

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Palmer CJ)
COURT FILE NUMBER:	Criminal Appeal Case No. 75 of 2023 (On Appeal from High Court Criminal Case No.83 of 2020)
DATE OF HEARING:	13 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	SAMUEL MANETOALI -V - REX
ADVOCATES:	
APPELLANT:	In-person
RESPONDENT:	O.R.Manu
EX TEMPORE/RESERVD	RESERVED
ALLOWED/DISMISSED	DISMISSED
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JUDGMENT OF THE COURT

1. The appellant was charged with multiple counts of conversion contrary to s 278(1)(c)(ii) of the *Penal Code (Cap 26)*.
2. On 27 August 2019, in the Magistrates Court, he was acquitted on 18 of those counts after a no-case submission was made at the end of the Crown case.
3. The Crown then appealed that decision to the High Court where Palmer J¹:
 - (a) dismissed the appeal in relation to counts 1, 2, 10, 11, 13, 15, 17 and 18;
 - (b) upheld the appeal in relation to counts 3-9, 12, 14 and 16;
 - (c) remitted counts 3-9, 12, 14 and 16 to the Magistrates Court for a retrial.
4. The appellant challenges that decision on several grounds, each contending that his Lordship erred in fact or law in the following way:
 - (a) the first three grounds state in a conclusionary, but ultimately unhelpful, way that there was error in upholding the appeal, quashing the magistrate's decision, and remitting the matter for retrial;
 - (b) ground 4: placing too much emphasis in PEX 1 (Ministry of Rural Development Fund, Operational Manual Guidelines and Process) when the Republic Of China (ROC) had its own guidelines, standards and templates;
 - (c) ground 5: in ruling there was a case to answer when the recipients of payments had not been called to give evidence;
 - (d) ground 6: failing to consider the evidence of witness (PW1) to the effect that the *Constituency Development Fund Act 2013* had not been gazetted and was not in operation.

¹ As His Lordship then was.

5. The Appellant is the current elected Member of Parliament for the Gao/Bugotu Constituency in the Isabel Province. He was re-elected as the Member of Parliament for that Constituency in 2014. In the last National General Elections in 2019, he retained his seat.
6. The allegations relate to the payment of a sum of \$100,000 on or about 24 December 2014, into the Gao/Bugotu Constituency Account with the ANZ Bank.
7. There is no dispute that this sum of money was part of the \$300,000 which the ROC provided towards the Constituency Development Fund (CDF). All the members of parliament received this sum of money on behalf of their respective constituencies in December 2014.
8. His Lordship categorized the 18 counts relevantly as follows:
 - (a) first, those counts where the conversion was to the appellant's own use and benefit; this consisted of counts 1, 10, 11, 13, 15 and 17 in respect of which the Crown's appeal failed and the appellant was acquitted; these counts may be put aside;
 - (b) secondly, those counts related to the use and benefit of another, namely counts 3-9, 12, 14 and 16; and
 - (c) thirdly, payments to another for the appellant's own use and benefit; this was count 18; as this count was one where the appellant was acquitted, it may be put aside.

Conversion

9. Section 278(1)(c)(ii) of the *Penal Code (Cap 26)* provides:

“any person who –

(c) ...

- (ii) having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof,

is guilty of a misdemeanour, and shall be liable to imprisonment for seven years.”

10. The elements of the offence can be stated thus:

- (a) any person;
- (b) solely or jointly ... received any property;
- (c) for or on account of any other person;
- (d) fraudulently converts;
- (e) to his own use or benefit, or the use or benefit of any other person; and
- (f) the property or any part thereof or any proceeds thereof.

11. As His Lordship noted,² there is no issue as to elements (a)-(c). The appellant received the sum of \$300,000, being part of the Constituency Development Funds for the Gao/Bugotu Constituency, for and on behalf of the members of the Constituency. Those members would be applying for income generating projects for socio-economic activities.

Legal principles – no case to answer

12. Section 197 of the *Criminal Procedure Code (Cap. 7)* provides:

“If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and forthwith acquit the accused.”

