

N11384

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR(JJ) NO. 41 Of 2025
CR(JJ) NO. 42 Of 2025

BETWEEN

Juveniles AL & BIL
Applicants

AND

THE STATE
Respondent

TARI: Kostopoulos, J
2025: 11th June, 13th June, 16th June and 22nd July

JUVENILE JUSTICE: Application for Review – Section 87 of Juvenile Justice Act – Juvenile AL and BIL serving custodial sentences imposed by Magistrate – Court of Summary jurisdiction exercised jurisdiction against juveniles contrary to Juvenile Justice Act 2014 – Section 19 (2) of the Juvenile Justice Act 2014, incompetent sentence and excessive punishment of juveniles set aside by National Court on review – Wholesale violation of Juvenile Justice Act in Local Court - Guidelines for application of Juveniles Justice Act for Local Courts .

CRIMINAL LAW: Habeas Corpus – Certiorari - Quashing of orders of conviction, sentencing and punishment of summary offences made in court below – Juveniles charged with serious offences under Section 347C(a) of the Criminal Code (Amendment) Act of 2013 – The State withdraws the charges at trial in National Court – interference of juveniles’ rights pursuant to section 59 of Constitution in court below by adult victim who was relation of juveniles.

Legislation:

Constitution of the Independent State of Papua New Guinea
Criminal Practice Rules of 2022.
Dangerous Drugs Act 1952 (as amended).

Juvenile Court Act 1991 (as amended)
Juveniles Justice Act, 2014

PNG Cases:

State v Gobe [2011] PGNC 205; N4547; (14 July 2011);
State v Juvenile RB [2010] PGNC 62; N4002 (22 April 2010);
State v Penias [2014] PGNC 41; N5659 (13 March 2014);
Kalinoe v Paul Paraka Lawyers [2014] PGSC 38; SC1336;

Overseas cases

Council of Civil Service Union v Minister for Civil Service [1985] AC 374;
Kalashnikov v Russia 222 [2022] VIEUR Court; HR 94 (Kalashnikov);
Kuri Willie v The State [1987] PNGLR 298;
Minister for Aboriginal Affairs v Peko Wallsend Limited [1986] 162 CLR 24;
Queen v Port Moresby Stipendiary Magistrate [1974] FC68;
State v David Henry, CR 495 of 2008 (Unreported);
SZTAL v Minister for Immigration and Boarder Protection [2017] HCA 34 262;
CLR 362 91; ALJR 396 347; ALR 405;

Publication: *Nil restrictions on judgment - the identities of juveniles and victim have been protected.*

Counsel:

Mr. Ngibe, for the Applicants
Mr. Tengdui, for the Respondent

Ex - tempore Judgement 16th June, 2025; revised 22 July 2025

22nd July 2025

JUDGMENT

Introduction

1. **KOSTOPOULOS J:** First, in relation to the juvenile prisoners, the court ordered habeas corpus for the Applicants to be present in respect of the review proceedings filed on their behalf by their lawyer pursuant to section 87 of the *Juvenile Justice Act*, as persons held in custody serving a sentence imposed by the Magistrate, Mr. Nape, on 23rd September 2024.

2. Second, the court directed that the Local Court files, all records including certificate of convictions, recordings of the proceedings that may exist concerning the 23rd September 2024 proceedings before Magistrate Nape in respect of the Applicants, the depositions, transcripts, or any other record held or in the custody of the Registrar of the Local Court, or copy of any record in electronic form are to be delivered up to the National Court and will remain as the National Court file until further orders of the court.

3. Third, the court directs that the previous orders made by the court in the criminal proceedings will be matters subject to the review proceedings that were conducted on the 11th and 13th June 2025, including a closed court and non-publication orders.

4. Lastly, having regularized the proceedings the Applicants are now before the National Court to proceed with the review application.

Explanation of the legal status of the juveniles

5. The above steps were necessary in order to regularise the status and *locus standi* of the juveniles to avoid the National Court offending the *Constitution* and application of the *Juveniles Justice Act 2014* pursuant to the orders made against both juveniles by the Magistrate Nape on 12th November 2024.

6. The Juvenile Justice Officer Sergeant Gerry Kela is before the court and from time to time will translate the facts or matters that are raised during the hearing of the review as the two juveniles are seated at the gallery of the court on either side of the juvenile justice officer and not in the dock at my direction, to record the status of the Applicants during the Review.

7. The juveniles before the National Court are identified as BIL and AL who are siblings and will be referred to as the Applicants in this judgment for ease of reference and protection of their identity pursuant to the requirements of the *Juvenile Justice Act*.

8. The State is the Respondent in this Review under the *Act*.

The Review

9. The Applicants now seek a review of the decision made by Magistrate Nape, on 23rd September 2024 in the Local Court at Tari in the Hela Province in relation to each Applicants' criminal convictions and sentences made in the court below against both Applicants on 12th November 2024.

10. Section 19(1) of the *Juvenile Justice Act 2014* provides that a court of summary jurisdiction can exercise the jurisdiction conferred by the *Act* as a Juvenile Court when a Juvenile Court has not been established in the area.

11. I rely on judicial notice that a Juvenile Justice Court in Tari or the Hela Province does not exist and the magistrates at Tari conventionally deal with juvenile matters.

12. Section 19(2)(c) of the *Juvenile Justice Act* provides that a court of summary jurisdiction may impose any order under section 80 **other than an order for custody or imprisonment.**

Background

13. The application for review is instituted in this court pursuant to section 87 of the *Juvenile Justice Act 2014 (as amended)* and will hereinafter be referred to as the *Act*.

Attachment 'A' to this judgment is a Short-form Chronology of Facts Agreed to by both parties.

14. On 8th December 2024, the certificate of conviction in the Local Court at Tari relevant to the Applicants (the record of the Local Court) as certified by the Alesia Wan Dipi, the officer with custody of the Local Court records states:

“Plea of guilty to possession of drugs, convicted 23rd September 2024 before Magistrate Nape.”

15. On the 12th November 2024, Magistrate Nape made the following orders:

“Each had in their possession a dangerous drug, namely, one (1x) and packed (sic) of dried marijuana\sativea, cannabis wihtout (sic) (I take it to mean without) authorisation made thereunder (sic) as stipulated under the schedule of Dangerous Drugs Act, thereby contravening section 3(1)(d) of the Dangerous Drugs Act.

16. On 12th November 2024 following the conviction of the Applicants in respect to the drug offences, the learned Magistrate Nape then entered the conviction and sentenced the Applicants without reference to the handgun allegedly found in their possession as follows:

“And I further certify that the: (1) Defendant is convicted and is to pay a court fine of K200 each. In default, they have to be imprisoned for a term of three (3) years at Hawa Prison.”

“Defendant is convicted and is to pay court fine of K100 each. In default to (sic) imprisonment for a term of one year at Hawa Prison. Brothers sentences to be served concurrently.”

17. I will deal with the findings and the record I referred to above further in the judgement, however, it is sufficient to say the individual defendants have not been identified in the learned magistrate’s findings and there is no mention of the handgun.

18. On 11th June 2025, the public defender and counsel for the Applicants, Mr. Vincent Ngibe, was granted leave of the court to file the urgent application for

review pursuant to section 87(4) of the *Act* (the application) as there is no form to initiate the review under the *Juvenile Justices Act* or the *Criminal Practice Rules of 2022*.

19. The Application for review form was created as a general form as approved by the court with the assistance of both counsel during the proceedings and without objection in the following form:

“Application for Review of Sentence pursuant to section 87 of the Juvenile Justices Act 2014”

for the application to proceed.

20. The court applied its powers pursuant to section 185 (*Lack of Procedural Provision*) of the *Constitution* to remedy the lack, absence, or inadequacy of the form which relevantly states:

“If in the circumstances of a particular case before a court, no provision or no adequate provision is made in respect of a matter or practice or procedure, the court shall give ad hoc directions to remedy the lack or adequacy.”

21. The application seeks orders pursuant to section 87(1) of the *Act* for review on the grounds pursuant to section 87(2) of the *Act*, that:

(a) “The Applicants are unable to comply with or are experiencing serious difficulties in complying with the terms of the order.

(b) It will be otherwise in the best interest of the juveniles.”

22. On 11 June 2025, the matter was stood over for argument on 13 June 2025 by the court for the parties to consider the application and to prepare short

submissions to assist the court in the application with any relevant case law and authorities, if any, on the court's powers pursuant to section 88 of the *Act*.

23. The Public Prosecutor on behalf of the State (the State), Mr Tengdai of counsel did not object to the filing of the application and the supporting documents which include:

(i) Affidavit in Support of the applications sworn by BIL on his own behalf and as a proxy for and on behalf his younger sibling AL, dated 11th June 2025 (BIL Affidavit).

(ii) Juvenile Justice Officer's review report also dated 11th June 2025 pursuant to section 89 of the *Act* (review report) prepared by Sergeant Gerry Kela.

24. The effect of section 89 of the *Act* in relation to the review report of the Juvenile Justice Officer (JJO) Sergeant Kela is that if an application for review has been made, as is the case presently, it remains mandatory for the Juvenile Justice Officer to prepare a review report in relation to the Applicants for the application to be competent.

25. I find that the mandatory requirements have been complied with for the review to proceed and the application is now competent for the National Court to exercise all its powers under the *Act* and under its general jurisdiction.

26. The Juvenile Justice Officer has filed the review report dated 11th June 2025 with the Court and remains as an exhibit with the court file in respect of this application.

27. Section 88 of the *Act* grants powers to the National Court to review the sentence imposed on the juveniles which occurred on 12th November 2024 following the conviction of the Applicants for drug offences that were imposed by the learned Magistrate Nape pursuant to section 80 of the *Act*.

28. An unacceptable miscarriage of justice might have occurred had the Public Solicitor (with the assistance of the Court) failed to raise the issue that in fact the Applicants were offenders serving terms of imprisonment following their conviction in the Local Court made by the Magistrate Nape on 23 September 2024 after the criminal proceedings were concluded

awaiting trial for the more serious offences in the National Court which were ultimately withdrawn by the State where the applicants were on remand.

Acknowledgement – Her Honor Justice Berrigan

29. At this point before I provide my reasons for this judgment it would be remiss of me not to express my eternal gratitude to Justice Berrigan of this court for training me as a new Judge of the National Court during two (2) days of intense workshops in relation to the operation of the *Act* on 05th & 06th May 2025.

30. Otherwise, the Court unknowingly would have been a vehicle of injustice to the rights of the juveniles in the present proceedings and unwittingly causing an egregious error in failing to uphold the rights guaranteed to the Applicants under the *Act* in the circumstances.

Juvenile Courts Act, 1991 (as amended) – the previous laws

31. The previous *Act* (the predecessor of the current *Act*) was *Juvenile Courts Act of 1991*.

32. The current *Act* improves the common law development since 1991 in the application of the previous *Act* by the courts.

33. The current *Juvenile Justice Act 2014* is sophisticated legislation in its approach to protect juveniles violating the criminal law.

34. The previous *Act*, the *Juvenile Courts Act of 1991*, refers to a juvenile as being a person aged not less than seven (7) years and less than eighteen (18) years. The current *Juvenile Justices Act 2014* refers to Juvenile as being a person not less than ten (10) years and less than eighteen (18) years of age which is more sensible.

35. In *Queen v Port Moresby Stipendiary Magistrate [1974] FC68* the full court unanimously adopted the view that in respect of section 36 of the previous *Act*:

“The true position is that a District Court when dealing with a child is exercising its ordinary jurisdiction but may, by virtue of section 36(4) employ certain special orders provided for in section 36(2).”

36. In *State v Penias [2014] PGNC 41; N5659 (13 March 2014)* in the decision of Batari J, it was relevantly stated that:

“The prisoner was aged 17 years of age in 2011. He was a juvenile. It is proper therefore to treat him and sentence him under the Juvenile Courts Act [1991] pursuant to the powers of the National Court under section 18 of the Act...Section 29 makes it mandatory for the court to order pre-sentence reports before imposing a sentence. The law requires the court to investigate all possible alternatives and to treat imprisonment as a last resort. This comes with the paramount duty to be constructive and not destructive in dealing with young offenders...”

