N10273

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) NO. 118 OF 2019

THE STATE

V

PAUL PARAKA

Waigani: Berrigan J

2021: 14, 15, 17, 21 September, 12, 13, 15, 18 October
2022: 8, 15, 17, 18 February, 1, 4, 7, 8 March, 6, 29 April, 1, 3, 10, 14, 15, 17 June, 21 July, 2, 8, 9, 11, 12, 15, 16, 17, 18 August, 5, 6, 12, 14, 15, 20, 21, 22, 23 September, 7 October, 7 November, 5, 6 December
2023: 6 February and 26 May

CRIMINAL LAW – S 383A, Criminal Code, Misappropriation – Honest Claim of Right without Intention to Defraud – Guilty.

The accused was the principal of the law firm, Paul Paraka Lawyers (PPL). It was alleged that over a period of almost five years commencing on 24 April 2007 more than K162 million was paid by the Department of Finance (DoF) to the ultimate benefit of the accused. The monies were paid to PKP Nominees Ltd (PKP Nominees), a property investment company wholly owned and directed by the accused, or to the accounts of seven other law firms – Sino & Company Lawyers, Jack Kilipi Lawyers, Harvey Nii Lawyers, Sam Bonner Lawyers, Korowi Lawyers, Kipoi Lawyers and Yapao Lawyers. The monies were paid by way of 65 cheques, ranging in value from about K1m to almost K5m. In every case the law firms retained at least K30,000 to K50,000 and sometimes as much as K400,000 before almost immediately passing the proceeds on to PPL or PKP Nominees.

The accused was charged with five counts of misappropriating property belonging to the State between 2007 and 2011 in the amounts of K30,300,000, K30,054,312.68, K14,480,672.28, K39,808,610, and K48,216,600, respectively, contrary to s 383A(1)(a)(2)(d) of the *Criminal Code*.

Held:

(1) The monies held to the credit of the State with BPNG and controlled by DoF, and upon which the cheques payable to PKP Nominees and each of the seven law firms were raised, were property belonging to the State.

(2) At the time the cheques were raised property belonging to the State was deflected from the purposes of the State and applied to the accused's own use and the use of others: *R v Easton* [1994] 1 Qd R 532 adopted and applied.

(3) The State retained an interest in the property and was its owner: *Brian Kindi Lawi v The State* [1987] PNGLR 193 applied.

(4) The person or persons in DoF who applied the property to the accused's own use and the use of others did so dishonestly.

(5) The offences charged in the indictment were committed, the accused knew the essential facts constituting the offences in each case, including the state of mind of the person or persons who committed the offences, and procured the perpetrator to commit the offences in each case, for the purposes of establishing his liability pursuant to s 7(1)(d) of the *Criminal Code*.

(6) The totality of the circumstances excluded any rational possibility that the accused acted in the exercise of an honest claim of right and without an intention to defraud.

(7) The combination of circumstances led to the inevitable conclusion beyond reasonable doubt that the accused dishonestly applied the property belonging to the State the subject of Counts 1 to 5 of the indictment to his own use and the use of others, in the amounts averred but for Count 5, in respect of which the sum was K47,608,300. The State's evidence excluded beyond reasonable doubt any other reasonable conclusion inconsistent with the guilt of the accused.

The accused is convicted of Counts 1 to 5 of the indictment.

Cases Cited:
Papua New Guinean Cases

Paul Paraka v Kaluwin (2019) N7975
The State v Paul Paraka (Decision on Presentation of Indictment) (2020) N8229
The State v Paul Paraka (Decision on Further Amended Motion (No 1) (2020) N8608
The State v Paul Paraka (Decision on Further Amended Motion (No 2) (2021) N8807
The State v Paul Paraka (Decision on apprehension of bias) (2020) N8508
The State v Paul Paraka (2021) N8938
The State v Paul Paraka (Decision on Application to Call Additional Evidence) (2021) N9159
The State v Paul Paraka (Decision on Admission of Bank Records) (2022) N9568
The State v Paul Paraka (Application to Lead Evidence via Video Link) (2022) N9970
Kennedy v Cheah (2021) SC2157
Lama v NDB Investments Ltd (2014) N5970
Luma v State (2022) SC2249
Sam Koim v The State (2016) N6558
Powers, Functions, Duties and Responsibilities of the Police Commissioner (2014) SC1388
S v William (1995) N1380
Richard Dennis Wallbank and Jeanette Minifie v The State [1994] PNGLR 78
Odata Limited v Abusa (2001) N2106
The State v Graham Yotchi Wyborn (2004) N2847
Havila Kavo v The State (2015) SC1450
Wartoto v The State (2019) SC1834
David Kaya and Philip Kaman v The State (2020) SC2026
State v Merimba (2022) N9481
Roland Tom v State (2019) SC1833
Paulus Pawa v. The State [1981] PNGLR 498
Maladina v The State (2016) SC1495
The State v Epei (2019) N7845
The State v Joan Kissip (2020) N8184
The State v Felix Kange (2020) N8488
R v Birch [1978] PNGLR 79
Maraga v The State (2009) SC968
James Pari & Bomai Tine Kaupa v The State [1993] PNGLR 173
Brian Kindi Lawi v The State [1987] PNGLR 193
R v Easton [1994] 1 Qd R 532

Kalinoe v Paul Paraka Lawyers (2014) SC1366
Kimisopa et al v Paul Paraka trading as PPL (2009) SC1325
Kalinoe et al v Paul Paraka trading as PPL (2010) SC1024
Banaso v The State (2022) SC2302
Imiyo Wamela v The State [1982] PNGLR 269
Karani and Aimondi v The State (1997) SC540
Aparo, Araba, Haio, Tinidipu and Akwia v The State [1983] SC249
Pritchard v State (2016) SC1541
Ingian v State (2022) SC2263
The State v Hasu (2018) N8656
The State v Bobby Leva (2019) N8696
The State v Wai (2020) N8182

Overseas Cases

De Gruchy v The Queen [2002] HCA 33; 211 CLR 85
Muhammed El Dabbah v Attorney-General for Palestine [1944] AC 156 PC
Apostilides v R (1984) 154 CLR 563
R v Harris [1927] 2 KB 587
R v Soma (2003) 212 CLR 299
R v Shaw (1991) 57 A Crim R 425
Whitehorn v R (1983) 152 CLR 657
R v Newland (1997) 98 A Crim R 455
R v Olivia [1965] 3 All ER 116
Dyers v R (2002) 210 CLR 285
Jones v Dunkel (1959) 101 CLR 298
RPS v The Queen (2000) 199 CLR 620
Stuart v The Queen [1974] HCA 54; (1976) 134 CLR 426
R v Oberbillig [1989] 1 Qd R 342
R v Adams [1998] QCA 64
Attorney-General's Reference (No 1 of 1975) [1975] 2 All ER 684

References Cited

Sections 11, 37, 44, 49, 51, 57, 155, 187, 197, 213, 214, *Constitution*
Sections 7, 23(2), 383A, 531, 573, 588, *Criminal Code* (Ch. 262)
Sections 7, 8, 13, *Attorney-General Act*, 1989
Section 6, *Search Act*
Sections 44, 61, 65, *Evidence Act*
Sections 13, 14, *Claims By and Against the State Act*
Section 16, *Police Act*
Sections 3, 4, 7, *Audit Act*
Section 4, *Underlying Law Act 2000*

Counsel

Ms H. Roalakona and Ms S. Mosoro, for the State
Mr P. Paraka for himself

DECISION ON VERDICT

26 May, 2023

1. **BERRIGAN J:** The accused is charged with five counts of misappropriating property belonging to the State, contrary to s 383A(1)(a)(2)(d) of the *Criminal Code* (Ch. 262) (*Criminal Code)*.

2. In summary, the State alleged that each year between 2007 and 2011 the accused caused very large amounts of State monies, in total almost K163m, to which he had no entitlement, to be paid by the Department of Finance (DoF) to the bank accounts of various law firms - Sino & Company Lawyers, Jack Kilipi Lawyers, Harvey Nii Lawyers, Sam Bonner Lawyers, Korowi Lawyers, Kipoi Lawyers, Yapao Lawyers and PKP Nominees Ltd (PKP Nominees) – and from there to the bank accounts of his own law firm, Paul Paraka Lawyers (PPL), or his company, PKP Nominees.

3. A trial was conducted on indictment charging the accused with five counts of misappropriation such that he:

Count 1: **between the 24th day of April 2007 and the 31st day of December 2007 at Port Moresby, National Capital District in PNG dishonestly applied to his own use and to the use of others the sum of Thirty Million and Three Hundred Thousand Kina (K30, 300, 000) the property of the Independent State of Papua New Guinea.**

Count 2: **between the 28th day of February 2008 and the 31st day of December 2008 at Port Moresby, National Capital District in PNG dishonestly applied to his own use and to the use of others the sum of Thirty Million and Fifty-Four Thousand, Three Hundred and Twelve Kina and Sixty-Eight toea (K30, 054, 312.68) the property of the Independent State of Papua New Guinea.**

Count 3: **between the 11th day of March 2009 and the 18th day of August 2009 at Port Moresby, National Capital District in PNG dishonestly applied to his own use and to the use of others the sum of Fourteen Million, Four Hundred and Eighty Thousand, Six Hundred and Seventy-Two Kina and**

Twenty-Eight Toea (K14, 480, 672.28) the property of the Independent State of Papua New Guinea.

Count 4: **between the 20th day of January 2010 and the 29 day of November 2010 at Port Moresby, National Capital District in PNG dishonestly applied to his own use and to the use of others the sum of Thirty Nine Million, Eight Hundred and Eight Thousand, Six Hundred and Ten Kina (K39, 808, 610) the property of the Independent State of Papua New Guinea.**

Count 5: **between the 14th day of January 2011 and the 29th day of November 2011 at Port Moresby, National Capital District in PNG, dishonestly applied to his own use and to the use of others the sum of Forty Eight Million Two Hundred and Sixteen Thousand and Six Hundred Kina (K48, 216, 600) the property of the Independent State of Papua New Guinea.**

Contrary to section 383A(1)(2) of the *Criminal Code*.

4. On arraignment the State alleged that:

"The accused, Paul Paraka owned and operated a law firm under his name as Paul Paraka Lawyers.

In about 2000, Paul Paraka Lawyers (PPL) was engaged by the Attorney General and the Office of the Solicitor General to act for and on behalf of the State in civil litigation matters.

On 17 October 2006, the State withdrew its instructions from PPL and instructed PPL to cease to act as of Monday 20 November 2006.

Between 2007 and 2011, a number of payments were made by the State to various law firms' accounts for alleged outstanding legal bills. This led to a directive for an investigation into the Department of Finance into these payments in 2013.

In 2014, an audit report was compiled and revealed that the payments were made to various law firms' accounts which were as follows:

No	Company/Law Firm	2007 (K)	2008 (K)	2009 (K)	2010 (K)	2011 (K)	Total Paid
1	Sino & Company Lawyers	14,300,000	5,452,983.97	2,050,000	2,000,000	15,608,300	39,411,283.97
2	Jack Kilipi Lawyers		5,902,700	2,050,000	3,000,000	12,108,300	23,061,000
3	Harvey Nii Lawyers	3,000,000			7,830,610		10,830,610
4	PKP Nominees Ltd	3,500,000	15,336,205.94	10,380,672.28	18,993,000	20,500,000	68,709,878.22

5	**Sam Bonner Lawyers**	**3,500,000**					**3,500,000**
6	**Kipoi Lawyers**				**3,990,000**		**3,990,000**
7	**Korowi Lawyers**	**3,000,000**	**3,362,422.77**		**3,995,000**		**10,357,422.77**
8	**Yapao Lawyers**	**3,000,000**					**3,000,000**
	Total	**30,300,000**	**30,054,312.68**	**14,480,672.28**	**39,808,610**	**48,216,600**	**162,860,194.96**

Further investigation revealed that these payments were made to these various law firms' accounts. The State alleges that the accused then caused these law firms to receive the payments as conduits on his behalf and then transfer the monies to the accused bank accounts namely: Paul Paraka Lawyers account no. 1000586112 and PKP Nominees Limited account no 1000587335. These payments were allegedly for outstanding legal bills.

The Office of the Solicitor General was consulted as to whether the State had engaged any of these law firms. The OSG had no records of any brief outs to any of the above-mentioned firms that received the payments from the Department of Finance. Further, a list of matters which the accused had relied upon for his justification for payment was cross checked by the Office of the Solicitor General which revealed that most of the matters listed by the accused as being briefed out to his firm were never briefed out by the State. There was also no clearance from the then Attorney General for the payments.

The State says that the accused had dishonestly applied to this own use and to the use of others in contravention of section 383A (1)(2) of the *Criminal Code* the following monies:

a. **Between 24 April and 31 December 2007 a sum of K30,300,000.00;**
b. **Between 28 February and 31 December 2008 a sum of K30,054,312.68;**
c. **Between 11 March and 31 December 2009, a sum of K14,480,672.28;**
d. **Between 20 January and 29 November 2010, a sum of K39, 808, 610.00;**
e. **Between 14 January and 29 November 2011, a sum of K48, 216, 600.00**

The accused was not entitled to the monies at the material time.

The State invokes section 7 of the *Criminal Code*."

5. The accused pleaded not guilty to all charges. He represented himself.

BACKGROUND

6. The matter has a somewhat lengthy history in the National Court. The accused applied to have the prosecution stopped on human rights grounds before another judge, which application was refused: *Paraka v Kaluwin* (2019)

N7975. The State presented an indictment pursuant to s 526 of the *Criminal Code* on 6 December 2019. The accused objected to the indictment for failing to comply with s 526 of the *Criminal Code*. The objection was refused and the indictment accepted: *The State v Paul Paraka (Decision on Presentation of Indictment)* (2020) N8229. The accused subsequently applied for the indictment to be quashed, and the proceedings to be permanently stayed for abuse of process, on numerous grounds. The objections were refused: *The State v Paul Paraka (Decision on Further Amended Motion (No 1)* (2020) N8608; and *The State v Paul Paraka (Decision on Further Amended Motion (No 2)* (2021) N8807. See also *The State v Paul Paraka (Decision on apprehension of bias)* (2020) N8508. There were various delays occasioned by the pandemic and the accused's health at times. The accused represented himself and allowance was made in this regard. An amended indictment was presented pursuant to my directions, following which there was a further application to quash, which was refused: *The State v Paul Paraka* (2021) N8938.

7. On arraignment the accused pleaded not guilty to all charges. He represented himself at trial.

STATE'S CASE

8. Following arraignment a voir dire was conducted on objection by the accused to the admission of bank records produced by Bank of South Pacific (BSP) and Australia New Zealand Bank (ANZ) including, in particular, bank statements for the accounts of PPL, PKP Nominees, and the seven law firms identified above, on the basis that the records were unlawfully obtained under search warrant. The objections were refused and the bank records admitted into evidence on the trial proper: *The State v Paul Paraka (Decision on Application to Call Additional Evidence)* (2021) N9159 and *The State v Paul Paraka (Decision on Admission of Bank Records)* (2022) N9568.

9. On 6 April 2022 the accused sought a four-month adjournment on medical grounds. A four-month adjournment was refused but the matter was adjourned pending a monthly review until the matter could proceed. A subsequent application to adjourn the trial for several further months to allow the accused to contest the National General Election was refused but for various reasons the trial did not recommence until 9 August 2022.

10. In total the State called ten witnesses, including three during the voir dire. The evidence of the witnesses who gave evidence on the voir dire, which became evidence on the trial proper upon the admission of the bank records, is

set out in my decision in *The State v Paul Paraka (Decision on Admission of Bank Records)* (2022) N9568. The evidence of all but one of the remaining witnesses was vigorously challenged by the accused. In the circumstances it is most convenient to summarise it in some detail.

11. **Jessy Yore** has been employed with the Department of Finance since 2005 and is currently the Assistant Secretary, Prevention and Deterrence, Financial Accountability and Inspection Division, DoF. In 2014 he was the Assistant Secretary, Audit Branch with the Internal Audit and Compliance Division of the Department of Finance, a position he held between 2012 and 2018.

12. For the payment of claims by DoF the service provider submits the invoice to the relevant division, which raises the claims, namely an FF3 form for approval from a particular vote, and an FF4 form providing a brief description of the claim. Each claim is to be accompanied by supporting documentation. The claim is submitted to the officer authorised by the Departmental head to approve the claim pursuant to s 32 of the *Public Finances (Management) Act* (PFMA). Claims are then referred to the accounts section where they are examined and certified. Brief details of the purpose of the payment are then recorded on the electronic PNG Government Accounting System (PGAS) which generates a cheque payable to the payee. The system captures information about the payment including the amount, number and date of the cheque issued. Each payee or service provider is given a unique code by the system.

13. Mr Yore produced 18 of the 21 PGAS payee history reports for Harvey Nii Lawyers, Sino & Co Lawyers, Sam Bonner Lawyers, Yapao Lawyers, Korowi Lawyers, Jack Kilipi Lawyers and PKP Nominees Ltd that he retrieved with the assistance of the DoF's IT section from PGAS for the years 2007 to 2010, and which he provided to police on 22 January 2014 in response to their request and upon instructions from the DoF Secretary: Exhibit P16 and P16-1 to P16-18. The Secretary approved the request by handwritten note on a letter from police.

14. Whilst no objection was taken at the time, the accused now objects to the documents. He submits that the reports are hearsay as they were provided to Mr Yore by the IT Manager of DoF but that person was not called to give evidence and nor were the person or persons who entered the information into PGAS. In addition, the Finance Secretary's direction was not produced and the documents

were not obtained under search warrant. The documents were unlawfully provided in breach of s 6 of the *Search Act* and ss 44(1) and 49 of the *Constitution*, and should be rejected under ss 11 and 57(3) of the *Constitution*.

15. I reject those arguments.

16. The reports which are writings purporting to be a memorandum or record of acts, matters or events were admissible in evidence as proof of the facts stated in them pursuant to s 61 of the *Evidence Act*. The reports were produced through Mr Yore, whose evidence was supported by Mr Kaivila also of DoF, as to the process during which the acts, matters and events contained in the reports are recorded and kept in PGAS as part of DoF's operations. Mr Yore also gave evidence as to the source from which the reports were produced and the circumstances in which they were received by him for the purposes of s 61(4).

17. Ideally a formal statement by the relevant IT officer would have been produced. Considering the evidence, however, it appears to me that the records were made in the regular course of the business of DoF at about the time of the doing or occurrence of the acts, matters or events captured in the PGAS reports, namely, the issuance of a particular cheque, bearing a particular number, on a particular date, for a particular amount, payable to a particular payee for a particular reason, for the purposes of s 61(2)(a) of the *Evidence Act*. Mr Yore gave evidence as to the source from which the reports were produced, namely IT which maintains PGAS, and the circumstances of their receipt and custody by him, namely in accordance with the standard procedure for the retrieval of records from the IT Manager, First Assistant Secretary, Keith Dill. In considering the issue I have taken into account that Mr Yore has detailed knowledge and extensive familiarity with the circumstances relating to the preparation of such records generally, their appearance, and the particular circumstances in which the records were produced to him in response to his request: see s 61(5) of the *Evidence Act*. Having regard to all of the circumstances, I am satisfied that the source of the information, and the method and time of the preparation of the reports are such as to the indicate their trustworthiness for the purpose of s 61(2)(b) of the *Evidence Act*.

18. For similar reasons, I am also satisfied from Mr Yore's evidence that the statements contained in the reports are admissible as evidence of the facts stated on the basis that the reports were produced by DoF's PGAS in the course of a period during which the computer system was used regularly to store or process

information for the purposes of activities regularly carried on over that period, for the purposes of s 65, *Evidence Act*.

19. The fact that the letter from the Secretary of DoF authorising the release of the records has not been produced does not affect my decision that the documents are admissible and reliable. I also reject the submission that the records were obtained in breach of ss 44 and 49 of the *Constitution* in the absence of a search warrant.

20. There was no contravention of s 44 of the *Constitution* (*freedom from arbitrary search and entry*) which provides that no person shall be subjected to the search of his person or property or to entry of his premises, except to the extent that the exercise of that right is regulated or restricted by a law, namely the *Search Act*. There was no search and entry. The documents were voluntarily provided to police by an appropriate officer from the DoF.

21. There was no contravention of s 49 of the *Constitution* (*right to privacy*) which provides that every person has the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects, except to the extent that the exercise of that right is regulated or restricted by a law that complies with s 38 (*general qualifications on qualified rights*).

22. The records were not the personal papers of any person. They were records belonging to the State, in particular official documents recording the payment of State monies. The release of such records by the State to its own investigative agency, namely the RPNGC, for the purpose of investigating the alleged abuse of State monies was permissible and did not constitute a breach of the reasonable right to privacy of any of the payees the subject of the records in the circumstances.

23. Furthermore, the records were prima face accessible to any citizen pursuant to s 51 of the *Constitution*, which provides that every citizen has the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society in respect of certain matters, including financial information obtained from a person or body.

24. Mr Yore also identified four documents as printouts from DoF's Integrated Financial Management System (IFMS) that replaced PGAS. He was

familiar with the system but did not recall retrieving the documents or producing them to police. The admission of the documents was objected to and they were marked for identification. Ultimately the State did not call another witness to press the tender and they were not admitted.

25. In cross-examination Mr Yore said that his division audits sections of DoF on an annual basis. He cannot recall receiving any complaints about payments to the various law firms other than when asked for assistance by police. The annual auditing process did not detect that the payments were illegal or improper.

26. A request was made to the custodians, the accounts section at DoF, to produce the payment vouchers for the payments but it was unable to produce them. It is not possible from the PGAS reports to tell whether the claims were raised from within DoF or from an external department. DoF does sometimes receive claims from external departments, provincial departments and agencies. The classic example is court order funds, which are paid by DoF, or claims for workers compensation. Otherwise agencies have their own budget and claims are referred back to the agencies to pay from their own budget. He agreed that sometimes services are provided to other departments but DoF pays. Sometimes payments are directly authorised by the Prime Minister and NEC. He has seen occasional, urgent or one-off directions from the Secretary for the processing of claims, sometimes at the request of the Prime Minister. He is not aware of urgent cases where the Department of Justice and Attorney-General (DJAG) deals with the Secretary directly.

27. To his knowledge copies of payment vouchers are not stored electronically. In the absence of payment vouchers it was not possible to know the source, accuracy or purpose of the payments referred to in the PGAS reports. Some of the clerks from that period have died or moved on.

28. He explained further that claims are raised by the requisitioning officer who prepares the FF3 and FF4 forms with supporting documentation, the claim is processed through the commitment clerk who puts all the invoices together and then it goes to the examining officers, who examines the claim, the s 32 officer who approves the claim, and the certifying officers who certifies the claim before it goes to the paying officer to process the cheque. Only the Secretary, DoF, can approve claims above K100,000. He has unlimited power. The system is designed to detect people conspiring to bypass the process but

anything can happen. But the system always captures the resulting transaction. It keeps a record.

29. With respect to court orders, DJAG maintains the case management system and sends the court orders to DoF for payment. Sometimes they attach all FF3, FF4 and supporting documents. DoF, which maintains the budget, processes the claim based on the availability of funds. DJAG picks up the cheque and does the payment. Payment may be made to the claimant or the law firm representing the claimant. There may be cases where an aggrieved person goes direct to DoF for payment of a court order. But cheques go back to DJAG to maintain a record of the State's legal liabilities. He conceded that sometimes this does not happen.

30. **Yeme Kaivila**, is a Senior Acocuntant with Accounts Payable at DoF, with which he has been employed since 1983. From 2007 to 2009 he was on study leave. When he resumed in 2009 someone else was acting. He applied and has been in the position since 2010.

31. The commitment clerk is responsible for creating the unique code assigned to a particular payee. The commitment clerk enters the claim into the system. After commitment the examining officer checks that the claim, the FF3 and FF4 forms, are supported by documentation before it is given to the certifying officer, and then to the s 32 officer for approval. S 32 officers include the First Assistant Secretary, the Assistant Secretary, and the Secretary of the Department. After the s 32 officer signs, the claim comes back to the accounts section again, which proceeds with cheque printing. The commitment clerk generates the cheque. After the cheque is printed, the paying officer takes it and cross checks against the claim before paying the cheques out at the counter and finally filing the documents. Cheques are returned to DoF for reconciliation purposes after cleared for payment at the bank.

32. In PGAS the cheque numbers are produced by the system. Cheques are run at 11 am and 3 pm, following which the paying officer collects the claims and cross checks the cheques against the claims Cheques are then sorted to the relevant vote or division where the claims originated within DoF. After that cheques are kept by the paying officer in the paying room for collection. The commitment or paying officer moves the physical claims to the record room where they are filed according to date and cheque number. The keys to that room are kept by building management which is attached to Corporate Services.

33. On 13 August 2014 he became aware of a request by the Director of the Fraud Squad, Mathew Damaru, and Sgt Nicholas Taulo, which was approved by the Acting Secretary, Ken Nangan, to retrieve all documentation relating to the following three cheques paid to Korowi Lawyers by DoF, numbers: 881538 for K1,862,422.77 dated 18.7.08; 874653 for K1.5m dated 28.02.08; and 872750 for K3m dated 31.12.07, Exhibits P17-1,P17-2 and P17-3, respectively. And for two cheques paid to Sam Bonner Lawyers by DoF, numbers 860503 for K1.5m dated 26.04.07 and 861301 for K2m dated 15.05.07, Exhibits P18-1 and P18-2, respectively.

34. He obtained the original cheques from DoF's account section and the key to the record room in which claims are filed according to cheque numbers. Despite making careful and extensive searches, several times, which included wide searches in the months in which the cheques were issued, he was unable to locate the supporting claim documentation requested.

35. No objection was taken to the admission of the cheques at the trial. The accused now objects on the basis that there was no warrant and the letter authorising the release was not produced and the Secretary was not called and that the cheques were produced in breach of the *Search Act* and ss 44 and 49 of the *Constitution* and are therefore invalid under s 11 of the *Constitution* and must be rejected as null and void under s 57(3) of the *Constitution*.

36. The objection is refused. I repeat my comments above.

37. In cross-examination Mr Kaivila agreed that he could not know the real nature of the payments without the claim documentation.

