

N 1401

**PAPUA NEW GUINEA
NATIONAL COURT OF JUSTICE**

CR 340 OF 1995

**THE STATE
v
PAROA KAIA**

**Waigani : SAWONG, J
1995 : 5&6 September**



Criminal Law - Misappropriation - Sentence - Bank officer - Amount misappropriated K94,478.31.

CASES CITED:

The following cases are cited in the judgment:

Wellington Bclawa v The State [1988-89] PNGLR 496.
Joseph Roka v The State Unreported Judgment SCA 104 of 1993.

SENTENCE

The accused pleaded guilty to a charge of misappropriation and the following judgment was delivered on sentence.

*C Sambua, for the State.
M Kua, for the accused.*

6 September 1995

SAWONG J: You have pleaded guilty that between the 13th day of 1992, and the 21st day of May, 1992 you dishonestly applied to your own use and to the use of others namely Wari Wagi and Wari Kila of Wanigela Painting Contractors and Kidi Kaivepa of Hiri Security Services, the sum of K94,478.31 the property of Australia and New Zealand Banking Corporation (PNG) Ltd.

This is a serious offence and you could be jailed for up to 10 years.

The short facts of this case are that you were employed by the Australia and New Zealand Banking Group (PNG) Limited (herein after referred to as the "ANZ Bank") at their Port Moresby branch, as a accounts supervisor. Whilst in that employment and in that capacity, you entered several transactions by filling out false debit and credit forms belonging the ANZ Bank. After you filled out the forms, you debited the accounts of various clients of the bank within the bank and credited the same amount to the accounts of Wanigela Painting Contractors and Hiri Security Services. Once the moneys were credited to the accounts of Wanigela Painting Contractors and Hiri Security Services, you then arranged for the owners of those accounts to come to the bank where you worked and make withdrawals from the accounts. After the moneys were withdrawn by the proprietors of Wanigela Painting Contractors and Hiri Security Services, the money would be shared between yourself, Wari Kila, Wari Vagi of Wanigela Painting Contractors and Kidi Kaivepa of Hiri Security Services. During the execution of that scheme, the sum of K94,478.31 was misappropriated between yourself Wari Wagi, Wari Kila and Kidi Kaivepa and these moneys were the property of ANZ Bank.

There were a total of ten transactions that took place over that period. The sum of K94,478.31 was misappropriated over a period of two and a half months and the transactions that took place were as follows:

The first transaction was on the 13th of March, 1992. A sum of K11,220.50 was debited to the account of the PNGBC at Vanimo branch. The Vanimo branch of the Papua New Guinea Banking Corporation did not receive the money or the debit note and the debit note was returned to the ANZ Bank in Port Moresby where you were employed. You then used the debit note and credited the sum of K11,220.50 to the account of Wanigela Painting Contractors who had an account with the ANZ Bank at the Port Moresby branch.

The second transaction was on the 3rd of April, 1992. This time the transaction involved the sum of K8,500.00. In the transaction, you debited the

account of Hiri Security Services and credited the sum of K8,500.00 to the account of Wanigela Painting Contractors.

On the third occasion was on the 7th of April, 1992. At that time you debited the sum of K14,879.00 to the Bank of South Pacific and then subsequently credited that amount of K14,879.00 to the account of Hiri Security Service.

Subsequently on the 27th of April, 1992 a sum of K3,378.81 was debited by you from the account of Kila Bowring Insurance with ANZ Bank and you then credited the said sum of K3,378.81 to the account of Wanigela Painting Contractors.

Furthermore, on the 23rd of April, 1992 the sum of K5,000.00 was debited from the account of Graham Dunnage and it then was credited to the account of Wanigela Painting Contractors. On the same date, a further sum of K800.00 was debited from the account of Aron Noaio at the ANZ Bank Port Moresby Branch and you then had that amount of K800.00 credited the sum of K800.00 to Wanigela Painting contractors. Subsequently on the 24th of April, 1992 you debited to PNGBC Mendi Branch the sum of K5,000.00 and when the money was not received by the Papua New Guinea Banking Corporation Mendi Branch, the debit note was returned to the ANZ Bank Port Moresby Branch and you then had the sum of K5,000.00 credited to the account of Wanigela Painting Contractors.

Further, on the 27th of April, 1992, you also made two separate transactions. The first involved the sum of K15,000.00. The evidence shows that you debited the sum of K15,000.00 from the ANZ Bank Port Moresby Branch and had that amount credited to the account of Wanigela Painting Contractors. On the same date you again debited the account of Westpac Bank Lorengau Branch for the sum of K10,005.00 and then had that amount credited to the account of Wanigela Painting Contractors. The last transaction was on the 15th of May, 1992. In that transaction, you debited the sum of K20,000.00 from the account of Credit Corporation PNG Limited and had this sum of K20,000.00 credited to the account of Hiri Security Services.