² Reasons paragraph 37.

13. The test applicable in such circumstances is “whether there is evidence capable of supporting a conclusion beyond reasonable doubt that the accused is guilty”.³
14. If there is evidence capable of establishing, whether directly or inferentially, every element of the offence charged beyond reasonable doubt, there is a case to answer.
15. If there is evidence capable of establishing, whether directly or inferentially, every element of the offence charged beyond reasonable doubt, there is a case to answer.
16. There is no contention on this appeal that His Lordship mistook the relevant test.

Body of evidence

17. His Lordship considered the substantive body of evidence before the Magistrate’s Court in respect of the counts in question. It relevantly consisted of:
 - (a) the *Constituency Development Funds Act 2013*;
 - (b) Exhibit PEX 1, the Ministry of Rural Development, Constituency Development Funds, Operations Manual (Guidelines & Processes);⁴
 - (c) Exhibit PEX 2, Brief Background Information Report from the Ministry of Rural Development;
 - (d) Exhibit PEX 3, an extract from Cabinet on the Management Guidelines for the Disbursement of Constituency Development Funds for this Year 2014;
 - (e) Exhibit PEX 4, the Expenditure Summary (or Acquittal report) for the \$100,000 for the Gao/Bugotu Constituency of 24th December 2014;
 - (f) the evidence of Ms Boso, witness PW1;

³ *Regina v Somae* [2005] SBCA 18.

⁴ To which we shall refer as the CDF Manual.

- (g) Exhibit DEX 2, Acquittal Report template, drawn from a template provided by the ROC;⁵ and
 - (h) the evidence of witness PW3, Mr Dikamana, one of the officers in the management and control of the use of the funds, and Constituency Development Officer (or Project Officer) for the Gao/Bugotu Constituency.
18. The evidence of PW3 assumed some importance before the Magistrate's Court and before His Lordship. This was because of the role played by PW3 in relation to the Constituency Development Funds:⁶
- (a) he dealt with members of the Constituency interested in making applications for project proposals and funding, before submitting to the Ministry for Rural Development and Indigenous Affairs for, *inter alia*, acquittal of the funds;
 - (b) he collected the \$100,000 cheque, cashed it and handed the cash to the appellant on 24 December 2014;
 - (c) he was responsible for the receipt of payment vouchers;
 - (d) he made the entries in the Acquittal Report (DEX2) which was submitted to the Ministry of Rural Development;⁷ and
 - (e) DEX2 contained evidence (in the form of payment vouchers) of the receipt of the payments in counts 3-9, 12, 14 and 16, by the persons alleged to have received the payments.⁸
19. The Magistrate found as undisputed facts that:⁹

⁵ Appeal Book, p 164, paragraph 86.

⁶ Reasons, paragraphs 59.

⁷ Appeal Book, p 159, paragraphs 50-51.

⁸ Appeal Book, p 163, paragraph 72.

⁹ Appeal Book, p 153, paragraphs 13-14.

- (a) Cabinet decided to advance the \$100,000 per constituency from a fund known as the ROC Support Fund to Constituency Development;
 - (b) the ROC Support Fund “is administered by the Ministry of Rural Development”;
 - (c) the Gao/Bugotu constituency had an established constituency development office; it had three officers, namely a Constituency Development Officer (CDO), a Project Officer and an Accountant; and
 - (d) the CDO for the Gao/Bugotu constituency was PW3.
20. The evidence of Ms Boso, PW1, was that she was the Permanent Secretary of the Ministry of Rural Development and Indigenous Affairs. She identified that there were three uses for which the funds could be used, “firstly to assist newly elected members of Parliament to establish constituency offices; secondly to meet socio-economic needs of constituents and thirdly to support continuing projects of the constituency”. She said the \$100,00 was an advance payment from the ROC Support Fund to Constituency Development.

Categories of evidence

21. The main document relied upon by the Crown was Exhibit PEX 1, the CDF Operations Manual. Subject to one new contention advanced by Mr Maneatoli for the first time at the hearing of the appeal,¹⁰ there is no challenge to His Lordship’s findings as to its nature and purpose:¹¹

“49. The manual is fairly comprehensive and sets out in a plain and transparent manner how such funds received are to be used, including the purpose the funds are to be used for, “*being for socio-economic development projects and meaningful income generating projects*”.