37. In the Supreme Court case of *Kuri Willie v The State [1987] PNGLR 298*, Hinchcliffe J echoed the rationale for these sentiments in this way at page 299:

*“A judge or a magistrate who sends a young man to prison for the first time takes a **grave responsibility**. It is not practical or desirable to lay down a general rule but, in many cases, **it is desirable to take a risk to save a young man or a woman from the consequences of prison.**”*

38. When a court is sitting as a Juvenile Court, the proceedings are to be conducted in camera as a closed court. That was a requirement set out in the decision of *State v Juvenile RB [2010] PGNC 62; N4002 (22 April 2010)* by Cannings J and prevails presently as necessary law to protect the identity of juveniles.

39. If there is a finding of guilt, before sentence, a Pre-Sentence Report (PSR) and Means Assessment Report (MAR) must be provided pursuant to section 29 of the *Juvenile Justice Act*.

40. The convention is that Juvenile Courts over the past 24 years will generally seek to impose a non-custodial sentence on juveniles who offend the *Criminal Code Act*.

41. In *State v David Henry*, CR 495 of 2008, unreported and unnumbered judgment (15 February 2010) Yagi J. relevantly stated that:

“...The scheme of the Juvenile Courts Act is essentially to protect, promote and foster the welfare in the interest of children who violate the criminal law. One of the objects of this legislation is to provide a regulatory guideline and procedure in sentencing of juvenile offenders.

*The key consideration under the Act that is of paramount importance when the court is dealing with juvenile offenders is the “**interest of the juvenile.**” This is stipulated very clearly by the Juvenile Courts Act at the very outset. Section 4 of the Act states:*

4 INTERESTS OF JUVENILE PARAMOUNT

In proceedings and actions under this Act, the interests of a juvenile shall be the paramount consideration.”

42. Section 31 of the *Juvenile Courts Act 1991* sets out the factors enumerated in detail which must be considered by the court including (which still prevail in the current *Act*): -

- a) the seriousness of the offence.*
- b) the age maturity, education and health, character, and attitude of the juvenile.*
- c) the juvenile’s parental or family background as well as the social and community environment which he lives and to which he is to return.*
- d) juvenile’s previous history of offences, community service and facilities that are available to assist the juvenile.*
- e) any proposals that the juvenile or his parents may put forward for the future improvement of the juvenile.*

- f) *any views of the juvenile court officer in relation to the juvenile and other factors.*
- g) *Any views of a Juvenile Court Officer in relation to the juvenile;*
- h) *Any views of any person who is involved in the education or custody of the juvenile.*
- i) *Any other factor that the Court may consider relevant.*

43. Having regard to the legislative imperative for the *Juvenile Courts Act 1991*, the court must, as a matter of law, give paramount consideration to the interests of the juveniles when determining an appropriate sentence in this case. See also *State v Gobe [2011] PGNC 205; N4547 (14 July 2011)* per Yagi J.

44. If a custodial sentence was imposed under the 1991 Act, then it was served in a Juvenile Remand Centre but only as a last resort under juvenile justice sentencing principles.

45. As for publications of judgments, His Honour Justice Cannings said:

“The court can authorise the publication of the judgment under section 28(1)(a) of the Juvenile Courts Act.”

46. I intend to publish this judgment in the interest of justice after revision, redaction and, of course, sanitisation of any prohibited publication of the victim, the names of the juveniles and any other identifying feature or material that are contrary to the current orders of non-publication I have made in these proceedings which may include any reference to villages or other identifying factors that could affect the Applicants.

The current Act – *Juvenile Justice Act, 2014*

47. After considering a review of the common law applying the previous *Juvenile Courts Act 1991*, the court must then apply, in my view, the purposive test in statutory interpretation of the current legislation to achieve the purpose or objectives of the current *Act* set out in section 5 of the *Juvenile Justice Act 2014*, as

read together with the general principles set out in section 6 of the *Juvenile Justice Act* for the purpose of the review.

48. The purposive approach to interpreting the principles of complimentary protection regimes in the administration of criminal justice for juveniles is necessary and obvious under the *Juvenile Justice Act of 2014* reflecting the immutable rights citizens have in criminal proceedings.

49. The protection of juveniles is first recognised by *section 22 of the Constitution (Enforcement of the Constitution)*; -

“The provisions of this Constitution that recognise rights of individuals (including corporations and associations) as well as those that confer powers or impose duties on public authorities shall not be left without effect because of the lack of supporting, machinery or procedural laws but the lack shall, as far as practicable, be supplied by the National Court in the light of the National Goals and Directive Principles, and by way of analogy from other laws, general principles of justice and generally accepted doctrines.”

50. The persuasive argument for a purposive approach builds on the dissenting judgment of *Gageler J. in SZTAL v Minister for Immigration and Boarder Protection [2017] HCA 34 262; CLR 362 91; ALJR 936 347; ALR 405.*

51. Justice Gageler (as he then was, now the Chief Justice of Australia) interpreted the intention requirements in the light of the expressed purpose of the Australian complimentary protection regime to align Australia’s international non-refoulement obligations as ratified under the convention against torture and other cruel, inhumane or degrading treatment or punishment (CAT) with reference to the *Migration Act of Australia.*

52. Australia also ratified the *International Covenant on Civil and Political Rights (ICCPR)* and the *Convention on the Rights of the Child (CRC)*. Likewise,

Papua New Guinea ratified the *ICCPR* on 21st July 2008 and entered the *ICCPR* into force as part of the domestic law on 21st October 2008.

53. However, the *Convention on the Rights of the Child (CRC)* was ratified by Papua New Guinea in March of 1993 and as of July 2025 the State and successive governments from the time *CRC* was ratified have not taken the additional step to enable the *CRC* to enjoy the status of domestic law.

54. The dualistic approach to international law by the State of Papua New Guinea dictates that international instruments generally only have effect as domestic law once enacted by statute.

55. The Parliament of Papua New Guinea has strictly controlled the reception of international law into the domestic legal system, demonstrating a widely observed executive anxiety towards international law.

56. The application of the reasoning of Gageler J, now Chief Justice of Australia, at paragraphs 31 to 59 of the judgment is relevant to the principles of autochthony in Papua New Guinea for the development of domestic law to accord with the applicable laws in relation to juveniles in Papua New Guinea under the State's obligation of care when considering international laws regarding the rights of children.

57. The reasoning of Gageler J (as he then was) is persuasive and assist in the development of juvenile justice in the interpretation of the *Act* relevantly to the operation of the *Juvenile Justice Act* in Papua New Guinea.

58. The current *Juvenile Justice Act 2014* remains robust legislation for the protection of the necessary and obvious rights guaranteed to juveniles when allegedly violating the criminal law under the *Constitution*, accepted international laws and conventions applied under the *Juvenile Justice Act*.

59. The *Act* sets strict rules and standards that must apply to the police force, the correctional officers, juvenile justice's officers, the courts, and other relevant persons defined in section 2 of the *Act*.

60. In principle, the *Juvenile Justice Act 2014* remains, in my view, world class domestic legislation to protect all juveniles in this country that breach the *Criminal Code Act*.

61. The law protecting juveniles under the *Act* accords with Articles 19, 33, 37 and particularly Article 14 of the *Convention of the Rights of Children (CRC)*, applying international law obligations in the domestic law in respect of the rights of a child allegedly accused of having infringed the penal law of the State to be treated with dignity and worth and respect for the child's human rights.

62. However, the *Act* can only apply with the support of the State and the funding that is necessary to support the *Act* breaching section 22 of the Constitution.

63. The State has failed in relation to supporting the *Act*.

64. Therefore, it is my view that the purposive test warrants application to the interpretation of the laws including both the domestic *Act* and the *CRC* to be ratified in a domestic statute.

65. The *CRC* remains as a reference, aid or as relevant extrinsic material in my judgment in considering the principles of complimentary protection regime when reviewing sentencing of juvenile offenders pursuant to sections 70 and 75-80 of the *Juvenile Justice Act 2014*, and furthering PNG's international obligations concerning United Nations conventions generally.

Treating juveniles through a different lens – the benefit of applying the *Act*.

66. I start with a quote from Plato circa 360BC, Ancient Greek philosopher who stated:

“Do not force children into your ways of life. They were created in a time different from your own.”

67. The *Constitution* of the Independent State of Papua New Guinea, although youthfully statured within a thriving democracy (now celebrating its 50 years of independence in September 2025), when applied by the courts and other government instrumentalities, is a mature document protecting human rights at the highest global level in the protection of its people including juveniles.

68. I first deal with the rights of the Applicants under the *Constitution* and the intersection of the *Act*.

69. The Applicants have a basic right to freedom guaranteed by section 32 of the *Constitution* except for violations of the *Criminal Code Act* in the administration of the criminal justice system.

70. As juveniles, the Applicants are afforded the necessary and obvious rights, guarantees and special treatment under sections 5 and 6 of the *Juvenile Justices Act 2014* conventionally not applied to adult offenders who are charged with similar offences during the law enforcement process of allegations being made against them for violations or breaches of the *Criminal Code Act*.

71. Section 36 of the *Constitution* provides guarantees that the Applicants will not suffer inhumane treatment relevantly when being dealt with by officers charged with the responsibility of dealing with juveniles who have allegedly committed offences in violation of the *Criminal Code Act*.

72. Section 37 of the *Constitution* provides for protection of the law for the rights of citizens which include the Applicants.

73. As juveniles, the Applicants are entitled to special constitutional rights including the right to be heard, the right to be treated with dignity when deprived of their liberty, segregated from convicted persons in prisons and their status as juveniles in custody to be separate from other persons in custody.

74. Section 37 (Protection of the law) states “(1) *Every person has the right to full protection of the law.*” Notably, the succeeding provisions of this *Act* are intended to ensure the right is fully available especially to persons in custody who are charged with offences.

75. Section 37 of the *Constitution* states: –

“(17) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person;”

“(18) Accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.”

*“(19) Persons under voting age who are in custody in connection with an offence or alleged offence shall be **separated** from other persons in custody and be accorded treatment appropriate to their age.”*

76. The Applicants are protected from the arbitrary use of force pursuant to *section 47* of the *Juvenile Justice Act 2014*, noting the relevant exceptions in the *Act* when being arrested by members of the police force for allegedly committing any offences under the *Criminal Code Act*.

77. Section 51 of *Juvenile Justice Act 2014* provides for the conduct of the police to respect the legal status of the juveniles under the *Act* and under the *Constitution* of Papua New Guinea generally and promote the well-being of the juveniles including the application of *section 59(2)* of the *Juvenile Justices Act 2014* which states: –

“If a juvenile has been remanded into custody, a court shall take such steps as are reasonably practicable to expedite the completion of the proceedings so as to minimise, to the extent possible, the length of time the juvenile will spend in custody.”

78. Section 59(1) of the *Constitution* states that the principle of natural justice applies to all citizens which includes juveniles: -

“Subject to this Constitution and to any statute, the principles of natural justice are the rules of the underlying law known by the name developed for control of judicial and administrative proceedings.”

79. Section 59(2) of the *Constitution* states: -

“The minimum requirement of natural justice is the duty to act fairly and in principle to be seen to act fairly.”

80. The principles of natural justice or procedural fairness have their origins in natural law.

81. When applying procedural fairness, one must look not only in the positive words in the statute requiring the parties the right to be heard, but justice in the application of the common law will supply the omissions of the legislature, and in Papua New Guinea, the *Constitution* as the ultimate law provides such protection.

82. The starting point may be important in the context of a judicial review of the guaranteed right to procedural fairness.

83. In my view, the statute as the starting point making it easier to conclude that the intent of the *Act* is to subject the decision-maker to the statute and the subsequent common law principles in interpreting and then applying the *Act*.

Failure by court below to apply the *Act*.

84. The Applicants should have been afforded their right to a public solicitor, a juvenile justice officer and other support at the hearing before the magistrate before entering any plea of guilty.

