

Decisions P. 21/10/10

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

**CR: 287/08, 739/08, 740/08,
741/08, 742/08, 743/08,
770/08**

IN THE MATTER

BETWEEN THE CROWN

**AND NORMAN GEORGE
Defendant**

Date: 30 April 2010
Court: Nicholson J
Appearances: Mr Ruffin and Mrs Saunders for the Crown
Mr Arnold for Defendant

JUDGMENT OF NICHOLSON, J

- [1] I now deliver my decision and verdicts on the seven charges against Mr George.
- [2] Mr George, you may be seated during my decision. I request you stand when I pronounce the verdicts.
- [3] I gave full details of the seven charges and the six transactions to which they related in my discharge judgment No.4 which was delivered on 24 February 2010. I therefore do not repeat this information and give only summaries of it.
- [4] The circumstances leading up to today's decision and verdicts are that in 1999 Mr George was an elected Member of the Cook Islands Parliament for the Outer Island of Atiu. In late 1999 Mr George joined a coalition government headed by Dr Terepai Maoate as Prime Minister. On 17

November 1999 Mr George was appointed Deputy Prime Minister and Minister with portfolios which included Health, Police and Crown Law. On 26 July 2001 Mr George's ministerial appointments were revoked.

- [5] On 11 February 2002, Dr Robert Woonton was appointed Prime Minister and the following day Mr George was appointed a Minister with portfolios which included Minister of Outer Islands Development (MOID). On 6 November 2002, Mr George's ministerial appointments were revoked.
- [6] Before and following 1999, Mr Christopher Vaile conducted businesses in the Cook Islands which included the sale of machinery. He and Mr George had been friends for many years. On 16 October 2000, Mr Charles Koronui was appointed the Secretary of Atiu Island Administration (Atiu Secretary). He had political affiliation with Mr George.
- [7] In February 2002, Mr Junior Areai was employed by Mr George to assist him as a Ministerial Liaison Officer. He was also employed as Executive Officer to the Director of the Environment Service and the Minister for Environment.
- [8] In April 2005, after a Jury Trial, Mr Areai was convicted of two offences of theft of \$8,000 by failing to account and conversion. The \$8,000 was a refund for the difference in the cost of a smaller grader which Mr Areai purchased for Aitutaki and the amount of a Government obtained bank cheque which Mr Areai had to buy a bigger grader. Mr Areai was sentenced to eight months imprisonment. He appealed against conviction and sentence.
- [9] On 5 October 2005, Mr Areai met the Solicitor-General, Janet Maki and on 20 October 2005 swore an affidavit in support of his appeal in which he said that he had decided to tell the truth which was that he was not alone in the commission of the offences and was acting under the instructions of his Minister, Mr George.

[10] In December 2005, Detective Inspector Franklin of the Cook Islands Police had a meeting with the Solicitor-General and the Director of Audit, Mr Allsworth and then started a Police investigation during which he got assistance from the New Zealand Serious Fraud Office. Arising out of that investigation, in March and April 2008, informations were sworn charging Mr George, Mr Koronui and Mr Vaile with offences. They pleaded not guilty to every charge and elected trial by Judge alone. Their joint trial by me started on Monday, 13 October 2008 and after three part-heard adjournments, the Crown called the last of the evidence of 63 witnesses and closed its case on 2 October 2009. All defendants said that they intended to apply for discharge on all charges at that stage and, by consent, written applications and submissions in support and opposition were filed and served. There were 14 charges against Mr George, two against Mr Koronui and seven against Mr Vaile. They related to seven transactions:

Transaction 1. The purchase of an Isuzu crane truck for Atiu about December 2000.

Mr George, Mr Vaile and Mr Koronui were charged that between 17 November 1999 and 24 December 2000 they conspired by deceit to defraud the Atiu Island Council. Mr Vaile was further charged that in that period he corruptly gave to Mr George, an agent of the Crown, money as a secret commission reward for awarding the contract for the purchase of the Isuzu crane truck to a company of which Mr Vaile was a Director. Mr George was charged with corruptly soliciting that money as a secret commission for that conduct. In Judgment No.4 delivered I discharged Mr George, Mr Vaile and Mr Koronui on all charges relating to Transaction 1.

Transaction 2. The purchase of a crusher for Atiu in early 2002.