50. As an important document, it set out the purpose and object of the funds. Its relevance and significance, lies in *the use and purpose to which the funds* are to be applied. For purposes of accountability, this is all the more important during acquittal.

¹⁰ We shall deal with this contention later in these reasons.

¹¹ Reasons paragraph 49-54.

51. The document sets out in detail for instance, processes for retirement of funds, enquiries, and reporting. At Rule 3.0 it sets out the processes on how a project application can be made.
52. These are all relevant and important to assist all parties abide by the requirements for which the funds are set aside for. While these may be described as “discretionary funds”, the exercise of such discretion is expressly governed by rules, processes and procedures. These are not free money to be used as a Member of Parliament pleases or chooses. His or her discretion is carefully and deliberately regulated.
53. The use or expenditure of such funds therefore, should be carefully assessed, screened and vetted against those rules/guidelines as the standard, before approval and release. The people (members of the Constituency) are entitled to question the use of the funds if not directly related to those guidelines.
54. The primary purpose of course being for “*socio-economic development projects and meaningful income generating projects*”. The use of such funds therefore should fall within those purposes.”

Substance of counts 3-9, 12, 14 and 16

22. **Count 3:** payment of \$500 for “medical assistance” to one Gideon Jesse. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
23. **Count 4:** payment of \$2,000 to one Thomas Tavake for “Engravement Expenses”, namely engravement of his son’s gravestone. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
24. **Count 5:** payment of \$400 to one Francis Loke for “old people assistance”. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
25. **Count 6:** payment of \$1,008 to one Chief Davis Maneboro for “3 x cartons of beer”. The payment was collected by one Isaac Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.

26. **Count 7:** payment of \$1,008 to one Ellison Supa for “3 x cartons of beer”. The payment was collected by one Isaac Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
27. **Count 8:** payment of \$336 to one Marshall Hiro for “1 x carton of beer”. The payment was collected by one Isaac Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
28. **Count 9:** payment of \$1,000 to one Joel Neusia for “wedding assistance”. The payment was collected by one Isaac Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
29. **Count 12:** payment of \$440 to one Chris Vahia for “4 gallons of petrol”. The payment was collected by one Paul Wale. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
30. **Count 14:** payment of \$540 to one Robert Tige for “Beer”. The payment was collected by one Ronald Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.
31. **Count 16:** payment of \$90 to one Chris Ugura for “Beer”. The payment was collected by one Ronald Leguvaka. Witness PW3 confirmed the payment by means of the records but knew nothing of it and only became aware of it when he received the payment voucher.

Consideration

32. As to the impugned payments in counts 3-9, 12, 14 and 16, we make the following observations:

- (a) none of the payments, on their face, fit into the CDF Manual's description of the purpose for which the funds were to be used;
- (b) none of the payments, on their face, fit the description of "*socio-economic development projects and meaningful income generating projects*";
- (c) the use of the Constituency Development Funds for the stated purposes does not sit at all well with use or expenditure of such funds having been carefully assessed, screened and vetted against the CDF Manual's rules or guidelines before approval and release;
- (d) the payments in counts 6, 7, 8, 14 and 16 all relate to payments for beer; it is very difficult to draw any conclusion that is consistent with an innocent and honest application of the CDF funds;
- (e) the same comment may be made about a payment for someone's petrol (count 12); and
- (f) counts 3, 4, 5 and 9 all involve payments for personal assistance such as "medical assistance", "wedding assistance", and the like; whilst they may be personally laudable, that does not qualify them as payments prima facie permitted to be made out of the CDF funds; they are not for "*socio-economic development projects and meaningful income generating projects*".

33. His Lordship's conclusion that there was a case to answer was largely based on the disparity between the nature of the payments in counts 3-9, 12, 14 and 16 and what was contemplated by the CDF Manual.¹²

"120. I am satisfied there is evidence when such payment is contrasted with the purpose for which the Constituency Funds had been given responsibility for such type of payment falls short of that mandate. I find the Respondent in this instance has a case to answer.