The moneys that were credited to the account of the two companies namely Hiri Security Services and Wanigela Painting Contractors were subsequently withdrawn by the proprietors and the people who had authority to deal with the accounts of the two companies. The moneys were withdrawn and were shared between the proprietors of those two organisations and by you. As the evidence stands the money was shared between you together with Wari Wagi and Wari Kila of Wanigela Painting contractors and Kidi Kaivepa of Hiri Security Services.

The total amount that was credited to the account of Wanigela Painting Contractors and was subsequently appropriated between you and the proprietors of Wanigela Painting Contractors was the sum of K59,599.31. The total amount that was credited to and received by and withdrawn by and appropriated by the proprietors of the Hiri Security Services and yourself was K34,879.00. The total amount that was credited into the account of those two organisations which was subsequently misappropriated between the proprietors of those two organisations and yourself amounted to K94,478.31. This amount was misappropriated by yourself for your own use and for the use of Wari Kila and Wari Wagi and Kidi Kaivepa. The sum of K94,478.31 was the property of the ANZ Bank.

There is evidence that for your co-operation and assistance you were rewarded by the proprietors of Wanigela Painting Contractors and Hiri Security Services of payment of moneys.

The scheme that you hatched and used was not by any means an elaborate one. The evidence quite clearly shows that you knew and were acquainted with the proprietors of the two organisations and with their help and your help, you managed to, over a period of two and a half months, draw from the bank's various clients accounts and had the funds credited to the accounts of your friends. I view your actions to be very serious because it shows that you have deliberately falsified documents and drawn unauthorised funds from innocent customers of the bank, credited the amounts to the accounts of you associates and subsequently from which

you benefited. There is no evidence before me as to whether any of the innocent customers of the bank who you had defrauded have been paid back by the bank.

You were born in Port Moresby on the 25th of June, 1956 and you have lived at Kaugere in Port Moresby since then. You attended the Koki Community School from 1964 to 1969 and subsequently entered the Port Moresby High School in 1970. You graduated after completing Grade 10 from the high school in 1974. In 1975, you entered the University of Papua New Guinea where you completed a preliminary year. Subsequently you commenced employment with the Bank of Papua New Guinea as a ledger examiner commencing in 1976 and you left that bank in 1983. There is no record of what happened to you between 1983 and 1986 but in 1986 you were employed as an overseas clerk by Niugini Lloyds Bank. You left that bank in 1991. In 1992, you commenced employment with ANZ Bank in Port Moresby as an account's supervisor. It was during this time that you committed this offence. As a result of your involvement in committing this offence, your services were terminated in 1993 by the bank.

You are married with five children. Their ages range from 15 years to 7 years old.

You have been convicted of a very serious and prevalent offence. The moneys you misappropriated and benefited from were moneys stolen during the cause of your employment with the bank. This makes it much more serious than other cases of misappropriation. Mr Kua has quite properly submitted that the Court should use the sentencing guidelines set out in the case of *Wellington Belawa v The State* [1988-89] PNGLR 496. Although I accept that, I am of the view that the guidelines set out in that case are persuasive and not binding upon this Court. The sentencing discretion of this Court has not been removed by the guidelines for sentences for various amounts of moneys misappropriated by the tariff set out in that case.

Secondly, I am of the view that the tariff suggested by the Supreme Court in that case are no longer relevant because the suggested tariff was set out in 1989, some

six years ago. In my view, the circumstances have changed considerably and the Court has a duty to take cognisance of the fact that the crime of misappropriation has increased consistently over the six years period.

However, I accept the general principles set out in the Belawa case that several factors which are listed there should be taken into account when the sentencer is considering sentencing an offender for an offence involved in dishonesty. In the present case, the relevant factors are:

1. The Amount Taken .

The amount taken here was quite a large sum of money. The sum stolen was in excess of K94,000.00. The principle here is quite simple and that is that if the amount of money misappropriated is large, the sentence will reflect that, that is, that it must be high.

2. The Degree of Trust.

The principle here is that if the officer or the offender holds a higher position of trust then the greater culpability will be attached. Thus, in the present case, you were employed as an accounts supervisor. Indeed a position of greater trust. In that position you had access to accounts and funds of various clients of the bank and you had information which you used to defraud the bank and its customers.

The period of over which the offence was committed over a period of two and a half months. This was not a case of sudden impulse but rather it was a case where it appears to me that you had thought it out and had it executed. You devised the scheme and put into effect that scheme quite successfully over the two and a half month period. During that time you committed ten transactions involving the same scheme. This was not a spur of the moment criminal act. This was a case where a series of dishonest acts were committed over a period of two and a half months. As I have said earlier, it appears to me that you have planned to take advantage of your knowledge of the banking system and you did dishonestly to enrich yourself and your friends.

