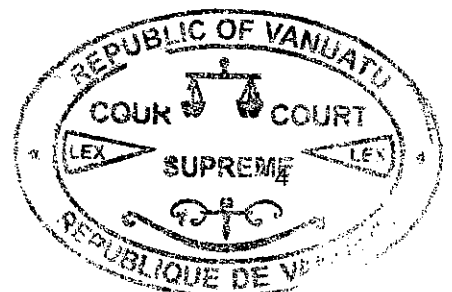


13. The Police witness statement of Isaac Isaiah dated 15 July 2011 was read into evidence pursuant to subs. 162(3) of the *Criminal Procedure Code* [CAP. 136] as Mr Isaiah has passed away [**Exhibit P1**]. In this statement, Mr Isaiah stated that he was a LATI board member and that LATI gave VT1,600,000 plus an extra VT50,000 to Mr Restuetune. Then LATI had to pay extra payments totalling VT489,515 to meet the balance of the 004 lease premium, lease fees and stamp duty. He stated that the total LATI spent on the 004 lease was VT2,089,515. He stated that the 004 lease was registered in Mr Restuetune's name, which was not in accordance with the verbal agreement that it be registered in the names of Gibson Leeman, Amos Tasso and Mr Restuetune. Finally, he stated that LATI did not give any right to Mr Restuetune to use the monies for his personal use.
14. Mr Isaiah's account is consistent with that of Mr and Mrs Macgillivray. I accepted his evidence.
15. Mr Restuetune elected to remain silent.
16. The fact that Mr Restuetune has chosen to exercise his right to remain silent will not of itself lead to an inference of guilt against him: s. 88, *Criminal Procedure Code* [CAP. 136]. Nonetheless, his silence will be relevant in assessing the persuasiveness of the evidence adduced by the prosecution and I will also weigh it as part of the evidence in all of the circumstances: *Public Prosecutor v Kalosil - Judgment as to verdict* [2015] VUSC 135 at [76]-[77] per Sey J.
17. The Court of Appeal stated as follows in *Swanson v Public Prosecutor* [1998] VUCA 9, cited by the same Court in *Kalosil v Public Prosecutor* [2015] VUCA 43 at [69].

*In a circumstantial case, where the accused makes no statement out of Court and/or elects not to give evidence, inferences can be drawn from the absence of any explanation from the person "with the unique knowledge of the complicated dealings to which the charges relate" (a quote from R v Connell [1985] NZLR 223 at 227).*

18. The Court of Appeal went on to state as follows in *Kalosil v Public Prosecutor* [2015] VUCA 43 at [70]:

[70] *While guilt must not be inferred from silence, we have no doubt that a Judge can draw inferences from the failure of an accused to exercise the right to give evidence, when there are proven facts which on an objective examination and in the absence of an explanation are supportive of guilt. If an explanation is required and should be in the accused's knowledge, the failure to provide that explanation cannot be ignored. The absence of evidence does not prove guilt, but it can be considered as part of a reasoning process in establishing whether an element is proven. This principle is known in New Zealand as the Trompert principle from the leading case of Trompert v Police [1985] 1 NZLR 357 (CA).*

