

**IN THE MAGISTRATES' COURT OF FIJI
AT RAKIRAKI
CRIMINAL JURISDICTION**

Criminal Case No: 461 - 2018

STATE

-v-

SEMI TITOKO - 1st Defendant

APOROSA RATUVEIKAU - 2nd Defendant

Before : RM Fotofili L.
For Prosecution : Ms. Prasad J. and Ms. Sharma T. [ODPP]
For 1st Defendant : In Person, Waived Right To Counsel
For 2nd Defendant : Ms. Koronawa E. [Niudamu Lawyers]
Date of Hearing : 8th to 10th November 2022
Date of Judgment : 31st March 2023

JUDGMENT

INTRODUCTION

1. The 1st Defendant Mr. Semi Titoko has pleaded not guilty to all the respective counts against him in the amended charge.
2. The 2nd Defendant Mr. Aporosa Ratuveikau has pleaded guilty to all the respective counts against him in the amended charge.
3. As a result, a hearing was held in-order to determine the guilt of the 1st Defendant regarding the respective counts against him.
4. Although references will be made to the 2nd Defendant Mr. Ratuveikau, much of this decision will focus on determining the counts against the 1st Defendant Mr. Semi Titoko.
5. For completeness, the prosecution preferred the following allegation [filed by way of an amended charge] against the defendants:

AMENDED CHARGE

FIRST COUNT

Statement of Offence

CONVERSION BY TRUSTEE: Contrary to Section 320 (1) (a) (ii) of the Crimes Act 2009

Particulars of Offence

SEMI TITOKO on the 27th day of September 2017 at Rakiraki in the Western Division being a trustee of the sum of \$222, 740.00, received as payment for the purchase of Lot 2 on Deposit Plan 10460 from Monisha Kritika Kumar into Qarcia Barristers and Solicitors Trust number Account number 9804945369 held at Westpac Banking Corporation, for the benefit of Tara Devi, with intent to defraud converted the sum of \$30,000.00 from the \$222,740.00 for the benefit of Aporosa Ratuveikau.

SECOND COUNT

Statement of Offence

AIDING AND ABETTING CONVERSION BY TRUSTEE: Contrary to Section 45 and 320 (1) (a) (ii) of the Crimes Act 2009.

Particulars of Offence

APOROSA RATUVEIKAU between the 27th day of September, 2017 and the 18th day of October, 2017 at Rakiraki in the Western Division, aided and abetted Semi Titoko commit the acts referred to in Count 1 by depositing cheque number 20 for the amount of \$30,000.00, of Qarcia Barristers and Solicitors Trust Account number 9804945369 held at Westpac Banking Corporation, into his Bred Bank account number 00103019010 and withdrawing monies thereafter.

THIRD COUNT

Statement of Offence

CONVERSION BY TRUSTEE: Contrary to Section 320 (1) (a) (ii) of the Crimes Act 2009

Particulars of Offence

SEMI TITOKO on the 18th day of October, 2017 at Rakiraki in the Western Division being a trustee of the sum of \$222, 740.00, received as payment for the purchase of Lot 2 on Deposit Plan 10460 from Monisha Kritika Kumar into Qarcia Barristers and Solicitors Trust number Account number 9804945369 held at Westpac Banking Corporation, for the benefit of Tara Devi, with intent to defraud converted the sum of \$30,000.00 from the remainder of the \$222,740.00 for the benefit of Aporosa Ratuveikau.

FOURTH COUNT

Statement of Offence

AIDING AND ABETTING CONVERSION BY TRUSTEE: Contrary to Section 45 and 320 (1) (a) (ii) of the Crimes Act 2009.

Particulars of Offence

APOROSA RATUVEIKAU between the 18th day of October, 2017 and the 15th day of November, 2017 at Rakiraki in the Western Division, aided and abetted Semi Titiko commit the acts referred to in Count 3 by depositing cheque number 23 for the amount of \$30,000.00, of Qarcia Barristers and Solicitors Trust Account number 9804945369 held at Westpac Banking Corporation, into his Bred Bank account number 00103019010 and withdrawing monies thereafter.

FIFTH COUNT

Statement of Offence

CONVERSION BY TRUSTEE: Contrary to Section 320 (1) (a) (ii) of the Crimes Act 2009

Particulars of Offence

SEMI TITOKO on the 17th day of November 2017 at Rakiraki in the Western Division being a trustee of the sum of \$222, 740.00, received as payment for the purchase of Lot 2 on Deposit Plan 10460 from Monisha Kritika Kumar into Qarcia Barristers and Solicitors Trust number Account number 9804945369 held at Westpac Banking Corporation, for the benefit of Tara Devi, with intent to defraud converted the sum of \$35,000.00 from the remainder of the \$222,740.00 for the benefit of Aporosa Ratuveikau.

SIXTH COUNT

Statement of Offence

AIDING AND ABETTING CONVERSION BY TRUSTEE: Contrary to Section 45 and 320 (1) (a) (ii) of the Crimes Act 2009.

Particulars of Offence

APOROSA RATUVEIKAU between the 17th day of November, 2017 and the 7th day of December, 2017 at Rakiraki in the Western Division, aided and abetted Semi Titiko commit the acts referred to in Count 5 by depositing cheque number 26 for the amount of \$35,000.00, of Qarcia Barristers and Solicitors Trust Account number 9804945369 held at Westpac Banking Corporation, into his Bred Bank account number 00103019010 and withdrawing monies thereafter.

SEVENTH COUNT

Statement of Offence

CONVERSION BY TRUSTEE: Contrary to Section 320 (1) (a) (ii) of the Crimes Act 2009

Particulars of Offence

SEMI TITOKO on the 6th day of December 2017 at Rakiraki in the Western Division being a trustee of the sum of \$222, 740.00, received as payment for the purchase of Lot 2 on Deposit Plan 10460 from Monisha Kritika Kumar into Qarcia Barristers and Solicitors Trust number Account number 9804945369 held at Westpac Banking Corporation, for the benefit of Tara Devi, with intent to defraud converted the sum of \$25,800.00 from the remainder of the \$222,740.00 for the benefit of Aporosa Ratuveikau.

EIGHTH COUNT
Statement of Offence

AIDING AND ABETTING CONVERSION BY TRUSTEE: Contrary to Section 45 and 320 (1) (a) (ii) of the Crimes Act 2009.

Particulars of Offence

APOROSA RATUVEIKAU between the 6th day of December, 2017 and the 18th day of January, 2018 at Rakiraki in the Western Division, aided and abetted Semi Titiko commit the acts referred to in Count 7 by depositing cheque number 27 for the amount of \$25,800.00, of Qarcia Barristers and Solicitors Trust Account number 9804945369 held at Westpac Banking Corporation, into his Bred Bank account number 00103019010 and withdrawing monies thereafter.

NINTH COUNT
Statement of Offence

PERVERTING THE COURSE OF JUSTICE: Contrary to Section 190 (e) of the Crimes Act 2009.

Particulars of Offence

SEMI TITOKO on or about the 3rd of April 2018 at Rakiraki in the Western Division attempted to obstruct or prevent the course of justice by having Tara Devi sign a withdrawal letter to withdraw her complaint against him to the Chief Registrar.

6. The Director of Public Prosecution [DPP] has filed a 'written sanction' to prosecute both the defendants for counts one to eight pursuant to section 320 (2) (a) of the **Crimes Act 2009**.

ADMITTED FACTS AND ADMITTED DOCUMENTS

7. For the 1st Defendant Mr. Titoko, a sizeable amount of facts and documents has been agreed to or admitted by consent. This is permissible pursuant to section 135 of the **Criminal Procedure Act 2009**.
8. The undersigned finds the admitted facts proven beyond a reasonable doubt as it is also consistent with the undersigned's view of the evidence in totality.
9. It is agreed and proven that the 1st Defendant Mr. Titoko was a legal practitioner of his own law firm Qarcia Barristers and Solicitors in 2017 based at Rakiraki. The 2nd Defendant Mr. Ratuveikau also known as 'Apo' was an accounts officer at the law firm in 2017.
10. In July 2017, Ms. Tara Devi [vendor] entered into an agreement with Ms. Monisha Kumar [purchaser] to have her house and land sold to Ms. Kumar. This house and land is comprised of in CT No. 42310, Lot 20 on DP No. 10460 [the property]. The purchase price of the property was \$232,000.

11. The transfer of the property was completed and registered by the Registrar of Titles on the 20-12-17.
12. The 1st Defendant Mr. Titoko is the sole signatory to Qarcia Barristers and Solicitors Trust account number 9804945369 held at Westpac Banking Corporation. There were withdrawals made from Qarcia Barristers and Solicitors Trust account number 9804945369 through cheques in the following sequence, amount and payee:

Date	Cheque Number	Payee	Amount
27-09-17	20	Aporosa Ratuveikau	\$30,000
18-10-17	22	Tara Devi	\$2000
18-10-17	23	Aporosa Ratuveikau	\$30,000
18-10-17	24	Tara Devi	\$100,000
16-11-17	26	Aporosa Ratuveikau	\$35,000
05-12-17	27	Aporosa Ratuveikau	\$25,800

13. The documents tendered or agreed to by consent namely include the sale and purchase agreement between Ms. Devi and Ms. Kumar, Westpac Bank Statement of the Qarcia Barristers and Solicitors Trust Account, cheques reflected in the table above, letter dated 18-06-18 from Qarcia and Barristers and Solicitors to the Chief Registrar's Office *inter alia*.
14. These agreed documents in relation to the 1st Defendant Mr. Titoko, the undersigned has admitted and listed as **Agreed Exhibits [AB]** with their corresponding tab markings.
15. Some of the documents tendered or agreed to by consent are 'business records' like bank statements, cheques *inter alia*. The undersigned accepts and find the existence of these records and what they reflect to be proven beyond a reasonable doubt unless the undersigned specifies otherwise.
16. During the hearing to determine the counts against the 1st Defendant Mr. Titoko, there was evidence led from 5 prosecution witnesses [PW1 to PW5].
17. Two further documentary exhibits were tendered during the hearing through prosecution witness 1 [PW1]. These documentary exhibits will be referred to during the course of this decision.

ILSC PROCEEDING

18. Before summarising the evidence from the prosecution witnesses, it is important to bear in mind that the 1st Defendant Mr. Titoko was charged before the Independent Legal Services Commission [ILSC] for professional misconduct.
19. This is not disputed by the 1st Defendant and this fact was also relied upon by the 1st Defendant before the undersigned when seeking a stay of the criminal prosecution before this court. The existence of the ILSC proceeding was also alluded to by the 1st Defendant when cross-examining the first prosecution witness PW1 during the hearing and the 1st Defendant also mentions the ILSC proceeding in his No Case To Answer Submission.
20. In relation to his stay application, the 1st Defendant on the 26-03-21 had filed a notice of motion with his supporting affidavit seeking stay. The 1st Defendant argued double jeopardy as the staple for the court to stay his criminal prosecution. The 1st Defendant explained that he was already 'charged' by the ILSC and therefore he cannot be criminally prosecuted.
21. The undersigned dismissed that application for stay and the reasons for dismissal are part of the court record and the undersigned does not wish to repeat it here in full.
22. As a background, the 1st Defendant Mr. Titoko was subsequently found guilty and sanctioned by the ILSC for professional misconduct and has been struck off the roll of practitioners indefinitely [see the matter of the **Chief Registrar v Semi Titoko** ILSC Case No. 001 of 2019 (Sanction 21st January 2022)]. The Commission has also ordered that Ms. Devi is to be reimbursed the balance of \$130,000 out of the Fidelity Fund pursuant to section 23 of the **Trust Account Act (Trust Account (Amendment) Act 2009**.
23. The parties in this criminal case have not made any application for the undersigned during this criminal proceeding to take judicial notice of any of the evidence or information that may have been exchanged or adduced in the ILSC proceedings.
24. The undersigned has only taken judicial notice of the fact that there was an ILSC proceeding regarding the 1st Defendant who was charged before the ILSC and has been sanctioned. This is already public information too [for instance www.pacii.org/fj/cases/FJILSC/2021/6.html] and these decisions are also regularly circulated to judicial officers for their general information and continuing education.
25. Other than accepting the above fact, all other information or evidence even the positive and adverse findings and the reasons for those findings against the 1st Defendant Mr. Titoko relating to the ILSC proceeding has been disregarded by the undersigned while preparing this decision in this criminal case.