38. All legal bills against the State come from DJAG to the Financial Control Division and then to the s 32 officer to approve for amounts greater than K50,000 and from there the process continues in the normal way at the accounts department. He is not aware of any circumstances where claims come directly to DoF and not through the Office of the Solicitor-General (OSG). They are always paid out of the court order vote.

39. He was not asked to provide information about any other law firms to police. He was not aware of any allegations involving improper payments to Sam Bonner or Korowi Lawyers prior to 13 August 2014. There was no search

warrant but he had a letter from the Fraud Squad to the Secretary who approved the search. He told police he could not find the requisitons and vouchers and supporting documents. Vouchers are not kept electronically.

40. He had no experience of someone being pressured to approve claims without proper documentation. It should not happen.

41. There is no difference between PGAS and IFMS. The only difference is that cheque numbers are automatically generated by PGAS whereas for IFMS cheque numbers are given by the BPNG and printed by Moore printing.

42. **Ekip Pop** is an Assistant Auditor-General with the Office of the Auditor-General. In 2012 or 2013 he was directed by the Auditor-General to join Taskforce Sweep (TFS). He produced Exhibit P19, a report headed *"Investigation into Purported Legal Fees and Court Order Payments made to Paul Paraka Lawyers by the Department of Finance (2007 to 2013)"*. The report was prepared on the materials provided to him by the Fraud Squad from DoF and the banks.

43. After reviewing DoF's accountings records, PGAS and IFMS printouts, and bank records he found that certain monies had been paid to PPL or PKP Nominees through the accounts of several law firms during the period 2007 to 2011. He traced the monies through from the PGAS and IFMS records, through the various accounts, and observed that the monies paid to the firms were transferred almost immediately from the firms to PPL or PKP following receipt, less a deduction of between 5% and 10% usually retained by the firm. He explained the process that he undertook.

44. Attachment D to his report contains tables setting out the cheques paid by DoF to PPL, PKP Nominees, Harvey Nii Lawyers, Jack Kilipi Lawyers, Sino & Co Lawyers, Sam Bonner Lawyers, Yapao Lawyers, Korowi Lawyers, Kipoi Lawyers, and others during the period 2007 to 2013. What happened in 2012 and 2013 is arguably relevant to this case but out of an abundance of caution I have excluded those payments which relate to 2012 and 2013 from my consideration. His table contains the number, date, payee and amount of the cheque in each case, except that the cheque number is not available in six cases during the relevant period.

45. He formed the view that the payments were in breach of the PFMA given that the sum of money paid to a single law firm, PPL, over several years, was well above K10m, which required the approval of the Central Supply & Tenders Board, and that payments were "split" into amounts less than K10m to avoid the requirement, and that the payments breached the PFMA for being paid in the absence of both Certificates of Legal Clearance and Certificates of Technical Compliance as the payments purportedly related to legal services to the State. He formed the view that the monies had been channelled through the accounts of other firms to PPL and recommended the investigation and charging of several persons.

46. Under cross-examination he agreed that he did not speak to officers within DoF who would have been responsible for processing the payments. He agreed that cheques cannot normally be printed unless all stages of the approval process, through various officers, have been complied with. He was not aware of any complaint to the Auditor-General's Office between 2007 to 2013 about irregular payments by DoF prior to his involvement in the investigation.

47. He had access to the cheques referred to in his report in Attachment D. The payment vouchers and other source documents were missing. He agreed that he formed the view the payments were for purported legal bills but he did not have the payment vouchers and only relied on PGAS and IFMS to form that view.

48. He repeated several times that DoF was unable to produce the payment vouchers. He maintained that he reviewed the PGAS, IFMS reports and bank records and he strongly rejected the suggestion that the report was not his and that he merely signed it upon direction from members of TFS. He agreed that he received a monthly allowance of between K2000 and K5000 as a member of TFS. He did not think it was wrong for him to receive the allowance. There was a time frame and they had to work long hours. The allowance did not influence the findings or recommendations in his report. His independence as an officer of the Auditor-General's Office was not compromised by sitting with TFS, first in Gordons and then when that was broken into, at Waigani. The investigation was sanctioned by the government. He is from Western Highlands Province. He is told that Mr Koim is from WHP but Mr Koim is not a personal friend and he did not predetermine fault on the part of the accused because he was working with Mr Koim.

49. **Kenneth Mowi**, Enforcement Officer, Legal and Compliance, Investment Promotion Authority (IPA) produced extracts for the following business names, registered as law practices, Exhibits P25 to P29:

- Paul Othas Lawyers, showing start and registration date as 18 April 2011.
- Harvey Nii Lawyers, showing start and registration date as 3 July 2007. Harvey Bill Nii is the associated person.
- Sino & Company Lawyers, showing start and registration date as 1 January 2007 and 8 December 2006, respectively, and a further registration in August 2013. Kumoro Sino is the associated person.
- Jack Kilipi Lawyers, showing start and registration date as 27 May 2012 and 3 May 2012. Jack Kulipi Be'Soer is the associated person.
- Paul Paraka Lawyers, showing business start date and registration date as 1 January 1995 and 21 March 2011, respectively. Paul Paraka is recorded as the associated person. The principal place of business is 7th Floor, Mogoru Moto Building, Champion Parade, Down Town, Port Moresby. Postal address PO Box 501 Port Moresby, NCD.

50. He also produced a company extract, as at 9 August 2013 for PKP Nominees Ltd, incorporated 17 February 2000, Exhibit P30. Paul Paraka is the sole director and sole shareholder of the company. The principal place of business is registered as Paul Paraka Lawyers, 7th Floor Mogoru Motu Building. Its registered postal address is C/Paul Paraka Lawyers, PO Box 501, Port Moresby, NCD. The address for service is Paul Paraka Lawyers. Its principal activity is property investment. It has one full time employee and no part time employees.

51. **Christine Gimots**, Acting Case Management and Systems Manager with the OSG, was the Senior Brief-out and Payments Clerk with the office from 2006 til 2021. She was responsible for the inputting of brief-out bills or invoices into the office's case management system before sending them down to accounts for cheque raising. The invoices were received from private law firms who were briefed out by the State. Brief-outs were done by the Attorney-General upon consultation with the Solicitor-General. When a brief-out instruction was signed by the Attorney-General, the letter was sent to the law firm engaged and a copy sent to her and the details entered into CMS, with a hard copy filed as proof of engagement.

52. In 2013 she was given four lists by CI Gitua: "Paul Paraka Lawyers Summary of ISPNG Bills to DJAG as at 30 June 2005"; "Paul Paraka Lawyers Summary of bills of land matters to DJAG as at 30 December 2005"; "Paul

Paraka Lawyers Summary of bills to DJAG as at 30th December 2005"; and "Paul Paraka Lawyers Summary of Bills to DJAG as at 31 December 2006", Exhibits P21, 22, 23 and 24, respectively. The total costs recorded in the lists were K8,977,186, K5,420,703.26, K15,397,676.63 and K1,278,993.50, respectively.

53. She conducted a search to see if the files were recorded on CMS She annotated the lists and summarised her findings in Exhibit P20. According to CMS, of the 1630 matters listed: 42 were briefed out to PPL and records were kept of payments made to it; 270 were briefed out to PPL "just on the initiation screen" - it appears that PPL served a notice of appearance on the OSG but there was no record of counsel fees or payments made; 21 were briefed out to other law firms; 778 were not briefed out but were under the carriage of officers in the OSG; and there were no records at all for 519 matters, meaning that the office did not hold any such files.

54. CMS was able to calculate how much had been paid for any particular matter. The brief-out firm submitted an invoice on a monthly basis and a final fee was submitted when they completed the matter, together with a brief to the Solicitor-General. Bills were paid by DJAG. Court ordered judgements were paid directly by DoF after clearance by the Solicitor-General. They were sent in batches to DoF.

55. There were no brief-outs by the OSG to: Sino & Co in 2007, 2008, 2009, 2010 or 2011; Jack Kilipi Lawyers in 2008, 2009, 2010 or 2011; Harvey Nii Lawyers in 2007 or 2010; Kipoi Lawyers in 2010; or PKP Nominees between 2007 and 2011. She could not recall the OSG engaging: Sam Bonner Lawyers in 2007; Korowi Lawyers between 2007 and 2010; Yapao lawyers in 2007; or any of the named law firms prior to 2007. She was asked by police to check CMS in respect of the named law firms for legal bills and found no information on the firms and no bills owing to them. She was not asked to check for court ordered judgements.

56. Between 2007 to 2011 cheques for all legal bills incurred by the OSG were raised through DJAG's accounts section and passed to the OSG for payment. She was not aware of any occasion when legal bills were paid directly by DoF. She was the authorising officer at the time for the payment of cheques. She collected the cheques and drafted the letter for release. Once the letter was signed by the Solicitor-General she called the law firm to collect the cheques. Requisitions attaching the invoice were sent to the Solicitor-General for

approval, then to the Department Secretary to sign off as the s 32 officer, and then forwarded to the accounts section to do checks before raising the cheque for payment to the respective law firm's trust account. She never experienced a payment of legal bills greater than K1m.

57. In her experience the Attorney-General consulted the Solicitor-General on the brief-out of files because the files were held with OSG. She was aware that the Attorney-General had directly briefed out some matters in the past. In those cases the OSG obtained a copy of the instruction which was filed and recorded in CMS. In her experience when firms are briefed out by other State departments and provincial governments they write to the Solicitor-General with a bill, which he vetted before sending it back to the respective department to make payment.

58. **Miriam Kias Kiap**, was employed with DJAG from 2003 to April 2022 rising to the position of Deputy Secretary of Legal and Policy Division in 2019. She served as Acting Deputy Solicitor-General at various times, most recently in 2013 and 2014. Whilst Acting Deputy Solicitor-General she oversaw the Police Team and the Costs and Recovery Team, which was set up to oversee the processing and payment of all judgements against the State. The team also oversaw the management of brief-outs, and the filing and keeping of their records.

59. The Attorney-General has the sole prerogative to appoint external lawyers to appear for the State in any matter under s 7 of the *Attorney-General Act*, 1989. The Solicitor-General acts as manager of all claims briefed out by the State. In practice the recommendation would come from the Solicitor-General to the Attorney-General to have a particular matter briefed out, for example because of its complexity or because it required expertise or resources that the office did not have. Matters are briefed out on an individual basis. The State does not give "umbrella or blanket" brief-outs. That is not practical from a management perspective because it has to keep track of all matters briefed out. Fees and invoices are submitted monthly. On approval they are paid from a dedicated trust account managed and housed within DJAG for the payment of legal fees. This is separate from the process for the payment of court judgements, which are paid by DoF upon approval by the Solicitor-General.

60. Once the Attorney-General signs off on a brief-out instruction to a private lawyer, a letter of instruction is drafted dictating when the law firm submits its bill of costs and how the bill is to be itemised. A copy of the instruction letter is

always sent to the OSG to be kept on the State's file. A copy is also placed on the electronic case management system.

61. Invoices are usually submitted on a monthly basis. The OSG payments team goes through the bill and checks the work to ensure that there is no duplication of work or bills. A requisition form is filled out and is signed off by the OSG and the Deputy Secretary for Corporate Services and that goes down to the Finance Division to draw down from the trust account to pay the lawyer's fees based on the invoice submitted. When funds are available then the fees are paid. The process is set up to ensure that all the bills come to DJAG for payment so that it monitors and manages the State's exposure to liability. Any payment outside that process might require an executive decision but she was not aware of any instance when bills were paid outside the process described.

62. She recalled that during her time as Deputy Solicitor-General there were some brief-outs to PPL but it would not be more than 10 or 15 matters. From her recollection and according to the OSG's records they were settled. To her recollection and the records at the time there were no brief-outs to PPL in 2011.

63. She became involved in the police investigation when DC Pius Peng approached the office in 2014. At the time she was the Team Leader of the Police Team. Then Acting Solicitor-General, Jubilee Tindiwi, directed her team, the Police Team, to conduct an internal investigation of all records in DJAG, not just the OSG, into the briefing out of legal work on behalf of the State to PPL. She appointed two or three other staff within the team to carry out the investigation. They went through the whole department with a fine-tooth comb to identify any records that might relate to any transaction or brief-out to PPL. They found that most of the State's files for PPL were missing or misplaced for whatever reason and they had to identify how many brief-outs they had on record. Less than 15 or 20 specific matters had been briefed out to PPL.

64. To her recollection there were no brief-outs to Sino & Co Lawyers or Jack Kilipi Lawyers, Korowi Lawyers or Yapao Lawyers between 2007 and 2011. There were some brief-outs to Harvey Nii Lawyers but she could not recall if it was within that period. There may have been one or two brief-outs to Sam Bonner Lawyers during that period but she could not be sure. There were no brief-outs to PKP Nominees Ltd between 2007 and 2011. According to the records, of the matters briefed out to PPL all fees were paid on the invoices rendered and nothing was outstanding. As for the other firms, if they were owed anything the bills were settled.

65. There is no specific time frame within which legal bills are settled by the OSG. It depends on whether funds are available. There have been instances when there are no funds available at the time the bill is submitted but as soon as funds hit the account, payments are made.

66. One of the key findings from the internal investigation was that there was no unilateral or blanket brief-out to PPL to enable the firm to assume the State's representation in civil matters filed in court around the country. There had been instances where officers from the OSG went to court to enter an appearance and lawyers from PPL were entering appearance for and on behalf of the State in the same matter. The investigation put their minds to rest that there was no blanket brief-out. Whilst there were brief-outs, they were for specific matters, not more than 20.

67. In October 2006 following reports of payments being processed by DoF to PPL for legal fees, directives were issued for DoF to stop processing any payments of fees to PPL. NEC directed that any existing brief-outs were to be recalled and to cease any kind of payment to PPL. In response PPL filed judicial review proceedings in the National Court: OS 829 of 2006 filed by PPL against the Chief Secretary, Acting Secretary for Department of Finance, Secretary for Department of Treasury and the State; and OS 867 of 2006 filed by PPL against the Minister for Justice, the Secretary for the NEC and the State. There was a third proceeding, MP 944 of 2006 brought by PPL which challenged the taxing master's decision to refuse to have the firm's fees taxed.

68. OS 867 of 2006 sought judicial review of the directive to recall brief-outs and the direction to carry out a departmental enquiry. Leave was granted and there was a stay of the Minister's decision. This led to the State appealing in SCM 3 of 2007 and obtaining a stay of all National Court proceedings pending the outcome. The State's representation in the proceedings was briefed out to private lawyers.

69. Ms Kias identified a number of court orders which she recognised as those served on the OSG by the lawyers who were engaged to act for the State in the various proceedings: Exhibits P31, P32, P33, P34 and P35. No objection was taken at the time and in both cross-examination of Ms Kias and in some parts of his submissions on verdict the accused seeks to rely on the court orders for various purposes, discussed further below. At other places in his

submissions the accused asks the Court to reject the exhibits as hearsay on the basis that Ms Kias was not privy to the proceedings and the State failed to call the lawyers having conduct of the proceedings for the State. He also says that the documents are irrelevant.

70. Section 44 of the *Evidence Act* provides that (emphasis mine):

> **44. Judicial proceedings.**
> **Evidence of—**
>
> **(a) a judgement, decree, rule, order or other judicial proceeding of—**
> **(i) a court of Papua New Guinea, the High Court or a Federal Court of Australia or a court of a State or Territory of Australia; or**
> **(ii) a Judge, justice or magistrate of any such court; or**
> **(b) an affidavit, pleading or legal document filed or deposited in any such court, may be given in a court by the production of a document purporting to be a copy of it, and—**
> **(c) proved to be an examined copy of it; or**
> **(d) purporting to be sealed with the seal of the court; or**
> **(e) purporting to be certified as a true copy by a registrar or chief officer of the court."**

71. Firstly, as to compliance with s 44, *Evidence Act*, its operation is not mandatory. "Evidence of … may be given in a court". The court then, in its discretion is able to receive evidence of a judgement, decree, rule or order in other ways than those set out in s 44: *Kennedy v Cheah* (2021) SC2157 at [9].

72. Secondly, following the wording of s 44, *Evidence Act*, an order may be given in a court by the production of a documentation purporting to be a copy of it and (d), purporting to be sealed with the seal of the court: *Kennedy v Cheah*, *supra* at [11]; see also *Lama v NDB Investments Ltd* (2014) N5970 at [23].

73. In the case of Exhibit P32, the document purporting to be an order made by Sir Mari Kapi, Chief Justice, in proceeding SCM No 15 of 2006, there is a filing stamp dated 23 November 2006, and a signed endorsement by Ms Christine Daingo, Deputy Registrar. What purports to be a seal of the Supreme Court is affixed on pages 1 and 2. I am satisfied that Exhibit P32 complies with s 44 of the *Evidence Act* as it is an order given in a court by the production of a document purporting to be a copy of it and purporting to be sealed with the seal of the court.

74. Exhibit P33, the document purporting to be an order made in the National Court in OS No 876 of 2006, contains a signed endorsement on behalf of the

Registrar, Ian Augeria, and purports to bear the seal of the Court on pages 1 and 2. I am satisfied that it complies with s 44 of the *Evidence Act*.

75. Exhibit P34, the document purporting to be an order made in the National Court in OS No 876 of 2006, contains the name and purported signature of Justice Hinchliffe, and purports to be sealed with the seal of the court in the usual manner on page 1. I am satisfied that it complies with s 44 of the *Evidence Act*.

76. Exhibit P35, the document purporting to be an order made in proceeding SCM No 3 of 2007, contains a filing stamp dated 12 March 2007, a signed endorsement purporting to be that of Christine Daingo, Deputy Registrar and the purported seal of the Supreme Court on pages 1 and 2. I am satisfied that it complies with s 44 of the *Evidence Act*.

77. Exhibit P31, the document purporting to be an order made in OS No 829 of 2006 on 17 November 2006 is a document upon which the accused seeks to rely elsewhere in his submissions. It does not purport to bear the seal of the National Court. It does, however, purport to contain an endorsement on behalf of the Registrar. In addition, it is one of the orders which Exhibit P32 stays pending the hearing of the substantive proceedings. In those circumstances, and having regard to the fact that s 44 is not mandatory and the evidence of Ms Kias, I am satisfied that Exhibit P31 is a copy of the orders made in OS 829 of 2006 on 17 November 2006.

78. Whilst Ms Kias did not represent the State in the proceedings, given her senior role generally, and her particular role as the team leader of DJAG's internal review, and the team responsible for the management and payment of legal bills and court order judgments, I am satisfied that she would have been familiar with the proceedings the subject of the orders in Exhibits P31 to P35, and any orders made in them, especially as they affected the payment of legal fees. She identified the orders and they were admissible and admitted. For reasons that will become clear further below, I am also satisfied that the orders are relevant to the issues in this trial.

79. On 17 November 2006 the National Court in OS No 829 of 2006 *Between Paul Paraka trading as PPL v Joshua Kalinoe, Chief Secretary to Government, Gabriel Yer, Acting Secretary for Department of Finance, Simon Tosali,*

Secretary for Department of Treasury and the State made the following orders (emphasis mine):

> "1. Leave is granted for Judicial Review pursuant to Order 16(3) of the National Court Rules.
>
> 2. The stop-payment directive of the Chief Secretary through his letter dated 6th June 2006 to the Acting Secretary for Finance is stayed pending the determination of the substantive review pursuant to Order 16, Rule 8(a) of the National Court Rules.
>
> 3. The Third Respondent identify funds and issue a special warrant for the sum of K6,499,436.44 to the second Respondent forthwith, who in turn shall arrange the payments to be made to the Plaintiff by or before 1:30 pm today, Friday 17th November 2006.
>
> 4. Further or in the alternative, the Second Respondent identify savings/funds, and pay the Plaintiff **all its outstanding legal fees of K6,499,436.44** by or before 1:30 pm today, Friday 17th November 2006.
>
> 5. Once the cheque is paid to the Plaintiff pursuant to Orders under either paragraph 3 or 4 hereof, the Respondents by themselves or through their Agents and servants are restrained from canceling or countermanding or putting a stop payment on the cheque.
>
> 6. The Respondents, by themselves or through their servants and agents and employees, including their respective Ministers and any other Ministers including their servants and agents are restrained from issuing any or further stop-payment directives, or from taking any steps whatsoever to frustrate, or delay or cease payments in legal fees owing to the Plaintiff upon the necessary clearance by the Attorney-General, pending the determination of the substantive judicial review.
>
> 7. The Second and Third Respondents shall pay the Plaintiff out of monies lawfully available **any subsequent legal fees** of the Plaintiff that have been or may be send to them by the Attorney-General upon necessary clearance by the Attorney-General, pending determination of the substantive judicial review.
>
> 8. That the Minister for Justice and the Attorney-General, by themselves, or through their servants and agents be restrained from issuing any directives, or any form of advice whatsoever to the Second and Third Respondents for the purpose of stopping, frustrating or delaying or ceasing payments of legal fees owing to the Plaintiff Legal Firm pending determination of the substantive judicial review.
>
> 9. That parties are to appear before the Court at 1:30 pm today, Friday 17th November 2006 to advice the Court of the compliance of Orders in paragraph 3 and 4 herein and for further directions."

80. By order of 22 November 2006 in SCM 15 of 2006 *Between Joshua Kalinoe, Chief Secretary to Government, Gabriel Yer, Acting Secretary for Department of Finance, Simon Tosali, Secretary for Department of Treasury, the State and Paul Paraka trading as PPL,* the Chief Justice, Sir Mari Kapi,

stayed the National Court orders made in OS 829 of 2006 on 17 November pending the outcome of the appeal: Exhibit P32.

81. On 29 December 2006 the National Court in OS 876 of 2006 *Between Paul Paraka trading as PPL v Biri Kimisopa, Minister for Justice, Winnie Kiap, Secretary, NEC, and the State* made the following orders (Exhibit P33):

> "1. The decision on the Applicant's application for stay and various injunctive orders argued on 22nd December 2006 is adjourned to 5th January 2007 at 9:30 am.
>
> 2. Pending the decision on 5th January 2007, pursuant to Order 16, Rule 8 of the National Court Rules, the following decisions are STAYED:
>
> (a) The Decision of the Minister for Justice, Hon. Biri Kimisopa, MP (First Respondent) dated 11th October 2006 (and carried in the National Newspaper on Wednesday 25th October 2006) in setting up on what he termed as *"Departmental Inquiry on legal brief-outs to Private Lawyers for State cases"* (hereafter referred to as *"Department Inquiry."*
>
> (b) The Decision of the National Executive Counsel ("NEC") No. 252/2006 dated 1st November 2006, (including NEC Decision No. 185/2006) which directed the Minister for Justice to establish a Department Inquiry in the Attorney-General's Department to investigate into the legal brief-outs and payments by the State to Law Firms including the Plaintiff Legal Firm to have retrospective effect to the time of appointment by the Minister for Justice on 11th October 2006.
>
> (c) The Decision of the Justice Minister by letter dated 5th October 2006, addressed to the Attorney-General, directing the Attorney-General to:-
>
> (i) terminate all brief-out to the Plaintiff Legal Firm and withdraw all files.
> (ii) cease all payments of legal fees to the Plaintiff Legal Firm.
> (iii) authorizing the Solicitor-General to sanction and clear all payments of legal fees.
> (iv) advice the Acting Solicitor-General to withdraw all files from the Plaintiff Legal Firm immediately.
> (v) Place an advertisement in both papers of the Notice of Withdraw all files; and
> (vi) To inform all staff concerned to observe the Ministerial Directions.
>
> (d) The decision of the Attorney-General to:-
>
> (i) Not to deal with the Plaintiff Legal Firm in all brief-out matters including attending to the Plaintiff's legal bills by letter dated 20th October 2006.
> (ii) Withdraw all instruction to act on behalf of the State by letter dated 17th October 2006.
> (iii) Not to deal with the Plaintiff Legal Firm in all brief-out matters including attending to the Plaintiff's legal bills by letter dated 20th October 2006.

(iv) Withdraw all instructions and legal brief-out to the Plaintiff Legal Firm by letter dated 15th November 2006.

3. Pending the decision on 5th January 2007, an interim order in the nature of prohibition, prohibiting the Department Inquiry into the Attorney-General's Office on matters of brief-out and payment of legal fees, pending determination of the substantive judicial review.

4. Pending the decision on 5th January 2007, the Minister for Justice is restrained from interfering with the performance of all aspects of the powers and functions of the Attorney-General and Solicitor-General under the Attorney-General's Act including giving of any form of directions or instructions whatsoever to the Attorney-General, including on matters of legal brief-out and payment of legal fees of the Plaintiff Legal Firm pending the determination of substantive judicial review.

5. Pending the decision on 5th January 2007, the Attorney-General shall be at liberty to deal with the Plaintiff Legal Firm on all matters of legal brief-outs, and may pay out of funds lawfully available within the Department of Justice and Attorney-General any legal fees owing to the Plaintiff Legal Firm, or refer them to the Department of Finance with the necessary clearance for payment, in his absolute discretion and authority vested in him by the Attorney-General's Act pending determination of the substantive judicial review.

6. Pending the decision on 5th January 2007, the Minister for Justice is restrained from making any public statement through all forms of electronic and print media including the Cabinet (NEC) and the Parliament and all and any forum both locally and internationally regarding the Plaintiff Legal Firm on all matters of legal brief-outs and payments of legal fees, pending the determination of the substantive judicial proceedings…"

82. On 2 March 2007 the National Court in the same proceedings, OS 876 of 2006, ordered the Secretary for Treasury to release a special warrant in the sum of K6.44m to the Secretary for Finance for payment to PPL by 3 pm the same day, to be effected by BPNG and BSP by 330 pm the same day, and for the said Secretaries to appear and confirm the same at 345 pm the same day: Exhibit P34.

83. By order of 12 March 2007 the Supreme Court in SCM 03 of 2007 *Between Bire Kimisopa, Minister for Justice, Winnie Kiap, Secretary, NEC, the State and Paul Paraka trading as PPL*, stayed the National Court orders in OS 876 of 2006 made on 2 March 2007, and the entire proceedings in OS 876 of 2006, pending the outcome of the appeal: Exhibit P35.