Mr George, Mr Vaile and Mr Koronui were charged that between 17 November 1999 and 13 December 2002, they conspired by deceit to defraud the Atiu Island Council in respect of the purchase of the crusher for

Atiu. Mr Vaile was further charged that between 12 February 2002 and 13 December 2002, he corruptly gave to Mr George, an agent of the Crown, money as a secret commission reward for obtaining Cabinet approval on 19 February 2002 for awarding the contract for the purchase of a crusher for Atiu Island to Keith Niederer and/or Pelmec Industries Limited (Niederer/Pelmec). Mr George was charged with corruptly soliciting that money as a secret commission for that conduct. In Judgment No.4 I discharged the three defendants on those charges. Mr George was also charged that between 12 February 2002 and 13 December 2002, being an agent of the Crown, together with Mr Areai, he corruptly solicited \$2,000 from Niederer/Pelmec as a reward for assisting in obtaining the said Atiu Island crusher contract. I declined Mr George's application for discharge. This is one of the seven charges on which I give my decision and verdict today.

Transaction 3. The purchase of a crusher for Mangaia about May 2002.

Mr George and Mr Vaile were charged that between 17 November 1999 and 13 December 2002, they conspired by deceit to defraud the Mangaia Island Council in respect of the purchase of the crusher for Mangaia. In Judgment No.4 I discharged Mr George and Mr Vaile on these charges. Mr Vaile was also charged that between 12 February 2002 and 13 December 2002, he corruptly gave to Mr George, an agent of the Crown, money as a secret commission reward for the purchase of a crusher for Mangaia Island to Niederer/Pelmec. Mr George was charged with corruptly soliciting that money as a secret commission for that conduct. In Judgment No.4 I discharged Mr George and Mr Vaile on these charges. Mr George was also charged that between 12 February 2002 and 13 December 2002, being an agent of the Crown, together with Mr Areai, he corruptly solicited \$2,000 from Niederer/Pelmec as a reward for assisting in obtaining the said Mangaia Island crusher contract. I declined to discharge Mr George. This is one of the seven charges on which I give my decision and verdict today.

Transaction 4. The purchase of a crusher for Aitutaki in September 2002.

Mr George and Mr Vaile were charged that between 17 November 1999 and 13 December 2002 they conspired by deceit to defraud the Aitutaki Island Council by trying to get a Niederer/Pelmecc crusher purchased for Aitutaki instead of a Tasman brand crusher from a company called Material Management & Supplies Ltd (Material Management) which was controlled by Mr Victor Kapoor. In Judgment No.4 I discharged Mr George and Mr Vaile on these charges. Mr George was also charged that between 12 February 2002 and 6 November 2002, being an agent of the Crown, together with Mr Areai, he corruptly solicited \$2,000 from Mr Kapoor as a reward for assisting in obtaining the award of a contract to Material Management for the purchase of a crusher for Aitutaki Island. I declined to discharge Mr George. This is one of the seven charges on which I give my decision and verdict today.

Transaction 5. The purchase of a grader for Aitutaki in June 2002.

Mr George was charged (CR 739/08) that on or about 11 June 2002, together with Mr Areai, he committed theft by dishonestly omitting to account for the proceeds of a cheque for \$8,000 drawn by Eagle Spares Limited. I declined to discharge Mr George on this charge. It is one of the seven charges on which I give my decision and verdict today.

Transaction 6. The purchase of an Isuzu truck for Aitutaki in June 2002.

Mr George was charged that on or about 11 June 2002, together with Mr Areai, he committed theft by dishonestly omitting to account for the proceeds of a cheque for \$7,340 drawn by Transport Commercial (Tauranga) 97 Limited (Transport Commercial). I declined to discharge Mr George. This is one of the seven charges on which I give my decision and verdict today.

Transaction 7. The purchase of a roller for Atiu.

Mr George was charged that between 12 February 2002 and 13 December 2002 he conspired with Mr Areai by deceit to defraud the Atiu Island Council by purchasing a smaller roller for Atiu than was required. Mr George was also charged that during that period, being an agent of the Crown, together with Mr Areai, he corruptly solicited \$3,000 from Rob James and/or Eagle Spares as a reward for facilitating the purchase of the smaller SW41 roller for Atiu from Eagle Spares. I declined to discharge Mr George on each of these two charges and they are two charges on which I give my decision and verdicts today.