26. This court will have to reach its own conclusion independent of any findings made by the Commission.
27. Only the evidence adduced in this criminal case [some of the evidence will reference the ILSC proceeding or touches on that] and applicable law are the prime factors that will guide the undersigned when determining the respective counts or criminal allegations against the 1st Defendant Mr. Titoko.

EVIDENCE ADDUCED DURING THE HEARING BEFORE THE MAGISTRATES' COURT

PW1

28. PW1 is Mr. Avneel Chand is the first prosecution witness who gave evidence during the hearing of the undetermined counts against the 1st Defendant. Mr. Chand is based with the Legal Practitioners Unit [LPU] currently holding the post of principal legal officer. He has been with the LPU since 2010. He has a law degree and was admitted to the bar in August 2009. LPU receives complaints against lawyers, they issue practicing certificates, they advise the Chief Registrar and officers with the LPU appear before the ILSC.
29. Mr. Chand recalls receiving 2 complaints from Ms. Tara Devi regarding a land sales transaction. Mr. Chand was tasked by the Chief Registrar to attend to the complaint as Ms Devi was persistent with her complaint. The land sales transaction had Ms. Devi as the vendor and Ms. Monisha as the purchaser. The 1st Defendant Mr. Titoko was the lawyer who 'prepared the transaction'.
30. Mr. Chand was constantly in communication with the relevant parties that is Ms. Devi, the the purchaser Ms. Monisha and the 1st Defendant Mr. Titoko.
31. Essentially, Ms. Devi alleged that she was yet to receive the entire proceeds from the sale which was approximately \$130,000 that was not paid to her.
32. The version provided by Ms. Devi contradicted the version given by the 1st Defendant Mr. Titoko regarding this essential issue whether the entire proceeds were received by Ms. Devi.
33. PW1 Mr. Chand testified that there was a meeting with Mr. Titoko where Mr. Titoko accepted that he had not paid the entire amount.
34. Mr. Titoko was charged with a number of counts and was disciplined by ILSC and has been struck off the roll.

35. Mr. Chand testified that before there is a withdrawal from a trust account, the client must provide the authority or consent for the trustee to withdraw. This authority is reflected in **AB Tabs 23 to 27**.
36. The evidence of written authority being given was provided by the 1st Defendant Mr. Titoko to Mr. Chand during Mr. Chand's investigation into Ms. Devi's complaint to LPU.
37. There is a written authority see for example **AB Tab 27** to have \$130,000 paid to Ms. Tara Devi authorised by Ms Monisha Kritika Kumar to 'Qarcia Lawyers'. This authority is dated the 03-04-18.
38. There is a trust account payment voucher no. 0029 **AB Tab 28** of Qarcia Law dated the 03-04-18 in the amount of \$130,000 charged to Monisha Kritika Kumar. A cheque is cited on the payment voucher as 'WBC # 29' or Westpac Bank Cheque. The provision in the voucher where it says payment received has the signature 'Tara Devi' present.
39. The originals of **AB Tabs 23 to 28** were provided to Mr. Chand by the 1st Defendant Mr. Titoko after which Mr. Chand made copies and returned the originals to the 1st Defendant Mr. Titoko.
40. A letter was also received by Mr. Chand through email. The email contained a letter purportedly signed by Ms. Tara Devi, seeking a withdrawal of the complaint from LPU.
41. The original letter was tendered through Mr. Chand during his oral testimony during the hearing and this original letter is listed as **Prosecution Exhibit 1**.
42. The letter reflects the following verbatim:

3rd April 2018

*The Chief Registrar
High Court
Suva*

Dear Sir

RE: COMPLAINT TARA DEVI REFERANCE [sic] NO: 044/2018

I Tara Devi, do hereby inform your office that I want to withdraw my complaint against Semi Titoko. I was not forced promised or induced to withdraw my complaint as I do not have any desire to continue such complaint

I have settled the matter with Mr. Semi Titoko

Apologized for any inconvenience caused

Yours faithfully

43. The original letter was cited by Mr. Chand a month later after receiving a copy of it via email.
44. The 1st Defendant Mr. Titoko provided an 'original' of the letter to the Chief Registrar and Mr. Chand when they had a meeting on the 07-05-18 and copies were made by Mr. Chand from that original letter.
45. Mr. Chand testified and explained that he was surprised by the letter as Ms. Devi had been calling LPU daily and wanted her complaint to proceed but the letter indicated that she wished to withdraw. Mr. Chand spoke to Ms. Devi perhaps on the same day or a day later after receiving the letter. Ms. Devi agreed that she signed the letter. She was desperate to have her money as she had a sickly daughter to help. According to Ms. Devi, this seemed to be the only option. Mr. Chand suggested to Ms. Devi that they will keep her complaint open until she confirms receiving the \$130,000. By May or June 2018, Mr. Chand was informed by Ms. Devi that she received a cheque for \$130,000 but she was told by the law firm not to bank it yet. In June 2018, Ms. Devi reaffirmed her position to continue with her complaint.
46. The 1st Defendant Mr. Titoko also provided a written 'file note' too during the meeting with the Chief Registrar and Mr. Chand on the 07-05-18.
47. This written file note was tendered through Mr. Chand and is exhibited as **Prosecution Exhibit 2**.
48. The file note reflects the following:

Transfer between TARA DEVI TO MONISHA KARTIKA KUMAR

<i>Taking instruction on transfer property selling \$232,000</i>	<i>Agreed by clients to engage us</i>
<i>Drafting Sales and Purchase Agreement</i>	<i>Clients check the documents</i>
<i>Final Copies Were Printed</i>	<i>Clients has signed the Sales and Purchase and Transfer</i>
<i>Upon Execution of the documents</i>	<i>Clients paid \$750 cash in the office</i>
<i>That client went back to New Zealand</i>	<i>Transfer Funds from New Zealand into trust account of Qarcia Barristers & Solicitors amount \$222,750.00</i>
<i>That upon sending the funds we have</i>	<i>We release half funds to Tara Devi \$100,000.00 and another \$2,000.00</i>
<i>That we proceeded for stamping of the documents</i>	<i>That advice the client that stamp duty is required to be paid client transfer the money for stamp duty into the trust account \$6,960.00 that client was agreed that if exemption is granted then will take that money as our fees as client has instructed. We apply CGT and it was granted, so we manage to take that money out from our trust account to be our fees.</i>
<i>We took the documents to Suva for stamping</i>	<i>Documents was granted for stamping</i>
<i>Upon stamping the Transfer and Sales and Purchase</i>	<i>We applied for CGT on behalf of Tara Devi</i>
<i>Then we proceeded for lodgement at registrar of title</i>	<i>That we have already given the Original title to Monisha Kartika Kumar as the title has been transfer under her name. We have released the sum of \$130,000.00 to Tara Devi on the 03.04.18</i>

49. When cross-examined, PW1 Mr. Chand accepts that the 1st Defendant's signature is not on **Prosecution Exhibit 1** the withdrawal letter addressed to the Chief Registrar.
50. Mr. Chand cannot confirm who drafted the letter but repeats that it was emailed to him and the original was submitted by the 1st Defendant Mr. Titoko.
51. Mr. Chand accepts that there was an ILSC proceeding with the 1st Defendant Mr. Titoko but the ILSC does not have jurisdiction to prosecute a non-legal practitioner like the 2nd Defendant. Mr. Chand was only involved in the investigation during the ILSC proceeding and is not aware whether the 2nd Defendant was summoned as a witness during the ILSC proceeding.

52. To date, the \$130,000 has not been paid to Ms. Devi. Only a cheque was given but it 'bounced'.

PW2

53. PW2 is Mr. Pita Vueti, a bank officer with Westpac.

54. He has been a bank officer for 25 years. He initially started working as an enquiry clerk, promoted to bank officer and then progressed from thereon.

55. His current post is State Support Officer. His responsibilities include facilitating searches done by state authorities such as FIRCA, FICAC and police.

56. Regarding a trust account with Westpac, the Attorney General [AG] needs to provide the approval before the account is opened. Other information from the law firm will be required too such as business registration. There will be at least one signatory to the trust account and the signatory must be a legal practitioner.

57. Qarcia Barristers and Solicitors were successful in opening a trust account with the bank. Mr. Semi Titoko was the signatory to the trust account. **AB Tab 18** includes documents that was used to set up or open the trust account for the law firm.

58. **AB Tab 6** is Qarcia Barristers and Solicitors Trust Account bank statement. It is for the period 11-01-17 to 01-08-18.

59. Notably on the 25-09-17, there is a deposit into the trust account of \$222,740.00. The deposit is made by Monisha and according to PW2 Mr. Vueti, it can be a deposit made from overseas into the trust account as a bank internal reference number is accompanying the deposit as identified in the bank statement.

60. On the 27-09-17 there was a withdrawal of \$30,000 from the trust account by way of a cheque. The cheque leaf is **AB Tab 8**.

61. On the 18-10-17 there were 3 withdrawals as follows:

Cheque No. 24 - \$100,000 [Cheque leaf is **AB Tab 11**]

Cheque No. 22 - \$2,000 [Cheque leaf is **AB Tab 9**]

Cheque No. 23 - \$30,000 [Cheque leaf is **AB Tab 10**]

62. On the 17-11-17 there was a withdrawal of \$35,000 by way of cheque no. 26. The cheque leaf is exhibited **AB Tab 12**.
63. On the 06-12-17 there was a withdrawal of \$25,800 by way of cheque no. 27. The cheque leaf is exhibited **AB Tab 13**.
64. The remaining balance in the trust account after the 06-12-17 withdrawal is \$84.83.
65. The bank statement reveals that the balance in the trust account hovered around that approximate figure of \$85 to \$117 between the 06-12-17 until the 01-06-18.
66. On the 08-06-18 a cheque of \$130,000 was presented.
67. On the 11-06-18 that cheque for \$130,000 was dishonoured. The cheque leaf for this dishonoured cheque is exhibited **AB Tab 14**. The cheque is dated 03-04-18. The cheque has the stamp 'REFER TO DRAWER' and stamped 'R'. The cheque references Qarcia Barristers & Solicitors Trust Account.
68. PW2 Mr. Vueti is not aware of any complaints made by the signatory of the trust account to any of the withdrawals from the trust account.
69. There was no cross-examination of PW2 Mr. Vueti sought or made by the 1st Defendant or counsel for the 2nd Defendant.

PW3

70. PW3 is Ms. Tara Devi, 60 years old, residing at Wairuku, Domestic Duties.
71. She is a widow. She is the only one supporting her daughter who suffers from epilepsy and who is 34 years old. Ms. Devi's educational level is up to form 4.
72. In 2017 Ms. Devi entered into an agreement with Ms. Monisha Kumar for the purchase of Ms. Devi's property. Ms. Devi was selling her property for \$232,000.
73. Ms. Kumar the purchaser, stays in New Zealand but her family in Fiji is a neighbour of Ms. Devi.
74. Ms. Kumar came to Fiji to view the property and also met Ms. Devi.