84. In cross-examination Ms Kias agreed that K6.5m in fees would concern many more than 15 to 20 matters. By 2006 DJAG was aware that there were issues with brief-outs. The issue was how many were being briefed out. She was not sure how many matters were briefed out in 2006 to PPL but the records showed only a handful.

85. She was aware of the main issues in the proceedings between PPL and DJAG but the State's representation was outsourced so she did not have specific knowledge of every document. She did not agree that the orders made on 29 December 2006 had never been appealed. The orders obtained in the Supreme Court on 12 March 2007 stayed the entire proceedings, including the orders made on 29 December 2006 in P33, not only the order directing payment of K6.5m. She was unable to say if OS 876 of 2006 was still on foot.

86. She was unable to say whether the Attorney-General exercised his powers pursuant to Order 5 of 29 December 2006 prior to the end of 2006. The Attorney-General would have been Fred Tomo, now deceased. Anything he signed in his capacity as Attorney-General would have been sent to the OSG. Based on the records at the OSG she cannot say that any clearance was given. Within the office there was a concern that there was no clearance of any sort that came through the OSG to find its way to DoF because legal fees would be paid out of DJAG and not DoF so the office was querying how it was that payment of legal fees was being processed out of DoF.

87. She agreed that there have been some instances where the Attorney-General exercised power to brief-out without prior consultation but the Solicitor-General is then made aware of those as it is the Solicitor-General who manages the trust account and pays legal fees. There is no point briefing out if there are no monies available to pay the matters the Attorney-General briefed out. In practice there must always be consultation.

88. As for provincial governments, the request for legal representation would come to the Attorney-General who would seek the views of the Solicitor-General and if necessary brief the matter out. As to the suggestion that many departments brief-out directly, that would be in breach of the *Attorney-General Act*. The Attorney-General must sign a brief-out letter to the firm. Documentation is always kept by the Department in the OSG. OSG is the custodian of all records when it comes to brief-outs.

89. She disagreed that PPL's brief-out records were missing because CMS was in disarray until it was put in order in late 2010. The system existed before she joined in 2003 and it is still in place. If the physical file could not be found then a duplicate file would be captured in CSM. To her knowledge the CMS has not crashed.

90. There was duplication but there was no indication in CMS or the physical files that the matters had been briefed out. PPL could have resolved the issue by producing all the brief-out letters but there was no record put forward by PPL to prove that it had brief-outs to represent the State. OSG could not sit down with PPL to iron it out because the office did not know what matters had been briefed out to PPL. But CMS was working and if there had been a brief-out it would have been captured on the system but they could not find one because there was not one. It came down to the records. She recalled that 5 or 6 volumes of invoices were submitted by PPL in 2005 or 2006 but she never came across the brief-out in the first instance, save for the 20 or so matters the office had.

91. In re-examination Ms Kias said that the cost of briefing out an OS (originating summons) proceeding would not be more than K50,000 for the entire proceedings.

92. In response to questions by the court she explained that judgement debts are always settled by DoF. Once an order is obtained in court the plaintiff needs to obtain a certificate of judgment under the *Claims By and Against the State Act*, signed by the Registrar of the National or Supreme Court, and provide it to the OSG. The Solicitor-General would then verify the order, and sign the certificate before sending it to DoF with FF3 forms, seeking payment as part of a batch of orders. DoF would check documentation, raise payments from the judgement debts vote that they manage and raise payments. All cheques would be taken back to the OSG. A copy of the cheque would be placed on the court file and the details uploaded on to the system, before the cheque was collected by the plaintiff or their lawyer. That is how the OSG knows the file can be closed. The Solicitor-General is the person who authorises the requests to DoF and that the file be closed.

93. **Neville Devete,** former Solicitor-General, gave evidence via video link from Australia: *The State v Paul Paraka (Application to Lead Evidence via Video Link)* (2022) N9970.

94. Mr Devete obtained his degree in law at UPNG in 1995, attended LTI in 1996, and commenced practice at the Office of the State Solicitor in 1997. Thereafter he worked with the Office of the Public Prosecutor and the PNG Defence Force before joining the Office of Solicitor-General as Principal Legal Officer in September 2006. He acted as Solicitor-General from 2007 until he was appointed Solicitor-General in 2009 a position he held until the end of

2012. His primary role was to act as advocate for the State in all civil matters arising before the District Court, National Court and Supreme Court. His role included attending to brief-outs by the State.

95. The decision to brief-out lawyers within or outside the jurisdiction was made by the Attorney-General exercising his powers under the Act, according to different criteria, for example when there was a conflict of interest, or because of the complexity of a matter, or where there was a lack of capacity in the OSG.

96. A systematic process was followed whereby all cases filed against or initiated by the State were recorded in the Integrated Electronic Case Management System. The OSG maintained a record of all brief-outs on CMS.

97. On 14 March 2012 he wrote a letter of complaint to the National Fraud & Anti-Corruption Directorate, *"Re complaint regarding recent information from the Department of Finance"*, Exhibit D3. Enclosed with his letter of complaint was a copy of a letter dated 13 February 2012 written to Dr Lawrence Kalinoe, Secretary, DJAG, copied to him and the Treasurer and Minister for Finance, from Stephen Gibson, Secretary, Department of Finance, Exhibit P36, which sought clearance for the payment of judgement debts in 12 different proceedings against the State.

98. Mr Devete's letter of complaint states that the payment of judgement debts is governed by law, and that the nature of the demands in the letter from DoF coupled with further information obtained from DoF about payments that had already been made, suggested to him that some action taken by the DoF was contrary to law. The letter further states that: *"The information made available to my Office concerns the possible depletion of the entire year's appropriation of approximately K60 million for the payment of judgement debts within the single month of February 2012. The law requires endorsement by me for the payment of judgement debts and I can confidently say that I have not endorsed payment of that full amount of money already. I have made an endorsement of a much small proportion of approximately K4.9m"*. He called for a meeting to discuss the possibility of further investigation and copied the letter to the Attorney-General, the Secretary, DJAG, and the President of the Law Society.

99. Payment of judgement debts is provided for under the *Claims By and Against the State Act*, under which a certificate of judgement is issued by the Court and served on the OSG pursuant to s 13(2). Once certified by the Solicitor-General it is sent to DoF for payment.

100. He made his complaint after being informed by the legal officer at DoF about monies being paid to various law firms, including the accused's. On that basis he wrote to the Fraud Squad to conduct an independent investigation. He believes that the Attorney-General had a meeting with the Fraud Squad a few days later and it was left up to them.

101. It appeared that monies were being paid from DoF to law firms for legal bills that were in dispute. Legal bills are not meant to be made under the court judgement vote. Legal bills are paid by DJAG through the OSG.

102. Once a matter is briefed out to a particular law firm under the *Attorney-General Act*, whether inside or outside the country, an itemised bill is sent to DJAG, which controls the money, and paid by DJAG, through the OSG, from that part of its budget specifically allocated for legal bills. Legal bills are sent to the Attorney-General, vetted first by him and then sent down to the OSG. If it is reasonable it can be paid, if not it must go for taxation.

103. He did not refer to any of the law firms in his letter of complaint specifically because he had no strict evidence and wanted an independent investigation to be conducted into the matter.

104. When he joined DJAG in 2006 he heard that a lot of cases had been briefed out to PPL by the previous Attorney-General but the new Minister for Justice, Bire Kimisopa, in consultation with Fred Tomo, the Attorney-General, and Secretary for Justice Kalinoe put a stop to it, and instituted an internal investigation led by the former Chief Justice, Sir Arnold Amet, into PPL. So, during his term as Acting Solicitor-General and Solicitor-General there were no brief-outs to PPL and his office did not pay any bills to PPL.

105. He was not aware of any brief-outs to Sino & Co Lawyers or Jack Kilipi Lawyers between 2006 and 2011. He cannot recalling briefing out Harvey Nii Lawyers in 2007 or 2010. PKP Nominees Ltd was never engaged during his time. He did not think that Sam Bonner Lawyers was ever engaged. He recalled

that Mr Kipoi was formerly employed by the OSG but he did not recall ever briefing him out. He did not recall ever engaging Korowi Lawyers between 2007 and 2010. He did not recall briefing out Yapao lawyers.

106. No payments were ever processed through the OSG for the said law firms He was emphatic that they did not receive any work from and there were no dealings with those law firms.

107. Following the complaint to police and given the large amount involved, serious concerns were raised by the Attorney-General, Allan Marat, and former Secretary, late Dr Lawrence Kalinoe, and the matter was referred to the late Manusupe Zurenuoc, former Chief Secretary to Government.

108. He does recall that during the course of his term some legal bills were sent by PPL to OSG but because investigations were on foot they were not addressed.

109. The process for the payment of legal bills is as follows: when a bill is received, CMS is consulted to confirm that a brief-out letter has been issued by the Attorney-General under the Act, and that an itemised bill of costs has been submitted. Once those preliminary steps are complete, the bill is reviewed by the responsible case officer. For every matter briefed out a case officer is assigned to keep track with the law firm as to what steps are being taken during the life of the case. Periodic updates are given by the law firm, e.g. as to discovery, phone calls, conference, meetings. Those are cross-checked with the itemised bill of costs. If the parties cannot agree then the OSG can apply for it to be taxed by the Registrar.

110. Payments are made under a distinct vote. Each quarter of the fiscal year an allocation is made for the payment of bills and the OSG works within that budget to brief-out. Legal bills cannot be paid from the court judgement vote held by DoF, it is distinct and separate. Payments are raised in the form of cheques and paid to the lawyers trust account. He reiterated that between late 2006 and 2011 no payments were made to PPL by the State.

111. Under cross-examination he agreed that the Attorney-General has discretion under s 7(f) of the *Attorney-General Act* to brief-out to private law

firms and that he received instructions from the Attorney-General under s 13(2) of the Act.

112. The letter from Acting Secretary Gibson referred to monies for twelve different proceedings but apart from those proceedings they were made aware of certain information from DoF about the payment of certain monies to a number of law firms including PPL. He was instructed by the Attorney-General and Secretary for Justice to make the complaint. To his recollection the Attorney-General and Minister for Justice at the time in 2012 was Dr Alan Marat and Mr Kerenga Kua came in shortly thereafter. Dr Kalinoe was Secretary for Justice. They had daily or weekly briefings on important matters.

113. He was aware that the 2012 allegations the subject of his complaint were dismissed by the District Court in 2020. He may have met with CI Gitua and Mathew Damaru on one or two occasions. He can't recall meeting DC Pius Peng. There was a time he met with Gitua and Damaru and another person but he cannot recall his name. He agreed that P21 is a list of bills given to him by police in 2014.

114. In September 2006 he was a Principal Legal Officer. Around that time there was an investigation of all brief-outs to PPL. A report was tabled by the chairman of the investigation, Sir Arnold Amet, to the Attorney-General and to the Minister for Justice, Bire Kimisopa. The investigation continued during the period he was Acting Solicitor-General but he was not actively involved in the investigation himself. He did see the report which made a number of administrative recommendations. He did not take any action to implement the recommendations following his appointment because there was an order by Hinchliffe J in 2006 for the payment of K4m to PPL. The State took retaliatory action by filing SCM No 15 or 16 of 2006 that stayed the order, in response to which PPL filed a further motion but the matter was locked up pending determination. As far as he was concerned SCM 15 or 16 of 2006 and another case by Minister Kimisopa were in court until 2012 or 2013 and were locked up pending determination. He did not as Solicitor-General take any action because of those proceedings. The matters were brief-out to Mawa Lawyers and Stevens Lawyers.

115. He recalls there was a miscellaneous proceeding MP 994 in 2006, a taxation proceeding brought by PPL, but it was decided in favour of the State because PPL refused to have its bills itemised.

116. He was not aware of the Attorney-General exercising his power under s 7(f) to review the decision of the Solicitor-General to refuse legal aid during his time. He did not recall the Attorney-General exercising his power to recommend to the Minister for Finance the payment of ex gratia payments under s 7(j) of the Act whilst he was Acting Solicitor-General or Solicitor-General.

117. To his recollection Sam Koim was made Chairman of TFS in 2012. He did not have any discussions with Sam Koim about the complaint.

118. He could not specifically recall the annual budget for brief-outs but it may have been between K2m and K5m. As to the range of costs of matters briefed-out it depended on the complexity of the matter.

119. The investigating officer, Detective Constable, now **Senior Sergeant Pius Peng,** joined the National Fraud and Anti-Corruption Directorate (NFACD) in 1996. He was a member of the team called TFS which was established by government, and became involved in the investigation in 2012. The investigation commenced following a complaint received from the Solicitor-General, Neville Devete. They executed search warrants at the banks and conducted enquiries with DoF, OSG and DJAG. Enquiries in relation to court proceedings OS 876 revealed that the law firms which received payments from DoF were not parties. There was a payment of K30m to six law firms in 2013. Enquiries revealed that payments had also been made to law firms dating back to 2007. Those payments were not the initial subject of the complaint but they became aware of them as the investigation progressed. A detective was then assigned to deal with each law firm. Chief Inspector Gitua was the leading officer and was also in charge of the investigation relating to payments in 2012 and 2013, and Peng took over investigation for payments from 2007 to 2011. As for the investigations in relation to the other law firms the principals were arrested and charged with the same offences as the accused. TFS was disbanded in 2014. It did not affect the investigations. Charges were laid in this matter against the accused in July 2014. Despite repeated requests DoF was unable to produce any payment vouchers for the payments made to the law firms, and any explanation for the missing documents.

120. In cross-examination he said that they were not able to speak to the commitment clerk or the examining officer because they did not have the payment vouchers which would show who they were. He did not speak to anyone occupying the positions at the time. There were other officers by 2013 and 2014 who were not aware of earlier payments. The respective certifying

officer, commitment clerk and examining officers could not be identified without any documents. He did not speak to Gabriel Yer, the Secretary and s 32 officer at the time as he was no longer employed at DoF. He did not speak to the Deputy Secretary or other s 32 officers. They made appointments but they did not attend as requested and he did not make further attempts to speak to them. If the payment vouchers were available it would have been easy for them to speak to everyone involved in the processing of cheque payments but since they were missing they did not pursue it. He was unable to identify why the vouchers were missing.

121. He did not execute a search warrant at PPL because he did not believe he would find anything in the office. Harvey Nii was arrested and charged by another detective. He did not conduct searches of Harvey Nii's offices for the period 2007 to 2011. He ascertained who directed the transfers to PPL. He did not obtain any documents from the banks that they may have required to validate the payment before processing the cheques. Cheques drawn by DoF are met from funds held by BPNG. He did not go to BPNG to ascertain whether there were any documents produced to validate the cheque deposits to the accounts of those firms He did not execute search warrants at Sam Bonner Lawyers, Yapao Lawyers, Jack Kilipi Lawyers, Sino & Co Lawyers, Korowi lawyers, but other officers were responsible for investigating those law firms and it is possible they did. He did not execute a search warrant at PKP Nominees. He did not ask the commercial banks to produce validation documentation.

122. In 2013 officers spoke to Dr Lawrence Kalinoe and the Minister for Justice who was Attorney-General. Dr Kalinoe provided a statement to police as to his own findings. Dr Kalinoe has since died. He did not investigate brief-outs prior to 2007. He did not take the PGAS and IFMS reports to OSG to verify if payments had been made. Mr Devete came to CI Gitua's office on one occasion and he was asked by Gitua to compile the bills purported to be from PPL but which Devete confirmed were "illegal". He could not recall the dates of the bills.

123. He maintained that the charges were brought on the basis that the payments to the law firms were traced through to the PPL's account. He relied on the report from Eki Pop. The charge of K162m over the five year period was based on the payments made to the law firms and on to PPL. The figure was based on PGAS and bank statements. He prepared a table which was contained in the hand up brief setting out the details of all 62 cheques. He agreed that he

put the cheques to the accused during the record of interview but that none were paid directly to the accused.

124. The principals of the other law firms were investigated by other members of TFS. He did speak to two principals, Jack Kilipi and another not the subject of these proceedings. They were arrested and charged. The matters are still pending in the District Court. He did not ask them to come to court and give evidence in this case because he did not think they would want to, they are suspects and he did not want to use them as witnesses. He did not speak to the principals or others at the relevant law firms to find out what the payments were for, other than for Jack Kilipi, who was charged, and his statement is contained on the court file.

125. PGAS reports were not obtained under search warrant but upon request from his boss to the Secretary for Finance. Investigations in government departments are normally made by request, government to government, not by search warrant.

126. He did not personally make enquiries with the persons from DoF who signed the various cheques to ascertain what the payments were for. He did not go to the commercial banks or BPNG to seek verification documents. Officers in charge of the other law firms may have. They may have provided a report. If they did it was on the brief. He cannot recall. He did not obtain all copies of the cheques paid to the law firms, only some of them. If he had the cheques he would have included them in the hand up brief. Cheques P18-1 and P18-2 paid to Sam Bonner were given to him by the IO in that case. He did not speak to the countersigning officers. The investigating officer in that case may have. He cannot recall. The banks could not locate any other records like cheques because they had been destroyed in accordance with bank retention policy.

127. He agreed to the suggestion that the PGAS reports add up to K73m. The balance of K162m comes from the audit report and bank statements. IFMS reports were provided to him by James Roy from DoF.

128. He was not clear on the dates documents were obtained from the banks. They were obtained through search warrants filed by CI Gitua.

129. During the course of investigation into Devete's complaint they discovered that payments had been made prior to that payment. The complaint was laid in 2012 and he could not recall the year but between 2012, 2013 and 2014 they commenced investigations and it could have been in one of those years.

130. He agreed that Sam Koim was Chairman of TFS. He did not raise a possible conflict because Mr Koim was a Principal Legal Officer of OSG and the complainant was the Solicitor-General. TFS was established by NEC to investigate allegations of fraud and corruption in government departments and not the OSG alone. They had to deal with the complaint raised. As to the suggestion that he was paid between K2000 and K5000 every fortnight he could not recall the amount but they were paid some allowances. Sam Koim distributed the allowances. Sam Koim was from Western Highlands Province. He was from Jiwaka Province. It was not the case that he was a close friend of Mr Koim. Mr Koim did distribute an Operations Manual setting out the conduct of duties, including investigations and the laying of charges. Mr Koim ensured that members of TFS read, understood and complied with it. He was familiar with s 187 of the *Constitution*. The manual did not encroach on his independence. He still had police powers. The charges were not laid at Mr Koim's direction. He agreed the government allocated a lot of money to TFS. He did not charge the accused to please Mr Koim or justify his allowance. He did not do it to please anyone. He charged based on the evidence. Mr Koim did not become his legal adviser. He made an independent decision to charge. If any advice was given that was not the basis of his decision to arrest.

131. After the complaint was laid in 2012 he spoke to Mr Devete. He did not speak to Mr Devete again after he left the country. He believed that CI Gitua obtained a supplementary statement. He thoroughly read all statements in the police brief and in CI Gitua's case. Information was shared amongst the team. He included a number of witnesses who gave evidence in CI Gitua's case in the brief for this case. He did not intentionally include the statements in the police brief in the District Court to make it think he had evidence when he did not. It was to give a picture of the whole case and investigation. It was not irrelevant. There was only one investigation, not two or many. He did not include the statements to receive more payment from Mr Koim. He had no reason to please the Chairman of TFS. Mr Koim never paid him an additional allowance for a job well done.

132. Following the complaint he spoke to Mr Devete, Ms Tindiwi and Dr Kalinoe. He also spoke to the Minister for Justice, Kerenga Kua. He provided a statement in relation to the other case. It was included in this case to show a

complete picture. All of the witnesses spoke the same language. Dr Kalinoe provided a statement and all relevant information that would come from the Attorney-General is all the records kept in the OSG which was provided to him. He did not concentrate on collecting information from OSG because Mr Koim was an officer in the OSG. He agreed Mr Koim was sitting downstairs in Sir Buri Kidu Haus and that the OSG was located upstairs in the same building.

DEFENCE CASE

133. The accused declined to give evidence himself or to call any other witnesses in his defence. That is his right and I make it clear that I draw no inference of guilt as a consequence. It is the obligation of the State to prove each of the elements of each of the offences alleged in the indictment beyond reasonable doubt.

134. The accused did tender an affidavit sworn by him on the voir dire which was admitted without objection. It is now evidence on the trial. No reference was made to it by either party during the course of submissions. For the most part it contains further copies of the search warrants and supporting material the subject of the voir dire. It also refers to another affidavit filed by the accused in support of his October 2020 application which is not before me on this trial and which included copies of the police hand up brief in respect of both the 2012/2013 and the current allegations. As I indicated to the parties at the time it was neither necessary nor appropriate for me to consider the contents of the briefs for the purposes of the application: see *The State v Paul Paraka (Decision on Further Amended Motion (No 1)* (2020) N8608 at [103]. A number of exhibits were tendered during the voir dire, for the most part they concern the bank records. Where they become relevant they are referred to below.

PROCEDURAL ISSUES

135. The accused made submissions on a number of matters which I will consider before turning to the merits of the case.

INDICTMENT

Accused's Submissions

136. The accused submits that the indictment is duplicitous, that I erred in ruling that it was not, and in directing that it be amended to contain five counts on an annual basis, that I erred in relying on common law principles in breach

of the *Underlying Law Act*, that I had no power to make such a direction of my own volition when no party asked for it, that I erred in giving reasons for the amendment, that I erred in relying on the pre-trial review statement, that there was no evidence or statement of facts or pretrial review statement showing close proximity for a common purpose to satisfy the one transaction principle.

137. The charges allege that the accused personally misappropriated State funds. At trial it was alleged that the accused caused the payments to the law firms by the State and that the funds were transferred to the accused's controlled bank accounts. The indictment does not expressly identify any other persons or law firms involved in the alleged misappropriation together with the accused, and it does not expressly identify the transactions involved, and therefore no evidence can be led to prove the allegations.

138. It only became clear during cross-examination of S/Sgt Peng that the State relies on the same amounts relied upon for the charges in the District Court, that is:

- Count 1: K30,300,000 - 13 cheque payments to law firms/entities
- Count 2: K30,054,312.68 - 15 cheque payments to law firms/entities
- Count 3: K14,360,671.28 - 6 cheque payments to law firms/entities
- Count 4: K39,808,610 - 20 cheque payments to law firms/entities
- Count 5: K50,216,600 - 26 cheque payments to law firms/entities

139. The State failed to set out the facts, matters and circumstances of each payment in the indictment. The charges allege several distinct offences. The State should have charged each of the cheques separately so that the Court could have elected which charges could proceed. The indictment is duplicitous and should be quashed.

140. In addition, the indictment is defective for failing to expressly state the offence provision under which it was laid, namely s 383A of the *Criminal Code*, and is therefore not an offence "defined by a written law" in compliance with s 37(2) of the *Constitution*.

Consideration

141. These arguments have been raised and dealt with in some form or other before.

142. The offences charged are offences known to the written law: see *The State v Paul Paraka* (2020) N8229 at [88] to [105] and *The State v Paul Paraka* (2021) N8938 at [27] to [33]. There was no requirement at the time the indictment was presented for the offence provision to be expressly stated in the indictment.

143. As for the submission that the indictment is duplicitous, the accused is entitled to maintain his objection but I have ruled on the issue, and the arguments raised are without merit. The relevant principles and reasons for my ruling on this issue are set out in *The State v Paul Paraka* (2021) N8807 at [255] to [274] and *The State v Paul Paraka* (2021) N8938 at [20] to [22] and [34] to [43] and it is neither necessary nor appropriate for me to reproduce them here. There was no need to refer to the *Underlying Law Act*. The common law rule against duplicity is reflected in s 531(1) of the *Criminal Code* and its operation has been well established in this jurisdiction in accordance with those principles for many years. Furthermore, it is a rule of general application only, subject to the overriding consideration that the rule will not apply if joining more than one allegation in one charge is not unfair or prejudicial to the accused: *Luma v State* (2022) SC2249 at [12] and [13].

144. In this case, the allegations were of different acts of a similar nature, namely the dishonest application of monies belonging to the State for which there was no entitlement. Having regard to the common and continuing nature of the acts they might fairly be regarded as forming part of the same alleged criminal transaction or enterprise. It was not unfair or prejudicial to the accused for the allegations to be reduced to one charge. There was no error in the State's original indictment. The amendment of the indictment was only directed by me in response to the accused's contention that he was entitled to be charged on an annual basis. He was not so entitled but I ordered the amendment pursuant to s 588(2)(b) of the *Criminal Code* to facilitate the administration of the trial and I repeat my comments in *The State v Paul Paraka* (2021) N8938 at [20] to [22] and [34] to [43]. Moreover, the accused remains unable to demonstrate the basis upon which he is prejudiced in his defence at trial by the indictment.

145. The accused's submission that he did not know the State's case is without merit. The accused has been in possession of the police brief since 19 May 2017. The State intention to proceed against the accused for misappropriation has been clear since it first informed the accused it intended to present the s 526 indictment against him in the National Court. The accused has been in possession of the State's pre-trial review statement since April 2021. The

allegation in this case is essentially a simple one, namely that the accused caused monies to which he was not entitled to be paid to accounts controlled by him, including through the accounts of various other firms in some cases. It is evident from his cross-examination of S/Sgt Peng that the accused has been aware that the allegation concerns 65 or so cheques since he was interviewed by police. The details of those cheque payments, if not the cheques themselves, were referred to in Mr Pop's report, which was served as part of the hand up brief. His contention that 65 separate indictments should have been laid has been previously rejected: *The State v Paul Paraka* (2021) N8938 at [40]. There can be no doubt from the conduct of the trial that the accused well understood the nature of the allegations and the evidence to be led. If the accused was under any doubt about those matters he was at liberty to ask for further particulars, as I reminded him in *The State v Paul Paraka* (2020) N8229 at [103].

OPENING STATEMENT

146. In a related submission, the accused contends that the State did not introduce and rely on a pre-trial review statement in the trial and did not provide an opening statement at the trial. It went straight into evidence with its first witness. He was not provided with a summary of the State's case and was thereby denied a fair trial pursuant to s 37(3) of the *Constitution*.