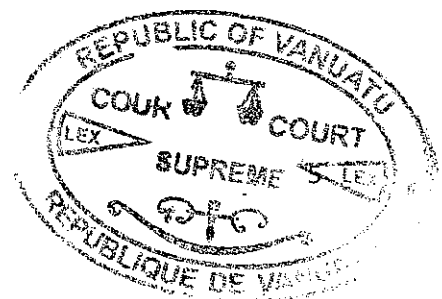


*[emphasis added]*

19. I adopt the above statements of the law.

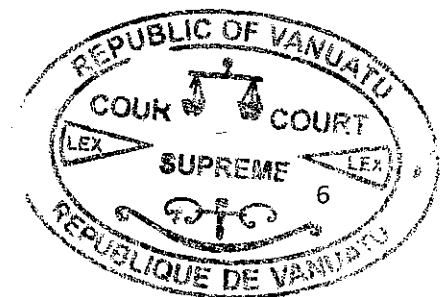
D. Prosecution Witnesses' evidence

20. The first Prosecution witness **Mrs Jillian Macgillivray** gave evidence that she and her husband Alistair Macgillivray began a school at Aore Adventist Academy in 2002. In 2007, they and their students decided to set up an independent school called "Listair Adventist Academy" and began looking for land in Santo where there would be 24 hours power supply. Through two of their students Amos Tasso and Gibson Leeman, they identified the 004 lease for purchase. They paid VT176,000 to Amos for his uncle for the lease. They also paid vT433,000 to the DOL for half of the lease premium.
21. She stated that on 7 August 2008, Mr Restuetune offered to get the 004 lease in two weeks and asked for VT400,000. After he contacted Amos Tasso, a further VT600,000 was deposited to his account on 9 August 2008. He subsequently asked for a further VT500,000 which was put into his ANZ account on 28 August 2008. On 31 October 2008, Mr Restuetune requested another VT100,000. The transfers were from LATI's account at the ANZ Bank, account number 1185682 to Mr Restuetune's bank account.
22. Mr Restuetune had promised to put the 004 lease in the name of Amos, Gibson and himself until LATI was registered as a school. They kept asking for receipts but he did not give them any. LATI received its registration on 21 June 2010 with the Vanuatu Financial Services Commission ('VFSC') but Mr Restuetune refused to transfer the land into LATI's name.
23. They went to the Department of Lands ('DOL') to ask what to do and found out that Mr Restuetune had paid only one amount of VT122,000 to the DOL for the 004 lease; the receipt was in the name of Amos, Gibson and himself. The DOL told them to pay the rest of the money required for the lease so they paid about VT962,000 altogether to the DOL.
24. Mrs Macgillivray stated that they had limited funds but a friend had given them A\$50,000 in July 2008. He had mortgaged his house unbeknownst to them. They were trying to be very careful with the money so they were very troubled when Mr Restuetune had not given them the 004 lease and they had to pay the VT962,000 to the DOL.
25. In December 2009, they went again to the DOL to ask what they could do and were advised that Mr Restuetune had been registered as the lessee of the 004



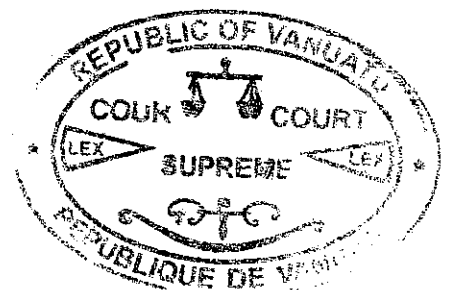
on 27 August 2008. And there was a certificate from the DOL issuing the land to Mr Restuetune. Mrs Macgillivray stated that they knew then that Mr Restuetune had told them untruths about the land.

26. She stated that after that, they kept asking Mr Restuetune for the 004 lease to be transferred to their name and finally, there was a Court case involving a man, Elie John, who had had the 004 lease transferred to his name and he won. Then Mr Restuetune appealed and made a false statement on appeal that he was a trustee of LATI. As a result of the appeal, the land was transferred to LATI's name in November 2015. They continued with the school but Mr Restuetune did not give back the money for the 004 lease. They did not ask for it back as they were just relieved to have the 004 lease in the school's name.
27. In May 2018, they had already transferred the school to Ni-Vanuatu in Business and they left. Ms Norah Dick was now the care-taker of the school. She said that Mr Restuetune claims that he was appointed as a trustee for LATI but he has never been appointed as trustee. They accepted his kind offer get the 004 lease but they quickly realized that he had lied to them.
28. In cross-examination, Mrs Macgillivray agreed that the initial, verbal agreement in 2008 was for Mr Restuetune to put the 004 lease in his, Amos and Gibson's names until the school was registered. She said that she is aware of a meeting on 5 June 2008 between Mr Restuetune, Gibson, Amos and Mr Macgillivray but was not present and not aware of the meeting discussions. She has never seen minutes of the meeting. She and her husband have not discussed the meeting. It was put to her that it was agreed in the 5 June 2008 meeting that Mr Restuetune would be registered on the 004 lease. She replied that it was only ever agreed that it would be in the 3 names until the school was registered but Mr Restuetune registered it in his own name on 27 August 2018 which was contrary to their verbal agreement. She stated that she kept records of all the monies and there was no record to verify what Mr Willie was putting to her – that at the 5 June 2008 meeting, Mr Restuetune requested an advance payment for another lease title, which he would refund through timber milling at his village in North West Malekula.
29. Mrs Macgillivray also agreed that she withdrew the initial VT400,000 and gave it to Gibson who passed it to Mr Restuetune. She agreed that Elie John commenced a Court case, and obtained judgment. And that only Mr Restuetune appealed the judgment. She denied that Mr Restuetune was ever appointed a trustee for LATI.
30. In re-examination, Mrs Macgillivray explained that Mr Restuetune got the 004 lease registered in his own name, not as a trustee because they had not asked