75. Both Ms. Devi and Ms. Kumar agreed to engage the 1st Defendant Mr. Titoko to help with the legal documents for the purchase of the property. Ms. Devi knew the 1st Defendant Mr. Titoko from before as the 1st Defendant had done some work for her previously.
76. The 1st Defendant Mr. Titoko informed them that he will act for both the parties and his cost will be \$750 which Ms. Kumar will pay and which Ms. Kumar did. Receipt for this \$750 payment to Qarcia Barrister and Solicitor Operating Account is exhibited **AB Tab 2**.
77. The 1st Defendant Mr. Titoko instructed his clerk to prepare the papers and requested a \$10,000 deposit for the property which Ms. Kumar was to pay for which Ms. Kumar did pay.
78. Ms. Devi and Ms. Kumar signed on the Sale and Purchase Agreement **AB Tab 1**. Ms. Devi accepts that she was explained the document in Hindi and she also read it.
79. Ms. Devi had to attend to some matters herself as she said the firm was slow in finalising the sale. For instance, Ms. Devi went to FIRCA and obtained a letter exhibited **AB Tab 4** in relation to Capital Gains Tax in-order to assist in the completion of the sale and transfer of the property.
80. The property was transferred to Ms. Kumar on the 20-12-17.
81. After the transfer, PW3 Ms. Devi informed the 1st Defendant's law firm. Ms. Devi also spoke to the 1st Defendant Mr. Titoko directly and went to his office 'many times to get my payment'. The 1st Defendant became angry when she kept asking. Ms. Devi became so uncomfortable and sometimes met the 1st Defendant's clerk instead.
82. Out of the \$232,000 agreed purchase price, Ms. Devi confirms receiving \$102,000. The balance of \$130,000 is yet to be paid by the 1st Defendant to Ms. Devi.
83. Ms. Devi accepts that she has received \$130,000. That money was not paid by the 1st Defendant or the firm but it was paid to Ms. Devi in 2022 by the government.
84. Ms. Devi further testified that a Cheque for \$130,000 [or the dishonoured cheque] **AB Tab 14** was given to her by the 1st Defendant's accountant when Ms. Devi went to the law firm. Ms. Devi recalls that she may have received the cheque in May 2018 as it was about 2 weeks before her birthday. The date of the cheque is 03-04-18. Ms. Devi was told by the accountant not to deposit the cheque until she was told to do so by Mr. Titoko. On the 08-06-18 which is Ms. Devi's birthday, she went to deposit the cheque. The cheque bounced.
85. Ms. Devi then went to the Legal Aid Commission, Police and LPU. One of Ms. Devi's daughter's helped her write her complaint to LPU.

86. Ms. Devi verifies that **AB Tab 7** is her bank statement for her bank account no. 91070100006613.
87. The bank statement is for the period 01-10-17 to 02-10-18.
88. Notably there is a deposit of \$102,000 into her account on the 18-10-17.
89. Upon a closer examination of the bank statement, there appears to be a deposit of \$130,000 on the 08-06-18 but that same amount was deducted on the 11-06-18. There is no other deposit of \$130,000 in the period 01-10-17 to 02-10-18.
90. PW3 Ms. Devi also accepts and identifies her signature on the withdrawal letter **Prosecution Exhibit 1**.
91. Ms. Devi testified that the 1st Defendant Mr. Titoko told her to sign the letter and then she will get her balance. Ms. Devi did not want to sign the letter but she needed the money for her sick daughter.
92. By 2018, Ms. Devi testified that she was 'very sick' and ended up in hospital because of the case citing vertigo. She was worried. She was stressed. She had to undergo physiotherapy.
93. Ms. Devi stated that she did not authorise anyone from the law firm to receive the \$130,000 but only that it be received in the trust account.
94. When cross-examined by the 1st Defendant Mr. Titoko, PW3 Ms. Devi accepted that she dealt with the 2nd Defendant Apo and another person named Priya regarding the sales and purchase agreement.
95. Ms. Devi also accepted that her signature is on the withdrawal letter **Prosecution Exhibit 1** and added that it was the 1st Defendant who told her to withdraw her complaint and then she will get the money. Ms. Devi said that she signed the letter in front of the 1st Defendant Mr. Titoko.
96. When cross-examined by counsel for the 2nd Defendant, Ms. Devi testified that she signed the withdrawal letter in front of the 1st Defendant while the 2nd Defendant was outside.

PW4

97. PW4 is Mr. Dharvish Chand, bank officer with Bank of Baroda.
98. PW4 Mr. Chand has been working with the bank for 13 years, helping process bank loans, deposits and withdrawals.

99. Mr. Chand in his oral testimony explained some information in the the bank statement **AB Tab 7** of Ms. Devi [a joint account of Ms. Devi and Sadhana Teresa Prakash].
100. The \$130,000 deposit made on 08-06-18 reflected in the bank statement was a deposit through Cheque. That cheque was not cleared and this is reflected in the bank statement for the date on the 11-06-18. That cheque which was not cleared or was dishonoured is **AB Tab 14**. That dishonoured cheque has the stamp 'R' meaning it was returned. The cheque will normally be returned if there are no funds in the account from which that amount is to be withdrawn from.
101. There was no challenge to the evidence of PW4 Mr. Chand by the 1st Defendant when given the opportunity to cross-examine this prosecution witness.
102. Counsel for the 2nd Defendant also did not wish to cross-examine PW4 Mr. Chand.

PW5

103. PW5 is the 2nd Defendant Mr. Aporosa Ratuveikau, 37 years old, accountant.
104. For thought, although the 2nd Defendant is a co-defendant and is still charged, the undersigned has allowed him to give evidence even incriminating evidence as he has waived the right to self-incrimination by pleading guilty for instance to the respective counts against him. The 2nd Defendant has also indicated that he wished to give evidence for the prosecution in relation to the pending allegation against his co-defendant, the 1st Defendant Mr. Titoko.
105. The 2nd Defendant Mr. Ratuveikau testified that he has pleaded guilty and understands the right to remain silent. He has discussed it with his counsel. He knows he is expected to tell the truth.
106. The 2nd Defendant testified that he joined Qarcia Law in 2014 and was still working there in 2017. The 1st Defendant Mr. Titoko was the principal at the firm. There was also another employee named Priyanka Reddy at the firm who was a clerk and dealt with the documents. The 2nd Defendant was the accountant at the firm. The 2nd Defendant did most of the litigation and conveyance. He received monies from clients, made deposits into the law firm's trust account and operating account and also facilitates payment of bills and staff salary. When clients are engaged, files are opened and monies and instructions received. Clients are approved by the 1st Defendant Mr. Titoko together with the costs. Mr. Titoko will give instructions regarding funds deposited into the trust account. The cheque book for the trust account and operating account for the firm is kept by Mr. Titoko. Mr. Titoko signs the

cheque and he tells the 2nd Defendant what other details to fill in the cheque such as the amount and who to pay to.

107. The 2nd Defendant recalls that in 2017 Ms. Tara Devi came to the office to talk to the 2nd Defendant about the transfer of her land. Ms. Devi came with her 'sick daughter' about two times. Mr. Titoko gave instructions and the firm did act on Ms. Devi and the buyer's behalf.
108. The sale price was for \$232,000. A Deposit of \$10,000 was paid into the firm's trust account. The law firm charged \$750 for facilitating the transaction with **AB Tab 2** as the receipt for that \$750 payment to the firm.
109. On the 25-09-17 the amount of \$222,740 was deposited into the trust account by Ms. Monisha to buy the land. The 2nd Defendant testified that the full purchase price was not paid to Ms. Devi although procedurally it should have. Only \$102,000 was paid to Ms. Devi. The full purchase price was not paid to Ms. Devi as there was 'no money in the trust account'.
110. The 2nd Defendant testified that the 1st Defendant Mr. Titoko instructed him to transfer the balance that was owed to Ms. Devi, into the 2nd Defendant's account. Mr. Titoko will then take the money from the 2nd Defendant. Mr. Titoko told the 2nd Defendant that he Mr. Titoko will use the money to develop land at Denarau. Once the land is developed and sold, he will then reimburse Ms. Devi.
111. The 2nd Defendant accepts giving a cheque for \$130,000 to Ms. Devi and instructing her to wait until she was instructed to cash it.
112. On the 27-09-17 the 2nd Defendant withdrew \$30,000 from the law firm's trust account by way of cheque which was signed by the 1st Defendant Mr. Titoko. That \$30,000 was deposited into the 2nd Defendant's own bank account. That \$30,000 was then withdrawn by the 2nd Defendant in phases from his own private account between the period 27-09-17 to 30-09-17. The 2nd Defendant was instructed by the Mr. Titoko to fabricate a story to the bank that he needed the money for a function so that the bank could release the money from his private account. Some of that money was given to Mr. Titoko who picked it from the 2nd Defendant and the 2nd Defendant used some of the money for 'bills and other things'. That \$30,000 was supposed to be for Ms. Devi the 2nd defendant testified.
113. On the 18-10-17 there was another withdrawal of \$30,000 from the trust account by way of cheque. Mr. Titoko signed the cheque and gave the amount to be filled in the cheque to the 2nd Defendant who complied with that instruction. That \$30,000 was drawn from the trust account and deposited into the 2nd Defendant's private account. Once the money was in his private account, the 2nd Defendant called and informed Mr. Titoko. The 'same thing happened' where the 2nd Defendant used some of that money for salary, expenses and

'personal use'. The 2nd Defendant had asked Mr. Titoko who allowed the use for those purposes and the rest of the money, the 2nd defendant gave to Mr. Titoko.

114. On the 17-11-17 there was another withdrawal from the trust account this time in the sum of \$35,000 by way of cheque. Mr. Titoko signed the cheque while the 2nd Defendant filled in the other details in the cheque. The \$35,000 was withdrawn from the trust account and deposited into the 2nd Defendant's private account. As in the previous occasions, some of the money was used by the 2nd Defendant for his 'personal use' and payment of bills and the rest was given to Mr. Titoko.
115. On the 06-12-17 another withdrawal in the sum of \$25,800 was made from the trust account by way of cheque. The cheque was signed by Mr. Titoko and the other details in the cheque were filled in by the 2nd Defendant. The \$25,800 was withdrawn from the trust account and deposited into the 2nd Defendant's private account. The 2nd Defendant listens to Mr. Titoko and would take out the money to pay for bills, salary and for personal use. The rest was given to Mr. Titoko who would collect it from the 2nd Defendant. The 2nd Defendant would fabricate a reason to the bank such as the money was for his mataqali in-order that the money is released from his private account.
116. When the 2nd Defendant enquired with Mr. Titoko why the latter's name is not on the cheque, Mr. Titoko told the 2nd Defendant that he will get in trouble with LPU.
117. The 2nd Defendant accepts knowing that what he did was wrong.
118. When cross-examined by the 1st Defendant Mr. Titoko, the 2nd Defendant said that it was Mr. Titoko who instructed him to write his name on the cheque. The withdrawal was not for the 2nd Defendant's family or his mataqali. The 2nd Defendant repeated that he lied to the bank because of Mr. Titoko. Mr. Titoko also told the 2nd Defendant that 'he [Mr. Titoko] knew what he was doing'. Mr Titoko treated him like a slave such as having the 2nd Defendant wash his clothes. Mr. Titoko used him. The 2nd Defendant does not know why Mr. Titoko is now denying what happened. Mr. Titoko has not reported the matter to police. Mr. Titoko is now blaming the 2nd Defendant.

CASE TO ANSWER AND CLOSING SUBMISSIONS

119. At the end of the prosecution's case, the undersigned found that there was a case to answer for the 1st Defendant Mr. Semi Titoko in relation to all the respective counts against him.
120. Having explained the options available to him, the 1st Defendant Mr. Titoko chose to remain silent and did not call any witness.