Consideration

147. There is no merit in the submission. The accused was arraigned in the usual manner. The facts alleged on arraignment are set out above. They reflect those contained in the pre-trial review statement. Whilst the State should give reasonable notice of the facts to be alleged on arraignment there is no obligation on the State to tender a pre-trial review statement.

148. The facts alleged on arraignment and an opening statement are different things. The State is not obliged to give an opening statement. It *may* give an opening statement pursuant to s 573(1) of the *Criminal Code*. For obvious reasons it is in the interests of both the parties and the court for it to do so.

149. In this regard I would encourage the State in making an opening statement to outline briefly its case theory, that is a short, simple summary of its case.

150. The State did provide a brief opening statement following arraignment in this case. It outlined the witnesses it intended to call, for what purpose, and identified that it perceived the principal issue in the trial to be one of dishonesty.

151. The accused made a short statement in reply to the State's opening. He said that the allegation concerned the payment of monies to eight other law firms and had nothing to do with him. The allegations were false and none of the elements would be satisfied on the evidence the State intended to call.

152. I repeat my comments above.

UNLAWFUL CRIMINAL INVESTIGATION

153. The accused submits that the investigation was unlawful for a number of reasons.

Accused's Submissions

154. The accused says that the government established a Special Investigation Task Force, code named Task Force Sweep, to undertake investigation into corruption and financial mismanagement at the Department of National Planning and Monitoring (DNPM). The government appointed Chief Inspector Timothy Gitua, Senor Constable Pius Peng and Mr Ekip Kop from the Auditor-General's Office to be integral members of TFS. A Principal Legal Officer of the OSG, Mr Sam Koim was appointed the Chairman of TFS.

155. On 14 March 2012 the former Solicitor-General, Mr Neville Devete lodged a complaint with the Police Fraud Squad alleging improper payments and the depletion of the budgetary allocations for Court Order payments in the 2012 National Government Budget, Exhibit D3. The complaint was merged with the special investigations by TFS, and the Police launched a formal investigation the next day under the auspices of TFS.

156. The initial complaint by Devete concerned payments in 2012. Police issued search warrants in March 2012, which were set aside by the District Court in April 2012. Further warrants were issued in August 2013 and a total of 22 charges were laid against the accused by police on 22 October 2013 by CI Gitua. Those charges related to offences allegedly committed by the accused in 2012 and 2013. The accused refers to those charges as "the primary case". The primary case was dismissed by the District Court on 10 June 2020: Exhibit D5.

157. On 25 July 2014, S/C Peng formally charged the accused in respect of the payments made between 2007 and 2011, the subject of these proceedings. The accused refers to this as "the secondary case". The investigation was unlawful, null and void because there was no official complaint from the Solicitor-General, the Attorney-General, the DoF or the government of the day. SC Peng personally initiated the charges, of his own volition, after reviewing bank records. The police conducted an unlawful "fishing expedition" by making enquiries with DoF and the OSG in the absence of a formal complaint from competent witnesses. An accused person must be given an opportunity to answer allegations before a record of interview is conducted except in "hot pursuit situations". An unsolicited observation of transactions in someone else's bank account cannot provide sufficient grounds for criminal investigation. The function of police is to "lay, prosecute or withdraw charges in respect of offences" according to s 197(2) of the *Constitution*.

158. For the reasons discussed separately below, the Court should find that the police obtained the bank records unlawfully and exclude them.

159. The police had no evidence but proceeded to lay charges at the District Court. Neville Devete was in Australia from January 2013. No one from the OSG was willing to speak on matters they knew nothing about. Procurement and payment officers at DoF were not willing to speak to police on historical matters they had no knowledge of. There were no cheque copies from DoF and no payment vouchers from DoF. The police compiled a false police brief and served it on the accused on 9 May 2017. It contained 10 statements from witnesses at the DoF whose statements were contained in the primary case brief and unlawfully included in the secondary case brief without their knowledge or authority. Only two gave evidence at trial. It contained 10 statements from witnesses at the OSG who were witnesses for the primary case and whose statements were included in the secondary case brief without their knowledge or authority. The accused objected to the evidence by application filed in the National Court on 11 October 2020, which was refused: *The State v Paul Paraka (Decision on Further Amended Motion (No 1)* (2021) N8608.

160. S/Sgt Peng and Ekip Pop were both members of TFS and worked under the direct control and supervision of Chairman Sam Koim, who was the Principal Legal Officer of the OSG at the time. They complied with his directions as to whom to arrest and charge. There was a conflict of interest. Both Peng and Pop admitted that they were paid monthly allowances by Mr Koim for undertaking investigations. S/Sgt Peng was motivated by the monthly allowances paid by Mr Koim to members of TFS for keeping the investigation alive.

161. The State failed to called Sam Koim to give evidence as to: the legal status of the team, whether it was established by an Act of Parliament or NEC Decision; the specific functions of TFS; the terms of appointment and specific functions of each member of TFS, including the Chairman; the extent of his control and involvement in the investigation; whether each member exercised their powers independently; and whether Chairman Koim could oversee the criminal investigation in respect of the complaint made by his former boss, former Solicitor-General Devete without being biased. The government funded TFS with substantial monies and Koim paid substantial allowances to all members. The accused was a victim of abuse of powers by the Government of the day. The involvement of Chairman Sam Koim in the whole process clouded the independence of both Organizations and the criminal investigations breached the accused's *Constitution*al right to the full protection of the law under s.37(l) of the *Constitution*, and breached the *Constitution*al independence of the Police and the Auditor-General under ss. 197(1) & (2), 213(2) and 214 of the *Constitution* respectively.

162. It was incumbent on the State to produce the Police Commissioner and the Auditor-General to confirm the appointments of their respective officers into TFS. Under s 16 of the *Police Act*, only the Police Commissioner can appoint, by instrument any of his members on secondment to another organization. Under s 3(6) of the *Audit Act*, the Auditor-General can lawfully appoint another person to act under his hand, including the express terms of his appointment. In the absence of this evidence it must be considered that the criminal investigative work undertaken by both officers was in breach of the *Constitution*, and the criminal charges are therefore in breach of ss.37(l). 197, 213(2) and 214 of the *Constitution*, the accused is entitled to the protection and enforcement of his *Constitution*al rights and seeks a declaration that the criminal charges in the National Court are null and void and of no effect pursuant to ss. 11 and 57(3) of the *Constitution*.

163. Mr Pop was verbally appointed to TFS in breach of s.3(6) of the *Audit Act*. There are no provisions in the *Constitution* (ss. 213 & 214 of the *Constitution*), and *Audit Act* that authorizes the Auditor-General to appoint any other person/employee to be involved in any criminal investigations or be part of such an organisation. Criminal investigations are the sole function of the Police under s.197 of the *Constitution*.

164. The purported Audit Report of Ekip Kop was not provided to the Auditor-General under s.4(l)(a) of the *Audit Act*. The Auditor-General did not prepare a formal Audit Report of TFS to the National Parliament and copy to

the Minister and Head of the relevant body under s.7(3) of the *Audit Act*. There is no evidence that TFS is a "relevant body" for the purposes of s.7(3) of the *Audit Act*, and the Audit Report of Ekip Kop has been formally authorized and is a lawful report of the Auditor-General for the "relevant body". Mr Ekip Kop's Audit Report did not comply with the requirements of ss.7(2A) & 7(3) of the *Audit Act* which is in mandatory terms, and it is therefore invalid, invalid, null and void and of no effect.

165. Furthermore, the report is invalid for the following reasons: (a) There has been no inspection and audit of the public accounts of TFS under s.214 of the *Constitution* and ss. 3,4 & 7 of the *Audit Act* (b) There has been no independent inspection and audit carried out into the books of accounts of the Finance Department independently and objectively by Ekip Kop in accordance with s.214 of the *Constitution* and ss. 3 & 4 of the *Audit Act*. (c) Ekip Kop's purported Audit Report did not comply with ss. 3 and 7(2A) of the *Audit Act*. (d) Ekip Kop relied heavily on the materials provided by the Fraud Squad, and breached his independence and objectivity required by ss.213(3) and 214 of the *Constitution* and ss.3 and 7(2A) & (3) of the *Audit Act*. (e) Ekip Kop was paid substantial allowance by the Chairman of TFS (Mr Sam Koim), on a monthly basis, affecting his objectivity and independence in breach of s.213(3) of the *Constitution*. (f) Ekip Kop' was undertaking a criminal investigation, a function of the Police Force under s.197 of the *Constitution*. (g) Senior Constable Pius Peng admitted that he relied on Ekip Kop's Audit Report to charge the accused in the District Court. (h) Ekip Kop admitted in the cross-examination that he was operating together with the Fraud Squad members at TFS Office at Waigani/Gordons in the Office of TFS where it was located. (i) These are the same Police brief the Public Prosecutor used to lay the Ex-Officio Indictment. (j) Now it is submitted that the Auditor-General's purported agent in Ekip Kop did not carry out his audit work into the Finance Department objectively and independently. (k) Both witnesses were paid by TFS Chairman (Mr Sam Koim) on a monthly basis for them to come up with the Audit report in a biased way, and the criminal charges and proceedings were the result of the biased work undertaken in breach of ss. 197 and 214 of the *Constitution*. (l) The Chairman, Sam Koim, deliberately caused the two witnesses to breach their *Constitution*al independence. (m) He kept both the Police Fraud Squad members and the Auditor-General in the same Sweep Team Office to investigate into the former Solicitor-General, Mr Neville Devete's complaint/allegations (of which Chairman Sam Koim was privy to as the former Principal Legal Officer). (n) This is a clear case of abuse of power; all of them breached ss.197, 213 and 214 of the *Constitution*.

166. TFS was disbanded by the NEC on 18 June 2014: *Sam Koim v. The State* (2016) N6558. Auditor Kop's purported appointment ceased on the 18th June, 2014. Because his appointment is dependent on the existence of TFS, his purported audit report of 9 October 2014, Exhibit P19, was done up well after the disbandment of TFS and is therefore invalid. As Senior Constable Pius Peng undertook the criminal investigations under the auspicious of TFS, since the disbandment on the 18th June 2014, his arrest and charging of the accused on the 25th July 2014 is null and void.

167. The Police Commissioner upon exercising his constitutional powers, directed Senior Constable Pius Peng to stop the criminal investigations as the Police were unlawfully appointed to TFS. It is principally on that basis that the District Court dismissed all the criminal charges on the 10th December, 2018 and 10th June, 2020 respectively in the District Court. See Exhibit D4, Exhibit D5 and the Supreme Court Judgment *Powers, Functions, Duties and Responsibilities of the Police Commissioner* (2014) SC1388. The Court is asked to dismiss the indictment in its entirety.

168. The Court is asked to declare the following actions invalid, unconstitutional and null and void under ss. 11, 37(1) and 57(1) & (3) of the *Constitution*: - (a) Purported criminal investigations into the Secondary case commencing on May 2013. (b) Purported Audit Report of Ekip Kop dated 9th October, 2014 (Court Exhibit "P19"). (c) Purported PGAS Report dated 22nd January, 2014 and Jesse Yore's evidence and Court Exhibits "P16, P16(l) - P16(18)". (d) Purported Bank cheques of Finance Department produced by witness Kavilla Yeme (Court Exhibit "PI7(1), (20 & (3) and P18(l) & P18(2),f). (e) Bank Statements and Bank documents purportedly obtained by Search Warrants on the 1st August, 2013 (Court Exhibit "P2 - P15"). (f) The criminal charges in the District Court by Senior Constable Pius Peng on the 25th July, 2014 in proceedings NCC No. 942-956 of 2014 (C/B No. 153 of 2014) - See "D4". (g) The Ex-Officio Indictment by the Public Prosecutor on the 25th April, 2019 and subsequent amendment on the 7th May, 2021.

Consideration

169. The investigation was not unlawful and the submissions are rejected.

170. There is nothing in law or common sense that prevents police from investigating suspected criminal conduct in the absence of a formal complaint. Police are expressly mandated under s 197 of the *Constitution* with preserving peace and good order and maintaining and enforcing the law. That includes

preventing, detecting and investigating crime, regardless of whether or not there is a complaint.

171. The full text of s 197 is (emphasis mine):

> **197. Functions of the Police Force.**
>
> **(1) The primary functions of the Police Force are, in accordance with the *Constitution*al Laws and Acts of the Parliament—**
> **(a) to preserve peace and good order in the country; and**
> **(b) to maintain and, as necessary, enforce the law in an impartial and objective manner.**
>
> **(2) Insofar as it is a function of the Police Force to lay, prosecute or withdraw charges in respect of offences, the members of the Police Force are not subject to direction or control by any person outside the Force.**

172. Furthermore, as I have said before, DC Peng and the other police officers involved continued to hold the general duties and powers of a constable at common law, including the powers to detect crime and bring an offender to justice, pursuant to s 140 of the *Police Act*: see *The State v Paul Paraka* (2020) N8608 at [95] to [97]; and *The State v Paul Paraka* (2021) N8807 at [121]; also Injia J in *S v William* (1995) N1380.

173. It may be difficult for practical reasons for police to pursue an investigation in the absence of a complaint but that is an entirely different matter and is not the case here.

174. Police had a complaint, albeit that it concerned suspicious payments in 2012, the investigation of which led to further suspicious transactions. There is nothing unlawful about police expanding the investigation. See also my comments in *The State v Paul Paraka (Decision on Further Amended Motion (No 2)* (2021) N8807 at [71] to [72]. There was no obligation on police to inform the accused of that investigation until they were ready to charge him. It appears that prior to charging, DC Peng offered the accused the opportunity to participate in a record of interview and respond to the allegations if he wished to do so. There was nothing unfair or unlawful about the process followed by DC Peng.

175. There was no "false brief of evidence". Witnesses do not belong to any particular investigation, set of charges, or brief of evidence. During an investigation witnesses may provide police with statements about matters of fact within their knowledge, or in the case of expert witnesses, their opinions.

Whether or not those facts or opinions are relevant in more than one case will depend upon the matters in issue in the respective cases. There is nothing improper about the fact that some of the witness statements contained in the brief in support of the charges concerning alleged payments in 2012 and 2013 were also included in the brief in support of charges concerning similar allegations between 2007 and 2011. The suggestion that the witnesses who gave evidence before me were coerced is baseless. Whether or not the evidence led is sufficient to establish the charges to the requisite standard is considered below.

176. The submission that the State only called two of 10 witnesses from DoF and three of 10 witnesses from the OSG is not borne out by the indictment, which only lists 20 witnesses in total, of which it appears that the State did not call perhaps two or three witnesses from OSG (one of whom, Dr Lawrence Kalinoe, there appears to be no dispute is now deceased), and perhaps one from DoF. As discussed below, in general terms, it is a matter for the State which witnesses it calls to establish its case. At various times during the trial the State updated the Court as to which witnesses it would be calling. The witnesses were listed on the indictment, the accused had a copy of their statement and was at liberty to require them for cross-examination but chose not to do so. That was a matter for him.

177. The circumstances in which TFS was established are not before me in any detail on this trial. It appears from the evidence of CI Gitua, S/Sgt Peng and Mr Pop that it was an interdepartmental taskforce or team established at the direction of NEC to investigate alleged misappropriation of State funds, and that it received some resources and funding from NEC for that purpose. It was comprised of police officers from both the NFACD and fraud investigators brought in from the provinces, and at least one officer from the Auditor-General's Office. Its Chairman was Sam Koim.

178. It was not incumbent on the State to produce the Police Commissioner to confirm the appointment of CI Gitua and S/Sgt Peng to TFS. I accept their evidence that they were assigned to the team but as above they did not need to be vested with any powers under s 16, they already possessed them. S 16 provides:

> **VESTING OF POWERS OF MEMBERS OF THE FORCE.**
>
> **(1) Where the Commissioner thinks it for any special reason desirable, the Commissioner may, by written notice, vest in a person, or in members of a class of persons, some or all of the powers, functions, duties and responsibilities of a member of the Force under any law.**

(2) A person to whom Subsection (1) applies is deemed, in relation to the powers, functions, duties and responsibilities vested in that person under that subsection, to be a member of the Force.

179. CI Gitua, S/Sgt Peng and Ekip Pop each impressed me as witnesses of truth. Each were cross-examined, at length, on a range of issues, over a period of days. There is no evidence to suggest that they or any member of the team acted improperly in the conduct of the investigation.

180. It is unclear but it appears that Sam Koim was a Principal Legal Officer at the OSG whilst also being the Chairman of TFS. Whilst it did involve an investigation into the accused's dealings with the OSG, the investigation into the complaint by Mr Devete was not the only matter under investigation by TFS and his role appears to be limited. He did not speak to Mr Devete about the matter. As the senior police officer, it was CI Gitua, NFACD, who led all investigations undertaken by TFS: *The State v Paul Paraka (Decision on Admission of Bank Records)* (2022) N9568 at [104]. He led the investigation into the complaint by Mr Devete, particular aspects of which were delegated to other officers as the investigation progressed. More importantly, I accept the evidence of S/Sgt Peng that he was not directed by Mr Koim to charge the accused and that he independently exercised his powers as a police constable to do so. I accept his evidence that the monthly allowance of about K2000 did not influence his decision to charge the accused. Mr Koim was listed as a witness on the indictment. The accused was entitled to require Mr Koim to attend for cross-examination but he chose not to do so.

181. There was no requirement for the Auditor-General to attend to give evidence. I accept that Ekip Pop was appointed to the TFS at his direction. There was no breach of s 3(6) of the *Audit Act*. Mr Pop was already an employee of his office. There was no breach of s 7 of the *Audit Act*. Regardless of the fact that Mr Pop refers to his report as an "audit" report, there was no audit by the Auditor-General of the DoF or TFS for the purposes of the *Audit Act*. Mr Pop's role was to analyse the records obtained by police. There is nothing surprising about that given his expertise as an auditor. I accept the evidence of Ekip Pop that the monthly allowance did not influence the preparation or content of his report. The report is quite straightforward. It sets out the procurement process and related legislation in general terms. The essential part of the report is that which summarises his analysis of DoF and bank records, including the tracing exercise he undertook of monies paid to the accounts of various firms and then to the accounts of PPL and PKP Nominees. Some other matters mentioned in his report are hearsay.

182. The fact that TFS was disbanded by the NEC on 18 June 2014 did not alter the ability of Ekip Pop to prepare a report documenting his findings whilst a member of TFS. Nor did it prevent S/Sgt Peng from concluding the investigation and charging the accused. Again, he retained his powers as a constable of police. The disbanding of TFS did not render the evidence gathered during its investigation "null and void".

183. This issue has been fully heard and determined before. Whilst the Police Commissioner has the power to issue directions to members of the Police Force regarding the conduct of criminal investigations, including applying for arrest and bench warrants, and laying and withdrawing charges: *Re Powers, Functions, Duties and Responsibilities of Police* (2014) SC1388, it was never put to CI Gitua or S/Sgt Peng and there is no evidence before me on this trial to support the assertion that the Police Commissioner directed the discontinuance of the criminal investigation of the accused. The evidence led before me on a previous application established quite the opposite but that is not before me on the trial: *The State v Paul Paraka (Decision on Further Amended Motion (No 2)* (2021) N8807 at [117] to [132] and is not necessary to my decision.

184. The applications for declarations are misplaced and rejected.

UNLAWFULLY OBTAINED BANK STATEMENTS

185. A significant portion of the accused's submissions are dedicated to having the bank statements relied upon by the State excluded from evidence. The accused submits that I should revisit my decision to admit the records on primarily two bases.

186. The first is that the bank records were unlawfully obtained by police in contravention of District Court orders setting aside the search warrants and that the police and the prosecution deliberately misled the Court about this matter. The second is that I erred in admitting the bank records in the exercise of the common law discretion. I will deal with each submission in turn.

BANK STATEMENTS – RECORDS OBTAINED UNDER SEARCH WARRANTS WHICH HAD BEEN STRUCK OUT

Accused's Submissions

187. The accused submits that the records were unlawfully obtained by police, that is the police misled or coerced the banks into producing the documents

when the search warrants authorising the seizure of the bank records had been set aside, and that the State prosecutors were aware of this on the trial.

188. It is not in dispute that on 15 March 2012 the police obtained search warrants in the District Court to obtain the bank records of the accused's law firm and other law firms. The accused applied for the warrants to be set aside on 26 March 2012, which application was granted by the District Court on 2 April 2012: see Exhibit D1, the written decision of Principal Magistrate, Cosmos Bidar.

189. The accused submits that the Court must infer that the police obtained the bank records sought under the warrants despite the fact that the warrants had been set aside because: the police had 17 days before the warrants were stayed to execute the search and likely obtained all the documents; the police did not apply for new warrants for 15 months; CI Gitua was "quiet" about the date the documents were obtained; S/C Peng and the police team started inquiring into the bank statements around May 2013; and the State deliberately kept S/C Peng out of the voir dire because they did not want him to expose the State's weakness. The subsequently lawfully issued search warrants cannot validate the unlawful investigations which commenced in May 2013. The evidence of the witnesses from DoF and OSG based on the unlawful investigation of the bank statements is therefore null and void and must be rejected. The police breached s 155(6) of the *Constitution* (National Judicial System) to comply with orders of the Ditrict Court and breached the accused's right to full protection of the law under s 37(1) of the *Constitution* and seeks orders in the nature of various declarations to the effect that the criminal investigation, police brief, District Court charges and ex officio indictment are invalid, null and void and of no effect pursuant to s 11 and 57(3) of the *Constitution*.

Consideration

190. I reject the submissions.

191. S/Sgt Peng's evidence was that as they went through bank records and records from DoF during the course of the investigation into Mr Devete's complaint into payments made in 2012 they discovered that similar payments had been made earlier. The investigation into prior payments commenced around May 2013. They started drafting warrants in about May and made enquiries with DoF and OSG and the investigation was ongoing from about May 2013. It must be said, however, that his evidence as to when the investigation commenced and his recollection of some details was at times limited. At one point in his evidence he said it commenced in 2012 or 2013 or

thereabouts. The important aspect of his evidence is that earlier payments were discovered from bank records *and* DoF records.

192. The 15 search warrants which have been admitted in this trial are dealt with in detail in my decision *The State v Paul Paraka* (2022) N9568. There was only one warrant obtained concerning bank records on 15 March 2012. The other warrant obtained that day pertained to the records of the PNG Law Society: see Exhibit D1. The warrant obtained on 15 March 2012 was directed to BSP with respect to the following firms: PPL; Paul Othas Lawyers; Harvey Nii Lawyers; Sino & Company Lawyers; Jack Kilipi Lawyers; and PKP Nominees Ltd: Exhibit P1.

193. It was not put to any of the relevant witnesses and there is no evidence to suggest that the search warrant had been executed before it was set aside. On the contrary, according to the decision of the magistrate made on the accused's application in the lower court, and upon which the accused relies: "To date, no searches have been made yet; one of the reasons is because of this Application": Exhibit D1. That is consistent with the evidence of CI Gitua and Asher Wafi that the production of documents usually takes considerable time, often several weeks.

194. It was not put to S/Sgt Peng and there is no evidence to suggest that the police went ahead thereafter to coerce or mislead the banks into producing the documents despite the fact that the warrants had been set aside. There is no reason to doubt that the orders were not served on the banks by the accused once obtained by him and there is no basis for suggesting that the banks would have acted contrary to such orders.

195. The suggestion is also inconsistent with the documentary evidence which shows that the warrant issued in March 2012 expressly sought documents for "the period between 1st February 2012 and 15th March 2012". Even if the warrant had been executed, which I am satisfied it had not, it would not have produced the bank records the subject of these proceedings.

196. Nor do the search warrants issued in August 2013 by Salika DCJ, or the material filed in support of them, suggest that the police had bank records for the relevant period by then. The material in support of the applications refers to information that appears to have been obtained from DoF, including cheque number references. For instance, Table 2 Extracts from Warrants, Affidavits

and Information in *The State v Paul Paraka* (2022) N 9568 at [35]. By way of example the information in support of the search warrant P2 states:

"Police have information in reference to alleged illegal payments being paid by the Department of Finance to Harvey Nii Lawyers in purported legal fees owed by the State. One such payment sum of K6 million was allegedly paid to the said Law Firm on a cheque # 177131 dated 17/02/12. It is believed that Dept. of Finance had made a number of such payments previously since 2006 up till the present time and may add up to substantial amount of public funds being illegally and fraudulent being disbursed."

197. Similarly, whilst the information for search warrant P6 refers to allegations from March 2007 it specifically refers to K6m paid by the DoF on 17 February 2012:

"It was alleged that between the period of March 2007 and 31st May 2013, the Department of Finance paid K6 million to Jack Kilipi Lawyers (cheque no. 177134, dated 17/02/2012) in settlement for purported outstanding legal fees owed by the State."

198. It is not unexpected that police investigating suspicious payments in 2012 and 2013 would consider the possibility of similar earlier payments, particularly given the concerns raised about payments from as early as late 2006, and the events and civil proceedings that followed.

199. Whilst it might have been preferable for S/Sgt Peng to have given evidence on the voir dire, there is no basis for the suggestion that the prosecution deliberately kept Peng out of the voir dire. It was the accused's application and he made it clear that S/Sgt Peng was not required on the voir dire, despite the fact that he was reminded that he was at liberty to require him. S/Sgt Peng has now given evidence and for the reasons outlined above, it does not support the accused's contention.

BANK RECORDS – DECISION ON VOIR DIRE

Accused's submission

200. The accused submits that having found that the bank documents were obtained in breach of the *Search Act* and therefore the *Constitution*, I erroneously admitted the bank records in an exercise of discretion at common

law in breach of s 4(3) and 4(4) of the *Underlying Law Act 2000* which provides:

> **(3) The common law shall not be applied unless:**
>
> **(*a*) it is consistent with a written law; or**
>
> **(*b*) it is applicable and appropriate to the circumstance of the country; or**
>
> **(*c*) it is consistent with the customary law as applied under Subsection (2); or**
>
> **(*d*) its application and enforcement would not be contrary to the National Goals and Directive Principles and Basic Social Obligations established by the *Constitution*; or**
>
> **(*e*) its application and enforcement would not be contrary to the basic rights guaranteed by *Division III.3 (Basic Rights)* of the *Constitution*.**
>
> **(4) A court which:**
>
> **(*a*) refuses to apply a principle or rule of customary law, shall give reasons for its refusal in terms of Subsection (2)(a), (b) or (c); or**
>
> **(*b*) applies a principle rule of common law, shall give its reasons for the application in terms of Subsection (3)(a), (b), (c), (d) or (e).**

201. The accused submits that the common law discretion is inapplicable and inappropriate to the circumstances of the country. The principles found in *Bunning v Cross* (1978) 141 CLR 54 deal with a statutory breach in Australia, and there are no equivalent provisions in Australia to ss 44 and 49 of the *Constitution*.