- [11] When the trial resumed on 24 March 2010, Mr George elected to give and call evidence. Over the next eight days he gave evidence and called the evidence of 13 witnesses.
- [12] Earlier this week, I heard final submissions from Mr Ruffin, Senior Counsel for the Crown and Mr Arnold, Counsel for Mr George. I then reserved my decision until today.
- [13] The evidence has proved beyond reasonable doubt that Mr Areai was directly involved in, and committed, each of the seven offences which are the subject of the seven charges against Mr George.
- [14] The Crown alleges that there was a joint enterprise between Mr Areai and Mr George to commit those offences. That Mr George approved and encouraged Mr Areai's offending and aided and abetted him in committing it. That Mr George shared with Mr Areai in the financial rewards of the offending.
- [15] The fundamental and key contentious issue for me to decide is whether the evidence has proved beyond reasonable doubt that Mr George was a guilty party with Mr Areai to one or more of those offences.

- [16] Decision on this key issue turns on whether I find that Mr Areai's evidence proves beyond reasonable doubt that Mr George approved and encouraged the offending and aided and abetted him in committing it and shared with him in the financial rewards of the offending. In essence, whether the evidence of Mr Areai on these matters was truthful and reliable.
- [17] In his evidence, Mr George strongly denied that he knew of any offending before Mr Areai was convicted and that he knowingly approved, encouraged, aided or abetted the offending as alleged by Mr Areai and that he shared in the financial rewards of the offending.
- [18] Where there is defence evidence three possible conclusions can come of it. One conclusion is that the Judge finds that the defence evidence on a key element or elements is credible and reliable and a convincing answer to the Crown's evidence. If that is the Judge's view, then the verdict would be not guilty. Another possibility is that the Judge finds that although the defence evidence is not entirely convincing, it leaves the Judge unsure of just what the real position was. In other words, it raises a reasonable doubt in the Judge's mind. If that is so, then it follows that the verdict would be not guilty. The third possibility is that the Judge finds the defence evidence is unconvincing and rejects it as unworthy of belief. If that is the Judge's view, the Judge should be careful not to jump from that conclusion to an automatic conclusion of guilt, or even regard that as adding to the case against the defendant. The Judge should go back to the rest of the evidence and ask whether, on the basis of that evidence, he or she is satisfied of guilt beyond reasonable doubt.
- [19] In assessing the truthfulness and reliability of both Mr Areai's and Mr George's evidence, I have had regard to the content of the evidence and the manner in which it was given – that is, not only what was said but how it was said. Also, whether the evidence-in-chief was strengthened or weakened by cross-examination. Also importantly, and perhaps crucially, whether the evidence was supported or detracted from by other evidence, particularly independent evidence from a neutral source or

contemporaneous documents. I have regard to the evidence of his good character called for Mr George. I give it limited weight because a defendant can have a good reputation but, nevertheless, unknown to the persons who hold that good character view, the person may have committed offences.

- [20] I have reminded and cautioned myself that although I may convict on the evidence of Mr Areai, that he was an accomplice, and that it would be dangerous to do so unless his evidence on the issue of knowledge and participation by Mr George was corroborated.
- [21] I bear in mind that Mr Areai gave false perjured evidence at his 2005 trial in an attempt to avoid criminal responsibility for his obtaining and not accounting for the \$8,000 refund in respect of the Aitutaki grader purchase. Furthermore, that in cross-examination in this trial he admitted that he had knowingly made a false declaration in a child-related matter.
- [22] Mr Areai testified that in 2002 he told Mr George that he had a plan to obtain two quotes for machinery, one higher, the other lower, and get a bank cheque from the OMIA Office for the higher quote. That he would use it on getting the cheaper machine and get a refund for the difference in prices. That refund would come to him, Mr Areai, with the main plan that it would then go for a political party slush fund. [T1478]
- [23] Mr Areai said that Mr George agreed to this plan and said to make sure it was fireproof, that is, make sure it was secret, and no-one else would find out about it. That Mr George told him not to worry as he was a lawyer and knew the law which was that as the events happened in New Zealand in a different jurisdiction there was nothing the Police in the Cook Islands could do. [T1478-9]
- [24] Mr Areai deposed that Mr George told him that he needed the money because at that time he was in financial difficulties. [T1479-24]