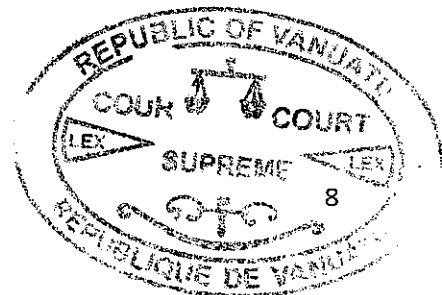


him to be a trustee and he refused to transfer it into the school's own name once it was registered.

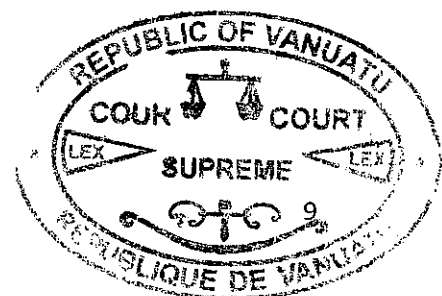
31. Mrs Macgillivray maintained her account in cross-examination. Her evidence was consistent with that of Mr Macgillivray. It was also consistent with the ANZ Bank statement for account no. 1185682 in the name of LATI which shows a VT400,000 withdrawal on 7 August 2008, a VT500,000 transfer to Mr Restuetune's account on 28 August 2008, a VT700,000 cash withdrawal on 29 August 2008 and a VT100,000 transfer to Mr Restuetune's account on 31 October 2008 [**Exhibit P3**]. Her account is also consistent with the Supreme Court's judgment dated 8 April 2015 in *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013) and the Orders by consent dated 23 July 2015 in the Court of Appeal: *Restuetune v Bill – Orders by Consent* [2015] VUCA 32. I accepted Mrs Macgillivray as a witness of truth and accepted her evidence.
32. The second Prosecution witness **Mr Alistair John Macgillivray** is 82 years old. He said that they gave over VT1,000,000 to Mr Restuetune to secure land being the 004 lease for LATI, in different amounts by his wife and Gibson Leeman and Amos Tasso. His wife kept all the financial records; it was her work to do so. He was responsible for the teaching.
33. He stated that Mr Restuetune did not give them receipts. He did not use the money received to pay for the 004 lease. They went to the DOL and were told to start paying for the 004 lease. There was a problem because there were two negotiating certificates for that lease – one in the names of Amos, Gibson and Mr Restuetune and another in Mr Restuetune's name alone. They began to realize that they had been double-crossed so they began paying the premium and other payments for the lease. He does not know how Mr Restuetune spent the monies sent to him for LATI's land but it was not on their land. They lost all confidence in Mr Restuetune and wanted him to no longer be part of their school.
34. In cross-examination, Mr Macgillivray agreed that he was one of the founders of LATI. He stated that he was an advisor and teacher because he was the only one qualified to teach. He confirmed meeting with Gibson, Amos and Mr Restuetune on 5 June 2008 at which they agreed and wrote on a small piece of paper that until LATI was registered, that Mr Restuetune would supposedly be a trustee. But when they found out the truth of the financial problem, they lost all faith in his integrity and from then on, did not regard him as a trustee at all.
35. He agreed that the 004 lease is now secured for LATI. He denied that Mr Restuetune received monies, secured the 004 lease and registered it under his name as a trustee for the school. He denied that Mr Restuetune requested at