202. The accused further submits that the discretion was to be exercised under s 57 of the *Constitution* and that there is no discretion to be exercised when documents are obtained in the absence of a search warrant because s 11 of the *Constitution* is in mandatory terms and therefore the documents are invalid, null and void. S 11 provides:

> **11. *Constitution*, etc., as Supreme Law.**
>
> **(1) This *Constitution* and the Organic Laws are the Supreme Law of Papua New Guinea, and, subject to Section 10 (construction of written laws) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective.**
>
> **(2) The provisions of this *Constitution* and of the Organic Laws are self-executing to the fullest extent that their respective natures and subject-matters permit.**

203. Accordingly, I should exercise my power at common law to correct my own mistake applying the principles in *Richard Dennis Wallbank and Jeanette Minifie v The State* [1994] PNGLR 78 and exclude the bank records from the evidence.

Consideration

204. The accused has failed to persuade me that there is any basis for revisiting my decision to admit the bank records. I have given reasons for my decision and I do not intend to repeat them here in any detail.

205. In brief, I found none of the matters alleged by the accused to be established. I could not be satisfied, however, that some of the affidavits in support of the warrants were properly sworn before a Commissioner for Oaths pursuant to ss 14 and 17 of the *Oaths Affirmations and Statutory Declarations Act* for the purposes of s 6 of the *Search Act* and that the warrants were therefore invalidly issued albeit this was not done deliberately or with reckless intent, or with any intent to defeat the purposes of those acts or the *Constitution*: *The State v Paul Paraka (Decision on Admission of Bank Records)* (2022) N9568 at [104] to [105] and [201]. Nevertheless, it followed that the material seized under the warrants was unlawfully obtained: [203]; [205]. That finding was consistent with s 11 of the *Constitution*. The seizure of the material was unlawful but it did not render the documents themselves null and void and nor did s 11 require mandatory exclusion on that basis.

206. It was not necessary to expressly refer to s 4(4) of the *Underlying Law Act* but for the avoidance of doubt the common law discretion is not inapplicable and inappropriate to the circumstances of the country for the reasons discussed at [206] to [213] of my decision.

207. The *Constitution* does not require mandatory exclusion. S 57(3) provides the Court with a discretionary power to exclude evidence obtained in breach of the protections under ss 44 and 49 of the *Constitution*: [230]. For the reasons outlined in my decision I expressly found that it was neither necessary nor appropriate to exclude the bank records in the exercise of that discretion: [219] to [239].

MERITS OF THE CASE

STATE SUBMISSIONS

208. The State submits that the accused owned and operated PPL, which was engaged by the State prior to 2006. The accused took out orders OS No 876 of 2006 against the State for the payment of K6.4m. The same reference appears on the PGAS transaction reports as the basis of payments made to the various law firms by DoF. Bank statements show that the bulk of the monies were paid

on to PPL and PKP Nominees by the law firms. The law firms were never engaged by the State. The accused owns and operates both PPL and PKP Nominees. If the payments were legitimate they would have been paid directly to those firms. The payments were made out of the court order vote and not from the OSG for legal fees. It can be inferred that the payments made by DoF were intended for the accused. When the monies were paid by DoF to the law firms and then transferred to the accused's bank accounts, the accused applied the monies to his own use and the use of others. The whole scheme was dishonest. The accused knew that he was never entitled to the monies. Even if the accused says he was owed K6m the amounts received far exceed that amount. The accused used the accounts of the law firms to disguise the payments. The monies were State monies intended for the payment of court ordered judgements. They were not for legal bills. The State retained a legal and equitable interest in the monies and the monies belonged to the State.

ACCUSED'S SUBMISSIONS

209. The accused submits that there is no evidence of monies paid by the State. The PGAS transaction reports are not "money" or "other property, real, legal or equitable, including things in action or other intangible property" within the meaning of s 383A(3) of the *Criminal Code*. Money includes cheques but the State did not produce the cheques. The PGAS reports do not indicate whether the cheques were actually printed out and delivered to the payees. The State has not given evidence of the dates of the cheques.

210. When the monies hit the private accounts of the law firms they became the "private property" of the law firms or entities. The monies did not continue to have the character of State property.

211. The State improperly laboured to connect the proceedings OS No 876 of 2006 *Between Paul Paraka v The State* with the references found in some of the PGAS reports. No-one from DoF gave evidence as to what the initials stood for in the above references, whether it was for Court orders for the identified cases, or legal costs for the identified cases, or legal fees for the firms who acted in the cases, or court settlement payments, or NEC approved/sanctioned payments, or ex gratia payments approved by the NEC and Attorney-General. Without the payment vouchers it is not possible to say what OS 876/20 stands for. Does it mean outstanding OS 876/20, Originating Summons 876/20, OS 876/20? OS 876/20 is not the same thing as "OS No 876 of 2006 Paul Paraka v The State".

212. The State failed to call the principals of the law firms to give evidence as to the purpose of the payments. The police failed to execute search warrants at the offices of the law firms and obtain their books of accounts and other documents pertaining to the payments. The police failed to execute search warrants at PPL and PKP Nominees. S/Sgt Peng did not make enquiries with the commercial banks and Bank of PNG for the reasons for the cheque payments.

213. The payment vouchers for all of the transactions were missing from DoF. The State failed to call the witnesses involved in the processing and authorising of the claims, the requisitioning officers, commitment clerks, examining officers, s 32 officers, certifying officers and paying officers. The State failed to call the IT Manager and the responsible officers who inputted the information into PGAS. DoF failed to produce the payment vouchers. The State failed to call the Finance Secretary, Deputy Secretary and other delegated s 32 officers.

214. The PGAS reports refer to payments to PKP Nominees. No evidence was led to show what the payments were for, whether for: legal fees; court orders/judgments; ex gratia payments authorised by s 7 of the *Attorney-General Act*; or out of court settlement payments authorised by the NEC, the Secretary for Finance or the Attorney-General.

215. PKP Nominees is a separate legal entity. The corporate veil may be lifted in a criminal case in certain circumstances but in this case there is no evidence of what the payments were for, how the accused was directly involved in the alleged payments, and no witnesses were called to testify to the payments. None of the factors identified by Kandakasi J in *Odata Limited v Abusa* (2001) N2106, applied by Salika J in *The State v Graham Yotchi Wyborn* (2004) N2847 apply. The veil cannot be lifted. It cannot be assumed the payments were for the accused.

216. The witnesses from DJAG gave evidence in relation to the "primary case". There is no nexus between the OSG and the alleged payments by DoF. Without the payment vouchers there is no way to tell whether claims originated from within DoF or from external departments/institutions. OSG gave clear evidence that all legal bills are paid internally by DJAG and that none are paid outside DJAG.

217. The State failed to call the Attorney-General and Secretary for Justice to give evidence about claims originating outside the Office of the Attorney-General, including: the briefing out of lawyers to give legal non-contentious advice pursuant to ss 7(a) and 8(4) of the *Attorney-General Act*, normally carried out by the Office of the State Solicitor; the settling of claims out of court on the instructions of the NEC under s.7(d) of the *Attorney-General Act*; the provision of legal aid refused by the Public Solicitor pursuant to s 7(f); the legal brief-out of State related matters to external Lawyers by the Attorney-General under 7(i); or the recommending of ex gratia payments under s.7(j) of the *Attorney-General Act*.

218. The Attorney-General and Secretary for Justice were not called to explain their respective functions under the Act and whether the mentioned law firms were briefed-out on any or all of the matters between 2007 and 2011. The Solicitor-General does not legally brief-out external law firms and his function does not include managing of external brief-outs by the Attorney-General (s.13(2) of the *Attorney-General Act*. It is flawed and without any legal basis for the witnesses in the OSG to suggest that the OSG manages the external brief-outs by the Attorney-General and the evidence must be rejected.

219. Exhibits P21 to P24 allegedly relate to the 2012/2013 case and were given by police to Ms Gimot in 2013. She did not confirm that the cases were undertaken by PPL nor constituted legal bills paid by the State as part of its claims for payments in any of the years 2005 and 2006. The lists are irrelevant and have no probative value.

220. It appears from Ms Kias' evidence that the Attorney-General can make an executive decision for payments to be made by DoF in consultation with the Finance Secretary and the Government of the day. She was the Deputy Solicitor-General in 2013/2014 and she would not know what executive decisions that the Attorney-General and Solicitor-General made regarding the law firms between 2007 - 2011.

221. PPL were briefed out substantial State matters by the former Attorney-General prior to 2006, before the termination of the retainer at the end of 2006. The witness could not speak of those matters/ or prior brief-outs, because they are old files. Her team could not locate them in 2014 because all "the State files on Paraka Lawyers were missing or misplaced for whatever reason."

222. The proceedings taken by the State were briefed out to Mawa Lawyers and Stevens Lawyers. Ms Kias said that OS 876 of 2006 was stayed but she admitted she was not aware of the full history of the matters.

223. The State witnesses from the OSG cannot be believed because: (i) their evidence is inconsistent with the interlocutory orders in the two National Court proceedings which reflect a large number of brief-outs (by the interim money payment orders); (ii) the State did not call the external Lawyers to give evidence as to the status of the Court proceedings with respect to the total number of brief-outs, that will far exceed the exaggeration by the witnesses; (iii) Their evidence of a limited brief-out totalling 15 - 20 matters cannot be correct, in view of the National Court proceedings, which is reflective of a substantive number of brief-outs. (iv) The State did not provide a Report of the brief-outs contained in the proceedings filed in the National and Supreme Courts, yet the two Officers saw fit to do up a file notation in a biased list of cases in 2013, the list provided to Ms Christine Gimot and Ms Miriam Kias by the Police. (v) The legal proceedings in 2006/2007 in OS No. 829 of 2006 of 2006 and OS No. 876 of 2006 involved a total of 6,000 brief-outs to Paul Paraka Lawyers by the Attorney-General between 2000 - 2006, in a 7-year period. Those were subjects of disputes in the Courts, where the National Court made specific interim orders and other clearances given by the Attorney-General pursuant to the National Court Orders before the Supreme Court Stay Orders and several other clearances given by the Attorney-General after the interim stay orders were set aside.

224. These cases raise the following issues: (a) What were the nature of each of the claims/cases? (b) Total number of legal brief-outs to Paul Paraka Lawyers and captured in the affidavits filed in the two proceedings and Court Judgments. (c) Value of the outstanding claims in these proceedings of Paul Paraka Lawyers. (d) Total value of the interim money payments orders. (e) Total value of other legal bills cleared by the Attorney-General pursuant to order 5 of the interim Orders. (f) Whether there were any out of Court settlements in these matters? (g) Whether the two cases were resolved through out of Court settlements. (h) Whether the NEC and Attorney-General had approved any ex-gratia settlement payments out of these Court cases? (i) Whether the NEC and the Attorney-General have made any NEC Decisions compromising these cases and authorizing the payments?

225. Once these issues become clear it will be clear and obvious that PPL was instructed by the Attorney-General between 2000- 2006, and that gave rise to the legal proceedings, the subject of Exhibits P32, P33, P34 and P35. The external Lawyers, Mawa and Stevens Lawyers, were material witnesses. Their

evidence was critical. State missed the opportunity and cannot mislead the Court and this part of the evidence must be rejected.

226. The two witnesses in a biased way closed their minds, and made purported notations on an unverified list by the Police, for the purposes of misleading the Court in the primary case. The Primary case is not before the Court, and the witnesses' evidence be rejected as biased, an authentic, untested and hearsay. Police deliberately mislead the Court and printed out a false list of cases for Paul Paraka Lawyers and got a purported verification done up by the OSG resulting in the biased notations by Ms Christine Gimot in Exhibits of Reports (and apparently confirmed by Ms Miriam Kias in part of her evidence). These were biased reports from case list by Police in 2013; and they are hearsay and Court must reject that piece of evidence. The two Officers' statements of 15 - 20 matters are in connection with some alleged fresh matters after 2007; the two witnesses did not give a Report of matters briefed-out to Paul Paraka Lawyers between 2000 - 2006; these are old files, and the Police did not insist on a Report on these old files; Police asked the witnesses to provide a favourable Report on the faked list of Paul Paraka Lawyers' cases done up by the Police. The State's failure to call the external Lawyers (Mawa & Stevens Lawyers) creates doubt in this case.

227. All court orders are paid by DoF. The witnesses did not explain the process and whether payments are initiated by the Solicitor-General, Attorney-General, Registrar, National Court or DoF, and who approves and endorses the claims. They did not state specifically whether the subject law firms had any court order judgements to the credit of their clients under their names.

228. Mr Devete said he was not aware of any brief-outs to PPL and the other law firms between 2007 and 2011 but his denials were not specific to the alleged payments by DoF. With respect to the termination of PPL's engagement by the Attorney-General's Office at the end of 2006 he was aware of the proceedings but the matters were briefed out to external lawyers and he was not directly involved. Therefore, the former Solicitor-General is not aware of the total number of brief-outs, by the Attorney-General to PPL between 2000 - 2006, which should be contained in the proceedings between Paul Paraka Lawyers and the State. He confirmed that legal bills of external Lawyers are settled internally from the accounts managed by DJAG. Only Court Orders are paid by DoF upon endorsement of the Court Orders by the Registrar of the Court and the Solicitor-General under the *Claims By and Against the State Act*. He did not give evidence of total Court orders cleared by the OSG for payments by the DoF between 2006 - 2007 (during his term as the Solicitor-General). After stating the processes involved in court order claims, he did not State

whether or not PPL and the other law firms had any court orders under their names (for acting for clients) between 2007 - 2011. He generally denied of any knowledge of brief-outs to the law firms between 2007 - 2011. Critically, he confirmed the Attorney-General has power to brief-out legal matters to external law firms and he only acts on the instructions of the Attorney-General under the *Attorney-General Act*.

229. The State failed to call the former Attorney-General, Mr Kerenga Kua, and the current Secretary for Justice, Dr Eric Kwa, and the former Acting Solicitor-General, Ms Jubilee Tindiwi, as to the powers and functions under the *Attorney-General Act* and the practice at DJAG regarding brief-outs, clearance of bill payments, court order payments and management of brief-out files.

230. The State failed to call the Attorney-General and Secretary for Justice to give evidence regarding PPL and the other law firms between 2007 - 2011 as to: (a) Whether the records at the Office of the Attorney-General show any evidence of brief-outs to Paul Paraka Lawyers between years 2000 - 2006; period Paraka Lawyers' retainer was terminated by the end of 2006 and between 2007 - 2012; period Paraka Lawyers were still litigating his cases in Courts. (b) Whether there were any Court Orders cleared for payments by the Office of the Attorney-General and those related law firms and submitted to the Finance Department for payments in accordance with law between 2007 - 2011. (c) Whether the establishment of the Managers of legal brief-outs by OSG was an extension of the Public Service structure under the *Attorney-General Act* and the Public Service (Management) Act. (d) Whether there were any Attorney-General's instructions for external Lawyers to assist in legal aid and assistance of criminal cases under ss.7(j) and 14 of the *Attorney-General Act* by way of legal brief-outs instructions to external Lawyers. (e) Total number of ex-gratia payments recommended by the Attorney-General between 2006 - 2012. (s.7(i) of the *Attorney-General Act*). (f) Whether the Attorney-General settled State claims and outstanding cases by way of out of court settlements under the instructions of the NEC under s.7(d) of the *Attorney-General Act* (i.e. NEC sanctioned cases on clearance by the Attorney-General). (g) Any other legal instructions on non-contentious matters from the Office of the State Solicitor on instructions of the Attorney-General under s.7(f) of the *Attorney-General Act*.

231. There is no evidence that the monies referred to in the five counts were paid by the State to the accused personally or on his directions. The evidence fails to establish any connection with DJAG. There is no evidence that the payments were for PPL's legal bills or any legal bills. The evidence fails to establish that he caused the payments to the law firms to be transferred to his controlled bank accounts. None of the witnesses produced any direct evidence to support the counts. There is no circumstantial evidence and no rational

inference can be drawn. The case is a complete sham, an abuse of power, malicious prosecution at the highest and the accused reserves his rights.

ELEMENTS OF THE OFFENCE OF MISAPPROPRIATION

232. S. 383A of the *Criminal Code* creates the offence of misappropriation:

> **(1) A person who dishonestly applies to his own use or to the use of another person–**
> **(a) property belonging to another; or**
> **(b) property belonging to him which is in his possession or control (either solely or conjointly with another person) subject to a trust, direction or condition or on account of any other person, is guilty of the crime of misappropriation of property.**
>
> **(2) An offender guilty of the crime of misappropriation of property is liable to imprisonment for a term not exceeding five years except in any of the following cases when he is liable to imprisonment for a term not exceeding 10 years:–**
> **(a) where the offender is a director of a company and the property dishonestly applied is company property;**
> **(b) where the offender is an employee and the property dishonestly applied is the property of his employer;**
> **(c) where the property dishonestly applied was subject to a trust, direction or condition;**
> **(d) where the property dishonestly applied is of a value of K2,000.00 or upwards.**
>
> **(3) For the purposes of this section–**
> **(a) property includes money and all other property real or personal, legal or equitable, including things in action and other intangible property; and**
> **(b) a person's application of property may be dishonest even although he is willing to pay for the property or he intends to restore the property afterwards or to make restitution to the person to whom it belongs or to fulfil his obligations afterwards in respect of the property; and**
> **(c) a person's application of property shall be taken not to be dishonest, except where the property came into his possession or control as trustee or personal representative, if when he applies the property he does not know to whom the property belongs and believes on reasonable grounds that such person cannot be discovered by taking reasonable steps; and**
> **(d) persons to whom property belongs include the owner, any part owner, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it.**

233. To establish the offence the prosecution must prove beyond reasonable doubt the following elements, such that the accused:

(a) applied;
(b) to his own use or to the use of another;
(c) property;
(d) belonging to another person;
(e) dishonestly.

Havila Kavo v The State (2015) SC1450.

HONEST CLAIM OF RIGHT WITHOUT INTENTION TO DEFRAUD

234. A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any

property in the exercise of an honest claim of right and without intention to defraud: s 23(2) of the *Criminal Code.*

235. Whether or not an act was done under an honest claim of right and without intention to defraud is a question of fact to be determined by the trial judge when there is some evidence raising the issue. Once raised, a judge must be satisfied that the evidence excludes the possibility that the accused acted in the exercise of an honest claim of right and without intention to defraud before they can convict.

236. The Supreme Court set out the following principles in *Wartoto v The State* (2019) SC1834. A claim of right only has to be honest, it does not have to be reasonable: *Tiden v Tokavanamur-Topaparik* [1967-1968] PNGLR 231, *Sebulon Wat v Peter Kari* [1975] PNGLR 325. It is not for the accused to prove that he had an honest claim of right. It is the duty of the State to prove that he did not have an honest claim of right: *Magr v R* [1969-70] PNGLR 165, *Francis Potape v The State* (2015) SC1613. The State must disprove (exclude) the defence beyond reasonable doubt: *John Jaminan v The State (No 2)* [1983] PNGLR 318. It is not a matter of an accused simply saying on oath that he had an honest belief and having that assertion accepted, as such evidence might be unconvincing as it was, for example, in *R v Hobart Magalu* [1974] PNGLR 188 and *The State v Henry Gorea* [1996] PNGLR 141. Once the defence operates, it is a complete defence to an offence relating to property of which fraudulent or dishonest intent is an element.

237. As observed in *David Kaya and Philip Kaman v The State* (2020) SC2026, the belief must be one of legal entitlement to the property and not simply moral entitlement: *Ikalom & Anor v The State* (2019) SC1888 adopting *MacLeod v R* (2003) 214 CLR 230*;* and *The State v Felix Luke Simon* (2020) N8183 applying *R v Pollard* [1962] QWN 13, 29*; R v Bernhard* [1938] 2 KB 264, 270*;* and *Harris v Harrison* (1963) Crim LR 497. Furthermore, whilst a claim need not be reasonable, one that is unreasonable may be less likely to be believed as being genuinely or honestly held: *The State v Felix Luke Simon (supra)* adopting *Macleod v The Queen* (2003) 214 CLR 230.

238. It should also be noted that s 23(2) requires both that an accused act in the exercise of an honest claim of right and without an intention to defraud: *State v Merimba* (2022) N9481 at [93].

239. An intention to defraud is an intention to deprive a person of property which is his or to which he might be entitled, or to put the property of that other

person at risk, or to imperil some lawful right, interest, opportunity or advantage of another person; by using deceit, or fraudulent or dishonest means; knowing that he has no right to deprive that person of that property or to prejudice those rights or interests: *Roland Tom v State* (2019) SC1833 applying *Scott v Metropolitan Police Commissioner* [1975] AC 819 and *Peters v The Queen* [1998] HCA 7; (1998) 192 CLR 493.

PRINCIPLES GOVERNING A CIRCUMSTANTIAL CASE

240. The State's case against the accused is substantially circumstantial. The principles governing such a case are well established. In a case resting wholly or substantially upon circumstantial evidence, an accused cannot be found guilty unless the prosecution has excluded all rational hypotheses consistent with innocence; that is the guilt of the accused must not only be a rational inference, but the only rational inference in all of the circumstances: *Paulus Pawa v. The State* [1981] PNGLR 498 (approving *The State v Tom Morris* [1981] PNGLR 493, adopting *Barca v The Queen* (1975) 50 ALJR 108 *quoting Peacock v the King* (1911) 13 CLR 619; see more recently *Maladina v The State* (2016) SC1495 and others.

241. The bare possibility of innocence should not, however, prevent a jury from finding guilt "if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence": *Peacock v. The Queen* at p. 661.

242. A circumstantial case is not for that reason weaker than a case based upon direct evidence: see the comments of the High Court of Australia in *De Gruchy v The Queen* [2002] HCA 33; 211 CLR 85 at [48] referred to in *The State v Epei (2019) N7845*. It will depend on the nature or number of the circumstances in evidence, and may well be stronger than direct evidence in some cases. The principles applicable in a circumstantial case are no more than an amplification of the rule that the prosecution must prove its case beyond reasonable doubt: see *Shepherd v R* [1990] HCA 56; (1990) 170 CLR 573 at [2]. This will depend upon whether all of the evidence establishes that the only rational conclusion is the guilt of the accused.

243. All of the circumstances established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence: *Paulus Pawa (supra)*. The evidence must be

considered as a whole and not by a piecemeal approach to each particular circumstance: *The Queen v Baden-Clay* (2016) 258 CLR 308 at [46] to [47].

244. The essential elements of the offence must be proved beyond reasonable doubt but it is not necessary for every fact, or every piece of evidence, relied upon to be proved beyond reasonable doubt unless the fact is fundamental to the process of reasoning: *Shepherd v R, supra* at [6].

245. It is not incumbent on the defence either to establish that some inference other than that of guilt should reasonably be drawn from the evidence or to prove particular facts that would tend to support such an inference. Where an accused chooses to give evidence, however, that evidence may narrow the range of alternative hypotheses reasonably available upon the evidence: *The Queen v Baden-Clay* (2016) 258 CLR 308 at [54], [55], [62] and [63]. To my mind that approach equally applies in this jurisdiction; *Epei (supra)* at [50].

PROSECUTION DUTY TO CALL MATERIAL WITNESSES

246. The accused makes numerous submissions about the failure of the State to call certain witnesses. The principles have been considered in the following cases, which whilst not binding I find persuasive, and which I have considered in *The State v Joan Kissip* (2020) N8184, at [97] to [104] and *The State v Felix Kange* (2020) N8488 at [48] et seq.

247. The first thing to make clear is that as a general proposition the prosecution has a discretion as to whether any particular witness should be called. The discretion is not unfettered, however, and must be exercised in the interests of justice so as to promote a fair trial: see *Muhammed El Dabbah v Attorney-General for Palestine* [1944] AC 156 PC and *Apostilides v R* (1984) 154 CLR 563.

248. The ordinary rule is that the prosecution should call all witnesses whose evidence is necessary for the presentation of the whole picture, to the extent that it can be presented by admissible and available evidence, unless valid reason exists for refraining from calling a particular witness or witnesses. Generally all witnesses who can give "material evidence" should be called by the prosecution: *R v Harris* [1927] 2 KB 587. As the prosecution seeks the truth, it must call evidence favourable and unfavourable to its case (*R v Soma* (2003) 212 CLR 299; *R v Shaw* (1991) 57 A Crim R 425.

249. Nevertheless, the prosecution does not need to call a witness if his or her evidence is likely to be unreliable, untrustworthy or otherwise incapable of belief: *Whitehorn v R* (1983) 152 CLR 657; *R v Newland* (1997) 98 A Crim R 455. Nor should the prosecution call a witness whose evidence is likely to be unnecessarily repetitious: *Whitehorn v R (supra)*.

250. Where the prosecution fails to call a witness without providing a reasonable explanation, the Court, if it considers that the prosecution has not exercised its discretion fairly, may invite the prosecution to reconsider its position but is not obliged to do so: see *R v Olivia* [1965] 3 All ER 116; and *R v Apostilides (supra)*. It may, in very exceptional circumstances, call the witness itself: see *R v Birch* [1978] PNGLR 79, or make an adverse finding that the witness should have been called.

251. As a general rule, a trial judge should not infer that the evidence of those who were not called would not have assisted the prosecution. A judge should not speculate about what the person might have said. Exceptions to these general rules will be rare and will arise only in cases where it is shown that the prosecution's failure to call the person in question was in breach of the prosecution's duty to call all material witnesses: see *Dyers v R* (2002) 210 CLR 285 considering *Jones v Dunkel* (1959) 101 CLR 298.