- [25] In his cross-examination of Mr Areai and in his evidence, Mr George strongly refuted that there was such a discussion and such an agreement. In evidence, Mr George deposed that he was not in financial difficulties in 2002 and referred to his bank records in support. The evidence of Mr George's wife and his son, Brett also supported this.
- [26] Mr Areai testified that Mr George not only agreed to the plan but gave practical assistance in carrying it out, particularly by ordering payment for machinery and equipment by bank draft and not by the usual telegraphic transfer, thus allowing Mr Areai to take four bank drafts to New Zealand in June 2002 to pay for a grader for Aitutaki, an Isuzu truck for Aitutaki, a Niederer/Pelmec crusher for Atiu and quarry equipment for Atiu and Mangaia.
- [27] Mr George refuted that he knowingly had any part in arranging for payment by bank draft rather than by telegraphic transfer.
- [28] The evidence proves that on 11 June 2002 Mr Areai received:
- \$8,000 cash refund for the Aitutaki grader,
a \$7,340 cheque refund for the Aitutaki Isuzu truck
and \$2,000 cash for Atiu the crusher purchase
- [29] That on 16 August 2002 Mr Areai received \$3,000 cash for the Atiu roller purchase. [Crown ch 17.5]
- [30] That on 8 October 2002 Mr Areai received \$2,000 for the Mangaia crusher purchase.
- [31] That on 25 September 2002 Mr Areai received a bank credit for \$2,000 for the Aitutaki crusher purchase.
- [32] Thus, by these six payments, Mr Areai received a total sum of \$24,300.

- [33] Mr Areai testified that of this he paid to, or on behalf of Mr George, seven payments totalling \$15,000.
- [34] Mr Areai said that the first payment was \$5,000 in bank notes which he handed to Mr George in the Centra Hotel, Auckland Airport on 13 June 2002. This was half of the \$10,000 cash he had received two days earlier for the Aitutaki grader refund and the Atiu crusher purchase.
- [35] The second payment was \$1,000 in bank notes which he handed to Siona Paku in Rarotonga on 21 June 2002 at Mr George's request as Mr George's contribution to the newly formed Tumu Enea political party.
- [36] The third payment was \$1,000 in bank notes which he handed to Mr George in Rarotonga between 13 June 2002 and 3 August 2002.
- [37] The fourth payment was \$1,000 in bank notes which he handed to Mr George at the Centra Hotel, Auckland on 16 August 2002.
- [38] The fifth payment was \$3,000 in bank notes which he handed to Mr George at a dinner at Mr George's brother's place in Papatoetoe, New Zealand on 8 October 2002.
- [39] The sixth payment was \$3,000 in bank notes which he handed to Mr George in Rarotonga soon after 29 November 2002.
- [40] The seventh payment was \$1,000 in bank notes which he handed to Mr George in Rarotonga soon after 29 March 2003.
- [41] The other evidence which the Crown submits supports Mr Areai's evidence starts with what Mr Ruffin described as background evidence from Mr George Pitt. Mr Pitt was employed for about a year as an advisor to Mr George when he was appointed Deputy Prime Minister in November 1999. He said he discussed with Mr George how to raise money for election campaigns and told him of a concept called cross-check transactions which

involved approaching businesses and people to whom the Government had probably shown favour or who had benefited from Government purchases or business and asking them to return the favour by contributing to campaign funds. Also, by getting part of the commission earned on the supply of articles to the Government. Mr Pitt did not assist Mr George by implementing these processes for him and did not know whether Mr George did so. The concept of politicians obtaining campaign donations from people who have been given, or hope for, favourable Government treatment is well known and is not necessarily unlawful. I find that Mr Pitt's evidence has no probative value on the issue of whether Mr George was a knowing party to Mr Arai's illegal money gathering.

[42] Other evidence which the Crown submits gives authenticity to Mr Arai's evidence is Mr Arai's evidence that Mr George told him that Mr Vaile had purchased a truck for \$5,000 and sold it to the Atiu Island Council for \$50,000 and that he, Mr George, was expecting to get some of this money for his Political Party. Mr Ruffin accepted that such a discussion had no relevance to the charges before the Court but submitted that it impacted on the credibility of Mr Arai to the extent that he said that Mr George related this conversation to him and although the actual sum paid for the truck was \$10,500 and the actual amount invoiced to the Atiu Council was \$55,000, the figures in the conversation were relatively close to the actual figures in the actual transaction. [5.1]

[43] Mr Arnold submitted that Mr Arai could have got the Atiu truck purchase information from many other sources as the purchase price was a matter of public record and a number of Crown witnesses from Atiu were aware of the general cost difference and there was some awareness of the actual truck purchase price. Because Mr Arai could have received the Atiu truck information from sources other than Mr George, I do not consider that his evidence about this impacts on assessing his credibility.