121. Only the prosecution and the 1st Defendant Mr. Titoko have filed closing submissions. The undersigned has considered these submissions in the course of preparing this decision.
122. The prosecution argue that by virtue of the **Trusts Account Act 1996**, the 1st Defendant Mr. Semi Titoko is a trustee. It is not the contention of the 1st Defendant that he did not sign the cheques or that the cheques were a forgery and that the 1st Defendant made no complaints about the withdrawals. The payee named in the cheques was the 2nd Defendant Mr. Aporosa Ratuveikau and the monies which were proceeds of the sale of the land belonging to Ms. Devi were converted. Further, the proceedings commenced by the LPU before the ILSC are 'judicial proceedings' with the commissioner presiding in the ILSC vested with powers to fine, disbar or strike off a legal practitioner's name of the roll which is encapsulated under the **Legal Practitioners Act 2009**. The 'withdrawal letter' signed by Ms. Devi and produced by the 1st Defendant Mr. Semi Titoko to LPU was intended to 'put an end to the case' before the ILSC the prosecution submits.
123. The 1st Defendant Mr. Semi Titoko submits that he was a legal practitioner, was the principal at Qarcia Barristers and Solicitors and the sole signatory to the trust account. The purchase price of \$222,740 was received to pay Ms. Devi. \$102,000 was paid or received by Ms. Devi. The 1st Defendant maintains that he paid an additional \$130,000 to Ms. Devi through cheque number 29 dated 03-04-18 but was rejected on 11-06-18 due to insufficient funds in the account. The cheques having the 2nd Defendant Mr. Aporosa Ratuveikau as the payee were signed by the 1st Defendant Mr. Titoko in good faith so that the monies were paid to Ms. Devi. It is the 2nd Defendant Mr. Aporosa Ratuveikau who used the money for himself, his family and his mataqali's benefit. It is possible that the 2nd Defendant had colluded with a bank officer so that the cheques naming the 2nd Defendant as the payee could be cashed. The prosecution failed to call any bank employee to explain whether the 1st Defendant was contacted for a 'special answer' regarding the cheques to withdraw monies from the trust account. The prosecution also failed to call a witness named 'Raju' referred to by the 2nd Defendant in his testimony who is said to have accompanied the 1st Defendant to Nadi to pick up some monies from the 2nd Defendant. The 1st Defendant denies signing the withdrawal letter and there is no evidence that he had instructed anyone to send the letter via email to the Chief Registrar. It is the 'doing' of the 2nd Defendant who sent the letter so as to implicate the 1st Defendant. It is questionable whether the ILSC has judicial authority and therefore the ninth count cannot stand. The ninth count for perverting the course of justice selected by the prosecution is flawed as they have not selected 190(a) but 190(e) of the **Crimes Act 2009** as the specific intention to pervert the course of justice is required to be proved.

BURDEN AND STANDARD OF PROOF

124. I remind myself that the 1st Defendant is presumed innocent until proven guilty [section 14 (2) (a) of the **2013 Constitution; Woolmington v DPP** [1935] A.C 462].
125. The prosecution carries the burden of rebutting this presumption.
126. The prosecution can rebut the presumption of innocence, when the prosecution prove their case beyond a reasonable doubt or make the court sure that he committed the offence [section 58 (1) of the **Crimes Act 2009**].
127. The 1st Defendant Mr. Semi Titoko has elected to remain silent and did not call any witness.
128. That is his right and the undersigned draws no negative inference in his exercise of that right.

AIDING, ABETTING, COUNSELLING AND PROCURING

129. The conversion counts against the 1st Defendant Mr. Semi Titoko cannot be looked at in isolation.
130. The conversion counts against the 1st Defendant mention him specifically or alone. However based on the counts against the 2nd Defendant, evidence led during the hearing, submissions filed and the case in its entirety, it amplifies the prosecutions' case that the 1st Defendant committed the offence of conversion by a trustee aided and abetted by the 2nd Defendant Mr. Aporosa Ratuveikau.
131. Even if the prosecution fail to prove that the 2nd Defendant aided and abetted the 1st Defendant, the 1st Defendant could still be found guilty of conversion. This principle applies to one, several or all of the counts of conversion against the 1st Defendant as reflected in the amended charge [section 45 (5) of the **Crimes Act 2009**].
132. Similarly, even if the 1st Defendant is found not guilty of one, several or all of the conversion counts in the amended charge, the 2nd Defendant could still be found guilty of aiding and abetting one, several or all the conversion counts.
133. The prosecution in the particulars of the counts against the 2st Defendant in the amended charge, only allege that the 2nd defendant aided and abetted the commission of the conversion offence. The prosecution do not allege counselling or procurement.

134. Despite this, the undersigned is minded to also briefly discuss what counselling and procurement is as in criminal law, aiding, abetting, counselling and procuring is usually considered as 'peas in a pod' and perhaps by dealing with all of them, ironically we can distinguish each of them.
135. Aid is to give help, support or assistance. Abet is to encourage, incite or instigate. Counsel is to advise. Procure is to take steps to produce a result or happening [**Ross On Crime** (3rd eds), 2007 at page 59].
136. Under our criminal statute, if person A aids, abets, counsels or procures the commission of an offence by person B, person A can also be deemed as having committed the offence committed by person B and person A is punishable accordingly [section 45 (1) of the **Crimes Act 2009**].
137. Furthermore, to be found guilty, person A's conduct must have in fact aided, abetted, counselled or procured the commission of an offence by person B and the offence must have been committed by person B [see section 45 (2) (a) and (b) of the **Crimes Act 2009**].
138. Generally, person A must have intended that his or her conduct would aid, abet, counsel or procure the commission of any type offence the type committed by the other person or his or her conduct would aid, abet, counsel or procure the commission of an offence and person A was reckless as to the commission of the offence by person B [section 45 (3) (a) and (b) of the **Crimes Act 2009**].
139. When aiding, abetting, counselling or procuring, one of these fault elements of either intention or recklessness must be possessed by person A towards achieving the result or towards committing the offence.
140. Intentional is when someone means to engage in a conduct and means to bring about a result or the person is aware that the result will occur in the ordinary course of events [section 19 (1) and (3) of the **Crimes Act 2009**].
141. A person's intention can be gauged from surrounding circumstances or circumstantial evidence or from direct evidence such as a confession [**Kural v. The Queen** (1987) 70 ALR 658].
142. Circumstantial evidence can be powerful evidence but it must be considered with care. It is evidence from which a reasonable inference can be drawn linking a defendant to the offence and must negative any other reasonable conclusion that may exonerate the defendant. Drawing a reasonable inference should not be confused with conjecture or guessing. Timing, motive, opportunity amongst other factors assist in determining whether there is sufficient circumstantial evidence. At the end of the day, the court must be

convinced beyond a reasonable doubt [Varasiko Tuwai v. The State Criminal Appeal Number CAV 13 of 2015 (26th August 2016) at paragraph 51 to 53].

143. Being reckless as to the result or the commission of the offence is when person A the aider or abettor or counsellor or procurer, being aware of a substantial risk that the offence will be committed and having regard to the circumstance known to him or her, unjustifiably took the risk [section 21 (2) of the Crimes Act 2009].
144. Person A cannot be found guilty of aiding, abetting, counselling or procuring an offence, if before the offence was committed, person A terminated his involvement and took all reasonable steps to prevent the commission of the offence [section 45 (4) of the Crimes Act 2009].
145. The particulars of the counts against the 2nd Defendant worded by the prosecution involves the conjunction 'and' where they allege that the 2nd Defendant 'aided and abetted' the 1st Defendant.
146. It could be proven that the 2nd Defendant did both, that is, aided and abetted but that is unnecessary as proving that the 2nd Defendant either aided or abetted the 1st Defendant in the commission of the offence can suffice in finding the 2nd Defendant guilty.

ACCOMPLICE EVIDENCE

147. An accomplice can testify as a prosecution witness in an alleged crime which they participated in. It is uncommon but it happens.
148. The 2nd Defendant Aporosa Ratuveikau has pleaded guilty to the respective counts against him [awaiting sentence] and has testified about his involvement in the withdrawal of monies from the law firms' trust account and the depositing of those monies into his private bank account under the direction and with the supposed request and agreement of the 1st Defendant and later withdrawing those monies from his private account and providing some of those monies to the 1st Defendant.
149. If it is proven that the 2nd Defendant either aided or abetted the commission of one, several or all of the conversion offences by the 1st Defendant, in law and in fact the 2nd Defendant is an accomplice [Davies v DPP (1954) 38 C App R at 11].
150. The undersigned is mindful that it can be dangerous to convict a defendant in this case the 1st Defendant, based on the uncorroborated evidence of an accomplice or based on the uncorroborated evidence of the 2nd Defendant if the 2nd Defendant is indeed found to be an accomplice [Davies v DPP].

151. The Court of Appeal in **Balelala v State** [2004] FJCA 49; AAU0003.2004S (11 November 2004) defined corroboration as:

... evidence independent of the witness to be corroborated which “confirms in some material particular not only the evidence that the crime had been committed but also that the prisoner committed it”: **Reg v. Baskerville** (1910) 2 KB 658. It means “confirmation” or “support”: **DPP v. Hester** (1973) AC 296. It does not have to prove, by itself, the guilt of the accused beyond reasonable doubt; it is sufficient if it confirms or tends to confirm the accused’s participation, or involvement, in the crime charged **Doney v. The Queen** (1990) 171 CLR 207.

152. Why is it dangerous to convict on the uncorroborated evidence of an accomplice? Firstly, the 2nd Defendant is admitting guilt or involvement in a crime and this is inherently worth a caution or pause for the court to consider his evidence carefully. Secondly, the 2nd Defendant may also have a strong motivation to shift blame or responsibility to someone else such as the 1st Defendant so that for instance the 2nd Defendant can lessen his punishment or involvement. Furthermore, the 2nd Defendant maybe implicating the 1st Defendant for personal reasons such as to spite the 1st Defendant [**Davies v DPP**].
153. Although it is dangerous to convict based on the uncorroborated evidence of an accomplice, the court may very well be minded in some cases to convict without any corroborative evidence.

ADMISSIONS AGAINST INTEREST

154. There has been evidence led that the 1st Defendant Mr. Titoko purportedly said and also gave information to PW1 Mr. Chand the principal legal officer with the LPU during their interactions when LPU was looking into the complaint received against the 1st Defendant Mr. Titoko.
155. There is also evidence led from PW5 the 2nd Defendant Mr. Ratuveikau that the 1st Defendant Mr. Titoko told him that he will use the money to develop land at Denarau. Once the land is developed and sold, the 1st Defendant will then reimburse Ms. Devi. The 1st Defendant also said for the monies to be transferred from the law firm’s trust account to the 2nd Defendant’s private account or else the 1st Defendant will get in trouble with LPU.
156. There has been no *voir dire* challenge sought by the 1st Defendant regarding these purported inculpatory statements.

157. The Fiji Court of Appeal Case of Ganga Ram and Shiu Charan v Reginam Criminal Appeal No. 46 of 1983 (13th July 1984) is the precedent authority in Fiji in relation to the admissibility of 'alleged confessional statements'.

158. The Court of Appeal at page 7 and 8 laid down the criteria for admissibility as follows:

*....**First**, it must be established affirmatively by the Crown beyond a reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the “the flattery of hope or the tyranny of fear”. Ibrahim v. R. (1914) AC 599. DPP v. Ping Lin (1976) AC 574. **Secondly** even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v. Sang (1980) AC 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.*

159. In addition to the two grounds above, an alleged confessional statement can still be ruled inadmissible if there is a breach of a constitutional right.

160. There are certain pre-trial orders that can be made by the Court and this has been codified in the Criminal Procedure Act 2009. It reads:

290. — (1) Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to —

... (d) a challenge to the use of any report or other evidence that may unfairly prejudice the defence case;

... (3) Upon hearing any application under this section the court may make any necessary order to protect the rights of any party to the proceedings, or to facilitate a fair and timely hearing of the proceedings to which the application relates.

