

**DC6016**

**Papua New Guinea**

In the District Court

Held at Waigani

Sitting in its Committal Jurisdiction

**Comm. Nos. 936-939 OF 2019**

BETWEEN:

**THE POLICE**  
*Informant*

AND:

**TERENCE HETINU**  
*Defendant*  
**Port Moresby: T. Ganaii**  
**2021: 05<sup>th</sup> March; 21<sup>st</sup> April**

**COMMITTAL PROCEEDINGS** – Committal Ruling pursuant to Section 95 of the DCA - Phase One of the Committal process – Two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* – Sufficiency of Evidence on all of the elements of the offences charged – Evidence is sufficient to make out a *prima facie* case to commit the defendant to trial on all of the charges

**COMMITTAL PROCEEDINGS** – Committal Ruling pursuant to 100 of the *DCA* – Phase Two of the Committal Process - Section 96 administered – Defence filed a section 96 statement – Defence maintains the defence of General Denial and raises Compulsion – Defences are matters for trial proper – Ruling on Sufficiency of Evidence under section 95 is intact – Defendant is committed to stand trial in the National Court on two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA*

### **Cases cited**

*Akia v Francis PGNC 335; N6555*

*Maladina v Principal District Magistrate Posain Poloh [2004] PGNC 208*

*Paulus Pawa -v- The State [1981] PNGLR 493.*

*R-v- McEachern [1967-68] PNGLR 48*

*State v Iori Veraga (2005) N2849)*

*State v. Kai Wabu [1994] PNGLR 94*

*State v. Toamara (1988-1989] PNGLR 253*

*State v William Nanua Kapris (2011) N4232*

*Yarume v Euga [1996] PGNC 24; N1476*

### **Overseas Case**

*George v Rockett (1990) 64 A.L.J.R. 384*

*Hughes v Dempsey 17 WAL.R. 81*

*Hussein V Chong Fook Kam [1070] AC 492*

### **Legislation**

*Criminal Code Act (Money Laundering and Terrorist Financing) (Amendment) Act 2015*

*Criminal Investigation Act of Western Australia, 2006*

*District Court Act, Chapter 40*

### **Text**

Commentary on Section 4 of the *Criminal Investigation Act of Western Australia, 2006*, provides a definition of “reasonably suspects”, at <http://parliament.wa.gov.au>

### **Counsel**

*Police Prosecutor: Sergeant John Wamugl:*

*For the Informant*

*Awalua and Associates Lawyers, Mr. R. Awalua:*

*For the Defendant*

## **RULING on SUFFICIENCY of EVIDENCE and COMMITTAL**

**05<sup>th</sup> March; 21<sup>st</sup> April 2021**

### **Introduction**

**Ganaii, SM.** This is a ruling on whether a *prima facie* case is made out

within the meaning of Section 95 (1) of the *District Courts Act (DCA)* where all the evidence of the Prosecution is received in the form of a Police Hand Up Brief (PHUB) and the Court is required to consider whether it is sufficient to put the defendant on trial.

2. The ruling also considers the administration of sections 96 and a final determination under section 100 of the *DCA* which completes the committal process.

**Charge(s)**

3. The defendant stands charged with the following four counts:

**Count One      Official Corruption      Section 87 (1) (a) (i) (ii) of the CCA**

1) *On the 27<sup>th</sup> of June 2017 at Port Moresby, the Defendant being and holder of a Public Office towit PNG Electoral Commission dully employed as the as the Election Manager for NCD, charged with the performance of any duty by virtue of that employment, corruptly received property, in the sum of K184, 300 in cash by other means for the benefit of himself or others on account of anything done or omitted to be done in the discharge of his duties*

*Thereby contravening Section 87 (1) (a) (i) (ii) of the CCA*

**Count Two Crime of Dealing with Property Reasonably Suspected to be Criminal Property      Section 508 (C) (i) of the CCA**

2) *On the 27<sup>th</sup> of June 2017 at Port Moresby, the Defendant whilst employed with PNG Electoral Commission as Election Manager for NCD, dealt with property towit K184, 300 cash in circumstances where it is reasonable to suspect that the property is a criminal property*

*Thereby contravening section 508 (c) (i) of the CC (Money Laundering and Terrorist Financing Act) of 2015*