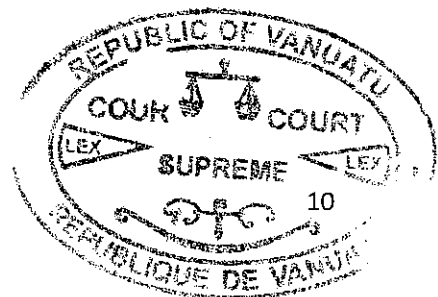
- the meeting an advance payment for lease 03/OG52/002 which would be refunded by timber milling at his village at North West Malekula. He denied that it was agreed at the meeting that the 004 lease would be registered in solely Mr Restuetune's name. He agreed that Mr Restuetune began cutting timber at Malekula for LATI but that he (Mr Macgillivray) was the one who stopped the timber-cutting and got all the machines returned to LATI. He denied that they received back any advance payment.
36. Mr Macgillivray agreed that Elie John commenced a Supreme Court case for fraud or mistake in the registration of the 004 lease. Mr John obtained judgment. He agreed that Mr Restuetune appealed the judgment. He denied that at all times Mr Restuetune was working to obtain the land for the school, not for his own personal use.
37. In re-examination, Mr Macgillivray explained that he did not agree that Mr Restuetune registered the 004 lease under his own name for the school because Mr Restuetune was not their trustee; he said that the DOL's records showed that Mr Restuetune purchased two lease titles: the 004 lease and another lease for a different block of land. He was to look after the documentation for the 004 lease until the school was registered. But then the school had to and paid the whole amount VT900,000 for the total cost for the 004 lease.
38. Mr Macgillivray maintained his account in cross-examination. His evidence was consistent with that of his wife Mrs Macgillivray and with the Court decisions in *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013) and the Orders by consent dated 23 July 2015 in the Court of Appeal: *Restuetune v Bill – Orders by Consent* [2015] VUCA 32. I accepted Mr Macgillivray as a witness of truth and accepted his evidence.
39. The third Prosecution witness **Mr Elie John** gave evidence that he won the tender in 2005 for the 004 lease. On 7 June 2008, he was issued a negotiator certificate and he paid for the lease in full through a loan from the ANZ Bank. Then LATI was looking for land and paid him VT25,000 rent to keep their shipping container on the 004 lease. Their agreement was to rent but not to remove the land, but they went through his nephew Mr Restuetune who removed the land from him (Mr John).
40. In cross-examination, Mr John agreed that he commenced a Supreme Court case for fraud or mistake and obtained judgment, then Mr Restuetune appealed against the judgment. He said that his case was against both Mr Restuetune and Mr Macgillivray.



41. There was no re-examination.
42. Mr John maintained his account in cross-examination. His account was limited to the relevant Court cases but was consistent with the accounts of both Mr and Mrs Macgillivray and the Court decisions in *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013) and *Restuetune v Bill – Orders by Consent* [2015] VUCA 32. I accepted Mr John as a witness of truth and accepted his evidence.
43. The fourth Prosecution witness **Ms Norah Dick** stated that on 14 May 2018, she met with Mr and Mrs Macgillivray and agreed to become the care-taker of the LATI school premises which was now under new owners Terence Brander David and Linda Heise. She stated that Mr and Mrs Macgillivray gave her tasks including to work closely with Gwen at the DOL to achieve the transfer of the lease from LATI to “Ni-Vanuatu in Business”; to help Terence apply for his residency and work permits; to help Dr Mark get his yacht from their property for his ministry work in the Banks Islands; to distribute a pallet of books to ministers or lay workers in ministry work; to help a single mother, Zelma, to move her house materials to build her house; and to pay land rent and lease payments whilst waiting for the issuance of Terence’s permits. In April 2020, Mr Restuetune challenged her about staying on the 004 lease. She went to the DOL and saw that the 004 lease was registered to LATI on 20 November 2015, then she and Mr Restuetune sorted out the issue as family and he has not challenged her care-taking on the 004 lease anymore.
44. In cross-examination, Ms Dick agreed that she started involvement with LATI in 2018 so in unaware of pre-2018 events. She agreed that her research at the DOL found that the 004 lease was registered to LATI in November 2015.
45. There was no re-examination.
46. I accepted Ms Dick as a truthful and accurate witness. Her account was consistent in cross-examination and she conceded matters where appropriate. However, her evidence was of no assistance in determining the factual matters in dispute.
47. The fifth Prosecution witness **Mr Gibson Leeman** stated that he, Amos Tasso and Mr Restuetune were board members of LATI. They along with Mr Macgillivray started the LATI school. Amos was the Principal and he was the Accountant. Mr Macgillivray was the advisor. He said that they thought everything was fine but when the 004 lease papers came through, he and Amos’ names were not on the lease. He said that he gave all monies for the school to Mr Restuetune.



