

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) 221 OF 2016
CR (FC) 222 OF 2016
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BETWEEN:
THE STATE

AND:
MIRIAM HEVELAWA, JACOB HEVELAWA AND TIMOTHY NUMARA
(NO. 1)

Waigani: Salika, DCJ
2017: January 24;
February 6, 13, 15;
March 24, 22;
April 12;
May 30; July 7

CRIMINAL LAW - Practice and Procedure – Charges of abuse of office – S92 of Criminal Code – Charge of Conspiracy to Defraud – S515 of Criminal Code – Charges of misappropriation – S383A(1)(a) of the Criminal Code

CRIMINAL LAW – What is abuse of authority of office – what is conflict of interest – what is vested interest – what constitutes an arbitrary act or action – what is conspiracy to defraud

Cases cited

The State v Graham Yotchi Wyborn (2004) N2847
State v Iori Veraga (2005) N2921

State v Gabriel Ramoi (1993) PNGLR 390

Counsel

Ms H Roalakona, for the State

Mr F Kirriwom & Mr E Sasingian, for the Defence

DECISION

7th July, 2017

1. **SALIKA DCJ: INTRODUCTION:** Jacob Hevelawa and Timothy Numara are charged with one count of Abuse of Office under s.92 (1) of the *Criminal Code*, one count of Conspiracy under s.407 of the *Criminal Code*. They are jointly charged with Miriam Hevelawa on one count of misappropriation pursuant to s.383 A (1) of the *Criminal Code*.

Facts

2. Jacob Hevelawa was the Director – General of the Office of Library and Archives (OLA) from March 2011 to March 2014. Timothy Numara was the Manager; Corporate Services for the same Office at the material time and Miriam Hevelawa was and is the wife of Jacob Hevelawa.

3. Miriam Hevelawa is the owner and sole Director of a company Paja Sisters Trading registered on 6 December 2011 as a company.

4. Between 1 December 2012 and 31 December 2013, the state alleged that the 3 accused conspired to defraud the State by submitting inflated invoices for grass cutting, landscaping and removal of rubbish services through Paja Sisters Trading, the 3 accused signed a contract for Paja Sisters Trading to provide those services with no agreed value of the Contract and no completion date. The 3 accused agreed that the payments were to be made based on Paja Sisters Trading invoices rendered to OLA.

5. Invoices 0005, 0006 and 0008 all dated 21 June 2013 were submitted by

Miriam Hevelawa to Timothy Numara for K103,250.00, K 91, 000 and K 86, 650 for processing and payment all being for grass cutting, landscaping and removal of rubbish. The invoices did not specify dates the alleged work was done.

6. After the invoices had been submitted for processing, finance forms 3 and 4 were filled and processed for payment by the OLA officers to Paja Sisters Trading. Jacob Hevelawa signed off all Finance forms as the Section 32 of the *Public Finance Management Act* officer approving the claims for payment.

7. On 31 December 2013 three cheques were processed in favor of Paja Sisters Trading for K 63, 120. 50, K 20,000 and K 35, 725.80. All these cheque payments were deposited into the Paja Sisters Trading bank account in 2014 and the monies were allegedly used by the accused for their own use and for the use of others.

8. The State alleged the 3 accused conspired when they agreed to a cleaning contract with Paja Sisters without a value and the Paja Sisters to invoice the Office of Library and Archives which the Office would pay. The State alleged that Jacob Hevelawa and Timothy Numara had abused their respective Offices by firstly entering into the Contract with Paja Sisters, and secondly by approving and processing the inflated payments despite the possible conflict of interest situation. The State alleged that the actions of the 3 accused was dishonest and therefore had them charged accordingly. The State invoked Section 7 of the *Criminal Code*.

ISSUES

9. The issues raised in this case are:

- a. Whether Jacob Hevelawa and Timothy Numara abused the authority of their respective offices?
- b. Whether there was a conflict of interest on the part of Jacob Hevelawa in entering into the cleaning contract with Paja Sisters?
- c. Whether the accused dishonestly applied the monies for their own use and to the use of others?

d. Whether Jacob Hevelawa and Timothy Numara conspired with each other to defraud the State?