**Count Three      Conspiracy to Commit a Crime      Section 515 of the CCA**

3) *On the 27<sup>th</sup> of June 2017 at Port Moresby did conspire with Patalias Gamato to commit a crime namely receiving cash in the cum of K184, 300 while in the performance of his official duty*

*Thereby contravening section 515 of the CCA*

**Count Four      Official Corruption      Section 87 (1) (a) (i) (ii) of the CCA**

- 4) *On an unknown date in the month of June 2017 being employed in the Public Service, PNG Electoral Commission as Election Manager of NCD charges with the performance of his duty by virtue of that employment, corruptly agrees to and signed a Memorandum of Agreement to receive benefit for himself in the discharge of his duties.*

*Thereby contravening Section 87 (1) (a) (i) (ii) of the CCA*

**Facts**

4. The defendant is Mr. Terence Hetinu from Biteve Village, Kainantu, EHP. On the 27<sup>th</sup> of June 2017, the defendant was employed by the Electoral Commission as the Election Manager for NCD. The public reported to the Police that the defendant was moving around with cash monies and bribing polling officials to support a certain candidate.

5. Upon receipt of the complaint, Police commenced investigations. They sighted the defendant and approached him. His vehicle was searched and cash monies amounting to K184, 3000 was confiscated from a black bag which he carried at that time and was in his possession. In the same bag, Police also confiscated documents namely a Memorandum of Agreement (MOA) between a certain candidate and the defendant. The MOA Stated among others that the defendant would be rewarded with contracts with NCD if he performed his part of the deal and if the candidate won the Port Moresby Regional Seat, North East electorate in the 2017 elections.

6. Police say the defendant had signed the MOA with a certain candidate where he was promised a reward if the candidate won the election. He was the Election Manager for NCD in the lawful employ of the Electoral Commission and so being in possession of a large reasonable explained account of how the huge sum of money came to be in his possession, his actions have amounted to offences of Official corruption, Conspiracy to Commit a crime and Crime and of Dealing with Property Reasonably Suspected to be Criminal Property. Police obtained an arrest warrant and arrested the defendant for the charge of official corruption.

7. The defendant was therefore charged accordingly for two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with

Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* respectively.

### **Issue**

**8.** The issue before this court is whether a *prima facie* case is made out. That is to say whether the evidence received from the prosecution is sufficient to warrant the committal of the defendant to stand trial at the National Court.

**9.** The sub-issue is whether there is *prima facie* sufficient evidence on each of the elements of all the offences and whether the witnesses' statements are admissible making out the elements.

### **The Law**

#### ***The Law on Committal Proceedings***

**10.** Part VI of the *District Courts Act (DCA)* provides the legal basis for committal proceedings specifically under Section 94 to Section 100 of the *DCA*.

**11.** The Committal Process whilst requiring the Court to make a finding on the evidence presented by the Police, this process is very administrative in that the Court need only to form an opinion that there is a *bona fide prima facie* case against the Defendant; as per *Akia v Francis* and *R-v- McEachern*.

**12.** In the matter of *Maladina v Principal District Magistrate Posain Poloh* His Honour Injia DCJ (as he then was); expressed in his opinion that the Committal process involves two phases, the first is when the committing magistrate makes a finding on whether or not there is sufficient evidence and whether a *prima facie* case is made out under Section 95 of the *DCA* on whether to discharge or commit the defendant only after the Court administers an examination of a defendant under Section 96 where the defendant is asked whether he desires to give evidence.

**13.** Furthermore, in the case of *Yarume v Euga* the National Court said in respect to committal hearings that the process of committal requires proper and reasonable assessment of the evidence with a view to see whether all the elements or ingredients of the offence is present before he can commit the accused; Section 94B, 94C, 95 and 100 to be read together.

### **Evidence In Written Statement**

**14.** Section 94C requirements in the committal process must be fulfilled and is

in the following terms:

**94C.        Regard to Evidence, Etc.**

(1) When conducting a committal hearing under this Part, the Court may, subject to Subsection (2), have regard to—

- (a) the evidence contained in a written statement; and
- (b) documents and exhibits,

of which a copy has been served on the defendant under Section 94(1) or made available for inspection under Section 94(2).

(2) Before admitting a written statement, the Court shall be satisfied that the person who made the statement had read and understood it, or if unable to read, had had it read to him in a language that he understood.