161. Although the above refers to pre-trial, it is perfectly within the court's discretion to reject any evidence even at judgment stage if the court finds that it was obtained improperly or unlawfully and it is not in the interest of justice to admit or consider the impugned evidence.

162. Typically the criteria for admissibility of an alleged confessional statement referenced above are applicable to confessions received by persons in authority such as police during the interrogation of a suspect [which in our jurisdiction is usually manifested in a police caution interview and or charge statement which are covered under the Judges Rules of 9th January 1967 Cap 13].
163. There are instances when alleged confessions can be made to others who are not police.
164. The case of State v Anand Kumar and 5 others Criminal Case No. HAC 42 of 2010 (31st of March 2011) involved one of the defendants having been interviewed by senior officers in a banking institution in the presence of a representative from the banking employees union. That defendant challenged the admissibility of the record of interview. That defendant was also a senior officer at the banking institution. The record of that defendant's interview was admitted into evidence by the trial Judge having found that the interview was conducted fairly and without oppression to the defendant.
165. Although there has been no application made by the 1st Defendant challenging the admissibility of any information whether it may be a confession or otherwise, the undersigned bears the admissibility principles in mind when preparing this decision.
166. Even if it were to be found that the 1st Defendant did make any admission to LPU and or to the 2nd Defendant, the undersigned will still have to determine whether the admission or confession is true?

ELEMENTS OF CONVERSION BY TRUSTEE

167. Returning to the counts specifically against the 1st Defendant Semi Titoko, as can be gleaned from the amended charge, the dates on which the conversion offences were committed are on different dates and the amount involved vary.
168. Other than those glaring variations, the elements of the offence for all the conversion counts against the 1st Defendant are the same.
169. For the conversion counts [first, third, fifth and seventh counts] against the 1st Defendant contrary to section 320 (1) (a) (ii) of the Crimes Act 2009, the prosecution must prove all these elements of their allegation beyond a reasonable doubt:

- i. **The 1st Defendant Mr. Semi Titoko;**
- ii. **Being a trustee of any property;**
- iii. **With intent to defraud;**
- iv. **Converts the property or any part of the property;**
- v. **For the benefit either in whole or in part of some other person, in this context, for the benefit either in whole or in part of the 2nd Defendant Mr. Aporosa Ratuveikau.**

170. *A trust exists when the holder of a legal or equitable interest in certain property is bound by an obligation cognisable and enforceable in equity, to hold that interest not for his own exclusive benefit but for the benefit, as to the whole or part of such interest, of another person or persons, or of himself and such other persons, or for some object or purpose permitted by law [Jacobs' Law of Trusts in Australia (6th eds) 1997].*

171. Equity can be summed up as a body of doctrines which helps to overcome the inflexibility problem of the law. Equity is a 'supplement' not a 'rival' of the law. Sometimes it may not be fair or equitable to strictly apply the law in certain cases and perhaps the judicial officer can exercise a degree of discretion to ensure that the purpose of the law is still applied [Equity, Restitution and Fraud, 2004 at page 5 paragraph 1.3].

172. Section 2 of the Trust Accounts Act 1996 defines a trustee to mean:

...any legal practitioner engaged in the practice of his or her profession or the carrying on of his or her business, either solely on his or her own account or in partnership with any other person or persons and who, or the firm of which he or she is a partner, in the course of such practice or carrying on of business receives any money upon trust or upon terms requiring the legal practitioner to account to any person for that money, and includes any person deemed by regulations under this Act to be a trustee...

173. The same section of the same Act defines trust money to mean 'moneys received for or on behalf of any other person by a trustee in the course of or in connection with the practice of the person's profession or the carrying on of the person's business. It does not mean instruments which are received by the trustee but payable to a person or persons other than the trustee but payable to a person or persons other than the trustee, and not banked to an account with any bank which account is under the control of the trustee or any partner or partners of the trustee'.

174. The Act amongst other things, prescribes the framework where a trustee can establish a trust account including their obligations in maintaining the trust account. It is also mandatory for all law firms to open and maintain trust accounts [section 3A of the Act].
175. There are varying definitions of what amounts to property but intrinsically, they share the same theme.
176. For instance, section 2 (1) of the Interpretation Act 1967 defines property to include money, goods, choses in action, land and every description of property, whether movable or immovable, and also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property.
177. Another example, section 2 of the Property Law Act 1971 defines property to include real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest.
178. On another front, the Trustee Act 1966 at section 2 describes property to include real and personal property and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not.
179. The offence of conversion comes under Part 17 of the Crimes Act 2009.
180. There is a definition of 'property' encapsulated in section 288 of the Crimes Act 2009 which is under Part 16 of the Act.
181. This definition is still persuasive although directly applicable to Part 16 and not Part 17. The definition in section 288 is similar to the definition under the Interpretation Act 1967 but extends the property definition to include domesticated animals.
182. Proving the offence of conversion also requires proving that the defendant had the specific fault element of intention to defraud.
183. Earlier, the undersigned has summarised what is intention and that intention can be proven through direct and or circumstantial evidence.
184. To defraud or fraud is synonymous with being dishonest [Equity, Restitution and Fraud, 2004 at page 21 at paragraph 1.14].

185. Dishonest can mean disposition to lie, cheat or defraud, untrustworthiness, lacking, honesty, deception or betrayal [**Mani v State** [2020] FJHC 773; HAA8.2020 (16 September 2020)].
186. If the whole or any part of the trust property is not converted, then there cannot be any offence of conversion.
187. Conversion can happen if there is wrongful dealing with or taking possession of, disposing, destroying even wrongfully refusing to return property which is inconsistent with the owner's right [**Oxford Dictionary of Law**, 9th eds, 2018 at page 162].
188. The conversion counts allege that the 2nd Defendant Mr. Aporosa Ratuveikau benefitted from the property. The evidence led by the prosecution particularly emanating from the 2nd Defendant Mr. Ratuveikau's evidence, he admitted that he used some of the monies for personal use and some of the money he gave to the 1st Defendant.
189. A benefit is an advantage or profit gained from something [**Concise Oxford English Dictionary**, 12th eds, 2011 at page 125].

ELEMENTS OF PERVERTING THE COURSE OF JUSTICE

190. For the ninth count of perverting the course of justice, it is alleged that this offence was committed by the 1st Defendant alone.
191. For perverting the course of justice contrary to section 190 (e) of the **Crimes Act 2009**, the prosecution must prove all these elements of their allegation beyond a reasonable doubt:
- i. **The 1st Defendant Mr. Semi Titoko;**
 - ii. **Attempts to prevent or prevents;**
 - iii. **Any person [in this context, Ms. Tara Devi] who is lawfully bound to appear and give evidence as a witness;**
 - iv. **In-order to obstruct the due course of justice.**

192. To be found guilty of attempt, the defendant's conduct must be more than merely preparatory to the commission of the offence and whether the conduct is more than merely preparatory is a question of fact [section 44 (2) of the Crimes Act 2009].
193. Intention and knowledge are fault elements in relation to each physical element of the offence attempted [section 44 (3) of the Crimes Act 2009].
194. The undersigned has referred to the definition of intention earlier and how intention can be discerned.
195. Knowledge of a circumstance or result is when the person is aware that it exists or will exist in the ordinary course of events [section 20 of the Crimes Act 2009].
196. A conduct can be an act, or an omission to perform an act or a state of affairs [section 15 (2) of the Crimes Act 2009].
197. Prevent is to keep from happening or arising or make unable to do something [Concise Oxford English Dictionary, 12th eds, 2011 at page 1137].
198. There is evidence emanating from PW1 Mr. Chand the principal legal officer of the LPU and PW3 Ms. Devi that a complaint was made to the LPU. PW1 Mr. Chand the principal legal officer with the LPU says that he was tasked by the Registrar to attend to Ms. Devi's complaint against the 1st Defendant Mr. Titoko.
199. The Legal Practitioners Unit [LPU] is under the auspices of the Chief Registrar of the High Court.
200. The Registrar is entitled to receive and investigate complaints of professional misconduct or unsatisfactory professional misconduct by any practitioner or law firm, or any employee or agent of any practitioner or any law firm [section 99 and 100 of the Legal Practitioners Act 2009].
201. The Registrar may by notice in writing, require a legal practitioner or law firm to provide to the Registrar a sufficient and satisfactory explanation of any matter relating to their conduct or practice [section 105 of the Legal Practitioners Act 2009].
202. On the other side, the Independent Legal Services Commission [ILSC] was established pursuant to section 84 of the Legal Practitioners Act 2009 and it shall consist of a commissioner.

203. Disciplinary proceedings against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm can be commenced by the Registrar before the ILSC [section 111 (1) of the Legal Practitioners Act 2009].
204. If a hearing before the ILSC is to be held in-order to determine the allegation, the Registrar and any complainant shall be entitled to appear at the hearing either in person or by an employee or by counsel, and shall assist the Commission in its hearing [section 112 (3) of the Legal Practitioners Act 2009].
205. Based on the statement and particulars of the ninth count, it is the prosecution's allegation that the 1st Defendant Mr. Titoko attempted to obstruct or prevent the course of justice by having Ms. Devi sign a withdrawal letter.
206. The nuances between attempting to prevent or preventing someone for instance from pursuing a complaint or from giving evidence in-order to obstruct the due course of justice or the perverting the course of justice may not be significant.
207. Perverting means to alter from its original meaning or corruption from what was first intended [Concise Oxford English Dictionary, 12th eds, 2011 at page 1071].
208. Persuasively, perverting the course of justice means to carry... *out an act that tends or is intended to obstruct or defeat the administration of public justice. Common examples are inventing false evidence to mislead a court (in either civil or criminal proceedings) or an arbitration tribunal, making false statements to the police, stealing or destroying evidence, threatening witnesses, and attempting to influence jurors...* [Oxford Dictionary of Law, 9th eds, 2018 at page 503.
209. His Lordship the Hon. Goundar J. in Sunil Kumar v Fiji Independent Commission Against Corruption HAC 181 of 2008 (HAM 044 of 2009) (18th March 2010) distinguished but also identified the similarity between preventing and perverting. In paragraph 11 of his Lordship's Ruling, his Lordship said:
- ...The ordinary meaning of the word "prevent" is to avert something from happening. The word "pervert" has a different meaning. It means to alter or change. However, when these terms are used with the course of justice, they denote an offence against the public weal...*
210. Further on at paragraph 14, his Lordship said and cited:
- The course of justice is the capacity of a court or competent judicial authority to do justice in accordance with the law. The course of justice is not confined to judicial adjudication (R v Bailey [1965] NI 15).*

ANALYSIS

CONVERSION COUNTS

- 211.** Scrutinising the evidence using a timeline and with the admitted facts and documents is one way we can make sense of the conversion counts.
- 212.** It is an admitted fact [see for example **AB Tab 1** – Sale and Purchase Agreement] that PW3 Ms. Devi entered into an agreement for the sale of her property to Ms. Kumar and that the agreement was penned in writing in July 2017.
- 213.** Part of the agreement [paragraph 3 and 5] is that the full purchase price of the property which is \$232,000 “shall be paid and satisfied by the Purchaser [Ms. Kumar] to the vendor [Ms. Devi] upon stamping and registration of Transfer of Certificate of Title 42310 on settlement date... The Date of Settlement shall be within ninety (90) days or such other date as may be mutually agreed in writing between the parties”.
- 214.** Prior to the property being transferred to Ms. Kumar, a sum of \$10,000 was paid to PW3 Ms. Devi as deposit and this deposit is evidenced for instance through the sale and purchase agreement itself [paragraph 3] and PW3 Ms. Devi’s oral testimony which was not disputed by the 1st Defendant.
- 215.** PW2 Mr. Vueti the bank officer for the bank in which the law firm’s trust account was with, gave unchallenged oral testimony about the status of the law firm’s trust account. The law firm’s trust account bank statement has been tendered by consent as **AB Tab 6**.
- 216.** The oral evidence of PW2 Mr. Vueti and the trust account bank statement shows that on the 25-09-17 a deposit of \$222,740 was made into the trust account deposited by ‘Monisha’ which the undersigned is sure of is referring to Ms. Monisha Kumar or Ms. Kumar the purchaser.
- 217.** The undersigned is also sure that this deposit is in relation to purchase of the property and the monies were meant for PW2 Ms. Devi.
- 218.** Reinforcing this view for instance is that the law firms trust account bank statement shows a withdrawal of \$102,000 on the 18-10-17 from the monies deposited into the trust account by Ms. Kumar.
- 219.** This is consistent with PW3 Ms. Devi’s oral evidence and is consistent with her bank statement [**AB Tab 7**] showing a deposit of \$102,000 into her bank account on the 18-10-17.