EVIDENCE

10. The State tendered into the evidence the following documents:-

| | Date | Description | Pagination | Exhibit No |
|----|---------------|---|------------|------------|
| 1 | | Statement of Magea Kila dated 20 February 2017 | | A |
| 2 | 19/01/16 | Record of Interview (Miriam Hevelawa) (6 pages) | 21 – 26 | B |
| 3 | 19/01/16 | Record of Interview (Jacob Hevelawa) (6 pages) | 22 – 27 | C |
| 4 | 26 & 27/01/16 | Record of Interview (Timothy Numara) (8 pages) | 22 – 29 | D |
| 5 | 04/06/16 | Finance Forms 4 – General Expenses for K7280.00 | | E |
| 6 | 03/06/15 | Finance Form 3 – Requisition for Purchase of Goods/ Services N0 3339 for K7280.00 | | F |
| 7 | 31/12/13 | Department of Education remittance advice for cheque No 365609 to PAJA Sisters Trading for K63,120.50 (Serial No. 446287) | | G |
| 8 | 08/07/13 | Finance Forms 4 – General Expense for K91,000.00 | | H |
| 9 | 08/07/13 | Finance Form 3 – Requisition for Purchase of Goods/ Services N0 3339 for K7280.00 | | I |
| 10 | 21/06/13 | Invoice No 006 from Paja Sisters Trading GST No 23813 for services rendered totaling up to K91,000.00 | | J |
| 11 | 21/06/13 | Quotation No 006 from Paja Sisters Trading GST No 23713 for services rendered totaling up to K91,000.00 | | K |

| | | | | |
|----|----------|--|--|---|
| 12 | 06/06/13 | Letter from IRC re GST Registration advise by Commissioner General to Paja Sisters Trading & Miriam Hevelawa. | | L |
| 13 | 07/06/13 | Letter from IRC re exemption from certificate of compliance by Commissioner General to Paja Sisters Trading & Miriam Hevelawa. | | M |
| 14 | 02/01/13 | Contract between Paja Sisters Trading and Office of Libraries and Archives. | | N |
| 15 | 06/12/12 | Certificate of Registration of Business Name Paja Sisters Trading by Registrar of Companies. | | O |
| 16 | 04/06/15 | Finance Forms 3 – Requisition for Purchase of Goods / services No 3270 for K8,046.00 and carbon copy. | | P |
| 17 | 31/12/13 | Dept of Education remittance advise for cheque No 365460 to Paja Sisters trading for K35,725.80 Serial No 446138. | | Q |
| 18 | 06/11/14 | Finance Form 4 – General Expense for K86,650.00. | | R |
| 19 | 06/11/14 | Finance Form 4 – General Expense for K8,046.00 | | S |
| 20 | 06/11/14 | Finance Form 3 – Requisition for Purchase of Goods/Services No 3522 for K86,650.00 and carbon copy. | | T |
| 21 | 21/06/13 | Invoice No 006 from Paja Sisters Trading GST No 23713 for services rendered totaling up to K86,650.00 | | U |
| 22 | 04/06/15 | Finance Form 4 – General Expense for K8,325.00 | | V |
| 23 | 04/06/15 | Finance Form 3 – Requisition for Purchase of Goods/Services No 3338 for K8,325.00 and carbon copy. | | W |

| | | | | |
|----|----------------------------|---|--|----|
| 24 | 31/12/13 | Dept of Education remittance advise for cheque No 35423 to Paja Sisters trading for K20,000.00 Serial No 446151 | | X |
| 25 | 06/11/14 | Finance Form 4 – General Expense for K103,250.00 | | Y |
| 26 | 06/11/14 | Finance Form 3 – Requisition for Purchase of Goods/Services No 3520 for K103,250.00 and carbon copy. | | Z |
| 27 | 21/06/13 | Invoice No 005 from Paja Sisters Trading GST No 23713 for services rendered totaling up to K103,250.00 | | AA |
| 28 | 21/06/13 | Quotation No 005 from Paja Sisters trading GST No 23714 for services rendered totaling up to K103,250.00 | | AB |
| 29 | 28/01/15 | Audit report Assessment Joint Investigation Report | | AC |
| 30 | 2014 | Correspondences with Dept of Education and Dept of Finance. | | AD |
| 31 | | Westpac Company and Organization Account Opening Form for Account No 6003230222 for Paja Sisters Trading (2 pages) | | AE |
| 32 | 3 May 2013 and 3 June 2013 | Westpac Bank Statement for Paja Sisters trading between 3 May 2015 and 3 June 2013 (59 pages) | | AF |
| 33 | 31 December 2013 | Copy of cheque No 356 609 dated 31 December 2013 for the sum of K63,120.50 and copy of cheque No 365 473 dated 31 December 2015 for the sum of K20,000.00 (1 page). | | AG |
| 34 | 31 December 2013 | Copy of Cheque No 365 460 dated 31 December 2013 for sum of K35,724.80 (1 page). | | AH |