**15.** The case precedent on this principle of law in relation to written statements is in the case of *The State v. Kai Wabu*. In *Kai Wabu* (supra) the court held that the combined effect of ss 94 (1A) and 94C (2) of the *District Courts Act* is that the committal Court must conduct an enquiry to ensure that the makers of statements had full knowledge of the contents, correctness, and truth of written statements they are responsible for signing. This requirement is mandatory and requires strict compliance. This enquiry is an independent one, which the Court must conduct in the exercise of its judicial function. The court further stated that after having conducted the enquiry, the Court has discretion to admit or reject the written statement. The Court must then record the nature and extent of the enquiry conducted and records its findings. A failure to conduct such enquiry and record its finding may result in voiding the committal.

**The law on the offending provision(s):**

**16.** The applicable offence provisions are:

a) Offence of Official Corruption

**87.        Official corruption.**

(1) A person who—

(a) being—

(i) employed in the Public Service, or the holder of any public office; and

(ii) charged with the performance of any duty by virtue of that

employment or office, (not being a duty touching the administration of justice),

corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of anything done or omitted to be done, or to be done or omitted to be done by him in the discharge of the duties of his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on or for any person, any property or benefit on account of any such act or omission on the part of a person in the Public Service or holding a public office,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years, and a fine  
at  
the discretion of the court.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

**b) Offence of Crime of Dealing with Property Reasonably Suspected to be Criminal Property**

*Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015, at "Part Via. - Money Laundering And Terrorist Financing. Division 1. - Money Laundering.*

**508A. Interpretation for this division**

...

**"criminal property"** means property that is, in whole or in part and whether directly or indirectly, derived from, obtained or used in connection with criminal conduct and includes any interest, dividends or other income on or value accruing from or generated by such property, regardless of who carried out the criminal conduct or who benefited from it;

**508C      Crime of Dealing with Property Reasonably Suspected to be Criminal Property.**

(1) A person who deals with property in circumstances where it is reasonable to suspect that the property is criminal property is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding K100,000.00 or imprisonment for a term not exceeding three years or both; or

(b) if the offender is a body corporate – a fine not exceeding K200,000.00.

(2) For the purposes of Subsection (1) "**deals with property**" includes one or more of the following:

(a) conceals property; and

(b) disguises property; and

(c) converts property; and

(d) transfers property; and

(e) removes property from Papua New Guinea; and

(f) brings property into Papua New Guinea; and

(g) **receives property**; and

(h) acquires property; and

(i) uses property; and

(j) **possesses property; and**

(k) consenting to or enabling any of the actions referred to in any of Paragraphs (a) to (j).

(3) **Reasonable suspicion** in Subsection (1) may be inferred from objective factual circumstances.

(4) Without limiting Subsection (1), it is reasonable to suspect that the property is

criminal property if -

(a) the conduct involves a number of transactions that are structured or arranged to **avoid the reporting requirements** under anti-money laundering and counter terrorist financing laws of Papua New Guinea; or

(b) the conduct involves using one or more accounts maintained in false names; or

(c) the value of the property involved is grossly disproportionate to the person's lawful income and expenditure over a reasonable period of time within which the act occurs; or

(d) the conduct involves a transaction which exceeds the threshold reporting obligation under anti-money laundering and counter terrorist financing laws of Papua New Guinea, and the person has –

(i) contravened his obligations under those laws relating to reporting the transaction; or

(ii) given false or misleading information in purported compliance with those obligations; or

(e) the conduct involves an importation or exportation which is required to be the subject of a report under section 14 of the ***Proceeds of Crime Act 2005*** and the person has –

(i) contravened his obligations under that Act relating to making the report; or

(ii) given false or misleading information in purported compliance with those obligations; or

(f) the person has –

(i) **stated that the conduct was engaged in on behalf or at the request of another person; and**

(ii) not provided information enabling the other person to be identified.

(5) For the purposes of Subsection (2), conceals or disguises property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(6) It is a defence to the crime created by Subsection (1) that the defendant had no reasonable grounds for suspecting that the property was criminal property.

(7) A defendant bears the legal burden of proof in relation to Subsection (6) and the legal burden must be discharged on the balance of probabilities.