252. If the question concerns the failure of the prosecution to call a witness whom it might have been expected to call, the issue is not whether the trial judge may properly reach conclusions about issues of fact but whether, in the circumstances, the judge should entertain a reasonable doubt about the guilt of the accused: see *RPS v The Queen* (2000) 199 CLR 620.

ASSESSMENT OF WITNESSES

253. Each of the State witnesses impressed me as honest and credible. I make these findings having heard and observed the witnesses, all of whom were, but for Mr Mowi, vigorously cross-examined at some length, and having regard to the evidence in the case as a whole, together with the demeanour of the witness whilst giving evidence, and bearing in mind that I may accept or reject any part of a witness' evidence: *Maraga v The State* (2009) SC968; *James Pari & Bomai Tine Kaupa v The State* [1993] PNGLR 173.

254. Mr Yore was an honest and careful witness. He has extensive experience at DoF, especially in audit and compliance. A large part of his evidence was formal in nature and concerned the production of records and the processes applying in DoF including, in particular, for the payment of court ordered judgements approved by the OSG. His evidence regarding assistance to police is also important. Mr Kaivila's evidence was more limited in nature, was not in any real dispute despite lengthy cross-examination, and was consistent in key respects with other State witnesses, although I prefer the express evidence of Mr Yore, Ms Kias and Mr Devete regarding the provision of cheques to DJAG for distribution. There is no dispute about Mr Mowi's evidence, which is formal in nature.

255. Ms Gimot has extensive experience as the officer with first-hand responsibility for maintaining the records of brief-outs at the OSG on court files and on its CMS. I am confident in her familiarity with the processes applying and her recollection of certain matters, discussed below. Mr Devete and Ms Kias were both very impressive witnesses. Both had first-hand and extensive experience in the management of brief outs and judgement debts, and their payment, by the State. Their evidence was clear and consistent on critical matters but not so similar as to suggest that it had been fabricated, and reflected their different roles and responsibilities at the relevant times. Each were careful in their evidence which demonstrated extensive experience and was also consistent with common sense. Particular aspects of their evidence is referred to below.

256. As above I found both Mr Pop and S/Sgt Peng to be honest and reliable witnesses, although their recollection of some details was lacking, which is to be expected given the lapse of time albeit that I would have expected S/Sgt Peng to have familiarised himself with certain matters regarding the conduct of the investigation prior to giving evidence, eg the availability of cheques paid by DoF.

FINDINGS OF FACT

257. I find the following facts to be established on the evidence. Further facts are set out below as they become relevant.

258. It is the sole prerogative of the Attorney-General to instruct lawyers within or outside the country to appear for the State in any matter pursuant to s 7(i) of the *Attorney-General Act*.

259. The primary function of the Solicitor-General is to appear as an advocate for the State in matters coming before the courts in Papua New Guinea pursuant to s 13(1) of the *Attorney-General Act*.

260. On the evidence of Mr Devete and Ms Kias, as a matter of practice, and in keeping with good governance and common sense, the decision to engage, or "brief-out" to, private lawyers to act for the State during the relevant period was made by the Attorney-General in consultation and on the recommendation of the Solicitor-General, having regard to the complexity of the matter, potential conflicts of interest or lack of capacity within the OSG.

261. The evidence of those witnesses and Ms Gimot also establishes that the OSG was responsible for keeping the records of brief-outs and managing the payment of the legal fees incurred, for the purpose of ensuring that DJAG monitored the State's exposure to liability.

262. Whilst there may have been occasions when the Attorney-General engaged private lawyers outside the normal process during the relevant period the OSG would subsequently be informed and the brief-out captured on the relevant file and in CMS.

263. In the event of a brief-out, the Attorney-General signed a brief-out instruction letter to the relevant law firm, outlining when it should submit its bill of costs to the OSG and how bills should be itemised. Brief-outs were made on a case-by-case basis to ensure oversight of each file briefed out. A copy of the instruction letter was sent to the OSG where it was kept on the State's file. A copy was also stored electronically on the OSG's CMS. A lawyer from within the OSG was assigned as case officer to maintain a watching brief on the file and obtain periodic updates on steps taken in the proceedings.

264. Invoices were usually submitted monthly and reviewed by the lawyer maintaining the watching brief, who would verify the bill of costs before referring it to the payments team within the OSG. A requisition was approved by the Solicitor-General and the Deputy Secretary for Corporate Services for payment by the Finance Division from a dedicated trust account specifically housed within DJAG and managed by the OSG for the payment of legal fees when funds were available.

265. The costs of a proceeding varied according to its length and complexity. A proceeding brought by originating summons, "OS" would not normally cost more than K50,000 in legal fees.

266. If there was a dispute between the OSG and the law firm concerned as to fees the OSG would apply for the costs to be taxed by the Registrar.

267. Whilst acknowledging that Mr Devete could not specifically recall, I find on his evidence that the annual budget for the cost of legal fees or bills during the relevant period was between about K2 and K5m.

268. The process for the payment of legal bills was distinct from that for court ordered judgements against the State.

269. On the evidence of Mr Devete, Ms Kias, and Mr Yore, judgement debts or court orders against the State were paid by cheque by DoF following clearance from the Solicitor-General. Whilst Mr Kaivila refers to DoF paying "legal bills", it is clear from his other evidence that he is referring to "legal bills against the State" that are "always paid from the court order vote", and the effect of his evidence is consistent with that of the other witnesses.

270. For this purpose it was necessary for a claimant to comply with ss 13 and 14 of the *Claims By and Against the State Act*, 1996 which provide:

> **13 NO EXECUTION AGAINST THE STATE.**
> **(1) In any suit, execution or attachment, or process in the nature of execution or attachment, may not be issued against the property or revenue of the State.**
> **(2) Where a judgement is given against the State, the registrar, clerk or other proper officer of the court by which the judgement is given shall issue a certificate in Form 1 to the party in whose favour the judgement is given.**
>
> **14 SATISFACTION OF JUDGEMENT AGAINST THE STATE.**
> **(1) The certificate referred to in Section 13(2) shall be served on the Solicitor-General by–**
> **(*a*) personal service; or**
> **(*b*) leaving the document at the office of the Solicitor-General with the person apparently occupying the position of personal secretary to the Solicitor-General between the hours of 7.45 a.m. and 12 noon p.m. or 1 p.m. and 4.06 p.m., or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act 1953*.**

(2) The Solicitor-General shall, within 60 days from the date of service upon him of a certificate under Section 13(2), endorse the certificate in Form 1.

(3) Upon receipt of the certificate of a judgement against the State bearing the Solicitor-General's endorsement that judgement may be satisfied, the Departmental Head responsible for finance matters shall, within a reasonable time, satisfy the judgement out of moneys legally available.

(4) Any payment in satisfaction of judgement may, in the absolute discretion of the Departmental Head responsible for finance matters, be made by instalments, provided the judgement is thereby satisfied within a reasonable time.

(5) No action–
(*a*) for or in the nature of *mandamus*; or
(*b*) for contempt of court,
or otherwise lies against the Solicitor-General or the Departmental Head responsible for finance matters in respect of the satisfaction of a judgement under this Act, other than for failure to observe the requirements of Subsection (2), (3) or (4), as the case may be, or unless other exceptional circumstances can be shown to the satisfaction of the court.

271. In summary, a certificate of judgement was to be obtained from the Registrar, clerk or other proper officer of the court by which the judgement was given, in compliance with s 13 of the Act, and served on the Solicitor-General for verification and endorsement, pursuant to s 14 of the Act.

272. Having certified the court order, the Solicitor-General completed an FF3 form and sent it and the supporting documentation to DoF for payment. Judgement orders were sent in batches.

273. Judgement debt/court order claims were processed through DoF and paid by cheques raised from the judgement debt vote managed by it. Any such claim would be processed through the commitment clerk, then the examining officer, the s 32 officer who approved the claim, and the certifying officer, before it went to the paying officer to process the cheque. Only the Secretary, DoF, could approve claims above K100,000.

274. Once raised, cheques for the payment of judgement debts/court orders were sent to the OSG. Copies of the cheques were placed on the relevant court file by OSG and its CMS before the lawyer for the successful party was called to collect the cheque, following which the file was closed upon the direction of the Solicitor-General.

275. There was no direct evidence of the annual budget for judgement debts between 2007 and 2011. On Mr Devete's letter of complaint, D3, it was about K60m in 2012.

276. The accused was the principal of PPL, a registered law firm, operating since 1995.

277. The accused was the sole shareholder and director of PKP Nominees, a registered property investment company, incorporated 17 February 2000.

278. Harvey Nii Lawyers and Sino & Company Lawyers were registered as business names with the IPA in 2007. Jack Kilipi Lawyers was registered in 2012.

279. On 17 November 2006 the National Court in OS No 829 of 2006 *Paul Paraka trading as PPL v Kalinoe* granted leave to the accused to review the Chief Secretary's stop-payment directive of 6 June 2006 and ordered the State through the Secretary for Treasury, alternatively the Acting Secretary for Finance, to pay all of PPL's outstanding legal fees of K6.5m by 130 pm the same day. The Court further ordered the said Secretaries to pay any subsequent fees upon clearance by the Attorney-General, and restrained the Chief Secretary, the Acting Secretary for Finance, the Secretary for Treasury, the Minister for Justice, the Attorney-General, the State and its Ministers, from stopping the payment of legal fees owing to PPL pending determination of the judicial review.

280. On 22 November 2006 the Chief Justice, Sir Mari Kapi, stayed the National Court orders made on 17 November 2006 in OS No 829 pending the appeal in SCM No 15 of 2006, *Kalinoe v Paul Paraka trading as PPL*.

281. On 29 December the National Court in OS 876 of 2006 *Paul Paraka trading as PPL v Kimisopa* stayed the decisions of the Minister for Justice and the NEC to establish a departmental inquiry into the briefing out of State cases to private lawyers, and the decisions of the Minister for Justice and the Attorney-General terminating all briefing-out to PPL, withdrawing all files, and ceasing all payments to PPL, pending judicial review. The Court further ordered that: the departmental enquiry into brief-outs and the payment of legal fees was prohibited; the Minister for Justice be refrained from interfering with the functions of the Attorney-General and Solicitor-General under the Attorney-

General's Act; and the Attorney-General be at liberty to deal with PPL on all matters of legal brief-outs and pay out of funds lawfully available within DJAG any legal fees owing to PPL, or refer them to the DoF with the necessary clearance for payment, in his absolute discretion and authority vested in him by the *Attorney-General Act* (Order 5).

282. On 2 March 2007 the National Court in OS 876 of 2006 ordered the Secretary for Treasury to release a special warrant in the sum of K6.44m to the Secretary for Finance for payment to PPL by 3 pm the same day.

283. On 12 March 2007 the Supreme Court in SCM 03 of 2007 *Kimisopa v Paul Paraka trading as PPL*, stayed the National Court orders in OS 876 of 2006 made on 2 March 2007, and the entire proceedings in OS 876 of 2006, pending the determination of the appeal.

284. On the evidence of Ms Kias and Mr Devete the proceedings remained on foot throughout 2007 to 2011.

285. I find on the evidence of Mr Devete that no matters were briefed out by the Attorney-General, through the OSG, to PPL during the period 2007 to 2011, and that no legal bills were paid by DJAG to PPL during that period.

286. Mr Devete joined the OSG in September 2006, and was the Acting Solicitor-General from 2007 and the Solicitor-General from 2009 until the end of 2012. In 2006 the Minister for Justice, Mr Kimisopa, and Fred Tomo, the Attorney-General, instituted an investigation into PPL, which was conducted by Sir Arnold Amet. The Minister, in consultation with the Secretary for Justice, Dr Lawrence Kalinoe, put a stop to briefing-out PPL. Thereafter, during his term as acting Solicitor-General and then Solicitor-General there were no brief-outs to PPL and no legal fees were paid to it. Mr Devete was emphatic about this. He was an impressive witness and as the acting or substantive Solicitor-General from 2007 until the end of 2012, he would have first-hand knowledge of this fact. Furthermore, it is entirely in keeping with common sense given the prevailing circumstances, including the court proceedings brought by the accused, and the orders obtained by the State in the Supreme Court in response, matters about which Mr Devete was clearly aware, regardless of whether or not the proceedings were conducted by private counsel. In those circumstances I have no doubt he would recall the briefing out of PPL or the payment of any of its bills during the relevant period.

287. Whilst not necessary to my finding, Ms Kias and Ms Gimot's evidence is consistent with this. Ms Kias' investigation searched for records pertaining to brief-outs to PPL at any time. Whilst she could not recall when the matters were briefed out, she recalled that the investigation conducted in 2014 revealed that a total of only 15 to 20 matters had been briefed out to PPL. According to Ms Gimot's evidence 42 had been briefed out but prior to 2007. In both cases all fees had been settled. I will return to this below.

288. On the evidence of Mr Devete, Ms Kias and Ms Gimots, no matters were briefed out, and no payments for legal fees were made, by the Attorney-General through the OSG, to PKP Nominees during the period 2007 to 2011.

289. On the evidence of Mr Devete, Ms Kias and Ms Gimots no matters were briefed out and no payments for legal fees were made by the Attorney-General through the OSG to Sino & Co Lawyers, Jaki Kilipi Lawyers, Harvey Nii Lawyers, Sam Bonner Lawyers, Kipoi Lawyers, Korowi Lawyers or Yapao Lawyers during the relevant period.

PROPERTY

290. I have reviewed the PGAS reports and bank records, primarily bank statements, of PPL, PKP Nominees, and the seven law firms, and summarised my findings in Table 1, which is annexed to this decision. The details set out in the narrative columns are taken verbatim from the PGAS reports or the bank statements as indicated.

291. The records establish beyond reasonable doubt that between 2007 and 2011 25 cheques were paid by DoF to PKP Nominees in the amounts set out in Table 1. Apart from one for K500,000, the payments ranged in size from about K1m to almost K5m.

292. The records also establish beyond reasonable doubt that between 2007 and 2011 a further 40 cheques were paid by DoF to one of seven law firms, namely Harvey Nii Lawyers, Sino & Company Lawyers, Sam Bonner Lawyers, Yapao Lawyers, Korowi Lawyers, Jack Kilipi Lawyers and Jack Kipoi Lawyers, at various times, in the amounts set out in Table 1. The cheques ranged in value from K1.5m to almost K4m. Furthermore, where the cheques were paid to one of the named law firms, the bulk of the proceeds of those cheques was then paid to PPL or PKP Nominees, usually within a matter of days if not the same day.

293. The first entry in the table is illustrative. PGAS records show that on 26 April 2007 a cheque in the sum of K1.5m was drawn by DoF in favour of Sam Bonner Lawyers for "O/S Legal Fees OS876/20". Bank records show that on 27 April 2007 K1.5m was deposited by BPNG to Sam Bonner Lawyers Account, No 1001252784. On the same day K1.1m was withdrawn from Sam Bonner Lawyers Account and deposited, again on the same day, to the account of PPL, No 1000586112.

294. The pattern of onward payment to PKP Nominees or PPL is repeated for all payments made by DoF to the law firms between 2007 and 2011, albeit that the amount that the recipient law firms retained in each case varies from about K30,000 up to about K400,000.

295. There is one exception to this with respect to the payments made to Harvey Nii Lawyers Trust Account in 2010. Cheques in the amounts of K2m, K3.830,610 and K2m were paid to the trust account on 26.01.10, 19.02.10 and 5.10.10, respectively, following which the sums of K2, K3,180610 and K2m were paid to PPL, meaning that whilst no monies were retained from the payments on 26.01.10 and 5.10.10, a total of K650,000 was retained from the 7.18m received by Harvey Nii Lawyers that year. This makes no difference to my finding.

296. Nor does the fact that the payments to Jack Kilipi Lawyers in 2008 and 2010 do not appear in the law firm's bank statements. The PGAS reports together with the bank statements for PPL establish the payment of the monies to Jack Kilipi Lawyers in 2008 and 2010 from DoF and the payment from Jack Kilipi Lawyers to PPL, less monies retained.

297. The fact that the monies were paid by DoF is supported by PGAS reports for the years 2007 to 2010. For all but 12 of the 46 payments made during that period PGAS reports are available to show that cheques were raised by DoF payable to PKP Nominees or one of the law firms on a particular date in a particular sum. The bank records confirm the receipt of the cheque into the account of the named beneficiary.

298. Despite the absence of the remaining PGAS reports, I am satisfied beyond reasonable doubt that the source of the monies into the accounts on the 12 remaining occasions were cheques from DoF having regard to the bank records, the source of the funds as described in the bank statements, the amount

of monies involved in each case, and the fact that the payments are consistent with the pattern of payments established.

299. Despite the absence of IFMS records for the payments made in 2011, I am satisfied beyond reasonable doubt that the source of the monies into the bank accounts were cheques from DoF, having regard again to the bank records, the source of the funds described in the bank statements, and the pattern and size of the payments.

300. The findings are consistent with the cheque payments listed in Attachment D to Mr Pop's report.

301. In making these findings I have taken into account that for the most part cheques and deposit slips have not been produced for either the payments made by DoF or the payments made from the recipient law firms to PPL or PKP Nominees. Copies of six cheques drawn by DoF have been produced. Copies of deposit slips which refer to a further seven DoF cheques by number, date and amount have been admitted. In other cases the description of the transaction in the bank statements is relevant in establishing the source and nature of the deposit in each case, in all of the circumstances.

302. It is unclear why the State has not produced most of the cheques issued by DoF. Mr Pop was adamant in evidence that he had access to the cheques and that he annexed copies to his report. The fact that he had the cheques is consistent with his report, which sets out the date, number and amount of each cheque in Attachment D. For some reason the report does not refer to or attach, Attachments A and B. Whilst his report makes specific mention of the fact that payment vouchers were not available he makes no such comment about the cheques. It is also possible that he obtained the details from PGAS and IFMS reports. For some reason not all of the PGAS reports produced by Mr Yore to police were tendered and, as above, none of the IFMS reports were admitted. According to Mr Kaivila, once cleared by the banks, the cheques would have been returned to DoF for reconciliation purposes. This is consistent with the fact that he retrieved five original cheques from DoF's account section upon specific request. S/Sgt Peng could not initially explain why the cheques were not available but said towards the end of his evidence that as far as he could recall the banks were unable to produce the cheques due to bank retention policies. His evidence also suggested that the investigating officers responsible for the cases against the principals of the respective law firms might hold the cheques. It is unclear from the questions put to S/Sgt Peng during cross-examination

whether the cheques, or copies of them, were available at the time of the record of interview, and the record of interview was not tendered. These matters should have been clarified by the State.

303. For the reasons outlined above, however, I am satisfied beyond reasonable doubt that cheques were raised by DoF in favour of PKP Nominees and each of the seven law firms in the amounts set out in Table 1. For similar reasons the absence of payment vouchers does not raise any doubt in my mind that the cheques were delivered and deposited to the bank accounts of PKP Nominees and the seven law firms. Furthermore, that in the case of the seven law firms, the bulk of the proceeds of those cheques was paid on to PPL or PKP Nominees. The records admitted into evidence are compelling.

304. The records correspond with the sums alleged in the charges and reflected in the facts on arraignment, set out above, except that on my calculations the total sum in Count 5 is K47,608,300. There appears to be a counting error in the State's calculation of the six cheques paid to Sino & Company Lawyers in 2011.

305. I further find that where PGAS reports are available, the cheques are purportedly raised for outstanding legal fees in most cases, outstanding legal bills in three cases, outstanding court orders in a few cases, or for settlement of OS 876/20, or its legal costs, in ten cases. See Table 1.

306. The particular references to "O/S 876" in the PGAS reports are:

- "Court Order OS #876/20" in respect of a cheque in the sum of K3m dated 31.12.07 payable to Sino & Co Lawyers
- "O/S Legal Fees OS 876" in respect of cheque in the sum of K3.5m dated 26.04.07 payable to Sam Bonner Lawyers
- "Court Order OS #876/20" in respect of a cheque in the sum of K3m dated 31.12.07 payable to Korowi Lawyers
- "C/Order OS# 876/2006" in respect of a cheque in the sum of K3,5m dated 31.12.07 payable to PKP Nominees
- "O/S: 876/06 Legal Bills" in respect of a cheque in the sum of K1.96m to Jack Kilipi Lawyers dated 31.12.08
- "O/S legal costs O.S.876" in respect of a cheque in the sum of K2.7m payable to PKP Nominees dated 28.02.08.

- "O/S legal fees O/S #87" in respect of a cheque in the sum of K2m payable to Harvey Nii Lawyers dated 20.01.10
- "O/S C/O OS #876/06" in respect of a cheque in the sum of K3.83m payable to Harvey Nii Lawyers dated 15.02.10
- "O/S C/O OS #876/06 (lega" in respect of a cheque in the sum of K3.99m payable to Kipoi Lawyers dated 15.02.10
- "O/S C/O OS #876/06 (leg" in respect of a cheque in the sum of K3.95m payable to Korowi Lawyers dated 15.02.10

307. In summary, between 2007 and 2011 cheques totalling the following sums were paid by DoF to PKP Nominees and the seven law firms:

- K30,300,000 in 2007
- K30,054,312.68 in 2008
- K 14,480,672.28 in 2009
- K39,808,610 in 2010
- K47,608,300 in 2011

308. In the case of the latter the bulk of the proceeds of the cheques were then paid on to PPL or PKP Nominees.

309. For the purpose of s 383A of the *Criminal Code*: "property includes money and all other property real or personal, legal or equitable, including things in action and other intangible property": 383A(3). Pursuant to s 1 of the *Criminal Code* money includes "bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money".

310. I am satisfied beyond reasonable doubt that the monies held to the credit of the State with BPNG and controlled by DoF, upon which the cheques payable to PKP Nominees and each of the seven law firms were raised, were property for the purpose of s 383A of the *Criminal Code*.

BELONGING TO THE STATE

311. It is well established that pursuant to s 383A(3)(d) of the *Criminal Code*, the State retains ownership in monies until the monies are applied for the purpose for, or according to the condition upon, which they are provided: see the Supreme Court decision of *Brian Kindi Lawi v The State* [1987] PNGLR 193, and the numerous cases applying it, including *Havila Kavo, supra and Wartoto v The State* (2019) SC1834; and *Kaya v The State* (2020) SC2026.

312. I am satisfied beyond reasonable doubt that the monies held to the credit of the State with BPNG and controlled by DoF, and upon which the cheques payable to PKP Nominees and each of the seven law firms were raised, were held for State purposes, in particular the payment of court ordered judgements against the State. Until the monies were applied for the purposes of the State, the State retained an interest in the monies.

313. For the reasons outlined below the evidence excludes any rational possibility that the monies were ever applied for any State purpose, court ordered judgement or otherwise. I am therefore satisfied beyond reasonable doubt that the State retained an interest in the monies and was their owner pursuant to s 383A(3)(d) of the *Criminal Code*.

APPLIED TO HIS OWN USE AND THE USE OF OTHERS

Legal Principles

314. The word "applies" in s 383A of the *Criminal Code* is not defined. The ordinary meaning of the word was considered in *R v Easton* [1994] 1 Qd R 532 in the context of 408C(1)(a) of the Queensland *Criminal Code*, which was in identical terms to s 383A. In my view the case whilst not binding is persuasive: *The State v Hasu* (2018) N8656 at [45]; *The State v Bobby Leva* (2019) N8696 at [60]; *The State v Wai* (2020) N8182 at [105].

315. In particular, the following statement of Macrossan CJ is instructive and it is useful to quote it here at length (emphasis mine):

> *"**The phrase "applies to his own use" may not always have the same meaning as, say, "uses for his own purposes" because under the former phrase some relevant use may not yet have commenced while under the latter the use will have been at least initiated**. However, even to "apply" involves some utilisation of the thing in question. The composite phrase which s. 408C adopts contains words which, if possible, should all be given their natural meaning. **It can be accepted that the section envisages some interaction between the person and the thing and this will not be met merely by the formation of an intention to act or the devising of a plan in respect of the thing. The section nevertheless stops short of requiring that there should be some consumption, expenditure or dissipation of the thing, alteration of its form or utilisation of it to secure some collateral material benefit, although these may be involved.***

I consider that the requirement of this part of the section is met when there has been a utilisation by the person involved for his own purpose*s. While the ways in which this may occur are legion, one example may illustrate the very minimal level of activity which I think would be sufficient. If a person takes a picture or work of art belonging to another and puts it in a place for the purposes of his own private enjoyment of it he will have applied it to his own use. He does not, for example, have to sell the picture before it can be said that this has occurred.*

Perhaps his plan may be more complicated than this. He may intend to sell the item after a time and in the meantime take pleasure from his private possession of it. On the other hand, he may simply intend to return it after a time. When he first takes the item in an unauthorised way from the person to whom it belongs and carries it towards his house to implement his plan, I consider that he will have already applied it to his own use, although in any such case if he is intercepted at that stage there may, in the absence of admissions on his part, be some difficulty in proving the case against him…

[B]efore an item of property will be "applied", there has to be a mental element, an intention held in relation to the thing, and also there has to be some implementation of that intention, i.e. some act or acts which constitute some dealing with the thing: ***in simple terms something has to be done to or with the thing. Usually there will be, I think, some influence exerted upon the thing affecting its form, location or its attributes. The "application" will involve some deflection from the purposes of the person to whom the property belongs.*** *In addition, the section stipulates that the application be dishonest."*

316. The term "applies" in s 383A of the *Criminal Code* should be given its ordinary meaning, such that to apply property involves some use or dealing with it. The section nevertheless stops short of requiring that there is some consumption, expenditure or dissipation of the property, alteration of its form or utilisation of it to secure some collateral material benefit, although these may be involved. An application to one's own use or the use of another will involve some deflection from the purposes of the person to whom the property belongs.

Consideration

317. As I understand it, the accused contends that the State failed to exclude the possibility that the cheques were drawn in favour of PKP Nominees or the seven law firms for outstanding legal fees, court ordered judgments, or ex gratia

payments by the Attorney-General, or ad hoc payments by the NEC or the Prime Minister.

318. The evidence excludes any rational possibility that the cheques were raised for those or any other purposes of the State.