220. In summary, out of the purchase price of \$232,000, PW3 Ms. Devi has received \$112,000 [that is, the \$10,000 deposit plus the \$102,000 deposited into her account on 18-10-17] and PW3 Ms. Devi received the \$112,000 by October 2017.
221. The balance of \$120,000 was to be paid and is the subject of the conversion counts against the 1st Defendant Mr. Titoko.
222. It is an admitted fact and is proven beyond a reasonable doubt that the transfer of the property to Ms. Kumar was completed and registered by the Registrar of Titles on the 20-12-17.
223. There is no other agreement between PW3 Ms. Devi and Ms. Kumar evidenced and the undersigned has no reason to conclude that there was any other agreement, to extend the settlement date.
224. Even if the sale and purchase agreement settlement period is to be given a liberal interpretation, the full purchase price or the remaining \$120,000 balance was to be paid to PW3 Ms. Devi within 90 days from the 20-12-17 which is when the property was formally registered or transferred to Ms. Kumar.
225. Alternatively within 90 days as per their sale and purchase agreement, that is by the middle of March 2018, the settlement of the remaining amount or balance of \$120,000 one would expect would have been paid to PW3 Ms. Devi.
226. The law firm's trust account bank statement reveals that after the monies for the purchase of the property were deposited by Ms. Kumar into the law firm's trust account on the 25-09-17 and before the property was formally transferred on the 20-12-17 to Ms. Kumar, there were other withdrawals [apart from the \$102,000 paid to PW3 Ms. Devi] from the \$222,740 deposited by Ms. Kumar into the law firm's trust account.
227. These withdrawals are consistent with the timeline alleged by the prosecution in the conversion counts [first, third, fifth and seventh counts] against the 1st Defendant Mr. Titoko.
228. The amount of \$25,800 reflected in the particulars of the seventh count of conversion is problematic for the prosecution. \$800 from this amount is unaccounted or not clearly explained through the evidence adduced. It is the undersigned's view that this amount should be \$25,000 and this sum is consistent with the amount reflected in the other conversion counts and the totality of the evidence adduced, which would bring the sum in all conversion counts to \$120,000 which is the balance which was to be paid to PW3 Ms. Devi regarding the sale of her property.

229. The law firm's trust account bank statement reveals the following withdrawn amounts ['debit'] on the following dates:

Dates	Amount	Corresponding Count Number of the Charge
27-09-17	\$30,000	First Count
18-10-17	\$30,000	Third Count
17-11-17	\$35,000	Fifth Count
06-12-17	\$25,800	Seventh Count
	Total = \$120,800	

230. The undersigned finds that the total of \$120,800 was withdrawn as reflected but \$800 can be disregarded from the total amount of \$120,800 as explained earlier, as the undersigned finds that \$120,000 is the actual balance owed or remained to be paid to Ms. Devi.
231. PW2 Mr. Vueti the bank officer's oral testimony, supplements or corroborates what is self-evident in the law firm's trust account bank statement.
232. The balance in the law firm's trust account from 06-12-17 was approximately \$85. The balance in the trust account hovered around \$85 to \$117 between 06-12-17 until the 01-06-18.
233. This unequivocally means and makes the undersigned sure, that between 06-12-17 to 01-06-18, PW3 Ms. Devi could not have been paid the balance of \$120,000 as the balance in the trust account was insufficient.
234. The obvious questions that comes to mind is where did those monies go as reflected in the table above and why wasn't PW3 Ms. Devi paid those monies or the monies transferred to her within the settlement period or soon after the property was transferred to Ms. Kumar?
235. There are some agreed documents which were tendered by consent and in one of those **AB Tab 29**, the 1st Defendant Mr. Titoko seems to offer an explanation.
236. The explanation is by way of a letter in the law firm's letter head addressed to the Chief Registrar and signed by the 1st Defendant Mr. Titoko. The letter reads:

18th June 2018

The Chief Registrar
High Court of Fiji
Suva

Dear sir

Attention – Mr Avneel Chand – Legal Practitioners Unit

Re – Tara Devi Complaint

We have received your e mail and apologies for the late response as I was sick.

We deny all allegations by Tara Devi as they are false and misleading.

That we had entered into a contract with Tara Devi on the 1st June 2018 (attached copy of agreement) in which we were to pay Tara her money, \$130,000.00 in which we had written a cheque and gave it to her prior to signing of such agreement with a piece of quarter acres of land at Denarau road, Nadi worth \$130,000.00 which she had instructed us that her money with us to be the deposit of such Denarau quarter acres of land to be on hold and that she will return us our cheque for such matter in purchasing the land at Denarau.

We had also agreed that \$5,000 will be paid by us for her stamp duties at FIRCA as to the Denarau land and further we agreed that we will assist her to build a new house at Wairuku, Rakiraki and support her financially in such building of her house at Wairuku, Rakiraki which in having her intention known, she signed the agreement without any further hesitation.

We did not know that she had deposited the cheque until you emailed us as she was well aware and agreed to have returned her cheque for the payment for her land at Denarau road, Nadi and on her instruction to hold the money as her payment, she was liable to sue or be sued under such agreement which she is well aware off after being explained of such agreement and with her intention to be known, she signed the agreement.

Sir, we will soon be advising our legal counsel to sue Tara Devi for defamation and any other legal civil remedy as what she had informed your office is false and misleading for we had not said anything like that to her as this is a civil matter now.

Thank you sir

QARCIA BARRISTERS & SOLICITORS

Per.....
SEMI TITOKO

237. The date and contents of the letter, that it is an agreed document and the evidence of PW1 Mr. Chand the principal legal officer with LPU, assures the undersigned that the letter was authored by the 1st Defendant Mr. Titoko and received by LPU during the enquiry by LPU into the complaint of Ms. Devi against the 1st Defendant.

- 238.** There are other information provided by the 1st Defendant to LPU during the enquiry such as the withdrawal letter supposedly authored by Ms. Devi [subject of the ninth count perverting the course of justice] which will be dealt with later in this decision.
- 239.** The 1st Defendant Mr. Titoko was a legal practitioner being the principal at his law firm. The 1st Defendant is an experienced counsel and judicial notice is taken of his representation of defendants in criminal cases before the Nalawa [rural sitting] and Rakiraki Magistrates' Court. It is safe to infer that he would or ought to have known that any 'out of court' statement whether made to a civilian, police or in this case to LPU or any other entity could be used in evidence against him.
- 240.** The Registrar is authorised by law to receive and investigate any complaint of professional misconduct for instance against a legal practitioner.
- 241.** The undersigned is sure that the information received by the Registrar or LPU from the 1st Defendant Mr. Titoko was in the course of their duty or authority and in good faith. Nothing malicious, improper or unconstitutional can be distilled from the evidence to persuade the undersigned to disregard or reject any information as being inadmissible.
- 242.** Again, the letter addressed to the Registrar signed by the defendant is part of the agreed bundle [AB] of documents.
- 243.** PW1 Mr. Chand the principal legal officer with LPU, his evidence was largely unchallenged during cross-examination. The undersigned found him to be believable and the undersigned has no reason to disregard his evidence as being unreliable.
- 244.** The letter addressed to the Registrar signed and authored by the 1st Defendant, is concerning to say the least.
- 245.** Firstly through the letter, the 1st Defendant Mr. Titoko suggests that Ms. Devi's money is still 'with us'. Granted, that it is not specified in the letter where these monies are kept.
- 246.** Bear in mind that it is established beyond a reasonable doubt that Ms. Kumar the purchaser had deposited \$222,740 on the 25-09-17 into the law firms trust account. There is no evidence and the undersigned has no reason to conclude that there was another trust account registered to the law firm except for the one in issue here where Ms. Kumar had deposited the monies into.
- 247.** It is also established that between 06-12-17 to 01-06-18 the balance of \$120,000 could not have been paid to PW3 Ms. Devi from the law firm's trust account as there was insufficient

balance in the account. There were withdrawals from the trust account as summarised in the table earlier reducing the balance in the trust account to approximately \$100.

248. Secondly through the letter to the Registrar, the 1st Defendant Mr. Titoko suggests that “we had entered into a contract with Tara Devi on the 1st of June 2018” regarding a quarter acre piece of land at Denarau, Nadi worth \$130,000 and the “money with us” will be the deposit.
249. It is not specified who “we” refers to but it could mean or include the law firm and or the 1st Defendant and perhaps some other party. Either way, it is highly dubious and a strong potential conflict of interest arises if it were accepted that there was an agreement, as the law firm or the 1st Defendant was already representing Ms. Devi and Ms. Kumar in finalising the sale of Ms. Devi’s property but then the law firm or the 1st Defendant now seems to be a partner or party in the purchase of another property at Denarau, Nadi from the proceeds of the sale of Ms. Devi’s property.
250. In addition, the settlement or payment in full of the agreed purchase price of Ms. Devi’s property [located at Waiqumu and Cakova, Rakiraki] should liberally be concluded at the latest by March 2018 based on the sale and purchase agreement.
251. If the version in the letter signed by the 1st Defendant Mr. Titoko addressed to the Registrar were to be accepted, that an agreement was made with Ms. Devi on the 1st of June 2018 for the purchase of land at Denarau, it still does not positively explain why between let us take March 2018 until June 2018, the balance of \$120,000 that was supposed to be paid to Ms. Devi was not paid or the balance was supposedly kept or retained by the law firm during those months.
252. Thirdly, the letter references that a cheque in the sum of \$130,000 was given to Ms. Devi “... and that she will return us our cheque for such matter in purchasing the land at Denarau”.
253. This suggests that the money supposedly already held by the law firm will be the deposit for the land at Denarau but then a cheque was issued anyways to Ms. Devi to withdraw the money but then she has to return the cheque?
254. This explanation is bizarre and the ambiguity in this explanation is self-evident.
255. In any event, PW3 Ms. Devi in her oral testimony was compelling and believable. She was a powerful witness for the prosecution. She appeared genuine and forthright.
256. Her evidence makes the undersigned sure that her objective at the time was not to acquire or buy another piece of land. The undersigned cannot distil from the evidence any good justification why she would be interested in purchasing land at Denarau as claimed in the 1st

Defendant's letter to the Registrar. Ms. Devi was already selling her land at Rakiraki. She needed money or cash as she was supporting her sickly daughter who suffers from epilepsy. A look at the transactions or withdrawals of monies from her personal account as reflected in her personal bank account statement [joint account] after she received the \$112,000 part payment is consistent with her focus to receive cash or money instead of buying another property.