#### **508F. Proof of Criminal Property.**

To avoid doubt, in order to prove that property is criminal property for the purposes of Section 508B –

(a) it is not necessary to establish –

(i) who committed the criminal conduct in relation to the property; or

(ii) that there is a charge or a conviction relating to the criminal conduct; and

(b) the prosecution –

(i) does not need to prove the property was derived from particular criminal conduct, but must prove either the general type or types of criminal conduct from which the property derived; or

(ii) can rely on evidence that the circumstances in which the property is handled are such as to give rise to the inference that it can only be derived from criminal conduct.

c) Offence of Conspiracy to Commit Crimes

#### **515. Conspiracy to Commit Crimes.**

A person who conspires with another to commit a crime or to do any act in any part of the world that –

(a) if done in Papua New Guinea would be a crime; and

(b) is an offence under the laws in force in the place where it is proposed to  
Penalty: If no other penalty is provided–  
(a) imprisonment for a term not exceeding seven years; or  
(b) if the maximum penalty for the crime in question does not exceed  
imprisonment for a term of seven years—not exceeding that penalty.  
be done,  
is guilty of a crime.

### **Elements of the offences:**

**17.** The elements of the offences are considered below.

#### **Official Corruption**

**18.** In the case of *The State v. Toamara*, where the defendant was charged with the equivalent of s 87 Official Corruption in the old Code, the court expressed that “corruptly” also means ‘dishonestly.’

**19.** According to section 87 wording of the charge, the following are the elements:

- a)** Date, Place, Accused
- b)** Corruptly
- c)**
  - 1. Give to
  - 2. confer on
  - 3. Procure for
  - 4. promise to give to
  - 5. Offer to give to
  - 6. procure for or
  - 7. attempt to procure for

- d)** Another person
  - 1.** Property
  - 2.** Benefit

*e)* On account of an

1. Act
2. Omission

*f)* On the part of the person

1. In the public service
2. Holding a public office
3. In reading the wording of the charge, Police say the defendant corruptly procured for another person property on account of an act or an omission on the part of the defendant in the public service and holding a public office.

### **Elements of Conspiracy to Commit a Crime**

20. In the case law of *The State v William Nanua Kapris* Cannings, J. said:

“251. *Each of the 14 accused is charged ...with conspiracy under the first limb of Section 515 (conspiracy to commit crimes) of the Criminal Code, which provides:*

...

252. *There are two elements of this offence – that the accused: conspired with another person; to commit a crime.*

253. *The first element is proven by evidence of an agreement (a meeting of minds), which may be express or implied, between the accused and some other person or persons. It is not necessary to prove direct communication between each conspirator.*

254. *The second element is concerned with the subject of the agreement:*

*it must be the commission of a crime (an offence).*

255. *It does not matter if the agreement did not come to fruition, the agreement was not performed or if no crime was, in fact, committed. Nor is it necessary for the prosecution to prove that there was agreement about the way in which the crime would be committed. It is the agreement and the subject of the agreement that give rise to the offence. If there is evidence that the crime was actually committed, this is relevant to proof of the agreement and its subject, but the agreement and its subject, and not evidence of them, remain the elements that constitute the offence (**The State v Iori Veraga.***

### **Elements of Crime of Dealing with Property reasonably suspected to be Criminal Property.**

21. According to the wording of the charge, the elements of the offence are:

- 1)** A person
- 2)** who deals with
- 3)** property
- 4)** in circumstances where it is reasonable to suspect that
- 5)** the property is criminal property

### **Prosecution Case**

22. To support its case, the Prosecution produced twelve (12) witness statements. The statements are from the following:

- 1.** **David Wakias** – is an Election Manager from PNG EC. He states that the PNG EC did not have any monies in the month of June 2017 for payment of polling officials. The funds were released on the 14<sup>th</sup> of July 2017.
- 2.** **Sylvester Kalaut** – The witness was the Assistance Commissioner of Police at that time. He was involved in the initial interview of the witness at Boroko Police Station. He had sighted and confirmed that the defendant was in possession of K184, 300. The defendant stated to the witness that the monies were given to him by PNG EC Commissioner Patalias Gamato.