85. To conclude the relevance of the guarantees of the *Constitution* that apply to the application for review, section 155 of the *Constitution* as argued as a separate ground of review in arguendo with counsel, submitted without objection from the State, that the National Court has nevertheless an inherent power of review where, in its opinion, there are overriding considerations of public policy in the special circumstance of a particular case.

86. That point was raised by counsel for the Applicants when submissions were made, and I accept that section 155 may also have application in these proceedings.

87. It is my view that for non-exhaustive reasons that will be set out in this judgment, the Applicants' case represents facts that fall into the category of special and indeed unique circumstances where the National Court is required and considers it appropriate for the application of section 155(3)(c) of the *Constitution* in the review and the general provisions pursuant to section 155(3)(a) to (e) and as mentioned broadly in section 155 of the *Constitution* for the exercise of the courts discretion in the interest of justice to intervene.

88. The placing of juveniles without segregation in an adult prison and without due process being afforded to them under the *Juvenile Justices Act 2014* during the Local Court proceedings until the matter was raised before this court that they were in fact prisoners, falls squarely into a category as reflected in the case of *Kalashnikov v Russia [2002] VIEUR Court HR 94*¹ at [31] which is reported in the European Court of Human Rights, as relevant.

¹ In that case, the European Court of Human Rights heard that a man was charged with a crime and placed in detention pending a hearing before the City Court. For the duration of his incarceration, he was kept in a small cell with no ventilation. There were eight beds in the cell, but it usually held 24 prisoners. Inmates took turns to sleep but sleeping was difficult because the lights were always on, and the television was always playing. A single toilet was located in the corner of the cell and no screens to offer privacy to the inmates. Meals were eaten at a dining table a metre away. The cell was overrun with cockroaches and ants. The man endured these conditions for four (4) years and ten (10) months. There is no doubt that the government and the local authorities were well aware of the substantive conditions of the facility. And the question that arose before the court was, did they, referring to the local authorities and government, intend to subject the man to these conditions?

89. In the simplest of terms, the Applicants were denied their basic rights guaranteed by the Constitution and statutory rights prescribed by the *Juvenile Justice Act 2014* during their incarceration at an overcrowded Hawa Prison in Tari.

The reasons for urgency for the application for review to avert a miscarriage of justice.

90. The court file and records show that the criminal sittings commenced in Tari on 2nd June 2025 after a seven-year absence of a permanent justice of the National Court in the Hela Province.

91. Criminal trials were listed as a running list from 2nd June 2025 until 31st July 2025 to deal with the backlog of criminal trials including five matters involving juveniles on remand held at CIS Hawa Correctional Institute facing serious indictable offences including the Applicants' criminal trial which was included in the list and was dealt with first.

92. The court was anxious to deal with, and did deal with, the juvenile matters in the criminal list with the urgency and the priority the trials involving juveniles on remand that justice deserved.

The Applicant's Criminal Trial

93. On 2nd June 2025, other matters in the National Court criminal trial proceedings involving the juveniles and dealing with serious indictable offences were mentioned for call-over and status hearing of the trials.

94. The court indicated to the parties, among other things, the breaches of the *Juvenile Justice Act 2014*, that required immediate attention.

95. The court further noted that the Applicants' trial was set for a trial date, and the sittings would not proceed without at the very least a juvenile justice officer being present for the trial to comply with the *Act* and other juvenile matters listed for trial in the list.

96. On 4th June 2025, the matter was called over to be advised by counsel on its status and information for a date the matter would be listed for trial at the present sittings.

97. Counsel for the accused juveniles sought an adjournment until Monday, 9 June 2025 to file the defence's pre-trial review documents before the trial which was unopposed and was granted by the court.

98. The court was advised that the juveniles did not have the assistance of juvenile justice officer for the trial which violated the *Act*.

99. The court acted immediately to remedy the fact that there was no juvenile justice officer appointed by the State in Tari or Hela Province.

100. On 4 June 2025, the court conducted an inquiry into the competence of Sergeant Gerry Kela, a senior police sergeant in Tari, in relation to his qualifications to be appointed as the volunteer juvenile justice officer pursuant to section 13 of the *Act* to remedy the fact that Tari did not have a juvenile justice officer or Hela Province for that matter, and to ensure that the trial proceeded without violating the *Act* by fast-tracking the eligible person for the role to avoid bureaucratic runaround.

Attachment "B" is the Transcript on the Inquiry into Competency of Sergeant Gerry Kela on 4 June 2025.

101. Presently, Sergeant Kela is sitting between the two juveniles in the gallery of the court rather than juveniles being in the dock.

102. In any event, the court was prepared to abort the trial to avoid non-compliance with the *Act* in interregnum, until the juvenile justice officer was appointed.

103. The above position was both unworkable and unacceptable to the court in the administration of juvenile justice in the circumstances.

104. After the Inquiry into Competence of the Sergeant Kela for the role of juvenile justice officer under the *Act* was completed, I directed that the Director of Juvenile Justice Services appoint Sergeant Kela by no later than 5pm on Friday, 6th June 2025, including other administrative directions to ensure the trial would proceed.

Attachment “C” are the Orders made by the Court 4th June 2025.

105. On 5th June 2025, the formal appointment of Sergeant Kela in writing was sent by email to the court, signed by the Director for Juvenile Justice Services as a volunteer juvenile justice officer for the Hela Province for a period of six months from 5th June 2025.

Attachment “D” is the Appointment letter of Sergeant Kela dated 5th June 2025.

The Newly Appointed Juvenile Justice Officer – Sergeant Gerry Kela

106. The sergeant has been of great assistance to the court in his new role as volunteer juvenile justice officer of Hela.

107. On 9th June 2025, the matter was mentioned before the court for pre-trial applications before the trial was set down for hearing on Tuesday, 10th June 2025.

108. Counsel for the State required time to consult with the State witnesses as the witnesses were arriving from rural townships and villages across the Hela Province.

109. On 10th June 2025, the trial was listed to commence.

110. Counsel for the State advised the court that the prosecution sought leave to file a section 525(1)(b) declaration that the charge would not be laid against both the juveniles.

111. Counsel for the State acted appropriately and honourably in this regard.

112. The court was ready to make the usual orders under Form 33 of the *Criminal Practice Rule of 2022* to release the Applicants who were on remand for the more serious offence before the National Court.

113. Counsel for the Applicants then announced to the court that the Applicants had been separately charged with drug and gun offences and had pleaded guilty to the offences in the Local Court and were serving one (1) to three (3) years of imprisonment, respectively.

114. The court was alerted to the relevant facts and caught by surprise in that had the court released the juvenile remandees the court would have been complicit to aiding and abetting the prisoners in escaping from lawful custody following their conviction and imprisonment ordered by Magistrate Nape on 12th November 2024.

115. The certificate of conviction does not bear out that the gun offences were dealt with by the magistrate below.

116. The court had no knowledge that the juveniles were serving custodial sentences imposed by Magistrate Nape requiring the National Court to act swiftly, intervene and decisively cure the legal status of the juveniles until this review was conducted and determined by ordering habeas corpus allowing the juvenile prisoners to be present and in the custody and protection of the court until this review was conducted, concluded and determined.

Averting a miscarriage of justice – the juvenile prisoners

117. Counsel for the State made enquiries as directed by the court with the police prosecutor who prosecuted the matter in the court below and confirmed that the handgun matter was raised as it was the police prosecutor's belief and recollection that it was dealt with by the magistrate.

118. The record does not contain or record that fact.

119. Both counsel for the State and the court were taken by surprise that in fact the Applicants were on remand and serving prison sentences concurrently without the knowledge of the criminal conviction made in the Local Court brought to the attention of the court and the parties in the criminal trial before the National Court.

120. In my findings this fact is yet another breach, heaped upon compounding breaches, I will discuss further in my judgment of the *Juvenile Justices Act 2014* and the constitutional rights guaranteed in favour of the juveniles of due process.

121. The court immediately requested the certificate of conviction and any other records concerning the Applicants' criminal trial or antecedent records from the Local Court in Tari.

122. Hypothetically, had the National Court released the Applicants at that time without knowledge of their convictions in the Local Court, then it was correct to assume the Applicants were once again free citizens had I made the usual orders.

123. The problem with that assumption is that the Applicants may have been returned to continue the existing sentences imposed by the Local Court in the existing position that the National Court and the parties would have been none the wiser.

124. In my view, the juveniles remaining in custody for one day longer at Hawa Prison would have resulted in a travesty of justice without the court properly applying the *Act*.

125. No party was to blame but there appeared to be a systemic failure contrary to the *Juvenile Justices Act 2014* in which a recent antecedent report would have assisted the court in identifying the issue immediately then alerting counsel for both parties that the juveniles were still serving custodial sentences.

126. I dare say, the National Court would have been party to the breach of the sentences imposed on the Applicants in the court below as would have been counsel for both the State and the juveniles.

127. In my view, the result would have been unacceptable, untenable, and unjust in all regards concerning the Applicants.

128. On 11th June 2025, the matter returned to court and the application for review was filed to deal with these unusual circumstances.

129. The court with the assistance of counsel averted what would have amounted to a chaotic clash of jurisdictions and control of the custody of the Applicants.

130. The Applicants having been released from remand by the National Court lawfully would, by the lawful orders of the National Court, placed the Applicants in legal paradox by leaving the court resulting in a potential charge of escaping from lawful custody while serving a prison sentence imposed by the Local Court previously after ending their trial without conviction in the National Court of the more serious indictable offences.

131. That could have resulted in a legal absurdity at the very least.

132. The National Court and counsel were unaware of the convictions below as a direct result of the lack of necessary resources in the proper administration of the *Juvenile Justice Act 2014* and counsel for the juveniles not obtaining a complete history of the Applicants' existing offences.

133. The putative re-arrest of the juveniles serving a custodial sentence would have amounted to an unthinkable miscarriage of justice, requiring the Applicants to serve potentially an additional term of imprisonment of two years as the maximum sentence for escaping lawful custody without the knowledge of the court and without the knowledge of counsel.

134. In my view, the complications faced by the National Court in the circumstances could have resulted in an unthinkable and disastrous maladministration of justice.

The submission for upholding the review in favour of the Applicants.

135. The arguments and submissions for the review took place on Friday, 13th June 2025 and judgment was delivered orally as a result of the court's administrative problems associated with no associate, secretary, typing facilities and the remoteness of being unable to operate because of a lack of Wi-Fi connectivity to assist me as the justice of the National Court in Tari.

136. The court expressed its deep regrets in the delay of three (3) days in delivering the judgment orally as a result of the intervention of the weekend, requiring the Applicants to remain in Hawa Prison, which was explained to the juveniles by the juvenile justice officer and accepted by them.

137. The juveniles were released and set free on 16 June 2025 after oral judgment was delivered subject to revision and review of the oral judgment represented by this written and published judgment with the consent of the parties.

The arrest, charge, and incarceration of the Applicants

138. The court will now deal with the arrest and the charge, incarceration, and the trial of the Applicants from the agreed facts which is *Attachment A* in this judgment.

139. That on 5th August 2024, both the Applicants were accused of a violation of the section 347C(a) of the *Criminal Code (Amendment) Act of 2013* for sexually assaulting a victim in her 40s. The charge was with respect to using violence by pointing a handmade gun at the victim.

140. On 5th August 2024, the investigating constable produced exhibits including evidence, photographs of the handmade gun, dried marijuana found in a dwelling house of the accused, GPS area views of the crime scene and photographs of both

accused which was in the CID file tendered by the prosecutor on 27th March 2025 against the accused during the committal before Principal Magistrate Maitang.

141. On 19th of August 2024, the victim provided a statement to corroborate and support the charge. A statement was also taken from the Applicants' sibling who supported evidence for the charges to be laid.

142. On 21st August 2024, an information was laid by a constable against both accused in contravention of section 347C(a) of the *Criminal Code (Amendment) Act 2013* that stated; -

“Each, severally sexually penetrated the victim, armed with dangerous weapons, namely, handmade guns.”