| | | | | |
|----|--|---|--|----|
| 35 | 13 Jul 2013 – 13 Jan 2016 | Westpac Bank Statements for account No 604645601 for Jacob Hevelawa. | | AI |
| 36 | 31 December 2013 to 30 October 2015 | BSP Bank Statements of account No 1000504091 for Timothy Numara from 31 December 2013 to 30 October 2015. | | AJ |
| 37 | 14 March 2017 | Statement of Oda Hitolo (2 pages) | | AK |
| 38 | | Statement of Simon Aisi dated 8 December 2015. | | AL |
| 39 | | State of Yali Yanubagi dated 4 January 2016. | | AM |
| 40 | | NEC decision 54/2015 Meeting No 3/2015. | | AN |
| 41 | | Receipt of Petrol dated 27 March 2017 for the sum of K205.40. | | AO |

A MATTER OF CONCERN

11. In a few cases that I have been involved in, I have experienced State Prosecutors tendering witnesses statements taken at the committal court as part of the depositions even after the witness has given oral evidence. This practice appears to take a strong hold in our practice nowadays. The Evidence Act only allows for witnesses to be cross examined on their statements if it is intended to contradict him or her. The statements or depositions in my respectful opinion should never be tendered into evidence to add extra to what the witness has already said in his oral testimony. For instance, in this case Magea Kila's statement at the committal depositions was tendered into evidence by consent even though he gave oral evidence. I did not raise this matter at the time but after much thought raise it now. I do not and will not rely on that statement in giving this decision.

Oral Evidence

Magea Kila

12. The relevance of Mr Kila's evidence is that the procurement section of the Department of Education would check the claims and companies would be

checked before the Department engaged them to provide services. He gave evidence of inflated amounts for the goods and services provided by the company Paja Sisters Trading.

13. He was asked if the payments were in order and he said the payments were in order in that there was a cleaning contract in place and work was done and invoices were rendered according to the contract agreement. He agreed cleaning both inside the building and outside the buildings was an administrative duty and if outside assistance was required, approval from the Secretary of the Education Department must be sought and if the Secretary approved, three quotes would be required and one of the three would be asked to provide the cleaning services. In this case there is no approval sought from nor was approval granted by the Education Secretary but even if it was not required, the Director General or the Corporate Services Manager of OLA did not obtain three quotes from cleaning and landscaping service providers for the OLA cleaning jobs.

Maria Kanambo

14. Mrs Kanambo is the Administrative Officer with the OLA and has been so for 26 years. Her evidence is that she registered the claims and gave them to Simon Aisi who then told her to fill in the Finance Forms 3 and 4 which she did. Simon Aisi checked the forms and submitted them to Manager, Corporate Services who certified the claims and the claims were given to section 32 officer. A s.32 officer is one who is identified under the *Public Finance Management Act* by s.32 of that Act. After this process Mrs Kanambo copied the FF3s and FF4s and passed the originals to the Department of Education located at Fincorp building. She was shown the relevant FF4s – the General Expenditure claim for K103,250.00 dated 6 November 2013 and confirmed she filled in that form and that Sibona checked the forms and certified them and Jacob Hevelawa signed as the s.32 officer. She said Invoice 0005 was authorized by Miriam Hevelawa and sent to the attention of Timothy Numara dated 21 June 2013. She was asked to read the notations on the FF4 and that notation read:- Cheque #365473 – 31/12/13 (b) K20,000 (c) part payment and (d) O/S – K83,250. Her evidence is that the directions were given by Jacob Hevelawa to make a 10 percent part payment for the claim.

15. She was asked if work was actually done and she said she saw work was done on Saturdays and about 10 to 12 people provided the grass cutting and cleaning service. She was asked if prior claims had been paid and she said some were paid.

Sibona Asigau

16. Mr Asigau is the Administrative Clerk with OLA and has been so for 7 years. Part of his duty is to raise the Claims (FF3 and FF4). He said the Paja Sisters claim was filled out on the direction of Simon Aisi. He was shown the claim and said he raised the claim for K91,000. He said both Simon Aisi and Jacob Hevelawa signed in their respective columns.