- 3. *Jeremy Mathias*** – He is a Constable of Police. Attached to the Support Unit of Boroko Police Station. He was involved in the apprehension of the defendant, the search on him, the confiscation of the monies and the handing of the sums of money to Mr. Kalaut.
- 4. *Aquila Koko*** – Witness is a Constable of Police attached with the Support Unit of Boroko Police station. His evidence is as above ( as Mathias)
- 5. *Timothy Junior*** - Witness is a Constable of Police attached with the Support Unit of Boroko Police station. His evidence is as above ( as Mathias)
- 6. *Roy Anthony*** – Witness is a Detective Constable of Police. His evidence is as above.
- 7. *Mike Imara*** – This witness is a Sergeant of Police Forensic Science Centre. He was involved in the examination of the defendant's signature. His expert opinion is that the signature on the MOA is one from a writer of the standard handwriting/signature as Terence Hetinu.
- 8. *Vincent Tabugun*** – Is a Senior Constable of Police attached to the Police Forensic Science Centre specialised in photography. He has taken and produced photographs depicting the cash monies at the office of Mr. Kalaut.
- 9. *Dii Evara*** – Senior Constable of Police attached to CID Boroko Police Station. He had witnessed the confiscation of the cash from the defendant
- 10. *Forbes Banasi*** – Witness is a Detective Senior Constable of Police attached to CID Boroko Police Station. He was involved in the Police interview with the defendant as the Corroborator.
- 11. *Smith Morikia*** – Witness is a Detective First Constable of Police attached to the CID Boroko Police Station. He is the case investigating officer involved in investigation, obtaining of witness statements and documentary evidence. He was responsible for conduct of the Police Interview as the interviewer, for the arrest and charge of the defendant and for the preparation, service and tender of court file.

### **Documentary Evidence**

- 23.** Police rely on the following documentary evidence:

**1) Record of Interview, first part dated 26<sup>th</sup> June 2017,** English version. The defendant has made admissions in the ROI at the following Q&A:

Q&A 24: Admit to being in possession of cash and MOA

Q&A 25: Deny signing the MOA

Q&A 26: Deny signing the MOA

Q&A 27: Admit that the MOA was sent to defendant in an envelope

Q&A 28: Admit that the envelope (containing the MOA) was left on his office table

Q&A 29: Defendant admitted opening and seeing the content of the envelope

Q&A 30: The defendant says his signature on the MOA is forged

Q&A 33: The defendant says the money does not relate to the MOA. It is from EC

Q&A 66: The defendant says the money was given to him to pay polling officials

**2) The Memorandum of Agreement (MOA)** – dated June 2017, between Michael Kandiu, Terence Hetinu and Willie Winstand Ipuia shows the candidate Michael Kandiu, a business man seeking favours from the defendant

**3) Search Warrant** records comprising court order dated 26<sup>th</sup> July 2017; Notice of Motion, Affidavit in Support, and Information.

**4) Letter by DFC Smith Morikia** dated 27<sup>th</sup> June 2017, to the Electoral Commissioner seeking explanation of EC paid funds in the amount of K184, 300. 00 to the defendant for payment of allowances for

polling officials.

- 5) **Photo Copies of Defendant's identification cards from:** PNG Drivers Licence, Nambawan Super ID and PNG EC employment ID.
- 6) **Copies of letters** signed by the defendant from records at PNG EC used by the hand writing expert for purposes of examining his signature
- 7) **Statement by John Kalamora,** Deputy Electoral Commissioner, dated 28<sup>th</sup> July 2017 stating that the cash of K184, 300.00 was not from PNG EC.

**Note: this statement is not certified and therefore is no in admissible form.**

- 8) **Statement of Alwyn Jimmy** dated 28<sup>th</sup> July 2017 stating that he was appointed and replaced the defendant to the position of Provincial Returning Officer (PRO) NCD after the defendant was arrested and charged. He also states that PNG EC did not have any money on the 29<sup>th</sup> of June 2017 when he asked for some money. The money that the defendant had is not from PNG EC.

**Note: this statement is not certified and therefore is no in admissible form.**

- 9) **Independent State of PNG Instruments of Revocation and Appointment** – showing revocation and appointment of Provincial Returning Office dated 27<sup>th</sup> of June 2012. Terence Hetinu's appointment was revoked and Alwyn Jimmy was appointed.
- 10) **Other documents** including email communications from PNG EC Finance and Accounts section on availability of funds
- 11) **Photographs** – Total of 6 depicting burnt monies, exhibits monies found in the possession of the defendant, confiscated by Mr. Kalaut and stored in an exhibit room at the Boroko Police Station.
- 12) **Copies of Newspaper articles** about Terence Hetinu and Patilius Gamato, marked as 23-23E