48. I then declared Mr Leeman a hostile witness and granted Ms Tete leave to cross-examine him. He denied making a Police witness statement dated 15 July 2011, that it was a forgery and no Police officer signed it. He denied all matters put to him from that Police witness statement. He said that the LATI school board decided that the 004 lease would be registered in Mr Restuetune's name. He said that he made a Police witness statement in November 2023 but not on 15 July 2011.
49. In cross-examination, Mr Leeman stated that the 15 July 2011 Police witness statement was not his statement. He agreed that on 5 June 2008, he met with Amos Tasso, Mr Macgillivray and Mr Restuetune and agreed that the 004 lease would be registered in Mr Restuetune's name and that he secured that lease for the school, including by appealing to the Court of Appeal. He also agreed that it was also agreed at the 5 June 2008 meeting that a VT400,000 advance payment be made to Mr Restuetune for another lease which he would refund through timber milling at his village on Malekula. He agreed that Mr Restuetune never misused the school's money.
50. There was no re-examination.
51. Mr Leeman accepted that his signature was on the 15 July 2011 Police witness statement but asserted that it was a forgery and relied on the lack of a Police officer's signature on it to resile from the statement. The tenor of his evidence was clearly to say everything that he could to assert Mr Restuetune's innocence. Mr Leeman's account was clearly inconsistent with his Police witness statement dated 15 July 2011. I consider that Mr Leeman was an unreliable witness and not credible, and have not accepted his evidence.
52. The sixth and final Prosecution witness **Mr Ernest Mathias** is employed by the BRED Bank, and previously worked with the ANZ Bank until April 2025. He extracted a bank account statement for account number 1185682 in the name of LATI for the period 14 November 2007 to 18 February 2009 [**Exhibit P3**]. The account was closed on 18 February 2009. He made a Police witness statement dated 4 March 2025 attaching the bank account statement [**Exhibit P2**].
53. In cross-examination, Mr Mathias confirmed that he extracted the bank account statement [**Exhibit P3**] pursuant to a Court order.
54. There was no re-examination.



55. Mr Mathias maintained his account in cross-examination. His evidence is consistent with that of Mrs Macgillivray. I accepted Mr Mathias as a witness of truth and accepted his evidence.

E. Discussion

56. The evidence from Mr and Mrs Macgillivray, Mr Isaiah and Mr Mathias and **Exhibit P3** as to funds given to Mr Restuetune for the purpose of securing the 004 lease for the school LATI is uncontradicted. Accordingly, I find that the following amounts were withdrawn from the ANZ Bank account no. 1185682 in the name of LATI ('LATI's bank account') and applied as follows:

- i) That on 7 August 2008, VT400,000 cash was withdrawn from LATI's bank account, which amount was given to Mr Restuetune;
- ii) That on 28 August 2008, VT500,000 was transferred from LATI's bank account to Mr Restuetune's bank account;
- iii) That on 29 August 2008, VT700,000 cash was withdrawn, following which VT600,000 of that amount was given to Mr Restuetune; and
- iv) That on 31 October 2008, VT100,000 was transferred from LATI's bank account to Mr Restuetune's bank account.

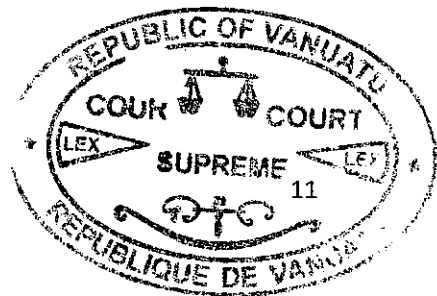
57. The total money withdrawn from LATI's bank account and paid to Mr Restuetune was, as set out above, VT1,600,000. I so find.

58. I also find that Mr Restuetune did not give LATI any receipts.

59. Accordingly, I am satisfied that the Prosecution has proved the first element of the charge beyond a reasonable doubt. That is, that Mr Restuetune was entrusted with property capable of being taken.

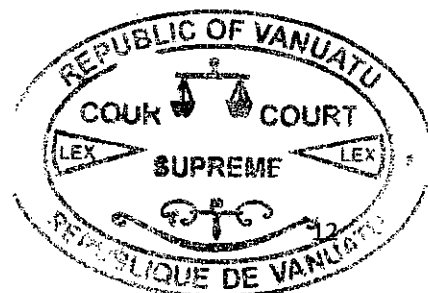
60. Mr and Mrs Macgillivray's evidence is uncontradicted that Mr Restuetune was entrusted with VT1,600,000 to acquire the 004 lease at the Melcoffee Sawmill area in Luganville, Santo island for the LATI school premises and then to transfer the lease to the school once the school was registered. Further, that after the school was registered, that Mr Restuetune failed to transfer the 004 lease to the school.