17. His evidence was that the claims and the payments made were excessive because the work did not warrant such excessive payments. He suggested that payments between K15,000 and K20,000 would have been alright. He said queries were raised but Jacob Hevelawa the then Director General gave instructions to pay. He said they could do nothing because he was the boss. He said work was done but what was paid was excessive.

Simon Aisi

18. Mr Aisi is the Senior Administrative Officer and has been so for 15 years. His statement was tendered into evidence. The witness was asked if he was aware of a cleaning contract between Jacob Hevelawa, Timothy Numara and Miriam Hevelawa and he said he was aware of the contract. He was asked if he ever heard of the words “conflict of interest” to which he said No.

Francis Kamuti

19. Mr Kamuti has been a cleaner with the National Library for 41 years. His evidence was that it cost them, that is the cleaners, K100 fuel to use the lawn mower to cut the grass and 1 to 2 days to do that. He also said 7 of them cut the grass and clean the area.

Yali Yambagi

20. His statement was tendered into evidence and is similar to that of Francis Kamuti.

Kakaito Kasi

21. Mr Kasi is the current Director General of OLA. He took over from Mr Jacob Hevelawa. When he took office he set out first to establish a board, which was a statutory requirement under The National Library Act of 1993. He said under Mr Hevelawa, there was no board and he had operated without a board for 11 years, that he was Director-General.

22. He said Paja sisters Trading had submitted its claims and that in total K1.3 million was still outstanding and yet to be paid and that K118,000 had been paid.

23. Relevantly, this witness produced and tendered into evidence receipts for grass cutting, how much it costs to cut grass and to clear the yard per month. From the receipts he is able to say that it costs K205 per month to cut the grass. He said he had purchased a grass cutter for the office. He said the OLA had an annual budget of K4 million effectively saying he could not afford to spend K1.3 million just to cut grass and landscape the area.

24. The defence cross examined him and suggested to him that if anything, the accused had conspired to do good for the OLA to which the witness said “no” and it was put to him that what the accused did was good for the office but Mr Kasi said “at a minimum cost he would agree.”

25. The witness was asked if he was the complainant in the case and said he was not but said the matter of misuse of monies and abuse of office was raised on the floor of parliament and then an inquiry ensued. He said that is how the accused got to be charged.

Bill Mugi

26. The witness is a Police Officer who did the investigation and laid charges against the 3 accused. It was suggested to him that there was no cause for complaint but he said he was directed to investigate the matter by his supervisors and he did and that is how the matter is now before the court.

Defence Case

27. The defence called the 3 accused to give evidence on their own behalf after their no case submission was dismissed.

Timothy Numara

28. Mr Numara was the Manager, Corporate Services in the OLA. He drafted the cleaning contract with Paja Sisters and said this was a business transaction where services were provided under the contract and payment was done in accordance with the contract. He said the cleaning contract was a standard contract. He denied the amounts claimed by Paja Sisters was excessive but the work was done and Paja Sisters got paid for the work they did as stipulated in the contract. He was asked if there might be a conflict of interest situation to enter into a contract with Paja Sisters and he said it was a matter for Mr Jacob Hevelawa.

Jacob Hevelawa

29. Jacob Hevelawa was the Director General of the OLA at the material time for 9 years. He is married to Miriam Hevelawa. He said the Manager Corporate Services was responsible to ensure the buildings were maintained and the grounds are also kept neat and tidy but that the Director General had the overall responsibility. He confirmed that he, Timothy Numara and Miriam Hevelawa had signed the cleaning contract agreement. He said the agreement spelt out the scope of works or the type of service Paja Sisters were to provide and not a legal document. He said he had signed similar contracts with other service providers.

30. Mr Hevelawa agreed that the contract was an open contract.

Miriam Hevelawa

31. Mrs Miriam Hevelawa is the wife of Jacob Hevelawa. She said she registered her company Paja Sisters Trading to assist woman in her community. She said she signed the contract with Mr Hevelawa and Mr Numara to help the mothers at 8 Mile community. She said the mothers with their families came and cut the grass and collected rubbish and landscaped the OLA area. She took photos of the families working and had those photographs tendered into evidence.