- 13) Letter to Police** date 28<sup>th</sup> September 2017 from Terence Hetinu
- 14) Letter to Kawat Lawyers** acting for Terence Hetinu from Mr. Kalaut dated 26<sup>th</sup> July 2017
- 15) Notice of Motion dated 29<sup>th</sup> June 2017** with an Affidavit in Support and a Court Order for an Arrest Warrant for the defendant for the offence of Official Corruption under section 87 (2) of the *CCA*.
- 16) ROI dated 6<sup>th</sup> October 2017 for defendant Agnes Jimu** regarding her arrest on allegations of stealing monies being exhibits from the subject K184, 300. 00, kept at the Boroko Police Station exhibit room.
- 17) Antecedent Report** – Contains the personal particulars of the defendant and whether there are prior convictions. Not to be considered at this stage.

### **Defence Submissions**

24. Defence filed their submissions on the 06<sup>th</sup> of November 2020. I have read their submission in full. They submit as follows:

#### **In relation of Statement of David Wakia:**

1. The statement contains hearsay evidence which is inadmissible. Much of his statement is irrelevant to the issue.
2. His evidence does not contain evidence on the elements of the offences
3. His evidence is based on his vengeful attitude towards the PNG Electoral Commissioner Mr. Patilius Gamato due to Mr. Gamato's decision to terminate him.
4. He is no longer a staff of PNG EC and cannot have standing anymore to give this evidence
5. There is no corroborating evidence to support his story

- 6.** He does not state how the MOA was made and
- 7.** He does not know whether PNG EC had monies or not.

**25.** Other submissions are:

- 1.** The MOA shows direct intention to commit a crime and it is not logical for the defendant to be carrying or possessing such evidence which will be a clear give away of his involvement
- 2.** The element of ‘corruptly receiving property for own benefit’ is lacking. There is no evidence of whom did the defendant get the monies from and how he benefitted from them.
- 3.** On the charge of Crime of Dealing with Property Reasonably Suspected to be Criminal Property, the elements of dealing with property, concealing and disguising property; and criminal conduct are not established.
- 4.** There is no evidence of whose property the monies belong to and
- 5.** What crimes were committed
- 6.** On conspiracy, the two elements of Conspiring with another to commit a crime are absent.
- 7.** There is no evidence on who was involved in making the MOA between the defendant and the candidate.
- 8.** Evidence of Mr. Sylvester Kalaut and all other Police officers does not support the elements of the charges. Their statements are of no evidential value on the elements of the charges.

### **Prosecutions Submissions**

**26.** Prosecutions filed a written submission dated 20<sup>th</sup> August 2020 which I have read in full. Their submissions can be summarised as follows:

**27.** There is sufficient circumstantial evidence on the elements of all the charges to make out a *prima facie case*.

**28.** The defendant had unexpected and properly unexplained amount of cash in his possession when apprehended by Police

**29.** Through the MOA, Police is asking the court to infer that the monies were given to the defendant by the candidate named in the MOA Mr. Michael Kandiu.

**30.** On conspiracy, inference can be drawn from facts surrounding the case including Mr. Patalius Gamato's defensive statements in defence of the defendant. Police is asking the court to infer conspiracy especially when there were no such monies in PNG EC in June 2017.

**31.** Witnesses from PNG EC Finance and Accounts section namely: the Certifying Officer, the Requisition officer and the Authorisation Officer for printing cheques all stated that there was no monies with PNG EC at the time the defendant had those monies.

**32.** The signature expertise opinion say the signature in the MOA is from a writer of Terence Hetinu's writing characters.

**33.** There is illogical and unreasonable explanation by the defendant of the huge amount of monies in his possession.

**34.** It is safe to infer that the monies are dirty monies offered as a bribe in the circumstance and in the light of the evidence of the presence of the MOA.

#### **Court's Assessment of the Evidence in the light of the Law**

**35.** Statements of **John Kalamora** and **Alwyn Jimmy** are not certified. They are inadmissible.

**36.** The statements of the balance of the witnesses are admissible having complied with section 94C of the *DCA* and the principles in **Kai Wabu's** case.

#### **On the elements of Official Corruption**

**37.** The main contention by the defence is that there is no direct evidence on the elements of 'corruptly receiving and benefiting'. The court accepts the prosecutions submissions that the law on circumstantial evidence is good evidence and the court can make inferences to make findings. The court adopts and applies the principle in **Paulus Pawa -v- The State**.