319. The evidence excludes any rational possibility that the cheques were raised in settlement of the legal fees of any of the recipient law firms. The firms were not briefed through the OSG during the period 2007 to 2011. Mr Devete was emphatic that those firms did not receive any work and there were no dealings with the law firms during the period. His evidence was supported by Ms Gimot. Not only did the total monies paid each year far exceed the total annual budget for legal bills, which was between K2m and K5m, but for the most part each of the payments themselves fell within that range. Any legal fees owing from an earlier period, or at all, had been paid according to Ms Gimot. Moreover, legal fees were not paid by DoF but by DJAG through the OSG from a dedicated trust fund.

320. Evidence as to who held the position of Attorney-General at various stages between 2000 and 2011 was not clear. There was evidence that the late Francis Damen was Attorney-General in 2003. In 2006 it was the late Fred Tomo, who with Minister for Justice, Bire Kimisopa, instituted the investigation into PPL within DJAG. Thereafter it was Dr Alan Marat, followed by Kerenga Kua, and then Dr Marat again, who in 2014 instructed the Solicitor-General to lodge a complaint with police. There was no evidence about whether there were times at which the Secretary for Justice held the position of Attorney-General because the Minister for Justice was not a lawyer.

321. Regardless of that the evidence excludes any rational possibility that the Attorney-General would go outside established practice and direct the payment of legal bills, without consulting the Solicitor-General, particularly on such a frequent basis and in respect of such extremely large amounts, for such an extended period of time. That would be the case in any event but particularly having regard to the decisions made by the Attorney-General and others including the Minister for Justice, the Chief Secretary, and the NEC in 2006 regarding the briefing out of and the payment of legal fees to private lawyers, the internal investigation conducted by Sir Arnold Amet in DJAG into those very matters, and the ongoing court proceedings between the State and PPL those decisions triggered. It is implausible.

322. To put this in context. The first of the payments was made on 26 April 2007 just a few weeks after the State obtained the Supreme Court order staying the payment of K6.4m to PPL and the entire proceedings in OS 876 of 2006, which stayed those decisions.

323. S 7 of the *Attorney-General Act* provides:

> **The duties, functions and responsibilities of the Attorney-General are–**
>
> **(*a*) in accordance with Section 8, to carry out the duties of the principal legal adviser to the National Executive Council and related duties; and**
> **(*b*) to exercise the duties, functions and responsibilities conferred upon the Attorney-General or upon the principal legal adviser by the Constitutional Laws and Acts; and**
> **(*c*) to exercise the functions vested in the Office of Attorney-General by virtue of the underlying law including the bringing of proceedings known as relator proceedings; and**
> **(*d*) to exercise powers delegated to him by the National Executive Council or a Committee of the National Executive Council; and**
> **(*e*) in accordance with Section 10, to appoint a lawyer to be the Solicitor-General; and**
> **(*f*) in accordance with Section 13, to review any decision of the Public Solicitor to refuse legal aid and assistance to a person and to grant such aid and assistance in his absolute discretion following a review; and**
> **(*g*) in accordance with Section 15, to grant a certificate that a barrister or solicitor practising outside the country is authorized to appear before the National and Supreme Courts; and**
> **(*h*) in accordance with Section 16, to grant a certificate to Investment Promotion Authority that–**
> **(i) a lawyer who is a non-citizen may commence practice as a lawyer in the country; and**
> **(ii) a firm of lawyers registered as a foreign enterprise under the *Investment Promotion Act 1992* may continue to practise as lawyers in the country; and**
> **(*i*) to instruct lawyers within or outside the country to appear for the State in any matter; and**
> **(*j*) to recommend to the Minister responsible for finance matters the payment by the State of an *ex gratia* sum of money in cases where the State is not under a legal liability but where it appears nevertheless that the State should compensate a person as an act of grace.**

324. For similar reasons the evidence excludes the possibility that the cheques were raised in an exercise of power to brief-out lawyers for legal advice, or to provide legal aid, pursuant to ss 7(a) or 7(f), respectively, or to settle matters outside court on the instructions of NEC pursuant to s 7(d). I fail to see how allowing a foreign lawyer to practice in the country under s 7(h)(i) is of any relevance.

325. Moreover, except for a small portion, the proceeds of the cheques were not retained by the law firm in whose favour they were raised but almost immediately paid on to PPL or PKP Nominees. That is not consistent with any intention by the State to pay the monies to those firms.

326. The evidence that all but a small portion of the monies were almost immediately paid on to PPL or PKP Nominees in every case also excludes any rational possibility that the monies were paid to the respective law firms to meet judgement debts awarded in their favour or that of their clients.

327. In addition, whilst it is not necessary to my finding, Mr Devete was a careful and honest witness. He was adamant that there were no dealings with the seven law firms during his term as Solicitor-General and I have no doubt that had he certified the payment of judgement debts to any of the firms, pursuant to the *Claims By and Against the State Act* he would have recalled it and would not have failed to mention it. That is particularly so given the number of payments in some cases to particular firms. For instance, Sino & Company Lawyers received six payments in 2007 alone, another three in 2008, one in each of 2009 and 2010, and a further six in 2011.

328. The evidence also excludes any rational possibility that the cheques were raised in settlement of the court orders in either OS 829 of 2006 or 876 of 2006, for K6.5m and K6.44m, respectively. Those orders were stayed. None of the cheques were drawn in amounts consistent with the orders and the total monies paid well exceeded the combined amount of K13m. Critically, none of the recipient law firms were, or appeared for, parties to the proceedings, or were named in the orders.

329. Finally, the accused's suggestion that such large payments may have been made for some ex gratia or ad hoc purpose on 65 occasions at the direction of the Attorney-General, the NEC, or the Prime Minister for some other unknown reason, is fanciful.

330. Ex gratia payments are by their nature exceptional, as reflected in s 7(j) of the *Attorney-General Act* which provides that the Attorney-General may "recommend to the Minister responsible for finance matters the payment by the State of an *ex gratia* sum of money in cases where the State is not under a legal liability but where it appears nevertheless that the State should compensate a person *as an act of grace*".

331. Each of the payments are of themselves very large. In some cases there are multiple payments to a law firm in a single year, or over a period of years. It is implausible that the Attorney-General would repeatedly approve the payment of large amounts of monies to private lawyers without legal obligation to do so in any case but particularly given the actions taken to investigate payments to law firms in his own department.

332. Ad hoc payments by the Prime Minister or NEC must by their nature also be rare. For similar reasons it is implausible that the Prime Minister or NEC would direct the making of such payments in all the circumstances.

333. Furthermore, at the risk of repetition, the fact that the bulk of the proceeds of the cheques were paid on to PPL or PKP Nominees excludes the possibility that the cheques were raised in the exercise of any ex gratia or other payment to any of the law firms by the State. If the firms were entitled to the monies then obviously they would have kept them.

334. The evidence also excludes any rational possibility that the cheques were raised in settlement of PPL's legal fees.

335. The accused's submissions are somewhat contradictory. On one hand he says that there is no evidence that the monies were paid to PPL for its legal bills. Well, I agree, but that does not assist the accused. On the other hand, as I understand it, he contends that matters were briefed out to PPL by the Attorney-General prior to 2007. The proceedings brought by PPL in 2006 concerned more than 6000 cases. The State was ordered to pay K13m. Those orders were interim only and it is not clear whether other interim orders were made or what happened to the proceedings. The matters are not recorded in CMS because the Attorney-General briefed out directly to PPL without consultation with the Solicitor-General, or because OSG's files were missing, or its CMS was in disarray. PPL may have continued to act in the matters briefed-out prior to 2007 and continued to be engaged directly in new matters by the Attorney-General during the period 2007 to 2011. During the same period the Attorney-General may have exercised his powers under the *Attorney-General Act* to have PPL's legal fees paid by DoF pursuant to Order 5 of the orders made in OS 876 of 2006 on 29 December 2006. The orders made by the Supreme Court on 12 March 2007 did not stay any orders but the order for the State to pay K6.4m.

336. There are a number of difficulties with the submissions. For the most part they are merely submissions. I will return to the question of whether any monies might have been owing from matters briefed out to PPL by the former Attorney-General prior to late 2006 below.

337. Regardless of whether any monies might have been owing prior to late 2006, that was a matter disputed by the State as evidenced by the fact that it appealed the orders to pay K13m to PPL and obtained orders of stay. I reject the submission by the accused that the Supreme Court only stayed the order to pay K6.4m in OS 876 of 2020 and not Order 5 of the orders made on 29 December 2006. The Supreme Court stayed the entire proceedings. I don't think the Court could have been more clear but Order 5 is really beside the point.

338. The proceedings remained on foot until July 2014 when the Supreme Court upheld the State's appeal and quashed all orders made on 17 November 2006 and 2 March 2007 in both proceedings except for the orders granting leave for judicial review, and remitted the matter to the National Court: *Kalinoe v Paul Paraka Lawyers* (2014) SC1366. Earlier applications by the accused to have the appeals dismissed, and to discharge the orders, were dismissed by the Supreme Court on 27 September 2009 and 30 April 2010, respectively: *Kimisopa et al v Paul Paraka trading as PPL* (2009) SC1325 and *Kalinoe et al v Paul Paraka trading as PPL* (2010) SC1024.

339. The evidence of Mr Devete excludes any possibility that new matters were briefed out to PPL, through the OSG, or that any legal fees were paid to PPL, through the OSG, between 2007 to 2011.

340. Regardless of Order 5 or the powers of the Attorney-General under the *Attorney-General Act*, the evidence excludes any possibility that the cheques were raised in settlement of PPL's legal fees for any period, before or after 2007, outside the normal process.

341. It is implausible that the Attorney-General would have briefed-out any new matters to PPL, or approved the payment of such large amounts of monies to PPL in settlement of legal fees, over such an extended period of time, outside established procedure, and without consulting the Solicitor-General, in any event but particularly given the ongoing proceedings with PPL, and the actions taken by the Attorney-General, the Minister for Justice and others which

prompted the legal proceedings, not to mention the investigation conducted within the Attorney-General's own department into payments to PPL.

342. For similar reasons there can also be no doubt that the monies were not paid to PPL in settlement of any judgements obtained by PPL. All such judgements required clearance by the Solicitor-General, upon endorsement of a certificate under the *Claims By and Against the State Act* by the Solicitor-General, and an FF3 approved by him. Again, the evidence of Mr Devete and Ms Kias excludes any such possibility.

343. Moreover, and quite simply, the fact that the cheques were not raised in favour of PPL excludes any possibility, particularly when taken in all of the circumstances, that the State intended to pay the monies to PPL.

344. The evidence also excludes any rational possibility that cheques were raised in favour of PKP Nominees for the purposes of the State.

345. The evidence of Mr Devete, Ms Kias and Ms Gimot excludes the possibility that any legal fees were paid to PKP Nominees during the relevant period. Furthermore, whilst it might have been referred to by the State in its brief facts as a law firm, PKP Nominees is not a law firm. According to IPA records its principal business is property investment. There can be no valid reason for the payment of legal fees to the company and any suggestion that PPL's legal fees were paid to it because of its relationship to the accused is excluded for the reasons outlined above.

346. For similar reasons the evidence excludes any possibility that the monies were paid to PKP Nominees in settlement of any judgement debts or ex gratia payments, particularly having regard to the size, frequency and extended period over which the payments were made, and having regard to the evidence of Mr Devete, and bearing in mind that PKP Nominees was not a party to either OS 829 or OS 876 of 2006, which orders had been stayed in any event.

347. Furthermore, the evidence establishes that the monies were applied to the ultimate benefit of the accused.

348. There is no dispute and I find that the accused was the principal of PPL at all times. This is reflected in the IPA's records. It was the accused's law firm. He controlled it and the only reasonable inference is that he controlled its bank account. The accused appears to concede this in his submissions but I make it clear that I make this finding regardless of his concession and despite the fact that no records showing the signatory or signatories to the account were produced by the State.

349. The accused was the sole owner and director of PKP Nominees during the relevant period. IPA records show that its principal place of business and registered place for service was PPL at PPL's address. It had only one employee. In all the circumstances, I am satisfied beyond reasonable doubt that the accused controlled the company's bank account. I am satisfied of this fact even in the absence of bank records showing that he was a signatory to the account.

350. The accused is not protected by the "corporate veil" as he suggests. The "piercing of the corporate veil" refers to the judicially imposed exception to the separate legal entity principle, whereby courts disregard the separateness of the corporation and hold a shareholder responsible for the actions of the corporation as if it were the actions of the shareholder. The State is not seeking, however, to hold the accused responsible for the actions of PKP Nominees in this case. It is seeking to hold him responsible for the application of monies to his own use and the use of others, monies which ultimately landed in the bank account over which he had control. For obvious reasons a person does not have to have title or legal ownership of a thing before it is applied to their use for the purposes of s 383A of the *Criminal Code*.

351. Even if the corporate veil doctrine was of relevance here, which it is not, I would have no hesitation in lifting it for the reasons outlined in *State v Wyborn*: it would be justified in all the circumstances of the case and the *Criminal Code* by implication provides for it.

352. In summary, having regard to the totality of the circumstances, I am satisfied beyond reasonable doubt that at the time the cheques were raised in favour of PKP Nominees and each of the seven law firms monies belonging to the State were diverted from the purposes of the State and applied to the accused's own use and the use of others.

S 7, PARTIES TO OFFENCES

353. The accused was not the person or persons within DoF who raised the cheques. The State relies on s 7 of the *Criminal Code* to establish the accused's liability.

354. Pursuant to s 7 of the *Criminal Code* criminal responsibility applies to every person who is a party to an offence. It deems to be guilty of an offence every person who actually does the act or makes the omission that constitutes the offence, who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence, who aids another person in committing the offence, or who counsels or procures another to commit it: *Banaso v The State* (2022) SC2302 at [62].

355. S 7 *(principal offenders)* of the *Criminal Code* provides (emphasis mine):

> **(1) When an offence is committed, each of the following persons shall be deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:–**
>
> **(*a*) every person who actually does the act or makes the omission that constitutes the offence;**
> **(*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;**
> **(*c*) every person who aids another person in committing the offence;**
> **(*d*) any person who counsels or procures any other person to commit the offence.**
>
> **(2) In Subsection (1)(d), the person may be charged with–**
>
> **(*a*) committing the offence; or**
> **(*b*) counselling or procuring its commission.**
>
> **(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.**
>
> **(4) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, it would have constituted an offence on his part, is–**
>
> **(*a*) guilty of an offence of the same kind; and**
> **(*b*) liable to the same punishment,**
>
> **as if he had done the act or made the omission, and may be charged with himself doing the act or making the omission.**
>
> **8…**

9(1) Where–

(*a*) a person counsels another to commit an offence; and
(*b*) an offence is actually committed under that counsel by the person to whom it is given,
it is immaterial whether–
(*c*) the offence actually committed is the same as that counselled or a different one; or
(*d*) the offence is committed in the way counselled, or in a different way,
if the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) The person who gave the counsel shall be deemed to have counselled the other person to commit the offence actually committed by him.

356. The State's case has always been sufficiently clear. It alleges that the entire scheme was designed by the accused for his own benefit and that he caused the application of the monies to PKP Nominees and the seven law firms, and in the case of the latter, the onward payment of those monies to PPL or PKP Nominees.

357. Whilst the State must establish that an offence has been committed, s 7(1) does not require that the perpetrator must be convicted before another may be found liable as a party to an offence: see *Banaso*, *supra* at [82]; *Imiyo Wamela v The State* [1982] PNGLR 269; *R v Lopuszynski* [1971] QWN 33. Nor is it necessary for the prosecution to establish the identity of the person who committed the offence. It is enough that the commission of an offence by someone is established in the case against the accused: *Banaso, supra* at [82]; *Borg v R* [1972] WAR 194.

358. It is not enough to show that the accused knew that some illegal venture was intended. But it is not necessary that the accused knew that the particular offence would be committed on a particular day at a particular place. The prosecution must show that the accused knew that an offence *of the kind* that was committed was intended, and with that knowledge did something to aid, counsel or procure the offender commit it: *Banaso* at [90] to [91]; *Wamela (supra)*; *Karani and Aimondi v The State* [1997] SC540 applying *R v Bainbridge* [1960] 1 QB 129 at 134.

359. It is not necessary for the State to establish that the accused himself or herself held the same intention as the person who committed the offence. It is sufficient for the prosecution to prove that the accused knew that the principal

offender held the specific intention, and that knowing this, aided, counselled or procured the offence: see the discussion in *Banaso* at [87] to [89].

360. Sections 7(1)(c) and (d) of the *Criminal Code* are both relevant. To establish liability pursuant to s 7(1)(c) of the *Criminal Code* the State must establish beyond reasonable doubt that: a) the offence was committed; b) the accused knew the essential facts constituting the offence, including where relevant the state of mind of the person who committed the offence; and c) the accused intentionally aided (assisted or encouraged) that person to commit the offence: *Banaso*, at [97].

361. Section 7(1)(d) of the *Criminal Code* deems any person who counsels or procures another to commit an offence to be guilty of it. For the purposes of s 7(1)(d), the term "counsel" is not defined in either the *Criminal Code* or the *Interpretation Act*. It should be given its ordinary meaning. The plain and ordinary meaning might be found in the context of the section, that is "urged" or "advised" or "solicited": as stated by Gibbs J in *Stuart v The Queen* [1974] HCA 54; (1976) 134 CLR 426; see also *R v Oberbillig* [1989] 1 Qd R 342 considering the equivalent provision in the Queensland *Criminal Code*; *Banaso* at [78]. On its ordinary meaning, it is not necessary to show that the counselling caused the commission of the offence.

362. To establish that an accused counselled another person to commit the offence the State must establish beyond reasonable doubt that: a) the offence was committed; b) the accused knew the essential facts constituting the offence, including where relevant the state of mind of the person who committed the offence; and c) the accused counselled, that is urged, advised or solicited the perpetrator to commit the offence.

363. "To procure" is somewhat different from "to counsel". It means "to obtain", "to bring about", according to the *Oxford Learner's Dictionary*. In considering the equivalent of this provision in *R v Adams* [1998] QCA 64 the Queensland Court of Appeal said where relevant it involves more than mere encouragement, and means "successful persuasion" to do something. There must be some causal link between the procuring and the commission of the offence: see *Attorney-General's Reference (No 1 of 1975)* [1975] 2 All ER 684: *Banaso* at [79].

364. For the purposes of s 7(1)(d) the State must establish beyond reasonable doubt that: a) the offence was committed; b) the accused knew the essential facts constituting the offence, including where relevant the state of mind of the person who committed the offence; c) the accused procured the perpetrator to commit the offence, that is caused, or persuaded the perpetrator to commit the offence.

365. S 7(4) of the *Criminal Code* is also relevant in this case. Its requirements are different from those under s 7(1)(d). The effect of it is that a person may be convicted of an offence committed through an innocent agent. An innocent agent may lack criminal responsibility or lack an intent which is an element of the offence. Unlike s 7(1)(d) it is not necessary to prove that the person who was procured held the requisite intention at the time they did the act or omission constituting the offence. A person who procures another to do an act or acts in certain circumstances which, if done by him or her in those circumstances, would have constituted an offence with a circumstance of aggravation, will be guilty of the aggravated offence: *Wamela.*

366. If a person wishes to withdraw his or her involvement in the commission of an offence he or she must communicate that fact to his or her co-accused and take action to undo the effect of the previous aiding, counselling or procuring: *Wamela (supra).*

PROCURED A PERSON OR PERSONS WITHIN DOF

367. Dishonesty is a question of fact to be determined by the trial judge, based on the facts of the case and according to the ordinary standards of reasonable and honest people: *Brian Kindi Lawi v The State* [1987] PNGLR 183. A subjective test must be applied such that it must be proven beyond reasonable doubt that the accused in fact knew that he or she was acting dishonestly. However, in applying that test, an objective standard can be taken into account: it might reasonably be inferred that the accused must in fact have known that he or she was acting dishonestly: *Wartoto* adopting and applying *Havila Kavo (supra).*

368. There is an overwhelming inference that the person or persons in DoF who applied the monies to the accused's use and the use of others did so dishonestly having regard to the size, number and frequency of the cheques raised, and the extended period over which that took place.

369. It is also relevant that a number of the cheques were raised in favour of different recipients on the same day. For instance, on 23 August 2007 cheques in the sums of K3m and K1.5m were issued to Harvey Nii Lawyers and Sino & Company Lawyers, respectively. On 31 December 2007, cheques in the sums of K3.5m, K3m, and K3.5m were issued to Sino & Co Lawyers, Korowi Lawyers and PKP Nominees, respectively, all by reference to "Court Order OS #876/20". See also the payments on 28 February 2008, and 15 February 2010. In 2011 K2m each was paid to Sino & Co Lawyers, Jack Kilipi Lawyers and PKP Nominees on 6 July 2011. On 26 July 2011 a further K2m, K3m and K2m, respectively, was paid to the same recipients.

370. In addition, the cheques were purportedly raised in settlement of legal fees when DoF does not pay legal fees, or in settlement of court orders when the evidence of Mr Devete excludes the possibility that there were any such orders, or that any such orders were supported by the necessary FF3 documentation, including a certificate executed by him pursuant to the *Claims By and Against the State Act*, or in repeated settlement of legal fees or orders in OS 876 of 2006 when none of the payments matched the orders referred to in value or beneficiary.

371. Furthermore, it is clear from the evidence of Mr Yore, Ms Kias and Mr Devete, that the cheques raised by DoF were not sent to DJAG for distribution in accordance with standard practice. If they had been Mr Devete would have become aware of them as he was the officer responsible for formally closing any file upon receipt of a cheque from DoF.

372. The raising of cheques in favour of PKP and the law firms, none of which had any entitlement to them, was clearly dishonest according to the standards of honest and reasonable people. I am also satisfied beyond reasonable doubt that having regard to the intelligence and experience necessarily required by a person employed in DoF that they must have appreciated that what they were doing was dishonest according to those standards at the time they applied the property. There is no other rational inference. Far from raising a doubt in my mind, the fact that no payment vouchers, FF3 or FF4 forms, or other supporting material, could be produced by DoF only fortifies my view.

373. In all the circumstances, the only rational inference is that the cheques were raised with the connivance of a person or persons within DoF. How precisely that was done, or by whom, whether upon direction or by manipulating PGAS or IFMS I cannot say. The only alternative is that the

cheques were raised after passing through the normal procurement process because they were supported by documents which must have been false or misleading, for example the order in OS 876 of 2006, but for the reasons outlined above, the defects associated with the payments were stark and the combination of circumstances excludes that possibility.

374. Furthermore, I am satisfied beyond reasonable doubt that the accused counselled or, in fact, procured the person or persons in DoF to dishonestly apply the monies to his own use and the use of others in all the circumstances. The evidence establishes that extraordinarily large amounts of monies were applied to the ultimate benefit of the accused, to which he had no entitlement, on a frequent basis, over a period of several years. There is no other rational inference.

375. The monies were paid to a company solely owned and operated by the accused but not bearing his name, or siphoned through the accounts of seven other law firms, in a clear attempt to disguise the payments and distance them from the accused.

376. In addition, the reference in several PGAS reports to OS 876 is in my view a clear reference to the court orders made in the proceedings brought by the accused, of which the accused had knowledge.

377. The inference that the accused procured the payments is only strengthened by the fact that in the case of payments made to the seven law firms, each of them retained some of the monies before passing them on to PPL or PKP Nominees. The monies retained, whilst small when compared to that which were passed on to PKP Nominees or PPL, were nevertheless significant on any objective view, ranging from between K30,000 and K50,000 for the most part and up to K400,000 in some instances.

378. What happened to the monies after they were received into accounts controlled by the accused is also relevant.

379. Bank records for both PPL and PKP Nominees show that overwhelmingly the proceeds of DoF cheques constituted the principal form of deposits to each of the accounts in both size and number, that expenditure of the monies began soon after deposit in every case, and that the funds were dissipated.

380. PKP Nominees' balance at the end of each year during the period was reduced to just K31.36, K1668.04, K877.88, K26,453.36 and K25,346.14, respectively. PPL's account balance, which was a business overdraft account, had the following negative balances in each case: -K1,105,580.72, -K1,759,799.33, -K4,498,584, -K4,964,494.65 and -K5,731,977.13.

381. In the circumstances the evidence establishes beyond reasonable doubt that the offences charged in the indictment were committed by a person or persons in DoF; that the accused knew the essential facts constituting the offences in each case, including the state of mind of the person or persons who committed the offences, and that he procured, that is caused the perpetrator to commit the offences in each case, for the purposes of establishing his liability pursuant to s 7(1)(d) of the *Criminal Code*. The accused was therefore properly charged with committing the offences himself.

382. I make it clear that even if the evidence had failed to establish the dishonesty of the person or persons involved at DoF, such that they were innocent agents, that would not exculpate the accused. For the reasons outlined above, I am satisfied beyond reasonable doubt that at the time the accused procured them to apply the monies to his own use and the use of others he did so dishonestly.

383. The accused's conduct was dishonest according to the standards of honest and reasonable people. Over a period of five years the accused procured another person or persons to apply to his own use and the use of others more than K162m to which he was not entitled. I am satisfied beyond reasonable doubt that having regard to the intelligence, education and experience of the accused, and the lengths taken by him to disguise the payments, that he appreciated at the time that he procured others to apply the property to his own use and the use of others that what he was doing was dishonest according to those standards. There is no other rational inference. If required, this would establish the guilt of the accused pursuant to s 7(4) of the *Criminal Code*. As above, however, I am satisfied beyond reasonable doubt that his conduct is captured pursuant to s 7(1)(d) of the *Criminal Code*.

384. In making my finding as to the guilt of the accused I have had regard to the defence of honest claim of right without intention to defraud under s 23(2) of the *Criminal Code*, which neither party addressed expressly.

385. I reject the accused's submission that Ms Kias and Ms Gimot's evidence was deliberately false, or that the case was selective or biased. I accept their evidence that CMS was not in disarray. Ms Kias' evidence suggests that there were at least 15 to 20 matters briefed out to the accused prior to 2007, which is at least consistent with his claim that PPL acted for the State at that time, albeit that she says that all outstanding bills were paid by DJAG. She did not produce her report and her evidence must be seen together with Ms Gimot's evidence.