[44] Mr Arai testified that the only way he could get a refund from suppliers was for him to personally take bank cheques to the suppliers. They would not

give a refund if they received payment through telegraphic transfer. When he approached Teina Frank, Manager of Corporate Services for OMIA, she told him that the system was to transfer money to suppliers by telegraphic transfer and any charge had to come from the Minister, Mr George. [T1481] Mr Areai said he told Mr George this and Mr George directed Teina Frank to give him, Mr Areai, bank cheques to take personally to the suppliers. As a consequence, on 6 June 2002, Teina Frank obtained four Westpac bank drafts (2/453) and gave them to him and he took them to New Zealand on 8 June 2002.

- [45] In her evidence-in-chief Teina Frank said that she was told by Mr George to give the cheques to Mr Areai and said that he, Mr George, would be in Auckland and Mr Areai would be catching up with him there. (T2139/2-8). This was consistent with the statement which Ms Frank had made in her trial deposition that "As a direction from Norman George, I gave those entire bank drafts to Mr Areai on that Thursday, the 6th of June 2002." (12.3) Ms Frank had given similar evidence at Mr Areai's trial. (9/53-57)
- [46] In cross-examination by Mr George, Ms Frank said that she could not recall whether Mr George directly asked her to produce the bank drafts and conceded that the direction could have come from Mr George's office or Mr Areai and not from Mr George personally. She accepted that Mr Areai was harassing her to give him the bank drafts by ringing her frequently and that he used Mr George's name as the source of directions.
- [47] In light of the reservations to Ms Franks evidence-in-chief elicited in cross-examination, I find the evidence of whether Mr George gave directions for payment by bank drafts to be given to Mr Areai, equivocal.
- [48] Mr Areai testified that on 13 June 2002 he met Mr George at the Centra Hotel near Auckland Airport and offered him the \$10,000 in bank notes which he had received from Mr Niederer and from cashing the Eagle Spares \$8,000 cheque. He said that Mr George took \$5,000 of the bank notes and told him to hold the rest and bring it back to Rarotonga.

- [49] Mr George testified that he did not get any money from Mr Areai, and that he did not see Mr Areai alone at the Centra Hotel that day. He called family members to support this. However, their evidence is of limited probative value because of the interval since that day and their family loyalty.
- [50] The Crown called evidence that on 18 June 2002 cash of \$2,540 had been lodged in Mr George's bank account in Rarotonga. This could create the inference that it was part of the \$5,000 cash which Mr Areai deposed he had given to Mr George six days earlier. However, Mr George testified that this was money donated at a Memorial Service for his mother which had been held in Rarotonga the day before and pointed out that the bank deposit also contained cheques which, from their amounts and drawers, were plainly donations. George family evidence supported this. I find this proved.
- [51] There was an entry by Mr Areai in his 2002 diary which stated "Taukore Teinangaro 101 3146154-401 ANZ Raro 18.6.02 \$10375.00". Mr George raised this entry when cross-examining Mr Areai and put it to him that he opened the account in his uncle's name, made himself co-signatory and deposited \$10,375 mainly being the proceeds of the money that he obtained from the grader and from Mr Niederer. Mr Areai denied this. He said he could not remember opening the account but the best he could recall was that his uncle had some money from the sale of his house in New Zealand and decided to invest \$10,000 in Rarotonga and that his uncle's daughter had used it to secure a loan.
- [52] Because of the time interval, the ANZ Bank no longer has records of the opening and early operation of the account. Since the matter was raised by Mr George in cross-examination last year there has been no further evidence about it. Mr Ruffin submitted that it seems impossible for the money in the account to be in any way related to the \$10,000 obtained by Mr Areai on 11 June 2002. (18.4). I do not think that this is necessarily so and consider that there is a possibility that Mr Areai lodged most, if not all, of the \$10,000 in this account.