143. On 21st August 2024, there is an interpreter's Affidavit of the Constable in respect of the charging of the accused. This is in the police brief as a summary of facts against the accused to prove the charge.

144. On 22nd August 2024, as part of the evidence in the police brief and the summary of the facts against the accused to prove the charge, the father of the victim corroborated facts to support the evidence for the committal proceedings.

145. On 18th September 2024, a Record of Interview between the juvenile AL and a constable was conducted at Hawa Prison in the Pidgin language and translated to the English language.

146. It is clear that there was no juvenile justice officer or parent of the juvenile, AL the youngest of the two Applicants, there to assist in the record of interview.

147. However, the record of interview shows the effects of their responses were to wait until they could tell the court their side of the story. That is consistent with their right to silence. That answer was given by fate, not design.

148. I find the absence of any support persons or a lawyer for the two juveniles at Hawa prison during the records of interview as violations of the *Constitution* and the *Juvenile Justice Act 2014*.

149. On 23rd September 2024, a record of interview was conducted with BIL, one of the Applicants in the proceedings. Again, the record of interview appears to support (in their questions and answers) that by answering the questions the applicant BIL was waiting to tell the court his side of the story which the court infers may have represented his defence to the allegations.

150. On 23rd September 2024, antecedent reports of the accused were presented as evidence and as part of the investigation.

151. In the antecedent report of the accused, it states that both accused did not attend primary school and for all intents and purposes, illiterate. Both the accused were subsistence living as subsistence farmers and had no prior convictions.

152. The relevance of this evidence is that vulnerable juveniles without proper employment, with no prior criminal convictions facing serious criminal offences, without support persons under the *Act* and without the benefit of legal representation represents a dreadful example of the breakdown of juvenile justice in Hela.

153. The *Act* is in place to protect the most vulnerable juveniles being processed in the administration of the criminal justice system in Papua New Guinea.

154. A model representing a complete disintegration of the Applicants' rights under the *Act*.

155. It is in my view that the facts on review are unfathomable and in complete dereliction of the *Act*.

156. The *Juvenile Justice Act 2014* contemplates in the objects and purpose of the *Act*, the vulnerability of such juveniles requiring treatment in accordance with the *Juvenile Justice Act 2014* which they were not provided in the circumstances.

157. On 29th October 2024, the investigator provided an affidavit of events in respect of the charging of the Applicants.

158. On 11th November 2024, Proof of Service of CID files on both accused were served at Hawa Prison without the mechanisms of the *Juvenile Justice Act 2014* in place, on illiterate accused who are juveniles with no idea of what Proof of Services or CID files were before the court.

159. I infer that the juveniles in all probability did not understand or could read what the allegations or evidence were put against them or understood the process or what the magistrate was saying in relation to the committal process.

160. The history of the matter is relevant to the review for two reasons:

- i. In the criminal trial before the National Court, the State had evidence from the victim dated 19th August 2024 in a signed statement to support the prosecution.
- ii. However, when one looks at the Local Court proceedings, the Applicants were facing a trial before Magistrate Nape on 23rd September 2024, compared to the statement given by the applicant as directed by the court in these proceedings which I accept that in fact, *“he was told by the victim and to (his younger brother), the younger sibling that if they pleaded guilty to the offence, all would be right.”*

161. This is a disturbing example of breaches of procedural fairness for juveniles under the *Juvenile Justice Act 2014* for a fair trial, to wit, having the benefit of independent legal representation to provide instructions in criminal proceedings.

162. The court presently cannot understand why the victim who is a close relation to the Applicants, would interfere in the due process of the juveniles’ rights before the magistrate.

163. These facts were not uncovered until the National Court criminal trial was withdrawn by the State by not proceeding with the charge against the juveniles and the inquiry by the court in relation to their previous criminal convictions in the Local Court.

164. On 27th March 2025, a Notice of Committal against both the Applicants in relation to the sexual offence was heard at the District Court of Tari before Magistrate Mathew Maitang.

165. Prosecutor, Mr Vairove and interpreter, Mako Mitka were also at the committal with the victim also present.

166. It was found by the magistrate that the accused were juveniles without evidence on the record to suggest that he formed a view as to their ages pursuant to section 4 of the *Juvenile Justice Act 2014*.

167. The magistrate did not apply the *Act* in closing the court and declaring the matter proceed under the *Act* and issuing non-publications orders.

168. The committal record shows that the age of accused are “*17 and 18 years respectively, nil bail granted, and they were again provided with CID files handed to them both in court.*”

169. Both juveniles were then remanded in custody as an order made by the magistrate to Hawa Prison pending appearance in the National Court for the referral of the committal to the court to hear the serious indictable offences without reference to the Act.

170. On 10th June 2025, the matter was listed for trial for three days.

171. On 11th June 2025, the prosecutor advised that he had conferred with the witnesses and sought leave to file a declaration that a charge will not be laid pursuant to section 525(1)(b) of the *Criminal Code Act*. The reasons provided for the charges to be dismissed was that:

“The prosecution not in the interest of justice.”

172. The Application of the *Juvenile Justice Act 2014*, and its guidelines were discussed during submission and final addresses before the court by counsel when the court suggested to counsel in arguendo for the Applicants that *section 43 of the Juvenile Justice Act 2014* applies and grants the court: -

“Power to dismiss the charges if the juvenile pleads guilty before the court and the court is satisfied that the juvenile should have been diverted or no action taken.”

173. As an alternative position, counsel for the Applicants suggested that an appropriate course would be for the court to apply *section 155 of the Constitution* with the general powers of the court to ensure that justice is done in the circumstances.

174. In taking either or both these legal pathways in the exercise of the court’s power, the result must be to set aside the orders of Magistrate Nape and quash the conviction and the sentences against both juveniles in the interest of justice.

175. In these special circumstances, the National Court must take the necessary and obvious step in its supervisory role to set guidelines for the lower courts to follow in juvenile matters under the *Act* as this case provides this court with the opportunity to do so in the circumstances.

Guidelines for the lower courts

176. The guidelines (in a non-exhaustive list) are necessary as part of the review in the interest of justice applying to the lower courts in the exercise of the supervisory jurisdiction of the National Court regarding the *Juveniles Justice Act 2014* (noting examples of the breaches of the *Act* referred to by reference to the facts relevant to this review application and judgment) below:-

177. The rudimentary and essential anterior procedures that the courts must undertake are to determine the age of the accused under section 4 of the *Act*, then close the court, ensure the file has a juvenile classification and status, and issue non-publication orders of the proceedings to protect the identity of the juveniles and the nature of the criminal proceedings before the courts.

178. The guidelines commence with section 6 of *Juvenile Justice Act 2014* are the general principles under the *Act*, where: -

“A court or person exercising a power or performing a function in accordance with this Act is to be guided by the following principles:

- (a) because of the youth and vulnerability, special considerations apply in respect to proceedings against juvenile, and -*
 - (i) at all stages, the criminal justice system for juveniles must be separate from that of adults; and*
 - (ii) Juveniles are entitled to enhanced protections to ensure that are treated fairly and their rights are respected; and*
- (b) in all actions concerning juvenile, the best interests of a juvenile are the primary consideration; and*
- (c) a juvenile must, as far as possible, be given an opportunity to express his or her views before any decision affecting the juvenile is taken; and...*”

179. In the current proceedings, sections 6(a) - (c) have not been applied to the Applicants in the Local Court summary proceedings and during their arrest, charging and the hearing of the committal proceedings.

180. Section 10 requires the presence of the juvenile justice officer to assist by executing his/her duties under this section to guide the court’s result.

181. Before 5th June 2025, after directions were given to the Director of Juvenile Justice Services, there was no juvenile justice officer whether permanent or

volunteer in Tari or the Hela Province for that matter which in my view constitute a breach of the *Act*.

182. Section 19 outlines the principles of the juvenile justice jurisdiction of the courts with emphasis on limitations or prohibition in sentencing options relevant to orders involving custody or imprisonment applied in the lower courts.

183. The Local Court, subject to some indictable offences that the principal magistrate of the province can deal with, has no jurisdiction under the *Juvenile Justice Act 2014* to deal with summary matters in which Magistrate Nape imposed custodial sentences on the Applicants.

184. Section 28 provides for diversion to be considered by the court before any other option on punishment is administered.

185. Section 28 was not complied with in the court below in my findings in relations to the Applicants.

186. Sections 32 to 34 and 42 outlines the powers of the court in relation to juvenile offenders including the ability to impose community-based orders and diversion programs which are set out in section 62 of the *Act* as alternative punishment to custodial sentences.

187. The court below should have considered these alternatives before imposing a custodial sentence during the drug trial, and I assume, the handgun trial against the juveniles.

188. Section 40 provides for the police to consider alternatives to initiating criminal proceedings like issuing warnings under section 41, referral to community-based conferences under section 42, and other diversion options mentioned in section 29 of the *Act*.

189. Section 43 states if the juvenile should have been diverted then instead of accepting a plea of guilty, the option is to dismiss the charge.

190. In my view the National Court has power under section 43 on the review application pursuant to section 87 of the Act to examine the relevant facts as to why the juveniles agreed to pleas of guilty in the court below.

191. In this instance, both Applicants under section 59 of the *Constitution* state to the effect, and I accept, that they were denied procedural fairness and natural justice in the court below, and that the court is entitled to dismiss the charge under section 43 of the *Act*.

192. Sections 44 to 45, the sections provide issuing a summons to initiate proceedings rather than be arrested by police unless a juvenile has committed a serious indictable offence.

193. Section 47, the use of force should not be used when arresting the juveniles with the exception of self-harm by the juvenile or causing harm to others or seeking to evade or resist arrest.

194. Section 48 requires the parents of the juvenile or the juvenile justice officer to be advised of the arrest of the juvenile to allow the intervention of the juvenile justice officer.

195. Sections 49 and 51 suggests that the juvenile is to be respected and his or her well-being promoted including medical assistance when the police deal with a juvenile if such medical aid is required by the juveniles.

196. The evidence of BIL, and as a representative of his younger brother speaking on his behalf, which I accept, is set out below at this juncture of the guidelines to provide the model and warning of what should not occur in the processing of juveniles under the *Act*.

197. BIL's Affidavit in Support was sworn and filed with the court on 11th June 2025 with the leave of the court which states as follows:

"I am the Defendant in these proceedings, and I have authority to depose to this Affidavit supporting the application, filed on behalf of

my (sic) by my lawyer - the Public Solicitor. I and my small brother were apprehended on 22 August 2024 on the allegations of us raping the victim. We were then arrested and charged and brought to Hawa CIS facility.

In September 2024, we had a Record of Interview with the arresting officer at Hawa Prison and that was the first time MT told me and my brother about the marijuana plants and the homemade gun and the police may say those items were ours and that they had brought it to support the stories of me and my brother taking cannabis, watching porn and sexually assaulting the victim at the gunpoint using the homemade gun.

Me and my brother categorically deny everything and maintain our innocence and say we will tell our side of the story to the court of law when we appear before the court.

Sometime in November 2024, we came to Tari from Hawa to appear before the magistrate and whilst waiting for the court, the victim advised us to admit to the court that the cannabis and the homemade gun were ours and upon that, the magistrate will feel sorry for us and ask us to make bail and go home.

On that basis, we just admitted to the charges without actually and properly understanding the nature and consequences of our admission.

For me, my mind was influenced by the earlier release that the victim said the magistrate will grant me and my sibling so we both agreed to and admit to the charge.

However, during that hearing, we were informed of our rights and did not went through the process we went through with the National Court.

The court did not consider that we were not financially okay to pay the fines and also court did not ask us for the CIS officer if there was a separate juvenile holding cell in Hawa Prison before imposing the custodial sentences.

In light of the processes and procedures, I and my brother observed and understood and that took place in the National Court could have been done in the District Court.

We feel that the magistrate may have breached those processes and procedures that could be accorded to me and my brother.”

198. The juvenile then goes on to say that they “ask the court to review their brother’s sentence and the custodial prison period in jail and they have learnt so much that they be released from custody?” He says further that “everything he deposed is true.”