¹² Reasons paragraphs 120, 125, 133. See also paragraphs 129, 138, 142, 146, 154 and 158.

125. For the same reasons given above, if true, such payments do not fall squarely within the purpose for which such limited Funds are set aside for. I am satisfied there is sufficient evidence to put the Respondent to his defence of this allegation.

133. In this payment, it is extremely difficult to appreciate how such payment of money for three cartons of beer can be regarded as beneficial, productive or even developmental in terms of improving the livelihood and lifestyles of members of the Constituency. I am satisfied the Respondent does have a case to answer in respect of this payment.”

34. The payments on these counts can be contrasted with others, where there was evidence of the use of the funds for Constituency purposes and little evidence to exclude such use. Thus, for example, count 2 involved payment for a pig used at a Christmas party which was part of Gao/Bugotu “Constituency Consultations”. The evidence of Ms Boso, the Permanent Secretary of the Ministry of Rural Development and Indigenous Affairs, identified that there were three uses for which the funds could be used, “firstly to assist newly elected members of Parliament to establish constituency offices; secondly to meet socio-economic needs of constituents and thirdly to support continuing projects of the constituency”.¹³ It was not disproved that the Christmas party was part of the consultation process.¹⁴
35. The same is the case in respect of count 1, which involved payment of a sum for the costs of the Christmas party.¹⁵
36. There is no compelling reason why the evidence of Ms Boso should be treated as excluding the inference that the payments in counts 3-9, 12, 14 and 16 were made for improper and dishonest purposes. Her evidence was that DEX2 (the Acquittal template provided by the ROC) contained the following “sectors of expenditure”:¹⁶ (i) medical; (ii) education; (iii) sports; (iv) youth; (v) women; (vi) denomination; (vii) infrastructure; (viii) general; and (ix) administration.

¹³ Reasons paragraph 110.

¹⁴ Reasons paragraph 111.

¹⁵ Reasons paragraphs 56-71.

¹⁶ Appeal Book, p 165, paragraph 87.

37. Further, her evidence was that the payments in counts 3-9, 12, 14 and 16 were proper and in accordance with the sectors listed above.¹⁷
38. However, it is evident from the Magistrate's summary of Ms Boso's evidence that Ms Boso made no assessment beyond whether the payments, in her view, fell with the "sectors" she referred to, and made no assessment according to the requirements of the CDF Manual.
39. Ground 4 contends that over-emphasis was placed on the CDF Manual (Exhibit PEX 1) when the ROC had its own guidelines, standards and templates. We reject that contention. Whilst it is true that the ROC had its own view of things, the ROC Support Fund was administered by the Ministry of Rural Development and the Ministry developed its own CDF Manual to govern the process of applying the funds.
40. His Lordship set out a summary of the CDF Manual's provisions, in a way that is not the subject of criticism on this appeal and may be adopted by this Court. The passages bear repeating:¹⁸

"22. It is not in dispute therefore, that the primary purpose, for which the funds are to be disbursed, is for **developmental purposes, for income generating projects or community projects** of the constituency to individuals, groups or communities.

23. To assist with the approval and disbursement process, meticulous and detailed guidelines were provided. These have been generously provided to assist Members of Parliament by the Ministry of Rural Development in the publication of the **CDF Operations Manual**, which set out in a fairly comprehensive manner how the funds may be utilised.

24. In part, this is to assist with accounting, transparency and integrity requirements purposely imposed on the use of funds.

25. In the "Introduction" to the CDF Operations Manual, for instance, it states:

"The Constituency Development Fund was designed to support the delivery of **socio-economic development projects** within fifty (50) constituencies in Solomon Island. The main objectives of the Constituency Development Fund are:

¹⁷ Appeal Book, p 165, paragraph 90.

¹⁸ Reasons paragraphs 22-28. Emphasis in original. Footnotes omitted.