32. She invoiced OLA for the work Paja Sisters did. In her invoice she claimed K600 for each of the workers for working two days at K300 per day. She charged for lawn mower hires and also for lunches for the members. She gave evidence of

how she had this dream to own and run a business of her own and that this dream was now a reality. It was suggested to her that she only got the OLA job because her husband was the Director General of OLA and therefore it was easy for her to get that job. She said she went to the National Capital District Commission for a cleaning job but they told her to wait. She also asked elsewhere but could not secure a cleaning job. She avoided answering the question but it is obvious she got the OLA job because of her husband. She could not get another cleaning job elsewhere.

33. Defence counsel tendered a register book of attendees of members of Paja Sisters which may have been relevant had some of those listed in the register book come and given evidence to say that they worked and were paid K600. Not one from the list was called to confirm Mrs Hevelawa's assertions that it was a women's group and that they all benefitted from the cleaning contract. Surely, it would not have been hard to gather the mothers with their families to come forward to support Mrs Hevelawa's story that they worked and got paid by Mrs Hevelawa. Are they not all living in and around the 8 mile area?

Abuse of Authority of Office

Elements of Offences

34. The first count alleged is abuse of authority of office. The elements of the offence of abuse of authority of office are:-

- a) A person
- b) On a date
- c) At a place
- d) Employed in the public service
- e) In abuse of authority of his office

- f) Does or directs to be done
- g) Any arbitrary act
- h) Pre-judicial to the rights of another.

35. Elements a, b c and d are not contested, Jacob Hevelawa and Timothy Numara were both public servants. There is no argument about that. There is no dispute about the dates and the place alleged.

36. Abuse as a noun means :- ***“1. Use of something that is wrong or harmful or misuse. 2. Unfair, cruel or violent treatment. 3. Rude or offensive remark. Abuse as a verb means :-1. To make bad use of something or to use too much of something that it harms your health. 2. To use power or knowledge unfairly or wrongly for instance she abused her position as principal by giving jobs to her friends or he felt they had abused his trust by talking about him to the press. 3. To treat a person or animal in a cruel or violent way for instance he had abused his daughter. 4. To make rude or offensive remarks about somebody.”*** Oxford Advanced Learners Dictionary new 8th Edition.

“Authority” as a noun means:- ***“1. The power to give orders in a position of authority. 2. The power or right to do something.*** Oxford Advanced Learners Dictionary new 8th Edition.

“Conflict of Interest” means :- ***“a situation in which somebody has two jobs, roles etc and cannot treat both of them equally and fairly at the same time.”*** Oxford Advanced Learners Dictionary new 8th Edition.

Wikipedia describes “conflict of interest” as:- ***“is a situation in which an individual has competing interest or loyalties. A conflict of interest can exist in many different situations. The easiest way to explain conflict of interest is by using some examples.***

- ***With a public official whose personal interests conflict with his/her***

professional position.

- *With a person who has a position of authority in one organization that conflicts with his or her interests in another organization.*
- *With a person who has conflicting responsibilities.”*

37. In this case Mr Jacob Hevelawa, was a public official whose personal interest conflicted with his professional position in that his wife and her company were related to him. He could not be seen in his professional position to be awarding cleaning contracts to his wife and her company. He had a vested interest in the awarding of the contract to his wife’s company. He signed as a Section 32 officer with vested interest written all over him. The Oxford Advanced Learners Dictionary New 8th Edition defines vested interest as – “*a personal reason for wanting something to happen, especially because you get some advantage from it*”. The Cambridge English Dictionary defines vested interest as – “*a strong personal interest in something because you could get an advantage from it*”. In my respectful opinion Mr Hevelawa had a vested interest in all that Mrs Hevelawa was doing. For Mr Numara, again with respect he simply went along with what Mr Hevelawa said or directed. It was and is unethical and wrong for Jacob Hevelawa and Timothy Numara to award that cleaning contract to Mrs Hevelawa and her company. Timothy Numara said it was for Jacob Hevelawa to make a decision but he should have advised Mr Hevelawa not to enter into such contract with his wife. It amounts to abuse of office.

THE CONTRACT

38. The cleaning contract between Mr Hevelawa, Mr Numara and Mrs Hevelawa is in evidence. They all signed the contract. Apart from the contract being open with no commencement and completion dates, it is the relationship of the parties who signed the contract that in my respectful opinion that must raise the eyebrows of any thinking person. Evidence is that Paja Sisters Trading is Mrs Hevelawa. She is the sole director and shareholder of Paja Sisters. She is the wife of Jacob Hevelawa. To enter into a cleaning contract with his wife, which brought monetary benefits to his wife and therefore him as well is unethical and amounts to abuse of office and abuse of authority of office. To me with respect it was and is clearly wrong. To suggest that what they did was good for the OLA is contrary to good conscience of a thinking person and contrary to good governance.