257. The explanation in the 1st Defendant's letter to the Registrar that Ms. Devi wanted to purchase a property at Denarau and that her remaining balance was to be kept for that purpose, is inconsistent with Ms. Devi's compelling oral evidence.
258. Ms. Devi's persistent appeal to the 1st Defendant going to the law firm and to LPU in-order to get the balance or remaining monies is also consistent with the view that she needed the money and not to purchase a new piece of land.
259. Ms. Devi's oral testimony and her bank account statement **AB Tab 7** illustrate that she has not received the balance of the \$120,000. The cheque issued to her to be drawn from the law firm's trust account in the sum of \$130,000 **AB Tab 14** 'bounced' and the reason why the cheque was dishonoured is obvious, as there was insufficient balance in the law firm's trust account at the time the cheque was issued or produced.
260. The amount actually owed to Ms. Devi is not \$130,000 and the undersigned is sure that this sum of \$130,000 mentioned in the dishonoured cheque is an amount provided unilaterally by the 1st Defendant Mr. Titoko as evidenced for instance in his letter to the Registrar and the cheque issued in that sum. A cheque signed by the 1st Defendant.
261. It is also important to examine another agreed document **Prosecution Exhibit 2** a file note submitted by the 1st Defendant during a meeting on the 07-05-18 which the 1st Defendant had with the Registrar and PW1 Mr. Chand the principal legal officer with LPU. Again, the undersigned is sure that this meeting is in the course of LPU's enquiry into the complaint received against the 1st Defendant.
262. In the file note, there is a mention of \$6,960 and it is claimed that Ms. Devi had agreed to forfeit that money if exemption was granted for Capital Gains Tax [CGT or see **AB Tab 4**]. This is in relation to the processing of the sale and purchase of Ms. Devi's land to Ms. Kumar which involves our state revenue department or FIRCA. That portion of the file note reflects the following:

That we proceeded for stamping of the documents

That advice the client that stamp duty is required to be paid client transfer the money for stamp duty into the trust account \$6,960.00 that client was agreed that if

	<p><i>exemption is granted then will take that money as our fees as client has instructed. We apply CGT and it was granted, so we manage to take that money out from our trust account to be our fees.</i></p>
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263. The amount of \$6,960 is significant and this claim in the file note is inconsistent with Ms. Devi's oral testimony. The undersigned does not accept that Ms. Devi would be willing to forfeit such an amount when she was in need of cash at the time. It is odd that \$6,960 would be the charge for what seemingly is an ordinary conveyance case for the law firm.

264. There is no need to repeat all of what is in the file note again at this stage save for the last paragraph of the file note which the undersigned finds is also relevant for discussion. That last portion of the file note states the following verbatim:

That we have already given the Original title to Monisha Kartika Kumar as the title has been transfer under her name.

We have released the sum of \$130,000.00 to Tara Devi on the 03.04.18

265. Here, the 1st Defendant suggests that \$130,000 has been paid to Ms. Devi and that this was paid on the 03-04-18.

266. This is inconsistent with PW3 Ms. Devi's version, it is inconsistent with her bank statement or account history as she has not received that amount, it is inconsistent with the insufficient balance in the trust account and it is inconsistent with the 1st Defendant's later account suggested in his letter dated 18-06-18 to the Registrar **AB Tab 29**, where the defendant suggests that the money was kept as a deposit for the purchase of land at Denarau.

267. The undersigned is sure premised on PW1 Mr. Chand's evidence the principal legal officer with LPU, PW3 Ms. Devi's evidence and the tendered or agreed bundle of documents [**AB**] such as the letter to the Registrar dated 18-06-18 amongst others, that as early as in April of 2018, the 1st Defendant Mr. Titoko was aware that a complaint was with the LPU regarding the unpaid balance to PW3 Ms. Devi.

268. PW1 Mr. Chand the principal legal officer with LPU said that during a meeting with the 1st Defendant Mr. Titoko, the 1st Defendant accepted that he had not paid the entire amount to Ms. Devi.

- 269.** It is not specified or adduced in evidence from PW1 Mr. Chand when the 1st Defendant accepted or told him that he has not paid the \$130,000. However, the undersigned is sure that this would have happened sometime in April to June 2018 during the enquiry by LPU into PW3 Ms. Devi's complaint. This information by the 1st Defendant given to LPU was certainly true [except that \$120,000 is actually owed to Ms. Devi and not \$130,000] as for instance, Ms. Devi's evidence, her bank account statement and the law firm's trust account bank account statement show that Ms. Devi has not been paid the balance.
- 270.** This true information given by the 1st Defendant is inconsistent to the position suggested in his file note that the money has been 'released' to Ms. Devi and is inconsistent with his letter to the Registrar in June 2018 that the money was kept and going to be used to purchase land at Denarau, Nadi.
- 271.** The different explanations orally and in writing, are material and are not trivial as it touches on the critical issue or complaint about the unpaid balance to Ms. Devi. The undersigned is sure that the information given by the 1st Defendant that the monies were kept and or had been released was not a mistake and was intentional. The undersigned is sure that the information provided by the 1st Defendant in the file note and the letter to the Registrar was false. PW3 Ms. Devi did not agree to forfeit \$6,960, she has not received her balance and she has not entered into an agreement to purchase land at Denarau.
- 272.** The undersigned finds that the 1st Defendant lied when he gave the file note and letter containing these false information.
- 273.** Why would the 1st Defendant lie?
- 274.** This ideally brings us to the 2nd Defendant Mr. Ratuveikau's evidence.
- 275.** He was the fifth prosecution witness or PW5. The 2nd Defendant Mr. Ratuveikau was also a compelling and believable witness. He owned up to his mistake and admitted that what he did was wrong.
- 276.** He gave evidence which convinces the undersigned that he was following the express directions of the 1st Defendant Mr Titoko who signed the cheque for monies to be withdrawn from the trust account between the 27-09-17 to 06-12-17 with the amount withdrawn amounting to \$120,800 [\$120,000 of that being the unpaid balance to Ms. Devi]. The cheque book is kept by the 1st Defendant where the 1st Defendant will sign the cheque and inform the 2nd Defendant Mr. Ratuveikau what other details to insert in the cheque.
- 277.** The monies were withdrawn from the law firm's trust account and transferred to the 2nd Defendant's personal bank account. The 2nd Defendant withdrew the sum as described in his evidence and the conversion counts against the 1st Defendant and the monies were used to

pay the staff salary, bills, were used for the 2nd Defendant's 'personal use' and the rest of the monies were given to the 1st Defendant.

- 278.** The 2nd Defendant did not specify how much of the monies withdrawn were given to the 1st Defendant but the undersigned is sure that a substantial portion of the monies withdrawn were given to the 1st Defendant.
- 279.** Why would a substantial portion of the monies be given to the 1st Defendant?
- 280.** Firstly, the 1st Defendant is the principal at the law firm, he is the sole signatory, the undersigned accepts the direct evidence of the 2nd Defendant that the 1st Defendant directed him to fill in the details in the signed cheque and transfer the monies from the trust account. In this context and with the evidence adduced, the undersigned is sure that the 2nd Defendant would not have acted unilaterally in relation to the withdrawal of monies from the trust account. As the 2nd Defendant described in his oral evidence which the undersigned believes and accepts, the 2nd Defendant was treated like a 'slave' which the undersigned interprets to mean that the 1st Defendant was controlling.
- 281.** Furthermore, the undersigned accepts and believes the 2nd Defendant's testimony that the 1st Defendant told him that the monies will be used to develop land at Denarau and once the land is developed and sold, the monies will then be reimbursed to Ms. Devi.
- 282.** The undersigned does not require the 2nd Defendant's convincing oral testimony to be corroborated.
- 283.** Nevertheless, there is still corroborative evidence in existence supporting the 2nd Defendant's evidence.
- 284.** The balance of the purchase price of the property that were to be paid to Ms. Devi was withdrawn from the law firm's trust account by 06-12-17. The law firm's trust account bank statement reflects this for instance. The balance in the law firm's trust account after that withdrawal was less than \$100 or hovered around that figure. This is supportive of the 2nd Defendant's evidence that Ms. Devi could not be paid her remaining balance as there was insufficient balance in the trust account.
- 285.** As early as April 2018, the 1st Defendant would have been aware of LPU's enquiry into the complaint by Ms. Devi regarding her unpaid balance. We get this date from the withdrawal letter signed by Ms. Devi and the letter was submitted to the Registrar by the 1st Defendant. It is immaterial who sent a copy of the letter by email. What the undersigned is sure of and which is not disputed and that the letter is an agreed document, it was the 1st Defendant who submitted the letter in person during a meeting the 1st Defendant had with PW1 Mr. Chand the principal legal officer with LPU and with the Registrar.

286. The context established such as the 1st Defendant being the sole signatory to the trust account and that there was an enquiry being done into the remaining balance to be paid to a client, it gives the irresistible inference that the 1st Defendant would or ought to have checked the law firm's trust account balance or the law firm's records or follow up about the monies that Ms. Devi was claiming was still unpaid.
287. A quick check of the law firm's trust account balance would show that there was insufficient balance in the trust account and the defendant would or ought to have known or checked who withdrew from the trust account, that is, if he did not authorise any withdrawal. A way to answer who withdrew or where the money from the trust account went to, is to see the corresponding cheques which was used to withdraw from the trust account. The payee named in the corresponding cheques is the 2nd Defendant Mr. Ratuveikau who is the accountant at the law firm. The payee is not Ms. Devi.
288. There is no evidence before the undersigned and the undersigned has no reason to conclude that a police report has been made by the 1st Defendant against the 2nd Defendant or any other person for withdrawing from the law firm's trust account without the 1st Defendant's consent or authority.
289. The 2nd Defendant Mr. Ratuveikau when giving oral testimony and while being cross-examined, confronted the 1st Defendant that the 1st Defendant has not made any report to police regarding any unauthorised withdrawal from the trust account. The 1st Defendant did not challenge that evidence and appeared stumped when he was faced with that rebuke by the 2nd Defendant who was in the witness box.
290. The information about the balance in the trust account, the 2nd Defendant being the accountant at the law firm and the information in the cheques amongst other information, were available to and accessible by the 1st Defendant Mr. Titoko. Even if some of these information such as documents were with the respective bank or financial institution where the trust account is held, there is no evidence to suggest that the 1st Defendant was prevented or could not have accessed that information.
291. It is agreed and established that the 1st Defendant is the sole signatory to the trust account and **AB Tab 18** contains the documents supporting the application to register or open a trust account for the law firm and the documents show that the 1st Defendant was intricately involved in setting up the law firm trust account having signed the bank form application for instance.
292. Yet the 1st Defendant did not raise in his file note or letter to the Registrar or any other communication with the LPU that the balance was withdrawn by someone else without his authority or could not be paid as there was insufficient balance in the law firm's trust

account. There is no police report or complaint filed by the 1st Defendant. There is a claim in his letter to the Registrar that defamation proceedings will be instituted against Ms. Devi and there is no evidence to suggest that this has been done or instituted and the undersigned does not have any reason to conclude that any defamation suit has been instituted.