- [53] On 21 June 2002 Mr Areai gave Siona Paku \$1,100 in \$100 bank notes as contribution to a newly formed political party. Mr Areai testified that he had asked Mr George whether he paid the \$1,100 from their slush fund money and Mr George said yes.
- [54] Siona Paku testified that in June 2002 a political meeting was held at Peri Vaevaepare's office at the Health Ministry in Tupapa. The purpose of the meeting was to form a new political party called the Tumu Enea Party. An executive committee was elected and he, Mr Paku, was elected as the Treasurer. Mr Areai was a committee member. Mr Paku raised an issue that Cabinet members should each contribute \$1,000 towards the formation of the party and that other committee members should each contribute \$100. This was agreed to.
- [55] In cross-examination Mr George put it to Mr Paku that Mr Areai said to him that he (Mr George) had handed Mr Areai the \$1,000 to give to him. Mr Paku answered that Mr Areai did not say this and just gave him the money. Mr Paku said that he assumed that the \$1,000 came from Mr George's pocket.
- [56] Mr George testified that he took \$1,000 in bank notes to the meeting as the contribution he intended to make and at the meeting, because he was not close to Mr Paku, gave it to Mr Areai to give to him.
- [57] Mr Vaevaepare testified that he was at the meeting which was held in his office and that Mr George took a thousand dollars from his pocket and gave it to someone, he couldn't remember who, to pass it to Mr Paku who had been elected Treasurer.
- [58] Mr George's son, Brett, who worked for Mr George when he was a Minister in 2002, testified that he accompanied his father to the meeting and that at it, his father said he would lead by example and would contribute \$1,000.

That his father then held up a wad of hundred dollar notes and gave it to Mr Areai to give to Mr Paku.

[59] I find that the evidence favours Mr George's version of where Mr George's contribution of \$1,000 came from, and the circumstances under which Mr Areai paid it to Mr Paku.

[60] Mr Areai gave evidence that columns of figures which he entered on the 3rd August page of his 2002 diary recorded the political slush funds he had received before then and what he had done with them. However, there is no record, as such in the diary of any of the stated sums having been paid to Mr George and I find that the diary entry does not support Mr Areai's oral statements that he had given \$6,000 in cash to Mr George by 3rd August and had used \$1,000 to pay Mr George's contribution to the Tumu Enea Party.

[61] Mr Areai testified that on 8 October 2002 he gave \$3,000 cash to Mr George at a dinner at Mr George's brother's home in Papatoetoe. Mr George denied this and said that he was not at such a dinner as that day, from about 8 in the morning until around 8 that night, he was at Middlemore Hospital where his wife had surgery that day. This was supported by Mr George's wife and their son, Brett. The weight of evidence strongly supports Mr George's version and his evidence that he did not receive any money from Mr Areai on 8 October 2002.

[62] Mr Areai testified that soon after 29 November 2002 he gave Mr George cash of \$3,000 in Rarotonga. On 10 December 2002 \$2,000 in \$100 notes was paid into Mr George's bank. The Crown alleged that this was part of the \$3,000. However, Mr George gave evidence that he received the \$2,000 from a client, Mrs Hunt as fees. Mrs Hunt gave evidence that she instructed Mr George to be her lawyer in a Title dispute she was having in November 2002 and initially paid Mr George \$3,500 in \$50 notes. She could not remember when she made that payment. Mr Ruffin submitted that because the \$2,000 lodgement was in \$100 notes it was not part of Mrs

Hunt's payment which was in \$50 notes. Mr Arnold submitted that Mrs Hunt may have been mistaken about the denominations she gave or that, given that Mr George had received considerable cash over the course of his travels as a Minister that year, and the practice of Mr and Mrs George making payments in cash, Mrs Hunt's lower denomination notes could have been held for spending and \$100 notes banked in their place as a matter of convenience.

[63] On 19 August 2002 Mr Areai opened two accounts with the Mt Roskill, Auckland branch of the ANZ Bank. He said that one of them was used to handle Slush funds. If this was so, then it is surprising that Mr Areai did not advise Detective Inspector Franklin of the existence and use of either of these accounts during his first interview which started on 27 January 2006 and was not finished until two weeks later.

[64] There is evidence in Mr Areai's 2002 diary and numerous business records that from early August 2002 Mr Areai started to establish, and run, a number of businesses incorporating the name "Global". One was for hiring articles and another for selling safety equipment. Each of these businesses would have required substantial financial input. There is validity in Mr Arnold's submission that the ANZ slush fund account was used by Mr Areai for having access to the tainted funds obtained from his criminal activities for his own commercial benefit and not for payment to Mr George or for political purposes.

[65] Having evaluated all the evidence and considered Counsels' submissions, I accept the evidence of Mr George and not that of Mr Areai. I accordingly find that none of the seven charges have been proved beyond reasonable doubt.