1. To provide the means by which the disadvantage, remote and inadequately served communities, groups, families and individuals can have access to rural development funds to **help them participate in revenue generating projects**
 11. To assist individuals, families and community based organisations to participate in **socio-economic developments** to help alleviate poverty within the rural areas, and
 111. To help address the problems of unemployment within the constituencies by involving people into meaningful income generating projects.
26. The CDF Operations Manual further provides inter alia for:
- (i) the formation of Constituency Development Committees;
 - (ii) a list of those who are eligible to apply for the CDF;
 - (iii) the criteria for selection of projects; and
 - (iv) the classification of projects.
27. The manual also provides for certification of projects for funding by the Secretary of the Constituency Development Committee, being the Constituency Development Officer (“CDO”), and a requirement that the Member of parliament for the constituency to endorse any such application.
28. There is also requirement for the setup of a Bank Account with identified signatories, one of whom is the member of parliament. There is also provision for disbursement of funds and procurement processes.”
41. We note these aspects of the CDF Manual:
- (a) it is the CDF Manual which sets out in a fairly comprehensive manner how the funds may be utilised;
 - (b) it is the CDF Manual which is to assist with accounting, transparency and integrity requirements purposely imposed on the use of funds;
 - (c) the Constituency Development Fund is the entity designed to support the delivery of socio-economic development projects within constituencies;

- (d) it is the CDF Manual which provides for the criteria for selection of projects and who are eligible;
 - (c) the CDO is the person to certify projects for funding; and
 - (f) nowhere in that is there any deference to, or incorporation of, the ROC guidelines or processes.
42. In our view, the CDF Manual set out the standards to apply in such detail that the ROC's point of view is irrelevant.
43. Ground 5 contends that the failure to call the recipients of payments meant that there was insufficient evidence to make the appellant answer the case. We reject that contention. There was evidence from PW3 that:
- (a) he was responsible for the receipt of payment vouchers;
 - (b) he made the entries in the Acquittal Report (DEX2) which was submitted to the Ministry of Rural Development;¹⁹ and
 - (c) DEX2 contained evidence (in the form of payment vouchers) of the receipt of the payments in counts 3-9, 12, 14 and 16, by the persons alleged to have received the payments.²⁰
44. There was, therefore, proof that the payments were made for the purposes identified in the payment vouchers and the Acquittal Report, and to the persons who were alleged to be recipients. Given that the relevant state of mind in the offences is that of the appellant, and not that of the recipients of payments, there is nothing further that they could add that would affect the issues before this Court.
45. The appellant contends that support for the critical absence of the recipients' evidence can be drawn from the Magistrate's reasons where she referred to the fact that they were

¹⁹ Appeal Book, p 159, paragraphs 50-51.

²⁰ Appeal Book, p 163, paragraph 72.

not called. The contention is misconceived. The reasons list the recipients for (relevantly) counts 3-9, 12, 14 and 16.²¹ Then follows this:

“71. Strangely, the Crown did not call any of these beneficiaries as witnesses in their case. Therefore there is no evidence to confirm whether these beneficiaries receive the amounts of monies alleged in the charges or not.

72. There is however evidence in DEX2, that the named beneficiaries received payments as described in these charges. There are eleven general payment vouchers in DEX2 that bears the names of these beneficiaries, the dates on which payments were made, the amounts of the monies and the purpose of each payment.”

46. Plainly the Magistrate identified that there was evidence to prove, on a prima facie basis, that the listed recipients did receive the sums alleged.

47. The appellant also seeks to draw support from a comment by His Lordship when discussing the elements to be considered on the appeal to the High Court. Drawing on *R v Boyce*,²² His Lordship identified²³ that there were three elements as to fraudulent conversion: (i) that the money was entrusted to the accused for a particular purpose; (ii) “that he used it for some other purpose”; and (iii) that the misuse of the money was fraudulent and dishonest. His Lordship said as to the second element:²⁴

“41. In terms of the second element, there seems to be a dispute as to the question whether he used it for some other purpose. There are two ways this element can be proved, if he used it for his own use and benefit, or for the use and benefit of others. The proof of the use of the money in either of those two ways will suffice, bearing in mind that the burden of proving this lies with the Crown from the start.”