293. Having raised no complaint or report or action, instead, the 1st Defendant suggested that the balance was released to Ms. Devi and then also suggested that the balance was kept to purchase land at Denarau for Ms. Devi. The 1st Defendant also informed LPU that the balance was yet to be paid to Ms. Devi.
294. Importantly as well, the defendant in his letter to the Chief Registrar accepts that a cheque of \$130,000 was issued to PW3 Ms. Devi. The cheque is signed by the 1st Defendant. This too is consistent and corroborates the 2nd Defendant's evidence that a cheque in that sum was issued to Ms. Devi.
295. This is strong circumstantial evidence that the 1st Defendant was directly involved and was aware of the issuance of the \$130,000 cheque. The cheque could not be honoured due to insufficient funds in the trust account. It is clear to the undersigned that the issuance of this cheque was the 1st Defendant's attempt to appease PW3 Ms. Devi even temporarily in light of the LPU on-going enquiry and Ms. Devi's persistent visits or appeals to the 1st Defendant or the law firm regarding her unpaid balance.
296. As the 2nd Defendant explained, Ms. Devi was told to cash the cheque when she was only told to do so. The cheque also gives the impression that Ms. Devi was being paid or going to be paid when in fact there was insufficient funds in the trust account. It was clearly misleading and intentional by the 1st Defendant.
297. The 1st Defendant also told the 2nd Defendant that the money meant for Ms. Devi will be used to develop land at Denarau and after the development, the money will then be reimbursed to Ms. Devi.
298. This was a direct confession by the 1st Defendant to the 2nd Defendant. The undersigned does not have any compelling reason to reject this evidence.
299. This evidence or confession evidenced through the 2nd Defendant's oral testimony is corroborated too by the letter written by the 1st Defendant addressed to the Registrar. In that letter as discussed earlier, the 1st Defendant claimed that an agreement was made with Ms. Devi to purchase land at Denarau.
300. The undersigned also accepts that the 1st Defendant told the 2nd Defendant to transfer the monies from the trust account into the 2nd Defendant's personal account so that the 1st

Defendant will not get in trouble with LPU. It is understandable in this case why the 2nd Defendant was used by the 1st Defendant and it simply because of convenience. The 2nd Defendant was working with the firm as an accountant, the 1st Defendant was the principal at the law firm or was the superior of the 2nd Defendant and that the 2nd Defendant was aware of the details regarding the law firm's trust account and the sale and purchase agreement between Ms. Devi and Ms. Kumar.

- 301.** Furthermore, the 1st Defendant was being investigated by LPU. He has a lot to lose and could be disciplined. These are good incentives for the 1st Defendant to exonerate himself and provide reliable and understandable information or evidence regarding the complaint of the unpaid balance owed to Ms. Devi. The information regarding the trust account is available to and accessible by the 1st Defendant, in addition to the records which would be with the law firm itself. The 1st Defendant did not and never claimed from the early stages such as during the LPU enquiry even to explain in a concise way, that the balance owed is no longer available as it has been withdrawn without his knowledge or authorisation.
- 302.** Instead, the 1st Defendant lied to LPU and gave different versions.
- 303.** Persons lie for various reasons perhaps due to embarrassment, risk of ridicule or some other innocent reason.
- 304.** In this case, the undersigned finds that the lie of the 1st Defendant to LPU is consistent with the 1st Defendant's consciousness of guilt and is consistent with his guilt. The 1st Defendant's lie or information given to LPU is another piece of evidence that corroborates PW5 2nd Defendant Mr. Ratuveikau's evidence that the monies from the balance owed to PW3 Ms. Devi were withdrawn from the trust account at the express direction of the 1st Defendant and were not paid to Ms. Devi. Instead the monies were deposited or transferred to the 2nd Defendant's personal account and used and distributed in the manner as described by the 2nd Defendant in his oral testimony.
- 305.** The admission by the 1st Defendant Mr. Titoko that he may get in trouble if trust monies were transferred to him is also supportive of the 1st Defendant's consciousness of guilt. The 1st Defendant knew that what he was doing was wrong.
- 306.** It is worth commenting that on another riveting moment in court while the 2nd Defendant gave evidence and while being cross-examined by the 1st Defendant. The 2nd Defendant challenged the 1st Defendant essentially to own up and to stop passing the blame. The 1st Defendant's cross-examination seemed to wane from there. It was a powerful confrontation and the undersigned interpreted that exchange in the favour of the 2nd Defendant and another reason why the undersigned believes and accepts the strong testimony of the 2nd Defendant.

- 307.** It is established that the 1st Defendant was a trustee at the material time. The facts in this case comfortably places the defendant within the definition of a trustee pursuant to section 2 of the Trust Accounts Act 1996.
- 308.** The \$120,000 balance owed to PW3 Ms. Devi falls within the definition of property within the same section of the same Act.
- 309.** The 1st Defendant intended to defraud her of that property. There is overwhelming direct and circumstantial evidence proving this. For instance, signing the cheques and directing the withdrawals of that sum from the trust account. Those sums were not released or paid to Ms. Devi but instead deposited into the 2nd Defendant's personal account. The money was converted that is, deposited into the 2nd Defendant's personal account and used for other means other than for whom those monies were rightfully meant for who is PW3 Ms. Devi. A substantial portion of those monies which was meant for Ms. Devi was given to the 1st Defendant.
- 310.** Ms. Devi did not consent or authorise the use of her unpaid balance in this manner.
- 311.** The 1st Defendant to quell the appeals or enquiry to him and to the law firm by Ms. Devi and LPU, issued a 'blank cheque' and gave false information to LPU regarding the whereabouts of the balance owed to Ms. Devi. These false information volunteered by the 1st Defendant even corroborates the 2nd Defendant Mr. Ratuveikau's direct testimony.
- 312.** All the conversion counts against the 1st Defendant Mr. Semi Titoko, that is, the first count, third count, fifth count and seventh count are proven beyond a reasonable doubt. He is found guilty of these counts accordingly. The amount of \$120,000 [not \$120,800 as alleged in the amended charge] was converted.

PERVERTING THE COURSE OF JUSTICE

- 313.** The evidence of PW1 Mr. Chand the principal legal officer with LPU and PW3 Ms. Devi is also important in this regard.
- 314.** The undersigned also does not have any reason to disregard their evidence regarding this count as being unreliable or discredited.
- 315.** The undersigned accepts that the 1st Defendant told Ms. Devi to sign the withdrawal letter and then she will get her balance. Ms. Devi accepts and the undersigned finds that she did sign the withdrawal letter.

316. It is immaterial who may have sent a copy of the withdrawal letter to LPU via electronic mail but it is established and the undersigned is sure that the 1st Defendant provided the original of the withdrawal letter to PW1 Mr. Chand the principal legal officer with LPU during their meeting on the 07-05-18 which again was during the period of enquiry by LPU into Ms. Devi's complaint.
317. The withdrawal letter speaks for itself and the undersigned has quoted it verbatim earlier in this decision.
318. The letter claims that Ms. Devi has "settled the matter with Mr. Titoko". The letter is dated 03-04-18.
319. In this context, the matter referred to is Ms. Devi's complaint that her unpaid balance has not been released to her.
320. This claim in the letter that the matter has been settled is obviously false when contrasted with the weight of the evidence established such as the law firm's trust account bank statement showing insufficient balance to pay Ms. Devi her unpaid monies between December 2017 to June 2018 and that Ms. Devi had no intention to purchase any other property but only wanted the balance owed to her.
321. The 1st Defendant in providing the withdrawal letter to PW1 Mr. Chand with the LPU is strong circumstantial evidence that the 1st Defendant was intimately involved in preparing the letter. This is together with the direct evidence of Ms. Devi who said in her oral evidence which the undersigned accepts and believes, she signed the withdrawal letter in front of the 1st Defendant Mr. Titoko and was told to sign and withdraw her complaint only then will she be paid her balance.
322. The termination of the enquiry with LPU would have benefitted both PW3 Ms. Devi and the 1st Defendant Mr. Titoko. For Ms. Devi it was due to the 1st Defendant's promise that she would be paid her balance. For the 1st Defendant, he could avoid scrutiny and potential discipline regarding the unpaid balance.
323. For Ms. Devi it is desperation and being induced, in that sense she did not volunteer the false information in the withdrawal letter that the matter was settled.
324. For the 1st Defendant, the undersigned does not find any innocent explanation. The information that the matter is settled is and was false. This is not the only false information the 1st Defendant has provided to the Registrar or LPU as seen earlier in relation to the conversion counts. When putting all of the information or evidence together, the ultimate beneficiary of the withdrawal of the complaint to LPU would be the 1st Defendant. He had motive.

325. If the withdrawal letter were to be accepted by the Registrar or LPU, that would have certainly meant that no disciplinary proceeding before the ILSC would have resulted.
326. As evidenced through PW1 Mr. Chand's evidence and judicially noticed by the undersigned, the 1st Defendant was still disciplined by the ILSC.
327. The Legal Practitioners Act 2009 and case law [for instance Sunil Kumar v Fiji Independent Commission Against Corruption] advocate that the ILSC is capable of exercising judicial authority. It is judicially noticed that it is the practice before the ILSC to apply natural justice and provide an opportunity to the parties to be heard and provide information or evidence albeit the proceedings before the ILSC is less rigid compared to a court proceeding. Nevertheless, the ILSC is still exercising judicial authority. The Act allows Ms. Devi to appear and assist the ILSC during the hearing.
328. The undersigned is sure with the information before this court and the information before LPU, that institution of proceedings before the ILSC against the 1st Defendant was inevitable and was in the due course of justice.
329. Providing the withdrawal letter to LPU during their enquiry was an attempt by the 1st Defendant to obstruct that due course of justice.
330. The undersigned rejects the 1st Defendant's contention in his closing submission that this ninth count is defective.
331. The primary issue is whether the 1st Defendant understands the charge and the answer to that is in the affirmative. The ninth count spells out the elements of the offence. Besides, the 1st Defendant was a legal practitioner. In addition, the issue about the charge being defective is a matter more appropriately raised at pre-trial or as late as during no case to answer stage.
332. The contention too that ILSC is not a court of law and therefore not exercising judicial authority is also rejected. The authorities establish that courts do not hold the monopoly over judicial authority. That authority can even be exercised by a tribunal or commission depending on the powers vested to that tribunal or commission.
333. All the elements regarding the ninth count of perverting the course of justice against the 1st Defendant Mr. Semi Titoko is proven beyond a reasonable doubt. He is found guilty of this count.

THE 2nd DEFENDANT Mr. APOROSA RATUVEIKAU alias "APO"

- 334.** You are an accomplice.
- 335.** The undersigned is sure and makes this finding based on your guilty plea, your admission of the facts, the documents tendered by consent such as your police interview, your oral testimony in court during the hearing to determine the counts against your co-defendant the 1st Defendant Mr. Semi Titoko and the evidence received or tendered during the hearing of your co-defendant *inter alia*.
- 336.** Although the prosecution only needed to prove that you either aided, abetted, counselled or procured the commission of the conversion offence, the undersigned finds that you aided, abetted and procured the conversion of \$120,000 monies that belonged to PW3 Ms. Devi.
- 337.** These monies were proceeds from the sale of her land and these monies were deposited in the law firm's trust account, a law firm where you worked as an accountant. You were intricately involved in transferring the monies from the law firm's trust account into your own personal bank account.
- 338.** This would not have been possible and the undersigned finds that you acted under the express directions of your principal the 1st Defendant Mr. Titoko. The monies were not used for Ms. Devi as intended but you used some for your own personal use, to help pay staff salary but most of the monies were given to the 1st Defendant.
- 339.** The undersigned does not accept your answer in question 52 of your police caution interview that you gave all of the monies to Mr. Semi Titoko.
- 340.** The undersigned prefers your oral testimony and the weight of the evidence convinces the undersigned that most of that money meant for Ms. Devi was given to the 1st Defendant.
- 341.** Despite the rejection of your answer to question 52 of your police caution interview, it does not make the undersigned doubt or waiver from accepting your oral testimony as being reliable and being the truth.
- 342.** The 2nd Defendant Mr. Aporosa Ratuveikau, you are found guilty of the second count, fourth count, sixth count and eighth count of aiding and abetting conversion by a trustee. The amount converted is \$120,000.

SUMMARY

- 343.** For the reasons the undersigned has explained above, the 1st Defendant Mr. SEMI TITOKO and the 2nd Defendant Mr. APOROSA RATUVEIKAU you each are found guilty of the respective counts against you as reflected in the amended charge.
- 344.** Further evidence or information that maybe relevant to your sentence will be received hereafter before the court passes sentence on each of you.



A handwritten signature in blue ink, appearing to read "LISIATE T.V. FOTOFILI".

LISIATE T.V FOTOFILI
Resident Magistrate

At RAKIRAKI this 31st day of March 2023