386. The accused strongly objects to Ms Gimot's evidence on the basis that the provenance of the lists of PPL matters for 2005/2006 is not clear. It is clear that Ms Gimot was given the lists to check against CMS by police but I agree that there is no clear evidence about how or from whom the police obtained the lists, or the source of the values claimed. Be that as it may, Ms Gimot's evidence is admissible and relevant to establish that at least 42 matters had been briefed out to PPL before 2007, albeit that no fees were outstanding, and that PPL had filed a notice of appearance in a further 247, although whether they had been briefed out or whether PPL had done any work was unclear.

387. The fact that K13m was owed by the State is very much disputed by it, as demonstrated by the proceedings it took. K13m is, of itself, a very large amount in legal fees, which would have required approval by NEC, upon the recommendation of the Central Supply and Tenders Board under the PFMA. The claim that K13m was owing is not supported by the OSG's records.

388. As above, however, the accused's argument is that many more matters may have been briefed-out by the Attorney-General to PPL prior to 2007 outside the normal process and not captured in OSG's records, and that PPL may have continued to act in those matters after 2007.

389. No-one who was present prior to 2007 was called by the State. The State's evidence about the legal proceedings lacked detail. Mr Devete did recall that some bills were submitted by PPL during his term albeit they were not paid because investigations were on foot. I understood Ms Kias's comment about missing files and duplication to mean that there were no files to justify payments to PPL, and that PPL had no authority to act, respectively. Nevertheless, the fact that the accused filed proceedings claiming K13m is some evidence that he believed that at least that amount was owing to him. In the circumstances the State has not excluded the possibility that some legal fees

were owing to the accused for work done prior to 2007. As for any suggestion that PPL continued to act for the State after 2007, the accused must have appreciated in all the circumstances that he had no authority to do so. Investigations were on foot into payments to PPL and he and the State were locked in legal proceedings.

390. Even assuming that the accused believed that there were monies owing to PPL for the years prior to 2007, the monies applied to the accused's own use and the use of others well exceeded the combined orders of K13m made in OS 876 of 2006 and OS 879 of 2006, which the State disputed, and which had been stayed, as the accused well knew.

391. Critically, the accused cannot honestly have believed that he was lawfully entitled to apply K13m, or any sum for that matter, to his own use or the use of others in the manner that he did, that is through payments to PKP Nominees, or to PKP Nominees and PPL through the accounts of seven other law firms, in a clear attempt to avoid detection. The existence of that scheme was of itself dishonest and puts paid to any such unarticulated suggestion. It also establishes an intention to defraud, that is an intention to deprive the State of its right to challenge the payments, as it had done in the Supreme Court: see *Roland Tom*, *supra*. The accused is a lawyer. There can be no doubt that he knew that what he was doing was dishonest, and the means that he used demonstrate that knowledge together with an intention to defraud.

392. Moreover, the totality of the evidence, including the evidence of Ms Kias and Ms Gimot as to the costs normally associated with brief-outs, the annual budget for the same, together with the size, frequency and extended period over which the monies were applied, the extraordinarily large value of the monies concerned, the elaborate nature of the scheme involved, and the monies given away by the accused as part of the scheme, excludes any rational possibility that even as much as K13m was owed to the accused by the State for legal fees outstanding prior to 2007, or that the accused believed that such monies were owing to him. It is implausible. Why would the accused resort to such a devious scheme over such an extended period of time otherwise?

393. Finally, none of the accused's submissions about the absence of certain witnesses raises any doubt in my mind as to the guilt of the accused.

394. The State has demonstrated valid reasons for not calling the principals of the seven law firms given their roles and responsibilities in the law firms, or any clerks who might have been involved in the particular transactions concerned. They are suspected of misappropriating the State's monies as part of the accused's scheme, and on the evidence of S/Sgt Peng the principals have been arrested and charged. It is not possible for the State to compel the witnesses to attend in the circumstances and it is not unreasonable for the State to regard them as unreliable or untrustworthy. There was nothing unfair in the State's decision not to call them and any prior statements they may have made outside of court either against or in favour of the accused are inadmissible hearsay: *Aparo, Araba, Haio, Tinidipu and Akwia v The State* [1983] PGSC 2; SC249; *Pritchard v State* [2016] SC1541; *Ingian v State* [2022] PGSC 74; SC2263.

395. As I recall, the State wished to call Mr Kua, who occupied the position of Attorney-General from sometime in 2012, at an early stage of the trial but on the accused's submission either that the bank records or DoF records were critical to the case and the objections to them should be considered first, other witnesses were called at that stage instead. Mr Kua was listed on the indictment, the accused had access to his statement, and the State had made it clear that he was available to be called. It was open to the accused to require him to attend for cross-examination but he chose not to do so. That was a matter for him.

396. It was not necessary for the State to call Ms Tindiwi, the Acting Solicitor-General in 2014, to give evidence about processes generally or the instructions she gave to Ms Kias. She was not Solicitor-General at the relevant time and the relevant witnesses gave evidence. Again, she was listed on the indictment and the accused chose not to require her. It was not incumbent on the State to call Dr Kwa, now Secretary for Justice, as to processes that might be in place some ten to fifteen years after the alleged events.

397. As above, it is not clear which person or persons occupied the position of Attorney-General at all times during the relevant period, or prior to 2007, and it does not appear to be in dispute that at least two have since died. These matters should have been made clear but I am not satisfied that there was any unfair conduct on the part of the State in not calling the person or persons concerned, and for the reasons outlined above the fact that they were not called raises no doubt in my mind.

398. Whilst I appreciate that it might have been difficult for the police to identify the officers in the accounts section of DoF at the relevant time, the fact

that the Secretary had left DoF did not mean that the police or the prosecution should not have spoken to him, particularly as he was the only person with authority to approve the payments. I would have expected police to speak to him in the circumstances but it does not appear to me that this was done in breach of their duty but rather a lack of rigour or experience. Critically, for the reasons outlined above the fact he was not called does not raise any doubt in my mind.

399. It is the case that the investigation could have been more thorough and coordinated. There were parts of the State's case that lacked detail or should have been clarified. But I am satisfied that the proven facts lead inevitably to only one conclusion in respect of each of the charges contained in the indictment.

CONCLUSION

400. For all the evidence and argument in this case, the essential facts are quite straightforward. Extremely large amounts of monies belonging to the State were paid to the ultimate benefit of the accused every year between 2007 and 2011 to which he had no entitlement. The monies were paid to a company solely owned and operated by the accused but not bearing his name, or siphoned through the accounts of seven other law firms, none of which had any entitlement to the monies, in an elaborate scheme designed to distance the monies from the accused and avoid detection.

401. The evidence established beyond reasonable doubt that cheques were raised by a person or persons in DoF in favour of the following recipients:

- PKP Nominees and five law firms, Sam Bonner Lawyers, Harvey Nii Lawyers, Sino & Company Lawyers, Yapao Lawyers and Korowi Lawyers to the total value of K30,300,000 in 2007.
- PKP Nominees and three law firms, Sino & Company Lawyers, Jack Kilipi Lawyers and Korowi Lawyers to the total value of K30,054,312.68 in 2008.
- PKP Nominees and two law firms, Sino & Company Lawyers, and Jack Kilipi Lawyers to the total value of K 14,480,672.28 in 2009.
- PKP Nominees and five law firms, Harvey Nii Lawyers, Sino & Company Lawyers, Jack Kilipi Lawyers, Korowi Lawyers and Kipoi Lawyers to the total value of K39,808,610 in 2010.

- PKP Nominees and two law firms, Sino & Company Lawyers and Jack Kilipi Lawyers to the total value of K47,608,300 in 2011.

402. The monies held to the credit of the State with BPNG and controlled by DoF, and upon which the cheques payable to PKP Nominees and each of the seven law firms were raised, were property belonging to the State.

403. The evidence excluded any rational possibility that the cheques were raised for any State purpose. They were not raised to meet the legal fees or judgment debts of any of the recipients, or for any ex gratia, ad hoc or any other State purpose. The cheques were not raised in favour of or to meet the legal fees or judgement debts of the accused or his law firm, PPL, or for any ex gratia, ad hoc or other State purpose.

404. The cheques were deposited to the respective payees' accounts. In the case of the monies paid to the law firms, the bulk of the proceeds of the cheques were almost immediately paid on to PPL or PKP Nominees, the accused's law firm and wholly owned company, respectively.

405. The evidence established beyond reasonable doubt that at the time the cheques were raised property belonging to the State was deflected from the purposes of the State and applied to the accused's own use and the use of others, *Easton v R, supra*, adopted and applied.

406. The State therefore retained an interest in the property and was its owner: *Brian Kindi Lawi v The State* [1987] PNGLR 193 applied.

407. The evidence established beyond reasonable doubt that the person or persons in DoF who applied the property to the accused's own use and the use of others did so dishonestly, having regard to: the size, number and frequency of the cheques raised; the extended period over which that took place; the clustering of cheques in some instances; and the fact that the monies were purportedly paid in settlement of legal fees when DoF does not pay legal fees; or in settlement of court orders when no such orders had been certified by the Solicitor-General; or in repeated settlement of legal fees or orders in OS 876 of 2006 when none of the payments made matched the orders in value or beneficiary; and when the cheques were not sent to DJAG for distribution; and having regard to the experience and intelligence necessarily required of a person employed in DoF.

408. The evidence established beyond reasonable doubt that the accused procured the person or persons in DoF to commit the offences in each case, having regard to all of the circumstances and the fact that the accused was the ultimate beneficiary. The monies constituted the principal form of deposits to the accounts of PPL and PKP Nominees between 2007 and 2011. Expenditure of the monies began soon after deposit in every case and the monies were dissipated.

409. The evidence established beyond reasonable doubt that the offences charged in the indictment were committed, that the accused knew the essential facts constituting the offences in each case, including the state of mind of the person who committed the offences, and that he procured, that is caused the perpetrator to commit the offences in each case, for the purposes of establishing his liability pursuant to s 7(1)(d) of the *Criminal Code*. The accused was therefore guilty of committing the offences applying s 7(1)(d) of the *Criminal Code.*

410. In making this finding I make it clear that the totality of the evidence, the size, nature, frequency and extended period over which the property was applied, the total value of the property concerned, the elaborate nature of the scheme involved, and the monies given away by the accused as part of the scheme, excluded any rational possibility that the accused acted in an honest claim of right and without intention to defraud.

411. The combination of circumstances leads to the inevitable conclusion beyond reasonable doubt that the accused dishonestly applied the monies belonging to the State the subject of Counts 1 to 5 of the indictment to his own use and the use of others. The State's evidence excluded beyond reasonable doubt any other reasonable conclusion that is inconsistent with the guilt of the accused.

412. It is the case that I have found that the sum involved varied in Count 5 from that averred in the indictment. The value of monies is not an essential element of the offence and there is no prejudice to the accused in the finding.

413. The accused is found guilty of dishonestly applying to his own use and the use of others the following property belonging to the State, contrary to s 383A(1)(a)(2)(d) of the *Criminal Code*:

- K30,300,000 on Count 1 of the indictment.
- K30,054,312.68 on Count 2 of the indictment.
- K 14,480,672.28 on Count 3 of the indictment.
- K39,808,610 on Count 4 of the indictment.
- K47,608,300 on Count 5 of the indictment.

FINAL OBSERVATIONS

414. The monies in this case were never applied for the purposes of the State. The State retained an interest in the monies from the outset and it was therefore possible for monies belonging to the State to be applied at different times and by different persons.

415. The State could have proceeded on the basis that the monies were applied for the accused's own use and the use of others at the time that the monies were expended from the bank accounts of PPL and PKP Nominees. As above, the bank records show that the monies deposited to PKP Nominees were expended, and the monies deposited to PPL were consumed against a very large overdraft account from which monies also continued to be drawn. For the reasons outlined above the evidence establishes beyond reasonable doubt that the accused dishonestly applied the monies to his own use and the use of others at the time they were expended from those accounts.

Verdicts accordingly.

Public Prosecutor: *Lawyers for the State*
Paul Paraka: *For himself*

Table 1. Summary of payments

	PGAS REPORTS			**LAW FIRM RECIPIENT'S ACCOUNT**					**PAUL PARAKA LAWYERS ACCOUNT 1000586112**			**PKP NOMINEES LTD ACCOUNT 1000587335**		
	PGAS Narrative	Amount	Date Issued	**Date of Deposit**	Bank Narrative	Amount Deposited	Date of Withdrawal	Amount Withdrawn	**Date of Deposit**	Bank Narrative	Amount Deposited	**Date of Deposit**	Bank Narrative	Amount Deposited
2007														
	Sam Bonner Lawyers			**Sam Bonner Lawyers 1001252784**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
1	**O/S Legal Fees OS876/20**	1,500,000	26.04.07	**27.04.07**	1 x bpng wrt #69109	1,500,000	27.04.07	1,100,000	27.04.07	Prcds from csh chq acct 100125278	1,100,000			
2	**Pmt o/s legal fees C/O**	2,000,000	15.05.07	**16.05.07**	1xbpng Wrt #:69321	2,000,000	16.05.07	1,950,000	16.05.07	1xbasp Chq B/-sam Bonner Lawye	1,950,000			
	Harvey Nii Lawyers			**Harvey Nii Account No**					**PPL Account No**			**PKP Nominees**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	T/Acc			**1000138465**					**1000586112**			**Ltd Account No** **1000587335**		
3	**O/S legal fees Nat. Court**	3,000,000	23.08.07	**24.08.07**	1 x Bpng Chq Depo	3,000,000	27.08.07	2,900,000	**27.08.07**	Harvey Nii Lawyers	2,900,000			
	Sino & Company Lawyers			**Sino & Co Lawyers Acc No 1001246161**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No** **1000587335**		
4	**Payment of O/S Legal fe**	3,000,000	27.07.07	**30.07.07**	Dept of Fin & Try	3,000,000	30.07.07	2,950,000	30.07.07	Sino & Lawyers 1001246161	2,950,000			
5	**O/S Legal fees as per C**	1,500,000	23.08.07	**28.08.07**	Bpng Chq B/o Dept of Fin/Trsy	1,500,000	03.09.07	1,450,000				**29.08.07**	1 x Bsp Chqu -Sino & Company	1,450,000
6	**Pmt o/s legal fees owin**	2,300,000	05.10.07	**08.10.07**	1 Bpng Chq B.dep of Finance	2,300,000	11.10.07	2,250,000				**11.10.07**	Sino & Company Lawyers	2,250,000
7	**Payment of O/S Legal**	2,000,000	16.11.07	**16.11.07**	1 bpng chq (dept	2,000,000	20.11.07	1,950,000	20.11.07	Trf from # 1001246161	1.950,000			

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	Fe				of fin)					Sino & C				
8	**O/Legal fees for Stat**	2,000,000	07.12.07	**10.12.07**	1 x bpng chq (Dept of Fin)	2,000,000	10.12.07	1,950,000	10.12.07	Sino & Company lawyers	1,950,000			
9	**Court Order OS #876/20**	3,500,000	31.12.07	**22.01.08**	1 x bpng chq b/o dpt of finance	3,500,000	24.01.08	3,450,000				**24.01.08**	B/-sino &company Trust A/c	3,450,000
	Yapao Lawyers			**ANZ Yapao Trust Account 11816302**										
10	**Legal Fees**	2,000,000	08.06.07	**02.06.07**	BPNG WI 69616	2,000,000	13.06.07	1,950,025	13.06.07	Anz-wgn B/chq # 778118	1,950,000			
11	**Pmt o/s legal fees**	1,000,000	03.07.07	**04.07.07**	Yapao Lawyers Dept of Finance	1,000,000	11.07.07	900,025	12.07.07	Anz B/Chq B/ Yapao Lawyers	900,000			
	Korowi Lawyers			**Korowi Lawyers 1000979717**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
												No **1000587335**		
12	**Court Order OS # 876/20**	3,000,000	31.12.07	**22.01.08**	1x bpng chq b/o dept of finance	3,000,000	22.01.08	2,600,000	22.01.08 (dep slip P12-F)	B/- Korowi Lawyers Trust A/c	2,600,000			
	PKP Nominees Ltd								**PPL Account No 1000586112**			**PKP Nominees Ltd Account No** **1000587335**		
13	**C/Order OS # 876/2006**	3,500,000	31.12.07									**22.01.08 (dep slip P10-F)**	1x bpng chq b/o dpt of finance	3,500,000
	TOTAL K30,300,000													
2008														
	Sino & Co Lawyers			**Sino & Co Lawyers Acc No**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
				1001246161								**No 1000587335**		
14				**29.02.08**	Deposit	1,565,116.74	29.02.08	1,515,116.74				**29.02.08**	Chq dep from 1001246161	1,515,116.74
15	**Pmt of O/S Legal fees**	1,935,167.23	30.05.08	**02.06.08**	Bpn vhg b/- dept finance	1,935,167.23	05.06.08	1,885,167.23				**05.06.08**	Sino and co	1,885,167.23
16		1,952,700	31.12.08	**09.01.09**	B-Dept of Finance	1,952,700	12.01.09	1,945,000	09.01.09	(P7-G deposit slip)	1,945,000			
	Jack Kilipi Lawyers			**Jack Kilipi Lawyers Acc No 1001227296**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
17	**O/S Legal fees per C/or**	1,950,000	01.09.08						04.09.08	B/o Jack Kilipi Lawyers	1,900,000			
18	**O/S Legal fees**	1,996,000	24.10.08						29.10.08	C/chq B/o Jack Kilipi Lawyers	1,946,000			
19	**O/S: 876/06**	1,956,700	31.12.08						12.01.09	X 2 Vrs Chq	1,949,000 (deposit slip			

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	Legal Bills									Depo	P7-G)			
	Korowi Lawyers			**Korowi Lawyers Acc 1000879717**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
20	**O/S legal costs. O/S No**	1,500,000	28.02.08	**29.02.08**	1 x bpng b/o dept of finance	1,500,000	29.02.08	1,300,000	29.02.08	b/o a/c# 1000879717	1,300,000			
21	**O/S Legal Bills as per**	1,862,422.77	18.07.08	**18.07.08**	Bpng Chq B/o dept of Fin	1,862,422.77	22.07.08	1,462,422.77	22.07.08	B/- Korowi Lawyers	1,462,422.77			
	PKP Nominees Ltd								**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
22	**O/S legal costs O.S 876**	2,700,000	28.02.08									**29.02.08**	Deposit	2,700,000
23	**O/S Lega fees as per**	2,798,289.14	21.04.08									**21.04.08**	1 xbpng Pom dept of	2,798,289.14

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	C												Fin & treas	
24	**O/S Legal fees as per Cos**	1,893,866.50	03.07.08									**03.07.08**	B/dept of Finance	1,893,866.50
25	**O/S Legal fees as per C**	2,000,000	13.08.08									**13.08.08**	Dept of Finance	2,000,000
26	**O/S Legal fees as per C/or**	1,918,505.62	01.09.08									**01.09.08**	1x dept finance chq	1,918,505.62
27	**O/S invoice # 12907-1**	1,998,000	24.10.08									**27.10.08**	b/dept of finance-chq dep	1,998,000
28	**O/S C/Order Payment**	2,027,544.68	15.12.08									**16.12.08**	Bpng Chq Finance Dept	2,027,544.68
	TOTAL K30,054,312.68													
2009														
	Sino & Co			**Sino & Co Lawyers Acc**					**PPL Account No**			**PKP Nominees**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	Lawyers			**No 1001246161**					**1000586112**			**Ltd Account No 1000587335**		
29	**O/S Legal Fees**	2,050,000	27.07.09	**27.07.09**	2,050,000	Dept of Finnace Bpng Chq	29.07.09	2,000,000				**29.07.09**	Sino & Company	2,000,000
	Jack Kilipi Lawyers			**Jack Kilipi Lawyers**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
30	**O/S Legal Fees**	2,050,000	04.08.09									**06.08.09**	Trf frm Jack Kilipi Lwyers (see P10-I cheque dd 27.07.09)	2,000,000
	PKP Nominees Ltd								**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
31												**11.03.09**	Dept of Finance Che Depo	500,000
32												**25.03.09**	B/o Dept of Finance - bpng Chq	2,215,485.75
33			(deposit slip P10-H)									**24.07.09**	B/-Dept of Finance	3,900,000
34												**18.09.09**	Deposit	3,765,186.53
	TOTAL K14,480,672.28													
2010														
	Sino & Co Lawyers								**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
35				**04.10.10**	Dept of Finance	2,000,000	05.10.10	1,970,000	05.10.10	Trf Sino & Co Lawyers	1,970,000			
	Harvey Nii			**Harvey Nii Lawyers Acc**					**PPL Account No**			**PKP Nominees**		

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
	Lawyers			**1000138465**					**1000586112**			**Ltd Account No** **1000587335**		
36	**O/S legal fees O/S 87**	2,000,000	20.01.10	**22.01.10**	Dept of Finance & Treasury Chq	2,000,000	26.01.10	2,000,000	26.01.10	From 1000138465	2,000,000			
37	**O/S C/O OS # 876/06**	3,830,610	15.02.10	**16.02.10**	1x dept. finance - bpng chq	3,830,610	19.02.10	3,180,610	19.02.10	Trf Harvey Nii	3,180,610			
38				**4.10.10**	Dept of Finance	2,000,000	05.10.10	2,000,000	05.10.10	B/o Harvey Nii Lawyers	2,000,000			
	Jack Kilipi Lawyers													
39	**Pmt for o/s Legal Bills**	3,000,000	13.04.10						16.04.10	2,950,000				
	Korowi Lawyers			**Korowi Lawyers Acc 1000879717**					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No** **1000587335**		

	PGAS REPORTS			**LAW FIRM RECIPIENT'S ACCOUNT**					**PAUL PARAKA LAWYERS ACCOUNT 1000586112**			**PKP NOMINEES LTD ACCOUNT 1000587335**		
40	**O/S C/O OS # 876/06 (leg**	3,995,000	15.02.10	**16.02.10**	1x dept. finance- bpng chq	3,995,000	19.02.10	3,595,000	19.02.10	Trf Korowi Lawyers	3,595,000			
	Kipoi Lawyers													
41	**O/S C/O OS #876/06**	3,990,000	15.02.10	**16.02.10**	1x dept finance – bpng chq	3,990,000	19.02.10	3,940,000	19.02.10	Trf Kipoi Lawyers	3,940,000			
									PPL Account No 1000586112			**PKP Nominees Ltd Account No 1000587335**		
42												**27.10.10**	Bpng Chq B/-dept of Fin&trea	4,997,000
43			(deposit slip P10-K)									**13.05.10**	Dept of Finance 2 x chqs	4,998,000
44												**17.09.10**	1 x bpng Dept of Fin. treasury	2,000,000
45												**11.10.10**	B/- department	2,000,000

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
													of Finance	
46			(deposit slip P10-L)									**29.11.10**	B/o: dept of Finance & Treasury	4,998,000
	TOTAL K39,808,610													
2011														
				Sino & Co Lawyers Acc No 1001246161					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
47			(P9-G deposit slip)	**28.03.11**	Dept of Finance	2,000,000	31.03.11	1,970,000	31.03.11	Sino & Comp. Lawyers	1,970,000			
48			(P9-H deposit slip)	**18.04.11**	Dept of finance	3,000,000	20.04.11	2,770,000	20.04.11	Trf from sino	2,770,000			
49				**25.05.11**	Deposit	3,000,000	27.05.11	2,970,000	27.05.11	Sino & Co Lawyers	2,970,000			
50				**06.07.11**	Dept of Finance	2,000,000	08.07.11	1,970,000	08.07.11	Trf frm Sino & Co Lawyers	1,970,000			
51				**26.07.11**	Bpng chq	2,000,000	28.07.11	1,970,000	28.07.11	Trf fr Sino	1,970,000			

	PGAS REPORTS			LAW FIRM RECIPIENT'S ACCOUNT					PAUL PARAKA LAWYERS ACCOUNT 1000586112			PKP NOMINEES LTD ACCOUNT 1000587335		
					dep					Lawyers				
52				**08.11.11**	Bpng Chq B/ Dept of Finance	3,000,000	10.11.11	2,984,520	10.11.11	Sino & Co Lawyers	2,984,520			
				Jack Kilipi Lawyers					**PPL Account No 1000586112**			**PKP Nominees Ltd Account No 1000587335**		
53				**14.01.11**	1xbpngchq b/dept fin& treasury	2,608,300	18.01.11	2,558,300				**18.01.11**	Trf Fr Kilipi Lawyers	2,558,300
54				**28.03.11**	Dept of Finance	2,000,000	31.03.11	1,970,000	31.03.11	Jack Kilipi Lawyers	1,970,000			
55				**08.06.11**	Dept of Finance ch# 003570	2,500,000	10.06.11	2,470,000	10.06.11	B/o: jack Kilip Lawyers	2,470,000			
56				**06.07.11**	Dept of Finance	2,000,000	08.07.11	1,970,000	08.07.11	Trf frm Jack Kilipi Lawyers	1,970,000			
57				**26.07.11**	Bpng chq dep	3,000,000	28.07.11	2,970,000	28.07.11	Trf Fr Jack Kilipi	2,970,000			

	PGAS REPORTS			**LAW FIRM RECIPIENT'S ACCOUNT**					**PAUL PARAKA LAWYERS ACCOUNT 1000586112**			**PKP NOMINEES LTD ACCOUNT 1000587335**		
									PPL Account No 1000586112			**PKP Nominees Ltd Account No 1000587335**		
58			(deposit slip P10-M)									**28.03.11**	Dept of Finance	2,000,000
59			(deposit slip P10-N)									**18.04.11**	Department of finance	3,000,000
60												**25.05.11**	Deposit	3,000,000
61												**08.06.11**	Dept of Finance ch# 003562	2,500,000
62												**06.07.11**	Dept of Finance	2,000,000
63												**26.07.11**	Bpng chq dep	3,000,000
64												**08.11.11**	Bpng Chq B/- Dept of Finance	3,000,000
65												**25.11.11**	b/ dept of finance	2,000,000

	PGAS REPORTS	LAW FIRM RECIPIENT'S ACCOUNT	PAUL PARAKA LAWYERS ACCOUNT 1000586112	PKP NOMINEES LTD ACCOUNT 1000587335
	TOTAL K47,608,300			