199. The Court accepts the unchallenged evidence of BIL on the balance of probability as accurate and truthfully in the affidavit of the juvenile and, on behalf of his younger brother, as a true account of the events in the court below from his perspective.

200. I find that procedural fairness was breached in the court below in respect of the following rights in favour of the juveniles in this review: -

- i. Due process.
- ii. a right to a lawyer.
- iii. failure to apply the *Juvenile Justice Act 2014*.
- iv. an alternate to a custodial sentence should have been imposed.
- v. a warning or referral to community-based assistance under the *Juvenile Justice Act* should have been considered but was not.
- vi. a right to run a defence according to the evidence that there was no evidence at the time of possession between the handgun, the marijuana.

- vii. what occurred thereafter in respect of the rights of the juveniles that could at the very least have been given before the magistrate for him to consider as a complete defence to the possession of the marijuana and the homemade gun was available but was not, put forward as a defence.
- viii. The interference by the victim in the court below breaches due process guaranteed to the juveniles and the undue influence borne upon the juveniles to plead guilty to the offences before Magistrate Nape for a collateral or ulterior motive was unjust, unfair, and unreasonable.

201. I revert to the guidelines; section 52 states that,

“Whilst in police custody, the juvenile must be segregated and kept safe from adult detainees and brought before the court within a reasonable time after the juvenile’s arrest and granted bail by the police or when brought before the court in accordance with section 55 of the Act.”

202. I find that the juveniles in this review were not segregated according to both the *Constitution* and the *Juvenile Justice Act 2014*.

203. Section 60 outlines the proceeding before a juvenile court or any other court exercising powers under the *Act*.

204. Section 62 provides for the court using the criteria under section 28 in favour for the juvenile. The court may divert the juvenile in making orders for one or more diversion options under section 29.

205. Section 63 provides for plea process involving juvenile: -

“(1) If a juvenile appears before a court charged with an offence has not been diverted under section 62, the court shall follow procedures set out in this section.”

Including -

*“(2)(a) explaining to the juvenile the nature of the allegations against him or her; and
(b) informing the juvenile of his or her rights; and
(c) explain to the juvenile the procedures to be followed under the Act.”*

206. I find section 60, 62 and 63 of the *Act* were breached and these rights should have been afforded to the juveniles in this review.

207. Section 64 provides for admissions or denials of the charge by the juvenile. Obviously if a juvenile admits a charge, then the procedures are to proceed to sentence but in accordance with the *Juvenile Justice Act 2014*.

208. If a juvenile pleads guilty and the juvenile does not dispute any of the allegations put to him or her in accordance with section 64(1)(b) and the offence is disclosed, then the procedure is that the juvenile may proceed with his or her defence.

209. I find that the evidence of BIL supports the facts that the Applicants had defences to the charges and were denied a right to be heard.

210. When the Applicant BIL was asked to provide a statement of matters relevant to how he was affected by the charging, arresting, and processing in the criminal justice system, BIL’s evidence in court was:

“I was beaten by police, defence force, correctional officers. We feel very bad. We are suffering. Clearance was given on 13th June 2025. At the time of arrest, three years imprisonment and feel worried. We were unhappy. We served 11 months in a prison camp. Relatives did not come and visit us at jail. We are both lonely, anxious, and worried. I want the sentence discharged and to be released from prison.”

(speaking on behalf of his brother).

211. From my observation of the applicant BIL in his statement to the court, the allegations are sincere and persuasive which I take into account as unproven allegation of BIL, as I cannot find beyond reasonable doubt that the evidence is

true as to do so would be to deny the rights of the officials, police and other officers to be heard and defend the allegations now made against them by BIL.

212. Section 67 of the *Juvenile Justice Act 2014* states that there must be the presence of parents and the entitlement to legal representation under section 68.

213. I find that in the summary offences before Magistrate Nape, where these aforementioned provisions of the *Act* were not complied with against the interests and basic rights afforded to the Applicants.

214. Regrettably, section 69 of the *Act* requiring the court to be closed and non-publication orders made, during both the committal and summary offences before Magistrate Nape in accordance with the *Act*, were not complied with in the Applicants' favour in my findings on review.

215. Section 70 is an important section because it provides for the presence of a juvenile justice officer at any criminal proceedings including juveniles.

216. I find that neither at the committal or at the summary offences being heard by Magistrate Nape was a juvenile officer present to assist the Applicants.

217. Section 74 deals with juveniles in custody and sections 75 through to sections 78 of the *Act* deal with the purposes of sentencing juveniles including the principles of sentencing and factors to be considered when sentencing juveniles, which provides for the referral to community-based conferencing for sentencing recommendation pursuant to section 78 of the *Act*.

218. Section 79 requires a pre-sentence report.

219. I find the process required by the *Act* pursuant to sections 70, 74 and 75 - 79 were not complied with before Magistrate Nape in relation to the drug offences and the handgun allegations alleged against the juveniles and the juveniles were denied their respective rights under the *Act* in this regard.

220. Section 80 of course deals with juveniles sentencing.

221. I find section 80 has not been dealt with by the Local Court pursuant to the *Act* and the Applicants were denied their rights under the *Act*.

222. Section 81 provides in the clearest terms the restrictions on the use of custodial sentences, particularly in summary offences.

223. In any event, it is my view that having seen the drugs produced before the court in the photographs tendered during the summary proceedings below against the Applicants, it appears to me to be a handful of marijuana for personal use, assuming the offence was proven beyond reasonable doubt.

224. The handgun on its own is an offensive weapon but there was no evidence to suggest it was going to be used for an offence alleged against the Applicants in the proceedings below, and the chain of possession or identifying any fingerprints to suggest that either of the Applicants:

- i. were in possession of the drugs; or
- ii. were in possession of the handgun was to be used for any crime,

has not been proven beyond reasonable doubt in the court below from my findings in the review application.

Grounds of application to review the lower court conviction under section 87 of the *Juvenile Justice Act 2014*.

225. A succinct summary of the available grounds of judicial review is set out in *Kalinoe v Paul Paraka Lawyers [2014] PGSC 38; SC1336 at 44: -*

“If a decision-making authority including the court lack the power to make the decision, exceeded or abused its power, committed an error of law, breached the principles of natural justice, arrived at a decision which no reasonable tribunal would have reached, took into account irrelevant considerations in its decision making process and failed to take into account relevant considerations in its decision-making process.”

226. I apply the same principles for a review under the *Act* as a guide without any authority on the current review provisions under the *Act* having taken place in other National Court proceedings which was confirmed by counsel and this court's own research on this point requiring the court to cite the general law on reviews.

227. In the authority of *Council of Civil Services Unions v Minister for the Civil Service [1985] AC 374 at 410-1*, Lord Diplock provided three (3) broad bases upon which a decision might be challenged on a judicial review:

- i. Illegality.
- ii. Irrationality.
- iii. Procedural impropriety.

228. The scope or overlaps of the grounds of review is evident in the views expressed by Mason J. (as he then was) in *the Minister for Aboriginal Affairs v Peko, Wallsend, Limited [1986] 162 CLR 24 at 41* which is persuasive authority to summarise the grounds of review in the following terms: -

- i. a failure to take a relevant account or the taking of an irrelevant consideration into account and unreasonableness.
- ii. in respect of illegality, the decision-maker must correctly understand the law that regulates its decision-making power and must give effect to it.
- iii. whether he has or not, his power acts alone a justiciable question to be decided in the event of a dispute by those persons, the judges by whom a judicial power of the State is exercised.
- iv. a failure correctly to understand the requirements of the provisions concerning decision-making authority which inevitably fall within the failure to take into account a relevant consideration and then take into account irrelevant considerations.

229. Procedural impropriety by decision-makers affecting the citizen's rights in Papua New Guinea is an obligation not left to implication in relation to the exercise of administrative or judicial powers but, is instead created expressly by section 59 of the *Constitution* known as the principles of natural justice as a

guaranteed right, leading to courts applying the rule of law, due process and the proper administration of justice which includes in these proceedings the courts below applying the *Juvenile Justice Act*.

230. The minimum requirement of natural justice is a duty to act fairly and in principle to be seen to act fairly as referred to in *Kioa v West [1985] 159 CLR 550* at pages 582 to 585.

231. The National Court has powers under review to consider the grounds for review including the lack of power to make the decision including not complying with the *Juvenile Justice Act 2014*.

232. Section 87 of the *Act* makes it clear that the grounds of review to be examined by the National Court include the best interest of the juveniles; the Applicants in this review.

233. Both Applicants sought review by the National Court under its powers pursuant section 88 relating to sentences imposed by the lower court.

234. It is my view the court may exercise all the powers of a juvenile justice court under this part.

235. One of the powers as I have mentioned previously in this judgment, is section 43 of the *Act*:-

“Where the court may dismiss charges if the juvenile should have been diverted or no action taken despite the juvenile pleading guilty before a court to a charge.”

236. In these proceedings, the evidence also includes the juvenile justice officer’s review report pursuant to section 89 of the *Juvenile Justice Act of 2014* which the court must take into account.

237. The report of Juvenile Justice Officer Sergeant Kela dated 11th June 2025 reads as follows:

“On 11 June 2025, after the State Prosecutor presented a declaration against the Juveniles - the Applicants in these proceedings, the State will not charge them. The State Prosecutor also informed the court that both juveniles were convicted of offences of being in possession of cannabis and handgun and both were sentenced to three years imprisonment by magistrate of the District Court. That information is new to both the court and defence counsel, and I was also surprised too as one should because I was recently appointed as a juvenile justice officer for Hela Province.

After the court and due to the urgency and circumstances of the matter, I went to the District Court Registry and enquired with the clerks of the court. Upon my enquiries, clerk informed me that all the other committal court depositions, notations with the orders were not typed due to power outages and that I was only given a copy of the Conviction Certificate. The clerk told me that she will have the order done, however, this blackout, not sure when it will be ready. From my observations from the juvenile justice office, I see that two juveniles were not separated as stated under the Juvenile Justice Act. As such, the two were already getting into the main institution without the conversion process followed. The two juveniles have already served 11 months in custody which is a long time.

There was no juvenile justice officer on the ground to see and follow the Juvenile Justice Act was properly complied with. However, that was not so, therefore such juveniles needed to be diverted away from the mainstream correctional institution at Hawa. Two of the juveniles attended ECPNG Churches and their father, mother both divorced and remarried so the two came from a background that needs a stable home. Two from a village coming and being detained in Hawa in Tari-Pori Electorate is a distance involving costs which the two with their background will have transportation problems.

I do not think the two to receive daily provisions while in the CIS would be met. Also, I notice that there is no separate holding facility for juveniles in Hawa prison. Due to the nature of the case and also unavailability of the immediate parents of the juveniles, I was not able to obtain all their views. Therefore, I recommend some non-custodial sentencing would be more appropriate.”

238. I accept that the above report illustrates the point that juveniles should not be placed into a prison like Hawa Prison as the conditions are so poor, without segregation as remandees, prisoners and as juveniles.

239. Remedies in the nature of prerogative writs are discretionary remedies available under the powers of the National Court to restore the rights of the Applicants which did not take place in the court below in the interest of justice.

240. Section 88 (2) of the *Act* provides that: - *“the National Court has and may exercise all the powers of a Juvenile Court under this Part.”*

241. Whilst there is little utility to be shown in respect of granting a judicial review remedy or the application of section 88 of the *Act*, it may also be refused on discretionary grounds. That is not the case here.

242. In my view, there is a serious miscarriage of justice that has occurred in the court below before Magistrate Nape involving both Applicants which compels this court to act on discretionary or any other available powers to right immeasurable harm caused to the Applicants in the narrative of their predicament.

243. When considering the options and the powers I must exercise in the interest of justice, the court refers to section 19 of the *Act* where it deals with the exercise of jurisdiction by a court of summary jurisdiction.

244. It is necessary to set out the entire section for the purpose of the exercise of the court’s powers under section 88 of the *Act* in this judgment, namely that: -

“Section 19. Exercise of jurisdiction by court of summary jurisdiction.