**38.** The court finds also that there is sufficient evidence showing a *prima facie* case that the defendant corruptly received the monies because PNG EC evidence is that they did not have any funds at that specific time. Further to that and according to the hand writing expert's opinion, the defendant is likely to have been the person that signed the MOA. The monies and the MOA were in his possession and it is inferred that he had used the monies to bribe polling officials for his long term benefit if the candidate who sponsored the bribe monies won the Governor's seat in the 2017 election.

**39.** The terms of the MOA specifically states that a certain candidate namely Michael Kandiu who was vying for the Governor's seat was seeking certain favours from the defendant. The defendant was named as the second party in the MOA. At part VI of the MOA, there will be rewards for the defendant as the second party where contracts from NCD will be awarded to him if Michael Kandiu won the elections. The MOA contains the name of the defendant and indicated that he had signed his signature.

**40.** It is sufficient to draw inferences in the circumstances that the monies came into the position of the defendant in a corrupt way and he had received them for purposes of bribing polling officials so that the defendant will benefit from the awarding of contracts from NCD if the candidate Michael Kandiu became Governor.

**41.** The court finds that in the circumstance, where the defendant is in the employ of the PNG EC as a PRO or Election Manager for NCD, there is sufficient evidence on the elements of this charge of Official Corruption to make out a case against the defendant.

**42.** On the second Official Corruption charge, there is sufficient evidence to show that whilst in the employ of the PNG EC as the PRO or Election Manager for NCD, in agreeing to sign the MOA, the defendant had corruptly agreed to receive benefit whilst in that employ.

**On the crime of Dealing with Property reasonably suspected of being criminal property, the court says the following:**

**43.** 'Dealing' with property includes *receiving, using and being in possession* of the property. Evidence shows that the defendant had received such monies and the monies were found in his possession upon apprehension. There is no direct

evidence of using it to pay polling officials as a bribe, however, the court draw inferences in the circumstances and especially also in the light of public complaints that the defendant had bribed polling officials to count in a certain way.

**44.** The possession of such monies where polling was taking place is reasonable enough from a reasonable man's point of view, and under the specific circumstance of possession of the MOA to show further that the monies were used to bribe the polling officials to attain a certain result that will favour the candidate named in the MOA Mr. Michael Kandiu. This is also sufficient evidence to show that the defendant had dealt with criminal property by using it to bribe officials.

**45.** The standard of proof for such inference is based on reasonable suspicion that the property is criminal property. In the circumstance, section 508F, paragraph (b) sub paragraph (ii) stipulates that the court can rely on evidence that the circumstances in which the property is handled are such as to give rise to the inference that it can only be derived from criminal conduct. As such, reasonable suspicion may be inferred by the court from the factual circumstances of the case where the explanation that monies came from PNG EC is not true and is refuted by the Finance and Account staff of PNG EC and where there is a MOA indicating intention to conspire to influence the outcome of polling decisions by the defendant for an intending candidate that the property is criminal property.

**46.** The court need not be satisfied as to where the monies came from. The laws in our jurisdiction do not define what 'reasonable suspicion' is. Therefore, I draw guidance from the definition provided in Section 4 of the ***Criminal Investigation Act of Western Australia 2006***, which provides a definition of "reasonably suspects" and says:

*"For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable".*

**47.** A commentary on this law says:

*"There are two elements to be considered: First is suspicion, the MacQuarie Dictionary (revised third edition) defines suspicion as "imagination of the existence of guilt, fault, falsity, defect or the like on slight evidence or without evidence"*

*In Hussein (1970) Lord Devlin described suspicion as being "a state of*

*conjecture or surmise where proof is lacking, "I suspect but cannot prove". **Hussein** (1970) A.G. 942 "It must be remembered that whilst suspicion falls short of actual proof, there must still be some factual basis upon which the suspicion is grounded" **George v Rockett** (1990) 64 A.L.J.R. 384.*

*Second is what amounts to a suspicion being reasonable? "Reasonable" means not immoderate, not excessive, not unjust, and tolerable". There is no standard or fixed rule as to what are reasonable grounds for suspicion which can be laid down as applicable to all cases. The test is "What would a reasonable person acting without passion or prejudice fairly suspect from the circumstances?"*