48. This is said to show that His Lordship “was not sure whether or not the payments were made to the beneficiaries”.²⁵ In our view, it does no such thing. All His Lordship was commenting upon was the legal theory as to how the second element can be proved, not whether it was proved in this case.

²¹ Appeal Book, p 162, paragraph 70.

²² 40 CR. Ap. R. 62 at 63.

²³ Reasons paragraph 39.

²⁴ Reasons paragraph 41.

²⁵ Appellant’s outline paragraph 5.1.

49. The case came before His Lordship on a no-case hearing. That requires the Court to consider if there is evidence capable of establishing, whether directly or inferentially, every element of the charge beyond reasonable doubt. The absence of evidence from the recipients does not affect that consideration, particularly where, as here, the Crown relies on the inference to be drawn from the disparity between the impugned payments and those mandated by the CDF Manual.

Ground 6

50. Ground 6 contends that His Lordship failed to consider the evidence of PW1 to the effect that the *Constituency Development Fund Act* had not been gazetted or put into operation. As things stood just before the hearing of the appeal this ground was no longer pressed as the appellant conceded in his written outline that the Act came into force when it was gazetted on 1 November 2013.
51. However, that changed when Mr Manetoali appeared on his own behalf. He sought to amend his submissions to now contend that the Act never came into force and therefore any reference to it was an error of law. A second aspect of that contention was that the CDF Manual was unlawful.
52. The contention was that, contrary to the concession made in the outline dated 9 September 2025, the Act did not come into operation because:
- (a) whilst s 59(3) of the Constitution provides that an Act comes into operation on the date of its publication in the Gazette, that only applies to Acts where Parliament specifically provides a commencement provision in the Act, or where parliament specifically appoints a future date of commencement in the Act;
 - (b) a second alternative is where the Act provides that it shall commence on a date to be published by the relevant Minister in the Gazette;

- (c). s 1 of the Act provides it shall come into operation on such date as the Minister may appoint, by notice in the Gazette; and no such notice was given;
- (d) therefore the 2013 Act was not in force at any relevant time;
- (e) that was so, notwithstanding that the 2013 CDF Act was “repealed” by the CDF Act 2023; and
- (f) therefore His Lordship erred by interpreting and applying the Act.

53. How the CDF Manual was said to be unlawful was never clearly articulated, except that Mr Manetoali asserted that it derived its existence from the Act, in a way never specified. Mr Manetoali seemed to accept that whatever its status, it was a working operations manual applied by the department responsible for the CDF programme.

54. The contention as to the CDF Manual must be rejected. It was no dispute before His Lordship:²⁶

- (a). as to the source, purpose and use of the funds; those were “more clearly set out under the CDF Act”;²⁷
- (b) the objects of the Act were that the funds were for responsible and accountable use for development purposes; and
- (c) that the primary purpose for which the funds were to be used were developmental purposes, income generating projects or community projects.

55. Further, the CDF Manual had the features referred to in paragraphs 41-42 above. It was, on any reasonable view, a comprehensive manual governing the application for and use of CDF funds.

²⁶ Reasons paragraphs 16-22, appeal book, pages 5-6.

²⁷ Reasons paragraph 16, appeal book page 5.

56. Further, the CDF Act does not refer to the CDF Manual at all, and the CDF Manual itself specified that it was “prepared for use by the Ministry of Rural Development **in the absence of** the CDF Act 2013 and the CDF Regulations 2013”.²⁸
57. Finally, the contention as to the status of the CDF Act is misplaced. His Lordship merely referred to it as exemplifying the source, purpose and use of CDF funds, but it was the CDF Manual that weighed thereafter in his consideration.

Conclusion

58. For the reasons given above, we consider that there is a case to answer on counts 3-9, 12, 14 and 16. It cannot be demonstrated that His Lordship erred in finding so.

Result

1. The appeal is dismissed.

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Muria P

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Gavara-Nanu JA

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Morrison JA