(1) If—
(a) a Juvenile Court has not been established in an area; or
(b) a Juvenile Court has been established in that area, but a Juvenile Court Magistrate has not been appointed or his absent from duty; or
(c) it is impracticable for a juvenile to brought before a Juvenile Court in that area,
a court of summary jurisdiction may, subject to Subsection (2), exercise in and for that area the jurisdiction conferred by this Act on the Juvenile Court.”

245. On review I find that Magistrate Nape failed to apply section 19(1)(a)(b) and (c) of the *Act* in the summary proceedings against the Applicants by applying the *Act* and convicted and sentenced the Applicants as adult offenders.

246. Section 19(2) states; -

“A court of summary jurisdiction -

(a) shall, so far as is practicable, sit and conduct proceedings in accordance with this Act; and

(b) may hear and determine summarily an offence punishable on summary conviction and otherwise triable in a District Court; and

(c) **may impose any order under Section 80, other than an order for custody or imprisonment; (my emphasis added)** and

(d) if the court considers that the nature or circumstances of the offence are of sufficient gravity, may order that the case be heard by a properly constituted Juvenile Court.”

247. On review, I find Magistrate Nape had no power under *section 19(2)(c)* of the *Act* to order that the Applicants serve a custodial sentence.

248. In any event, I find that the sentences imposed on the Applicants in the circumstances oppressive, unreasonable, contrary to law and of no legal force and effect.

249. On the above ground alone, it is my view that the review is successful, and the convictions and sentences of the Applicants imposed by Magistrate Nape must be set aside and quashed.

Natural Justice – the paramount principle of a fair trial

250. The key components of natural justice are the right to a fair hearing and the rule against any bias.

251. The right to a fair hearing involves a person being given adequate notice of the hearing and sufficient opportunity to present a case including the assistance of a duly qualified legal practitioner and notice of something unknown or not obvious to them so the Applicants can obtain the necessary legal advice.

252. In this instance a fair trial includes the rights of the juveniles to instruct counsel and put their case forward. Linked to natural justice is the notice of the legitimate expectation where a party expects a body or court to act in a certain way whether because of express statements in the law which includes the *Act* in the present review or because of accepted conduct and standards.

253. I find that the *Juvenile Justice Act 2014* was not applied in the court below at all by Magistrate Nape leading to my findings that the proceedings in the court below were prejudicial to the Applicants' statutory rights.

254. I find that Magistrate Nape did not have the assistance of a juvenile justice officer to ensure the *Act* was applied in the proceedings below.

255. I find the Applicants have been denied their rights under the *Act* before Magistrate Nape in the criminal proceedings in the court below.

256. The guidelines in this judgment are set out to avoid lower court judicial officers including District Court Judges and Magistrates failing to apply the *Act* in the future.

257. I lament that a world class system of juvenile justice in Papua New Guinea cannot survive when stifled and restrained by a lack of funding by the State agencies to provide the necessary and obvious resources under the *Act* for juveniles charged with criminal offences or violations of the criminal law.

The relevant and irrelevant considerations by Magistrate Nape.

258. The court can intervene if it can be shown a decision-maker failed to take into account relevant considerations. If the decision-maker fails to consider factors pursuant to the *Juvenile Justice Act* or not applying the *Act* at all when required to do so in the administration of criminal justice, the court below was bound to consider, then there is a failure by that judicial officer causing the system of juvenile justice to fail.

259. In this instance, I find Magistrate Nape failed to consider what is determined by the *Juvenile Justice Act 2014* and assuming there are factors not expressly stated, then criminal proceeding involving juveniles must be determined from the subject matter, scope, and purpose of the *Act*.

260. This involved two steps:

- i. Determining the purpose of the power authorised under the *Act*; and
- ii. the purpose for which the power is actually exercised.

261. It is my view, the challenge here on this ground must succeed as there has been an unwarranted and systemic failure by the Local Court to apply the *Juvenile Justice Act 2014*.

262. On review, I find that fact proven on the balance of probabilities.

Magistrate Nape exceeded his power – the decision examined

263. First, it warrants repeating that when the court acts beyond its power or authority by making a decision it has no power to make, this is a ground for review and must lead to a successful outcome in favour of the Applicants.

264. In my view, section 19(2)(c) of the *Act* is clear in its purpose that in the exercise of summary jurisdiction, the court may impose orders under section 80 **other than a mode of custody or imprisonment**. Section 80 (1): -

“If a Court finds a juvenile guilty of an offence, the Court may make one or more of the following orders:

- (a) direct that the juvenile be discharged and take no further action; or*
- (b) reprimand the juvenile; or*
- (c) make a good behaviour order for a period of not more than 12 months, requiring the juvenile to abide by an agreement made between the juvenile and his or her parents to comply with certain standards of behaviour; or*
- (d) order the juvenile to report to a specified person, agency or organisation for counselling, on such terms as the Court may decide; or*
- (e) make a supervision and guidance order for a period of not more than 12 months, placing the juvenile under the supervision and guidance of a specified adult or peer mentor in order to monitor and guide the juvenile's behaviour; or*
- (f) order the juvenile to attend a non-residential vocational training or rehabilitation program approved by the Director, on such terms as the Court may decide; or*
- (g) order the juvenile to make restitution to any other person, including the return of any item taken or repair of any damage done; or)*
- (h) subject to the consent of a person, order that the juvenile compensate the person by way of personal service, at the time and on the terms that the Court may decide, for any loss, damage or injury suffered by the person as a result of the offence; or*
- (i) having regard to the ability of the juvenile to pay, order the juvenile to pay restitution in kind to a person, at the time and on the terms that the Court may decide, for any loss, damage or injury suffered by the*

person as a result of the offence, in an amount not exceeding K5,000.00; or

- (j) subject to Section 82, order the juvenile to perform community service work under the supervision of a juvenile justice officer, or a specified person or civil society group that has agreed to supervise the juvenile, for a maximum period of up to 100 hours, and to be completed within a maximum period of six months; or*
- (k) having regard to the ability of the juvenile to pay, order the juvenile to pay a fine, not exceeding K500.00, to be paid at the time and on the terms that the Court may decide; or*
- (l) subject to Section 83, order that the juvenile be placed on probation in accordance with the Probation Act (Chapter 381) for a specified period, not exceeding three years; or*
- (m) order that the juvenile be committed to the care of the Director, with a directive that the juvenile be committed to custody in a juvenile institution selected by the Director, for a period not exceeding five years; or*”

265. In my view, the record is unclear on its face as to which defendant is guilty of which offence and whether the handgun offence against the juveniles was considered or determined in the court below.

266. In other words, the record reveals that the proceedings involving the Applicants before Magistrate Nape are incompetent at law and I make these findings.

267. Second, the imposition of custodial sentencing of a juvenile without identifying the relevant defendant and who it applies to is an error on the face of the record.

268. Third, whether the *Act* applies to these juveniles, which it does, the sentencing was excessive.

269. In my view, the custodial sentence is both unsafe, unsatisfactory, and unsound for the convictions against both juveniles to stand in fact and law, and I so find.

270. Fourth, an error of law often occurs when there has been an error in construction or interpretation of the law such as when the decision-maker, the Local Court in this instance, applied the wrong criteria and sentenced the juveniles in accordance with conventional adult standards, rather than under the provisions of the *Act*.

271. In my view, the Magistrate's decision involved an egregious error of law in that the decision would have been different by applying the *Act*.

272. I find that the systemic and unwarranted failures of the Local Court to apply the *Juvenile Justice Act* as I have found makes it an error of law.

273. Upon review and for all the separate reasons stated above, the court finds the convictions and sentences imposed by the Magistrate against the Applicants in the court below cannot stand and must be set aside

The inflexible application of Act or policy.

274. The decision-maker must apply policy or guidelines which exist under the *Juvenile Justice Act 2014* in regard to sentencing by providing due regard to diversion and with due consideration to the merit of the situation.

275. I find the Magistrate failed to exercise his discretion which he should have exercised by either diverting the juveniles under the *Act* or to order community-based mechanisms, which is a failure on his part.

276. I find in all the circumstances, the magistrate did not divert the juveniles under the *Act* or to a community-based option or any other available option by

imposing a custodial sentence on 13- and 17-year-old juveniles which was palpably wrong in fact and law.

277. Therefore, I find that the Applicants' convictions and sentences are of no legal force or effect and must be quashed.

Psychological impact of sexual assault accusations on the Applicants.

278. I have referred to the evidence that has been given by the applicant, BIL and on behalf and as spokesman for his 13 year old brother, expressing stress and anxiety and the uncertainty of facing a serious sexual offence trial which was ultimately discontinued by the State in the National Court trial, and concurrently serving custodial sentences of imprisonment for three (3) years.

279. I find in the summary jurisdiction convictions and sentences imposed by the magistrate on the Applicants as juveniles were, unjust, unfair, unreasonable, and contrary to law.

280. For all the reasons in this judgement, I find the convictions and custodial sentences imposed on the Applicants as contrary to law and must be set aside and quashed on review by this court.

281. The evidence clearly shows that the juveniles have been in Hawa prison, not segregated, in the mix and in contact with convicted hardened felons and criminals, and without a juvenile justice containment or detainment centre being available in Tari or the Hela Province as is required under the *Act*.

282. Either on remand, or in prison as sentenced by the court below, I find that the juveniles being held in custody in Hawa Prison for over eight (8) months is again unfair, unreasonable, excessive and in breach of the *Juvenile Justice Act 2014*.

283. The impact on the Applicants is evident.

284. I accept the mental effect of the imprisonment has resulted in psychological distress, anxiety, depression, and difficulties within themselves as stated by BIL to the court.

285. From experience in the law, I infer that it will no doubt change their self-identity, loss of dignity, credibility and purpose and sense of being different people.

286. The feeling of injustice is obvious. The long-term effects would in all likelihood result in persistent psychological and chronic distress in my view and experience.

287. Experience shows, as supported by peer-reviewed academic papers confirm that, the justice system impact on the Applicants being young juveniles will no doubt be taxing on them, and the legal process itself, creating pessimism about the future, poor health care being evident and is, from my observations of the juveniles in both the dock and with regard to BIL's statement to me, evidenced in the clearest terms.²

Recommendations and concluding remarks.

288. The absence of a permanent National Justice Court in Tari and Hela Province for seven (7) year has now been re-established and the rule of law is taking its place in the community.

289. As the resident Judge, commencing to hear and review juvenile justice matter in the National Court as an urgent priority, allows me to express my observation that the juvenile justice system controlled by the relevant *Act* is absent.

290. Juvenile justice officers required by the *Act* to assist the hierarchy of courts in Tari to comply with the special requirement under the *Act* were not available until orders made by the court to '*force*' the appointment of Sergeant Kela as the volunteer juvenile justice officer.

² Campbell, R., & Routh, D. C. (1994). *Psychological sequelae of false accusation*. *Journal of Traumatic Stress*, 7(3), 425-439.

O'Connor, M. (2005). *The psychological effects of false allegations of sexual abuse*. *Journal of Child & Adolescent Trauma*, 1(2), 123-136.

Smith, D. P. (2006). *Long-term psychological effects of false accusations of sexual assault*. *Journal of Trauma & Dissociation*, 7(2), 123-139.

Steele, L. A., & Douglas, J. (2004). *The psychological consequences of false accusations of sexual assault*. *Journal of Interpersonal Violence*, 19(1), 45-61.

Thompson, W. K. (2002). *The impact of false accusations of sexual assault on the accused*. *Journal of Traumatic Stress*, 15(5), 397-409.

Tye, J. (2004). *The psychological effects of false accusations of sexual assault*. *Journal of Psychopathology*, 13(1), 12-25.

Walker, L. A. (2005). *The psychological impact of false accusations of sexual assault*. *Journal of Forensic Psychiatry & Psychology*, 16(4), 637-652.

291. There are no permanent probation and parole officers to provide the courts with diversion and rehabilitation programs for youths or report to assist the courts in sentencing of juveniles or sentencing generally.

292. There is no provision for pre-sentence options, at the very least, guidance on the available history of the offender leaving prisons with long term prison sentences as the only option for the sentencing courts.