61. Mr and Mrs Macgillivray's evidence was also that the verbal agreement was that Mr Restuetune secure the 004 lease for LATI and register it in the names of Mr Tasso, Mr Leeman and Mr Restuetune pending the registration of LATI.

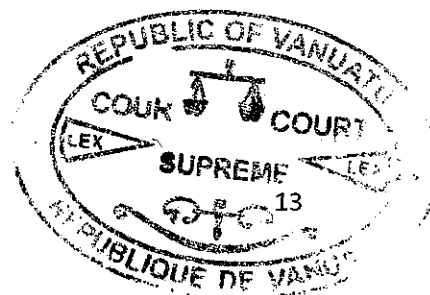


However, when the 004 lease was registered, it was registered solely in Mr Restuetune's name.

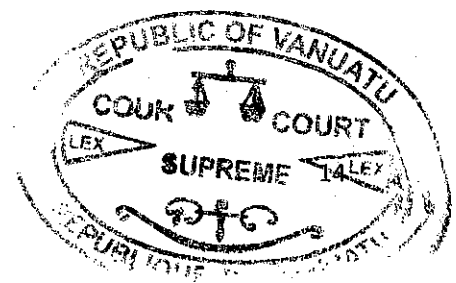
62. The defence case is that on 5 June 2008, there was a meeting between Amos Tasso, Gibson Leeman, Mr Restuetune and Mr Macgillivray at which it was agreed that the 004 lease be registered solely in Mr Restuetune's name and that a VT400,000 advance payment be made to Mr Restuetune to purchase another lease title no. 03/OG52/002 which he would refund from timber milling at his village on Malekula.
63. As I understood the defence case from Mr Willie's cross-examination questions, the defence case was that the initial VT400,000 Mr Restuetune received was an advance payment to purchase lease title no. 03/OG52/002 for himself which he would refund from timber milling at his village on Malekula. Further, that if the Court agreed that VT400,000 was advanced to Mr Restuetune for the purpose of purchasing lease title no. 03/OG52/002 for himself, then that was the purpose for which he was given VT400,000 hence the Prosecution would have failed to prove that Mr Restuetune received VT400,000 initial payment (hence VT1,600,000 in total) for the purpose of securing the 004 lease for LATI.
64. However, I have already made a finding that VT400,000 cash was withdrawn from LATI's bank account and given to Mr Restuetune for the purpose of securing the 004 lease for LATI. Accordingly, I reject Mr Willie's submissions that the VT400,000 was given to Mr Restuetune as an advance payment to purchase lease title no. 03/OG52/002 for himself.
65. Mr Macgillivray accepted that he attended that meeting on 5 June 2008 but he denied that it was agreed at the meeting that the 004 lease would be registered in solely Mr Restuetune's name. He denied that they received back the advance payment.
66. Finally, even if it was agreed at the 5 June 2008 meeting that the 004 lease be registered in solely Mr Restuetune's name, the VT1,600,000 entrusted to him was to secure the 004 lease in LATI's name. Therefore, I infer that any such registration in his name was simply to maintain the *status quo* until such time as LATI had been registered, then Mr Restuetune was obliged to transfer the 004 lease into LATI's name. Accordingly, even if I were to find that the 5 June 2008 meeting occurred at which it was agreed that the 004 lease be registered solely in Mr Restuetune's name, it does not assist the defence case. Accordingly, I reject this aspect of the defence case.