39. With respect Mrs Hevelawa is the sole head, the hands, the eyes, the feet, the nose and the mouth of Paja Sisters. See *The State v Graham Yotchi Wyborn* (2004) N2847. She is married to Jacob Hevelawa who was the then Director General of OLA. Her benefit is Mr Hevelawa's benefit.

40. Moreover, Genesis 2:24 says: "***Therefore shall a man leave his father and his mother and cleave unto his wife; and they shall be one flesh***". That is the Bible definition of a marriage. Jacob Hevelawa and Miriam Hevelawa are one. Whatever Miriam Hevelawa did and whatever Jacob Hevelawa did for the commission benefit both of them.

41. The net effect of this is that Jacob Hevelawa signed the cleaning contract not only for the benefit of the Paja Sisters and Mrs Hevelawa but also for the benefit of himself. Both Mr Hevelawa and Mr Numara are highly educated officers. To not pay any attention to this basic and simple matter of a conflict of interest and therefore vested interest and therefore vested interest arising here is simply with respect in my opinion either arrogance at its highest or dumb at its highest.

42. Abuse is defined as: "**to use something to the bad effect or for a bad purpose or a corrupt practice or custom.**" In this case the State alleged that Mr Hevelawa and Mr Numara both abused the authority of their offices to enter into a contract with Mrs Hevelawa for the benefit of Mrs Hevelawa and Mr Hevelawa which was wrong and unethical.

43. The defence could only submit that the action to engage a business to provide cleaning services was a function within the duties and responsibilities of both Mr Hevelawa and Mr Numara. I accept with respect that both man had the authority, power and responsibility to ensure the grounds of OLA were kept tidy and clean. What I do not accept is that the cleaning job was contracted to Mr Hevelawa's wife. Surely there were other cleaning contractors who might have been engaged to do the work. There is no evidence that Mr Hevelawa and Mr

Numara sought 3 quotations from other such service groups to be engaged. They did not do that. They simply got Paja Sisters, a company which Mr Hevelawa had an interest in and engaged it to do the cleaning job without a starting date and a finishing date. When one acts in that manner, does that action not fall into the category of an arbitrary action? I am of the opinion that it does. To enter into a cleaning contract without obtaining 3 quotations from 3 service providers for cutting grass and landscaping but selecting only one company owned by Mr Hevelawa's wife is in my respectful opinion an arbitrary act.

44. Counsel for the defence also submitted that other cleaning service providers had rendered cleaning services to the OLA, such as Mogose sisters. He submitted that Paja Sisters was formed after Mogose sisters broke up after an argument between the head and the treasurer. There is no evidence that Mogose Sisters was a registered business group. Paja Sisters was a registered business group and its sole owner and director was Mrs Miriam Hevelawa. There is no evidence who the head of Mogose Sisters was. The effect of all these is that the engagement of Mogose Sisters is of no relevance to the engagement of Paja Sisters.

45. The defence further submitted that the decision to engage Paja Sisters was based on the facts and circumstances surrounding Mogose Sisters break up. It was submitted that the same women involved with Mogose Sisters earlier were the same women under Paja Sisters who approached Mr Timothy Numara who earlier engaged Mogose Sisters for the cleaning engagement.

46. What the defence failed to do with respect, is call those same woman involved in or with Mogose Sisters to support their contention. Those same women would have given evidence of who benefitted from those cleaning contracts and assisted their clients. All that the court has is that the cheques were written out in the name of Paja Sisters who is Mrs Hevelawa. Mrs Hevelawa's sorry is not corroborated by any of these same women involved with Mogose Sisters. The failure to obtain 3 quotes from cleaning service providers was an unfair omission.

47. This is because to not get other quotes from other service providers was not fair. In other words the decision to only engage Paja Sisters was an arbitrary decision and not a decision based on good conscience, practice, reason and good

governance.

48. The State submitted that by entering into the contract with Paja Sisters, Mr Hevelawa and Mr Numara abused their respective authorities in their respective positions. By using their authority by arbitrarily awarding the cleaning contract to Paja Sisters in effect Mrs Hevelawa, amounts to abuse of office in my respectful opinion.