293. Bluntly, sentencing courts in Hela Province are being left in the dark.

294. The learned Magistrate Nape is now the subject of criticism by this court in my judgement as a matter of law, procedure, process, and the determinations he made against the Applicants.

295. The criticism it appears to me is the direct product of an overworked Local Court dealing with the criminal list including juvenile justice matters, without proper support from the State exemplified in what has occurred to the Applicants in this review which is a catastrophic, the inevitable and avoidable series of events suffered by the Applicants caused by lack of State and Provincial funding.

296. The system has failed Magistrate Nape in the administration of juvenile justice resulting in two (2) victims to the failure: the Applicants and the Magistrate Nape in the court below, which in my view, prove the ameliorating elements of my criticism of Magistrate Nape in the summary court.

297. The interest of the citizens of Hela are paramount and seem to have been abandoned as systems in the administration of justice have suffered abject failure.

298. In my view, the primary responsibility lies with lack of funding and disinterest by the State.

299. The underlying principles and general remarks I have made in the judgment reflect the grave issues affecting Hela and no doubt other districts, provinces and Local and District Courts across Papua New Guinea.

300. This review has revealed what I regard as systemic failures.

301. The *Juvenile Justice Act of 2014* is the product of well-established laws and principles, widely accepted norms and can be easily understood when read and applied to juveniles offending the criminal law.

302. It is in my view that services like a permanent public solicitor, a permanent public prosecutor, a public curator, probation and parole officers for pre-sentence reports, juvenile justice officers, a juvenile justice court and juvenile detention centres and other government welfare officers including a process officer not only under the juvenile justice system are obvious and necessary, and in general for all the community to benefit when they appear in courts in the Hela Province as essential services.

303. No doubt my remarks would apply across provinces in the country lacking resources and assistance in the administration of justice.

Finding and conclusions

304. The review on convictions and sentencing of the Applicants by Magistrate Nape, I conclude that:

- i. Taking into account the findings I have made in relation to the events leading to the conviction and sentencing of the Applicants in the Local Court and the trial that was discontinued by the Director of Public Prosecution under section 525(1)(a) by filing of the relevant notice the *Act* have not been applied in the courts below.
- ii. Applying my review powers under section 87 and my powers under section 88 of the *Juvenile Justice Act 2014* and section 155 of the Constitution, I quash the convictions for both the Applicants,
- iii. The summary jurisdiction exercised by the learned magistrate under section 19(2)(c), ordering custody or imprisonment against the Applicants was not available and, in any event, if there was a detainment order, it should have been in a Juvenile Justice

Detention Centre not Hawa Prison confirming my findings that the conviction and sentence was beyond the power of Magistrate Nape.

- iv. So, I find Magistrate Nape acted beyond power in his conviction and sentencing of the juveniles on 23 May 2024 and 12 November 2024, respectively in the court below.

Disposition

305. The orders I make under *section 87 of Juvenile Justice Act 2014* of the review and using the National Court's general and discretionary powers are: -

- (1) Habeas Corpus for the delivery of the prisoners who are the Applicant juveniles of these review proceedings into the custody and control of the National Court in Tari until further orders.
- (2) That the convictions against the Applicants BIL and AL made by Magistrate Nape on 24th May 2024 are of no legal force and effect and are therefore quashed.
- (3) That the custodial sentence imposed on the Applicants BIL and AL made by Magistrate Nape on 12 November 2024 be set aside, dissolved, and quashed.
- (4) That the court directs that all files in the Local Court and all records consistent with the orders of this court be transferred and form part of the National Court record and that these files be dealt with under the non-publication orders issued by this court previously.
- (5) That the declaration made by the State on 11th June 2025 pursuant to sections 525(1)(b) and (3) of the *Criminal Code* that the State declines to lay charges, the juveniles accused are immediately ordered to be released from custody pursuant to section 525(4) of the *Criminal Code*.

(6) The CR (JJ) File Numbers 41 of 2025 and 42 of 2025 involving the Applicants and the review proceedings in the matters are closed, therefore the Applicants are free.

I publish my reasons.

Office of Public Solicitor - *Lawyer for the Applicants*
Office of the Public Prosecutor - *Lawyer for the Respond*

“ATTACHMENT A”

Attached hereto and marked as “**Attachment A**” is the Short Form Chronology of Events as referred to in paragraph 13 of this Judgment.

DATE	FACTS	SOURCE
5 August 2024,	Both the Applicants were accused of a violation of the section 347C(a) of the <i>Criminal Code (Amendment) Act of 2013</i> for sexually assaulting a victim in her 40s. The charge was with respect to using violence by pointing a handmade gun at the victim.	Police Hand-up Brief & Summary of Charge
5 August 2024,	The investigating constable produced exhibits including evidence, photographs of the handmade gun, dried marijuana found in a dwelling house of the accused, GPS area views of the crime scene and photographs of both accused which were in the CID file tendered by the prosecutor on 27 March 2025 against the accused during the committal before Magistrate Maitang.	Police Hand-up Brief & Summary of facts
19 August 2024,	The victim provided a statement to corroborate and support the charge. A statement was also taken from the Applicant's sibling who supported evidence for the charges to be laid.	Police Brief & Summary of Facts
21 August 2024	An information was laid by a constable against both accused in contravention of section 347C(a) of the <i>Criminal Code (Amendment) Act 2013</i>	Police Brief & Summary of Facts
21 August 2024	There is an interpreter's Affidavit of Constable in respect of the charging of the accused.	Police Brief & Summary of Facts
22 August 2024	The biological father of the victim corroborated facts to support the evidence for the committal proceedings.	Police Brief & Summary of Facts

18 September 2024	Record of Interview between A and a constable was conducted at Hawa Prison in the Pidgin Language and translated to English Language. It is clear that there was no juvenile justice officer or parent of the juvenile, AL the youngest of the two Applicants to assist in the Record of Interview.	Police Brief & Summary of Facts
23 September 2024	A record of interview was conducted with BIL, appears to support in the questions and answers that by answering the questions, the Applicant BIL was waiting to tell the court his side of the story which the court inferred, he may represent his defense to the allegations.	Police Brief & Summary of Facts
23 September 2024	Antecedent reports of the accused were presented as evidence and as part of the investigation.	Police Brief & Summary of Facts
29 October 2024	The investigator provided an Affidavit of events in respect of the charging of the Applicants.	Police Brief & Summary of Facts
11 November 2024	Proof of Service of CID files on both accused were served at Hawa Prison without the mechanisms of the <i>Juvenile Justice Act</i> in place.	Police Brief & Summary of Facts
27 March 2025	A Notice of Committal against both the Applicants in relation to the sexual offence was heard at the District Court of Tari before Magistrate Mathew Maitang. The prosecutor, Mr Vairove and interpreter, Mako Mitka were with the parents at the committal. It was found by the magistrate without evidence on the record to suggest that he formed a view as to their ages pursuant to section 4 of the <i>Juvenile Justice Act</i> . But it stated that the ages of the accused are 17 and 18 years respectively, nil bail granted, and they were again provided with CID files handed to them both in court.	Police Brief & Summary of Facts
10 June 2025	The matter was listed for trial for three days.	Police Brief & Summary of Facts

11 June 2025	The prosecutor advised that he had conferred with the witnesses and sought leave to file a declaration that a charge will not be laid pursuant to section 525(1)(b) of the Criminal Code Act. The reasons provided for the charges to be dismissed was that: “ <i>The prosecution not in the interest of justice.</i> ”	Police Brief & Summary of Facts
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“ATTACHMENT B”

Attached hereto and marked as “**Attachment B**” is the Transcript on Inquiry into Competency of Sergeant Kela as referred to in paragraph 100 of this Judgment.

[2.31 pm]HIS HONOUR: Gentlemen, thank you for coming this afternoon. This will be an inquiry into whether a Papua New Guinea Constable Gerry, G-e-r-r-y, Kela, is suitable for the position of a volunteer juvenile justice officer to assist in all proceedings before the court in all matters under the Juvenile Justices Act of 2014. Is the Constable before the court? Could you please come up to the bar table? And please be seated. I am going to ask you a number of questions, Mr Kelly and if you could answer them, I would appreciate it. And I do not want any modesty because I have just read your CV, and it is very impressive. Gentlemen, I do not know if you have got a copy of his CV.

MR TENGDUI: Yes, I do.

HIS HONOUR: Yes. And that CV will be marked exhibit 1 on the inquiry and to be kept with the court records.

EXHIBIT MARKED 1 - CURRICULUM VITAE OF SGT GERRY KELA

HIS HONOUR: You have been a Constable as long as I have been a lawyer. What is your current rank?

MR GERRY KELA: Sergeant.

HIS HONOUR: Sergeant. May I call you Sergeant?

MR GERRY KELA: Yes, your Honour.

HIS HONOUR: Yes. And for the purpose of the record, I am referring to Gerry Kela. Have you been in the service since 1990?

MR GERRY KELA: No, your Honour. 1985.

HIS HONOUR: 1985. I am sorry, I have 1990 here. 1985. But that is corrected for the record, and I apologize. But in relation to your duties, could I just highlight some of the matters in what is now exhibit 1. Registrar, that is exhibit 1 on the inquiry.

THE REGISTRAR: That is correct, your Honour.

HIS HONOUR: Yes, thank you. You have done a drug awareness cause on narcotics of drugs in July 1999 and have been certified?

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: And I am just going through the critical documents now gentlemen, so, with the inquiry can conclude. And I invite either of you to ask any questions you want on the inquiry about his suitability. You have also done a certificate of advanced computing?

MR GERRY KELA: Yes, your Honour.

HIS HONOUR: You are better than me, Sergeant. You have also done, with the Australian Federal Police, a certificate of attendance when you were a detective senior constable on 2 July 2003, West African Organized Crime, and you are certified?

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: That is impressive. Further, you have done a course and being certified by the Australian Federal Police College, the AFP of Australia, for law enforcement intelligence programs? And that was in July 2004.

MR GERRY KELA: That is correct, your Honour.

HIS HONOUR: In addition, and this is impressive for me, United States Department of Justice, Drug Enforcement Administration certified in basic drug enforcement seminar in 2006?

MR GERRY KELA: That is correct, your Honour.

HIS HONOUR: So, you have been exposed to global issues involving crime management and crime investigation.

MR GERRY KELA: That is correct, your Honour.

HIS HONOUR: You have also done 23 June 1995, a police supervisors' workshop?

MR GERRY KELA: Correct,

HIS HONOUR: And you have supervised persons as a Sergeant?

MR GERRY KELA: That is right, your Honour.

HIS HONOUR: And are you conscious of the concept and principles of a conflict of interest?

MR GERRY KELA: Yes, I am fully aware.

HIS HONOUR: If, indeed, any of the matters present a conflict of interest, will you report that to both the prosecutor and the public solicitor that you can no longer act in the matter for the juvenile?

MR GERRY KELA: That is what I will exactly do, your Honour.

HIS HONOUR: Thank you, Sergeant. In addition, again, you have done community police workshop, 15 August 2008 and certified.

[2.36 pm]MR GERRY KELA: Correct, your Honour.

HIS HONOUR: Impressively, you have undergone the UNICEF certificate in 2009 before the Act was introduced into Juvenile Justice training. This is from UNICEF.

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: Briefly tell us what was the training that you undertook that involved Juvenile Justice?

MR GERRY KELA: Your Honour, just briefly on the Juvenile Justice course that was being conducted for us as law enforcement officers.

HIS HONOUR: Yes.

MR GERRY KELA: The roles that we have as enforcement officers to assist the court especially when it comes to juveniles in the justice systems that we have. How best we can help our juveniles so that they do not get themselves to mingle up with other adults who are already fond of crime and other activities. So, every much more of a prevention kind of a duty to see that they do not get themselves mingled into crime which is all of the time an issue.

HIS HONOUR: Sergeant, please forgive me if you think I am prying but are you a father? Are you a father? Do you have children?

MR GERRY KELA: Yes, I do.

HIS HONOUR: You understand the difficulties in bringing up children in this society?