3. The Use To Which the Money Was Put To.

There is no evidence before me as to how the money was used by you. Naturally, I can infer that your share was given to you and you used it personally or used it to help your family. Mr Kua has submitted that, and you yourself have also said in your allocutus that you had used the moneys to help look after a large number of your relatives.

4. The Effect on the Victim.

Here, quite a substantial amount of money was stolen from the bank and the bank's various clients. I do not know whether the banks clients have been reimbursed by the bank of the moneys that were debited from their accounts. I am quite certain that when these "victims" realised what had happened, they will be quite disturbed. In some case, large amounts of money were debited from various victims' accounts. You dishonestly obtained money amounting to more than K94,000.00 from the bank. None of this money has been returned to the bank.

5. The Effect On the Offender Himself.

As a result of committing this offence, you have lost your employment. I am quite certain that it will be hard for you to obtain future employment in a similar position of trust. As a direct consequence of your loss of your employment, you and your family will suffer.

6. Restitution.

As I have said earlier, in this case, no restitution has been made to the bank by you. I do not know whether the bank has made any restitution to any of the victims or the customers of the scheme. You have not shown to me whether you are able to repay any of these money to the bank. You expressed no remorse.

7. Your Own History.

I have already set out your own history. It shows that you have lived an unblemished record for the past 39 years. You have been gainfully employed and have dedicated yourself to those previous employment. I note also the fact that you have said that you have been involved in organising various youth groups at the Kaugere Settlement. I am not quite certain as to the precise nature of the organisation of and the activities that you assist the youth groups in performing. But nevertheless, I take that into account.

8. The Impact of the Offence Upon the Public and Upon Public Confidence.

It is common knowledge that employees who steal money from accounts of the customers of the bank, both the bank and the customer suffer. The customer suffers because quite simply put, it loses its money. The bank suffers because the bank would have to reimburse the customer for the wrong doings of its former employee. Ultimately, the bank loses and the share holders of the bank lose. Moreover, the public can also suffer from loss of confidence as in this present case because members of the public place their trust in the bank and the banking system to ensure that their moneys are safe and will not be interfered with or stolen by employees of the bank. This is an aggravating factor calling for a heavier sentence where a bank officer who is a high entrusted employee put to a scheme and consistently defrauds the bank and its customers of their moneys. In the present case you were an accounts supervisor. In that position you were responsible - you had a responsible position. You had intimate knowledge of the banking system. Your employment history shows that you have been employed with banks and so you had gained the knowledge with which you used to defraud unsuspecting innocent customers and the bank.

For these reasons you must be punished and punished severely so that it acts as a punishment to you and as a deterrent to other would-be offenders who might contemplate employing similar schemes as you had. Further, I am of the view that the punishment should be such that it should help contribute to restoring the public and public confidence in the banking institution.

But before making any final decision, I must look at other matter relevant to you for the purposes of sentencing. In that regard, I take the following matters into consideration:

(a) You have no prior convictions.

It indicates that up until now, you have been a good, law abiding citizen. At your age (39 years), it should be said that it was out of character for you to commit such a crime. However, the fact of the matter is that you put into a scheme and committed a series of criminal acts and so that is not in your favour. The offence was not something that happened on the spur of the moment.

(b) You pleaded guilty.

That to a certain extent shows me that you are sorry for what has happened and because of your plea, you have not caused any unnecessary waste of time and resources particularly in a complex fraud case like yours.

(c) You are a married man with five children aged between 7 years and 16 years old. I have no doubt that they would suffer considerably because of your actions. In particular the younger ones, unfortunately in a crime such as yours, it is the children who so often suffer because of the parents crime. I note from your allocutus you said to me that you had a large number of relatives and you used some of the moneys to help them. That is possibly true.

You are not hardened offender and you are not a violent, dangerous person who is a threat to those people who wish to live in peace and obey the law. On the other hand, you would be expected to be usefully punished.

The tariff that was suggested in the Belawa case was that where the amount misappropriated is between K40,000.00 and K150,000.00 a term of imprisonment of between three to five years in prison is appropriate. Your counsel has submitted that the appropriate range of sentence should be between two years and five years and that the Court should not impose a crushing sentence.

I accept that the sentence, that I should impose should not be a crushing one upon you. It appears that the other three friends of yours who were involved in this dishonesty have not been arrested. They have not been charged nor have they appeared before any court of Law. They were to a large extent the larger beneficiaries than you.

And so taking into account all the mitigating factors in your favour and the aggravating factors against you and the reasons that I have given, and taking into account the time that you have spent in custody, I sentence you to four years imprisonment in hard labour. I order that your bail money of K 200.00 be refunded to you.

Lawyer for the State : Public Prosecutor.
Lawyer for the accused : Public Solicitor.