FINANCE FORMS 3 AND 4

49. Mr Hevelawa signed the FF3 and FF4 forms which claims were for the benefit of Paja Sisters. Again in that regard these were arbitrary decisions to go ahead and process procurement for the benefit of Paja Sisters. Again to do this was abuse of authority as a Section 32 officer to sign off on the forms. In my humble opinion the actions of Mr Hevelawa and Mr Numara were arbitrary and an abuse of office.

INFLATED INVOICES

50. The evidence in relation to whether the invoices rendered to OLA by Paja Sisters were inflated came from the invoices themselves. Invoices 0005, 0006 and 0008 are in evidence and speak for themselves. The invoices are identical. I will reproduce Invoice 0006. The invoice is directed to the Director General OLA who then was Jacob Hevelawa and attention to Mr Numara and is dated 21 June, 2013.

| Item | Description | Quantity | U/Price | Total |
|------|---------------------------|----------|---------|---------|
| 1 | Cutting Grass | 50 | 1/350 | K17,500 |
| 2 | Landscape/Improvement | 50 | 1/250 | K12,500 |
| 3 | Removal of Rubbish | 50 | 1/150 | K7,500 |
| 4 | Lawn Mower Hire and Use | 8 | 1/1500 | K12,000 |
| 5 | Vehicle Hire and Use | 2 | 1/2500 | K5,000 |
| 6 | Cost of Fuel, Oil, Diesel | 10 | 1/200 | K2,000 |
| 7 | Members | 50 | 1/500 | K25,000 |
| 8 | Lunch for Members | 50 | 1/20 | K1,000 |

| | | | |
|--|--|----------------------------|-------------------|
| | | S/Total G/Total Vat 10% | K82,500 K8,500 |
| | | TOTAL | K91,000 |

51. When one looks at the Invoice 0006 there are 50 people to be paid at K350 per person with a total of K17,500.00 for grass cutting, 50 people to be paid K250 per person with a total of K12,500 for landscaping and improvement to be paid K150.00 per person with a total of K7,500.00 for removal of rubbish, 8 lawn mowers hired and used at K1,500 per lawn mower with a total of K12,000 for their hire and use, two vehicles hired and used at K2,500 for per motor vehicle with a total of K5,000 for their hire and use, 10 containers of fuel, oil and diesel at K200 per container for a total of K2,000, 50 members at K500 per member for a total of K25,000 and lunch money for 50 members at K20.00 per member for a total of K1,000.00. The sub-total of all that is K82,500.00 plus VAT at 10% at K8,500 and the grand total coming up to K91,000.

52. When one works out how much each of the 50 members would have earned from Invoice 0006 each of the 50 members would have earned K1,485.00. As alluded to earlier not one of the 50 members was called to confirm that he or she received any of the payments.

53. Moreover with respect not one of the lawn mower owners was called to give evidence that his or her lawn mower was hired by Paja Sisters at the material time. Similarly not one of the vehicle owners was called to support Mrs Hevelava's story. With respect I do not and cannot understand why the 50 members should be given any payment for lunch. Why would the OLA be paying for lunches.

54. Kakaito Kasi said it costs K205.00 to cut grass and clear the yard every month. Sibona Asigau said the payments should be around K15,000.00 to K20,000.00 and not beyond those amounts. He said the amounts invoiced by Paja Sisters were excessive and inflated. I too, with respect, think the amount quoted and invoiced were inflated and excessive and I find so. All these moneys were squandered in the absence of a Board. Had there been a board these matters may have caught the attention of the board and have the Director General to account for these activities and the huge amount of money that is more than a quarter of the

entire OLA budget for a year just on cleaning and landscaping.

55. In relation to Counts 1, 2 and 3 relating to charges of abuse of authority of office, I am satisfied beyond reasonable doubt that both accused Jacob Hevelawa and Timothy Numara did commit the offence of abuse of office as charged.

Conspiracy to Defraud

56. In relation to the charge of conspiracy to defraud the elements of the offence of conspiracy are:-

- a) A person
- b) On a date
- c) At a place
- d) Who conspires
- e) With another
- f) To defraud the public or any person.

In this case elements (a), (b) and (c) are not in dispute but (d), (e) and (f) are in dispute.