MR GERRY KELA: Yes, I do, your Honour.

HIS HONOUR: You understand discipline and you understand also that there has to be a time where we put aside discipline and we provide pastoral care to children?

MR GERRY KELA: I do understand, your Honour.

HIS HONOUR: Teaching them not to do the wrong thing.

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: And indeed, providing examples of being a good father so they follow suit.

MR GERRY KELA: Exactly, your Honour.

HIS HONOUR: And you would apply that if you are granted the role?

MR GERRY KELA: Yes, I will, your Honour.

HIS HONOUR: Are you prepared to be the juvenile justice officer for the entire province?

MR GERRY KELA: Yes, I am looking forward to the – you and your team if you have the confidence in me, I will certainly do my best.

HIS HONOUR: That is for the entire province.

MR GERRY KELA: Yes, for the entire province, your Honour.

HIS HONOUR: And if I recommend in my directions not order yet, if I provide a direction that you be appointed under the Juvenile Justice Act for six months, are you prepared to undertake that role and be in any court required from you to provide assistance to the judiciary including the magistrate, District Court judges and myself importantly.

MR GERRY KELA: Yes, I am willing to.

HIS HONOUR: You realise it is a role that will require a lot of your time.

MR GERRY KELA: Your Honour, I do realise that.

HIS HONOUR: Do you have the blessing from command to apply yourself for six months to a full-time role?

MR GERRY KELA: Yes, your Honour.

HIS HONOUR: Yes. And gentlemen, can I make this observation. From here on the bench this man presents as a humble man, he is a man that gives direct answers to direct questions, and it appears to me that he is capable of doing the role, and he understands conflict of interest. Gentlemen?

MR TENGDUI: Yes, those are my views as well. I have no issues with - - -

HIS HONOUR: You have those observations as well?

MR TENGDUI: Yes, your Honour.

HIS HONOUR: Yes, thank you. And you?

MR NIGBE: Yes, your Honour, I too have the same observation. If I am permitted, I will only ask a few questions.

HIS HONOUR: Yes, of course. We will come to that in a moment, but I have not finished. Now, impressively, in 2016 you undertook some serious subjects at the University of Technology in PNG.

MR GERRY KELA: That is correct your Honour.

HIS HONOUR: And it seems you have passed every course.

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: And I think you are 62 years of age?

MR GERRY KELA: That is right, your Honour.

HIS HONOUR: And you would have done this in your mid-50s, correctly. Are you prepared to self-educate if there is something in the Juvenile Justice Act that you do not understand and comply with the Act?

[2.41 pm]MR GERRY KELA: Yes, your Honour, I am looking forward - - - -

HIS HONOUR: You undertake to do that?

MR GERRY KELA: Yes, I have.

HIS HONOUR: Yes. Prosecutor, any questions?

MR TENGDUI: Your Honour, I have had the benefit of going through his attachment and I am impressed as well.

HIS HONOUR: Yes, thank you.

MR TENGDUI: So, I have no further questions.

HIS HONOUR: Yes.

MR NGIBE: Yes, your Honour, only one from me. I believe the candidate has been a police officer and then in line of my – the work with – the client will be basically will be – doing – dealing with evidence provided by police. So, what I want to know is whether he will take away that police cap and put on a - - - -

HIS HONOUR: Well, put it to him. Direct question.

MR NGIBE: What – as a defence counsel and for the best interest of my client who will be the juveniles, what we want to know is whether that he will take away that policeman cap where the onus is on him to provide as and when necessary evidence to the State now in this case who will be assisting the defence and me and the juvenile so what I know is that - - - -

HIS HONOUR: It is not what you know. Put the question.

MR NGIBE: Yes. Will you be – will you take away the policeman cap and then work as an officer serving the juveniles?

MR GERRY KELA: Thank you. That is a good question. I think basically what I understand all in all these are duties that come in line as State agents or State officers. So, once I am here to serve the interest and assist the court that is what I will do. And if I have to do any work with the police duties that is what I will do. But the bottom line I understand now is I have a duty to assist the court and the State.

HIS HONOUR: Thank you, sergeant. And one final question from me gentleman. You understand the concept of legal professional privilege, do you not? So, when a juvenile speaks to you or the lawyer speaks to you, you must keep that confidential, and it must not be disclosed to anyone.

MR GERRY KELA: Your Honour, I will not expose, or I will not spill out anything that is discussed here in this court and will be kept highly confidential.

HIS HONOUR: And particularly with counsel for the public solicitor's office.

MR GERRY KELA: Correct, your Honour.

HIS HONOUR: So, if you get instructions from them, you will market legal professional privilege.

MR GERRY KELA: Yes.

HIS HONOUR: Prepare your reports, correct?

MR GERRY KELA: Yes, your Honour.

HIS HONOUR: And we will call upon you from time to time because we do not have a probation and parole officer to provide a pre-sentence report. Can you do that report?

MR GERRY KELA: Yes, I can.

HIS HONOUR: Yes, you have seen them before, have you not?

MR GERRY KELA: Yes.

HIS HONOUR: And you can assist with that as well?

MR KELA: I can assist the court.

HIS HONOUR: Because I will direct you under the Act to do that, to provide a report to the court.

MR GERRY KELA: Yes, I will, your Honour.

HIS HONOUR: Gentlemen, anything else?

MR NGIBE: None from me, your Honour.

MR TENGDUI: None from the State.

HIS HONOUR: Very well. It is my view that this man is duly qualified to undertake the role of a volunteer juvenile justice officer under the Juvenile Justice Act 2014. Accordingly, I direct the following: Registrar, I direct the Director of Juvenile Justice Services of Papua New Guinea, bear with me one moment, I have his name, Collin C-o-l-l-i-n Sakap S-a-k-a-p Director of Juvenile Justice to do all things necessary under his powers pursuant to section 9(1) and (2) of the Juvenile

Justice Act 2014 as amended to appoint Sergeant Gerry Kela K-e-l-a and Gerry with a G not J of the Papua New Guinea Constabulary as a volunteer juvenile justice officer in Tari and the Hela Province pursuant to section 13 (1) of the Juvenile Justice Act of 2014 by no later than 5 pm on Friday, 6 June 2012.

[2.46 pm]The direction made shall be sent in writing to the director of the Juvenile Justice services of Papua New Guinea today, 4 June 2025 as soon as practicable by the registrar of this court in Tari, and a copy of the letter shall be sent to the director Nichodemus Mosoro M-o-s-o-r-o Secretary of National Judicial Staff Services and shall be copied and sent to the Attorney-General and Minister for Justice of Papua New Guinea, the Minister being the Honourable, Minister for Justice and Attorney-General of Papua New Guinea, member for Imbongu, gentlemen, I hope I said that well, I-m-b-o-n-g-u, the Honourable Pila Niningi. Any further directions, gentlemen?

MR NGIBE: None from me, your Honour.

HIS HONOUR: Fingers cross we get that approved and we can run the trial next week without any hesitation. And gentlemen, you will be making enquiries I am sure with your bosses about continuing to the balance of these circuits.

MR NGIBE: Yes, your Honour. From my immediate supervisor, however, I am not sure whether the registry has written to the- - -

HIS HONOUR: No, but you have made enquiries?

MR NGIBE: Yes, your Honour.

HIS HONOUR: That is all I am asking, yes or no.

MR NGIBE: Yes, your Honour.

HIS HONOUR: Yes, please. Not too much flapdoodle, not too much verbiage. In any way, sergeant, can I ask you to stand up again. Thank you for coming. Thank you for providing a very impressive CV and with global accolades. Thank you for

the offer of your services and I will recommend in the direction that your appointment be for six months. Thank you so much sergeant we are all indebted to you, and for your service. You may be excused. Thank you. And I reiterate that was a court inquiry into the competency of the man to be a juvenile justice officer. Gentlemen, thank you for coming this afternoon and hopefully that is one more thing we can tick off the box that can assist us in trials. Thank you for your participation in the inquiry.

AT 2.49 PM, THE COURT ADJOURNED INDEFINITELY

“ATTACHMENT C”

Attached hereto and marked as **“Attachment C”** is a copy of the Orders made by Court as referred to in paragraph 104 of this Judgment.



PAPUA NEW GUINEA
IN THE NATIONAL COURT OF JUSTICE AT TARI

IN THE MATTER OF STATE AGAINST

CR (JJ) NO. 465 OF 2025 [REDACTED] AL
CR (JJ) NO. 466 OF 2025 [REDACTED] BIL
CR (JJ) NO. 57 & 58 OF 2024 [REDACTED] DT
CR (JJ) NO. 59 & 60 OF 2024 [REDACTED] AH
& CR (JJ) 821 & 822 OF 2023 [REDACTED] MP
(All Juvenile Accuses)

INQUIRY into Competency of Royal Papua New Guinea Constabulary Police officer Sergeant Gerry Kela to be appointed Voluntary Juvenile Justice Officer for Tari and Hela Province.

Further to this Court's directions made on the 3rd of June 2025, the Court directs that:

1. The Director of Juvenile Justice Services in Papua New Guinea Mr. Collin Sakap is to do all things necessary under his powers pursuant to section 9 (1) & (2) of the Juvenile Justice Act 2014 as amended to appoint Sergeant Gerry Kela of the Royal Papua New Guinea Constabulary as a Volunteer Juvenile Justice Officer in Tari and the Hela Province pursuant to section 13 (1) of Juvenile Justice Act 2014 by no later than 5pm on Friday 6th of June 2025.
2. The directions made shall be sent in writing to the Director Juvenile Justice of Papua New Guinea today 4th of June 2025 or as soon as practicable by the Assistant Registrar of the court in Tari and a copy of the directions to the following persons: -
 - (a) Secretary National Judicial Staff Services, Mr. Nichodemus Mosoro
 - (b) Minister for Justice and Attorney General of Papua New Guinea and Parliamentary Member for Imbongu District, the Hon. Pila Niningi.
3. This Court further recommends that the appointment of Sergeant Gerry Kela of the Royal Papua New Guinea Constabulary as a Volunteer Juvenile Justice Officer in Tari and the Hela Province be for a period of six (6) months from the date of the appointment.

DATED this 4th day of June 2025.



BY THE COURT

JUSTICE KOSTOPOULOS

“ATTACHMENT D”

Attached hereto and marked as “**Attachment D**” is a copy of the Appointment letter of Sergeant Kela as referred to in paragraph 105 of this Judgment.



Juvenile Justice Regulation 2024.

Act, Sec. 13; Reg, Sec. 4

Form 3

APPOINTMENT OF VOLUNTEER JUVENILE JUSTICE OFFICER

I, **MR. COLLIN SAKAP** Director of the Juvenile Justice Service, by virtue of the powers conferred by Section 13 of the Act and all other powers enabling me, appoint **SERGEANT GERRY KELA** of **ROYAL PNG CONSTABULARY** as a Volunteer Juvenile Justice Officer in **TARI** and **HELA** Province(s) to perform the following duty or duties listed below;

- i. *provide juveniles with support, counselling and basic information about their rights at all stages of the juvenile justice system; and*
- ii. *conduct timely assessments of a juvenile's background and circumstances, and provide advice and recommendations to the police and courts with respect to any decision made regarding diversion, bail, and sentencing of a juvenile; and*
- iii. *promote the development of diversion and community-based sentencing options for juveniles by enlisting support from provincial governments and local-level governments, civil society groups, churches and members of the community; and*
- iv. *maintain lists of authorized facilitators, and of civil society groups or individuals providing programs, supervision and mentoring for diversion and community-based sentencing options; and*
- v. *prepare and submit such reports and records as a Court or the Director requires; and*
- vi. *establish and maintain an adequate system of confidential records; and*
- vii. *perform such other functions, duties or responsibilities as the Director may require or as are prescribed by or under this Act or any other law.*

The Volunteer Juvenile Justice Officer must act in accordance with the Act when exercising powers, functions, responsibilities or duties conferred on him.

This appointment must remain in force for a period of six (6) months from the date of this appointment.

DATED this 5th day of June 2025

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.

Director
Juvenile Justice Service