67. For the foregoing reasons, I find that the verbal agreement was that Mr Restuetune secure the 004 lease for LATI and register it in the names of Mr Tasso, Mr Leeman and Mr Restuetune pending the registration of LATI. It follows and I find, therefore, that Mr Restuetune was entrusted with VT1,600,000 to secure the 004 lease for LATI and register it in his, Mr Tasso and Mr Leeman's names pending LATI's registration following which the 004 lease be transferred to LATI.
68. Accordingly, I am satisfied that the Prosecution has proved the second element of the charge beyond a reasonable doubt. That is, that VT1,600,000 was entrusted to Mr Restuetune for the purpose of a particular dealing, namely to secure the 004 lease in LATI's name.
69. I also find on Mr and Mrs Macgillivray's evidence and taking judicial notice of the Court decisions in *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013) and *Restuetune v Bill – Orders by Consent* [2015] VUCA 32 that when the 004 lease was registered, it was registered solely in Mr Restuetune's name.
70. I find that LATI received its registration on 21 June 2010 with the VFSC but Mr Restuetune refused to transfer the land into LATI's name.
71. The defence case was that at all times, he was acting as a trustee for LATI including appealing against the judgment entered in Mr Elie John's favour. In other words, that Mr Restuetune used the money that he received from LATI for the purpose for which it was sent as he purchased the 004 lease, secured its registration and when challenged, continued to fight – at his own cost – till the Court of Appeal. Today, LATI has the land.
72. However, this aspect of the defence case is directly contradicted and undermined by Mr and Mrs Macgillivray's evidence that when they went to the DOL, they found out that no payments had been made for the 004 lease but instead, Mr Restuetune had made payments for lease title no. 03/OG52/002 for himself. Therefore, LATI had to pay an additional VT962,000 to the DOL for lease 004. Mr Macgillivray's evidence was that they do not know what Mr Restuetune did with the money that LATI entrusted to him because LATI itself had to make the VT962,000 payment itself to the DOL for the 004 lease.
73. Accordingly, I find that LATI had to pay an additional VT962,000 to the DOL for lease 004. It follows and I find that LATI had to pay that additional amount to the DOL because Mr Restuetune had not used the VT1,600,000 total funds entrusted to him to make the requisite payments to the DOL.



74. In addition, the Court decisions in *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013) and *Restuetune v Bill – Orders by Consent* [2015] VUCA 32 show that these proceedings were for the purpose of changing the registration of the 004 lease from Mr Restuetune's name to LATI's name, after LATI itself had paid the VT433,000 lease premium for the 004 lease and then the VT962,000 required by the DOL for that lease including the balance of the lease premium.
75. For the foregoing reasons, I reject Mr Willie's submissions that Mr Restuetune was acting as a trustee for LATI including appealing against the judgment entered in Mr Elie John's favour. That was certainly the wording that the parties agreed in the Orders by Consent in the Court of Appeal matter – that Mr Restuetune held the 004 lease as trustee for LATI and would forthwith do all things necessary to record LATI as registered lessee of the 004 lease in their own right: *Restuetune v Bill – Orders by Consent* [2015] VUCA 32.
76. However, prior to that, Mr Restuetune had resisted both Mr John and Mr Macgillivray's (on behalf of LATI) claims in the Supreme Court to the 004 lease: *Bill v Restuetune* [2015] VUSC 36 (Civil Case No. 14 of 2013). He only accepted in the Court of Appeal that he must transfer the 004 lease to LATI's name.
77. For the reasons given, I am satisfied that the Prosecution has proved the final element of the charge beyond a reasonable doubt. That is, Mr Restuetune converted the property entrusted to him, that is, he used the property for a different purpose than its intended purpose namely by registering the 004 lease in his name and refusing to transfer it to LATI's name until the matter was before the Court of Appeal when he agreed to consent orders dated 23 July 2015 that he (Mr Restuetune) held the 004 lease as trustee for LATI and would forthwith do all things necessary to record LATI as registered lessee of the 004 lease in their own right: *Restuetune v Bill – Orders by Consent* [2015] VUCA 32.
78. Mr Willie submitted that there was no independent evidence from a DOL officer or official records or receipts adduced into evidence about the additional payments LATI made for the 004 lease. I reject this submission as such payments must have been made to DOL in order for LATI to be the rightful registered lessee, as was accepted in the Orders by Consent in the Court of Appeal.
79. I find that on 20 November 2015, the 004 lease was registered in LATI's name. Accordingly, Mr Restuetune's actions caused loss to LATI, which loss LATI suffered in the period between it becoming registered on 21 June 2010 and 20 November 2015 when the 004 lease was finally registered in LATI's name.



F. Result

80. I return a verdict of guilty as to the charge.

81. Mr Restuetune is convicted as charged.

**DATED at Port Vila this 20<sup>th</sup> day of April, 2026  
BY THE COURT**

*VM Trief*  
.....  
Justice Viran Molisa Trief