57. In relation to this charge there is no direct evidence that Mrs Hevelawa, Mr Hevelawa and Mr Numara conspired to defraud the State. Conspiracy as a noun means “*a secret plan by a group of people to do something harmful or illegal.*” (Oxford Advanced Learners Dictionary New 8th Edition). The question at this stage is – did Mrs Hevelawa, Mr Hevelawa and Mr Numara come up with a secret plan to defraud the State?

58. From Mogose Sisters experience, Mrs Hevelawa knew a cleaning job was there for the taking at OLA. She knew her husband was the boss at OLA. Although no direct evidence was adduced there is a high likelihood of Mrs Hevelawa talking or discussing the cleaning contract with Mr Hevelawa. This culminated in Mrs Hevelawa fulfilling her dreams to own her own business. This

was then progressed with Mr Numara's involvement in drafting the contract on behalf of Mrs Hevelawa and Paja Sisters. There is no direct evidence that Mr Numara discussed this with Mr Hevelawa. However the end product, that is the cleaning contract was signed by all three accused persons. I cannot imagine Miriam not discussing the matter of the cleaning contract with Jacob at home.

59. The law on conspiracy is that there must be an agreement between 2 or more people to commit an unlawful act or to commit a crime at some time in the future. Conspiracy could require one overt act in the furtherance of the agreement to constitute the offence. In this case there is no direct evidence of the agreement or conspiracy but the act of signing a cleaning contract between Mrs Hevelawa, Mr Hevelawa and Mr Numara in my respectful opinion is an overt act in the furtherance of an agreement between them. The consequential events of the filling of the Finance Forms 3 and 4 and the signing of them by Mr Hevelawa and Mr. Numara and the lodgment of the Paja Sisters Invoices are all overt acts in the furtherance of the agreement, in my respectful opinion. See *The State v Iori Veraga* (2005) N2921.

60. On the evidence, I am satisfied beyond reasonable doubt that elements (d), (e) and (f) of the charge of conspiracy to defraud have been made out. Accordingly, I find all 3 accused guilty to Count 4 of the charge beyond reasonable doubt.

Misappropriation

61. The accused are also jointly charged with 3 counts of misappropriation contravening s.383A(i) of the *Criminal Code Act*. The elements of the charge of Misappropriation are:-

- a) The accused
- b) On a date
- c) At a place
- d) Dishonestly applied
- e) To his or her own use or to use of another

- f) Property
- g) Belonging to another

The State has the burden to prove beyond reasonable doubt each of the elements of the charge.

62. Elements (a), (b) and (c) are not in dispute in that all three accused have been named and the date and place are specified and not in dispute. Elements (d), (e), (f) and (g) are disputed.

63. Dishonesty relates to the state of mind of the accused. In this case the issue is whether the accused acted dishonestly. In entering into a cleaning contract there is no doubt Mrs Hevelawa and Mr Hevelawa had vested interests to be entering into that contract. They both had vested interest in the cleaning contract. Mr Numara on the other hand, a very highly educated man and an experienced public servant ought to have known that Mr Hevelawa had a conflict of interest since his wife was also a party. He ought to have sounded or alerted Mr Hevelawa that he had a vested interest and was therefore in a conflict of interest situation and therefore should have stopped Mr & Mrs Hevelawa from entering into the contract. Looking at the conduct of Mr Hevelawa, Mr Numara and Mrs Hevelawa from the outside what would a decent, reasonable and an honest person think about their conduct individually and collectively? Similarly using the subjective test both Mr Hevelawa and Mr Numara are highly educated. They are also both very experienced public servants. Given their education levels, experience and intelligence, they would have appreciated that what they were doing was dishonest. By first of all entering into a cleaning contract and then signing finance forms 3 and 4 and then signing inflated invoices for excessive payments and then Mr Hevelawa giving instructions that the invoices be part paid, what was going on in their minds. Did they think their conduct was alright?

64. To put it bluntly with respect, their collective actions were to cheat the State. The inflated invoices which I have discussed earlier in detail and which speak for themselves is clear evidence that the amounts charged were in excess of the actual work done. The example of invoice 0006 glaringly overcharged OLA.

65. In the end result, I am satisfied beyond reasonable doubt that the accused intended to cheat, deceive and mislead (see *The State v Gabriel Ramoi* (1993)

PNGLR 390. I find each of them guilty to Counts 5, 6 and 7 of the charge of Misappropriation.

Public Prosecutor: *Lawyer for the State*

Public Solicitor: *Lawyer for the Defence*