[66] Mr George, would you please stand while I pronounce my verdicts.

- [67] Mr George, on information No. CR 287/08 charging you that, together with Junior Areai Enoka, you conspired with Junior Areai Enoka by deceit to defraud a person, namely, the Atiu Island Council - I find you Not Guilty.
- [68] On the information No. CR 739/08 charging you, together with Junior Areai Enoka, having received a valuable security, namely a cheque drawn by Eagle Spares Limited in the sum of \$8,000, on terms requiring you to account for its proceeds to the Government of the Cook Islands, you dishonestly omitted to account for the same, thereby committing theft - I find you Not Guilty.
- [69] On the information No. CR 740/08 charging you, together with Junior Areai Enoka, having received a valuable security, namely a cheque drawn by Transport Commercial (Tauranga) 97 Limited in the sum of \$7,340 on terms requiring you to account for its proceeds to the Government of the Cook Islands, you dishonestly omitted to account for the same, thereby committing theft - I find you Not Guilty.
- [70] On the information No. CR 741/08 charging you that being an agent of the Crown, namely being a person in the service of the Crown or acting on behalf of the Crown, together with Junior Areai Enoka as an agent of the Crown being a person holding an office in the Public Service, corruptly solicited from Rob James and/or Eagle Spares Limited consideration being a sum of \$3,000 as a reward for doing an act in relation to the Crown's business, namely the facilitating of purchase by the Crown from Eagle Spares Limited of an SW41 roller for Atiu Island - I find you Not Guilty.
- [71] On the information No. CR 742/08 being an agent of the Crown, namely a person in the service of the Crown or acting for or on behalf of the Crown, together with Junior Areai Enoka, an agent for the Crown being a person holding an office in the Public Service, corruptly solicited from Victor Kapoor of Materials Management & Supplies Limited consideration being the sum of money of \$2,000 as a reward for doing an act in relation to the Crown's business, namely assisting in the process of obtaining the award of the

contract for the purchase of a crusher from Aitutaki Island to Materials Management & Supplies Limited – I find you Not Guilty.

[72] I similarly find you Not Guilty on the two remaining informations, Nos. CR 743/08 and CR No. 770/08. I won't read out the substance of those charges.

[73] Mr George, you are discharged on all charges and may leave the Court when you wish.

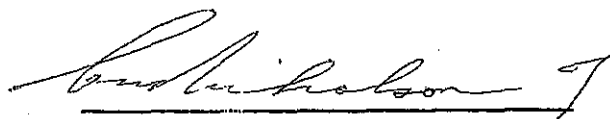
[74] **Costs:**

I think it is appropriate that if it comes to a contested application or applications, then I should deal with it on the papers rather than wait until I am next in Rarotonga and I also agree that I should encourage discussion and agreement but set a timetable so that in the event of agreement not being reached, the matter can proceed on a contested basis. I take it there is no great urgency to have the matter decided and just thinking it through, if I allow, say, one month for discussion as to costs, and in the event of there not being agreement, then if I set a date six weeks hence which would allow that one month to take place and then two weeks for preparation. If agreement can't be reached, then applicants' submissions are to be filed and served no later than six weeks away and then submissions in response are to be filed and served within two weeks of receiving all the applicants' submissions.

[75] I order that there be a period of one month to allow the parties to confer to see if costs can be agreed. However, in the event of costs not being able to be agreed, I direct that the applicants for costs file and serve written submissions in support of their applications by 4 p.m. six weeks hence.

[76] That the Crown responds by written submissions filed and served within two weeks of receiving all written submissions.

- [77] That the matter be dealt with by me on the basis of the written submissions. I request that if it gets to the stage of written submissions that Counsel in their written submissions address the issue of power of Cook Islands High Court to make orders for costs in criminal cases and relevant principles that should be implied in exercising such power if there be such power.
- [78] Now finally, I would like to thank all Counsel for the thorough, competent and, in my view, highly professional way in which they have conducted their clients' cases. I have been greatly assisted by the thoroughness of Counsel's contributions.
- [79] In light of the strong criticism which the defence have made of Detective Inspector Franklin during the trial, I think it appropriate for me to comment that from all that I have heard and read in this trial, I have formed the view that he conducted a very complicated and difficult investigation with limited resources in a competent, intelligent and fair manner.
- [80] Finally, I comment to Mr George, you leave the Court with your reputation untarnished.


Nicholson J