*In the case of **Hughes v Dempsey** 17 WAL.R. 81, the court held that: "Reasonable suspicion means that there must be something more than imagination or conjecture. It must be the suspicion of a reasonable man warranted by facts from which inference can be drawn, but it is something which falls short of legal proof. "**Hughes v Dempsey** 17 WAL.R. 81"*

**48.** Based on the above, the court is able to draw inferences from surrounding facts that show suspicion held by a reasonable person in the circumstance to say that the defendant had monies in possession for bribing of polling officials. Evidence establishes a *prima facie* case that these were not monies from PNG EC. The relevant time is also a consideration which is that it was polling period. It is therefore reasonable under the circumstance to hold such a suspicion and find that there is sufficient evidence to find that the defendant was involved in a crime of Dealing with Property reasonably suspected of being criminal property.

### **Conspiracy to Commit a Crime**

**49.** On Conspiracy to commit a crime, the required element is the meeting of minds and agreeing to commit a crime. The court accepts that in inferring from the facts of the case, that is where the former PNG Electoral Commissioner Mr. Gamato has made statements in defence of the defendant, and where all state witnesses from PNG EC say there was no such monies in the month of June 2017 for polling officials, it is likely that the defendant and Mr. Gamato had known about the defendant's criminal behavior, had defended it and therefore had agreed with the defendant's obtaining of the monies and dealing of them to most likely bribe polling officials.

### **Conclusion/ Findings**

**50.** I find that there is sufficient evidence showing that whilst on duty as the Election Manager for NCD, the defendant's action of having in his possession a

huge sum of monies in cash where he had not offered an acceptable and convincing explanation on how the monies had come into his possession and what they were for, and where evidence suggests that he would have signed the MOA with an intending candidate, his actions amount to counts Official Corruption, involvement in a crime of Dealing with Property reasonably suspected of being criminal property and conspiracy to commit a crime of bribery.

**51.** On the basis of the above analysis, this court as a result of the performance of its committal function as an investigator into the strength of the case being mounted by prosecution and not as an adjudicator, has assessed the evidence in totality and makes the final finding that there is sufficient evidence on the essential elements of the charges of two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* respectively.

**52.** The court accepts that the witness statements comply with s94 of the *DCA* and the principle enunciated in the case of *Kai Wabu*.

**53.** I find sufficient evidence to make out a *prima facie* case that the defendant did commit the alleged offences of Official Corruption, Crime of Dealing with Property Reasonably Suspected to be Criminal Property and Conspiracy to Commit a Crime.

**54.** Consequently, I form a *bona fide* opinion against the defendant that there is sufficient case against him in order to commit him to stand trial on two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* respectively.

#### **Administration of Section 96 of the *DCA***

**55.** Section 96 of the *DCA* was explained to the defendant. The defendant has exercised his right to make a written statement. He filed his statement on the 10<sup>th</sup> 12<sup>th</sup> of April 2021. In summary, the following was stated:

- 1)** He is a Seven Day Adventist and was a Church Minister and District Pastor;
- 2)** He has had many years of experience working as Election official and has attained training in election process overseas;

- 3) He stated that the monies found in his possession were given to him by Mr. Gamato for payment of camping allowances for polling officials;
- 4) He admitted to signing the MOA under pressure;
- 5) He stated that signing of the MOA has no link to the monies. He is not aware of Michael Kandiu and does not personally know the person who pressured him to sign the MOA;

56. The Court's reply to the defendant's section 96 statement is:

- 1) The defendant's explanation of how the monies came into his possession is his defence and are matters for trial proper;
- 2) The defendant's explanation of the signing of the MOA are also matters for trial proper; and
- 3) The ruling on sufficiency of evidence is intact.

### **Final Orders**

57. I make the following orders:

1. There is sufficient evidence to commit the defendant to stand trial in the National Court on two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* respectively.
2. The defendant is committed to stand trial in the National Court at Waigani on two counts of Official Corruption under section 87 (1) (a) (i) (ii), one count of Crime of Dealing with Property Reasonably Suspected to be Criminal Property under section 508 (c) (i) and one count of Conspiracy to Commit a Crime under section 515 of the *CCA* respectively.
3. The defendant shall appear at the **Waigani National Court, Criminal Listings on Monday 31<sup>st</sup> of May 2021 at 9:30am.**

4. The defendant's bail is extended on same conditions.

***Police Prosecution:***

***For the Informant***

***Awalua and Associates Lawyers***

***For the Defendant***