

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) 221 OF 2016
CR (FC) 222 OF 2016
CR (FC) 223 OF 2016

BETWEEN:
THE STATE

AND:
MIRIAM HEVELAWA, JACOB HEVELAWA AND TIMOTHY NUMARA
(NO. 2)

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

CRIMINAL LAW – Practice and Procedure – Section 515 of Criminal Code - Conspiracy to defraud – Section 92 of the Criminal Code Act – Abuse of authority of office – Section 383A (1) and (2) of the Criminal Code – Misappropriation – what is the appropriate sentence – sentencing trend in dishonesty cases.

Case Cited:

Belawa v. The State (1988-89) PNGLR 486
Goli Golu v The State (1979) PNGLR 653
The State v David Kang (2009) N3603
The State v Iori Veraga (2005) N2921
The State v Nancy Leah Uviri (2008) N5468
State v Augustine Sekry CR 376 of 2005) (Unreported National Court decision)
State v Rictor Naiab (CR 387 of 2005) Unreported National Court decision
State v Joyce Gulum (CR 1620 of 2005) Unreported National Court decision
State v Paul Taro (CR 237 of 2006) Unreported National Court decision
The State v Steven Lasin (2007) N5052

Counsel:

Ms H Roalakona, for the State
Mr F Kirriwom, for the Accused

SENTENCE

15th September, 2017

1. **SALIKA DCJ: INTRODUCTION:** On 17th July 2017, I found Jacob Hevelawa and Timothy Numara guilty to 2 counts of abuse of authority of office pursuant to S.92 of the *Criminal Code Act*, one count of conspiracy to defraud under S.515 of the *Criminal Code Act* and three (3) counts of misappropriation under S383A(1) (a) of the *Criminal Code Act*.

2. On the same date and time I found Miriam Hevelawa guilty to one count of conspiracy to defraud under S.515 of the *Criminal Code Act* and three (3) counts of misappropriation under S.383A(1)(a) of the *Criminal Code Act*.

ISSUE

3. Having found each of them guilty to those various charges I am now left with the issue of sentence to impose on each of the prisoners on each of the counts.

4. I will also need to decide whether the sentences should be served concurrently or cumulatively.

THE LAW

5. Section 92 (1) of the *Criminal Code Act* says:-

“(1) A person employed in the Public Service who, in abuse of the authority of his office does, or directs to be done, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two years.

Section 515 of the *Criminal Code Act* says:-

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 be done.

is guilty of a crime.

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- to imprisonment for a term of seven years – not exceeding that

penalty.

Section 383A (1) (a) of the Criminal Code says:-

- (1) A person who dishonestly applies to his own use or to the use of another person –
(a) property belonging to another*

is guilty of the crime of misappropriation of property.

- (2) An offender guilty of the crime of misappropriation of property is liable to imprisonment for a term not exceeding five years except in any of the following cases when he is liable to imprisonment for a term not exceeding 10 years:—*

(a) where the offender is a director of a company and the property dishonestly applied is company property; or

(b) where the offender is an employee and the property dishonestly applied is the property of his employer; or

(c) where the property dishonestly applied was subject to a trust, direction or condition; or

(d) where the property dishonestly applied is of a value of K2,000.00 or upwards.

In this case the value of the property dishonestly applied is more than K2,000.00 and so they are liable for up to 10 years imprisonment.

6. The provisions referred to above set the maximum imprisonment terms for each of the offences committed. The Court may in the exercise of its discretion impose lesser terms pursuant to S.19 of the *Criminal Code*.

7. It is also trite law that the maximum imprisonment terms are only to be imposed where it is shown that a case is the worst of its type and that the maximum penalty is warranted. A case should be made out for a worst case scenario in my respectful opinion. See *Goli Golu v The State* (1979) PNGLR 653.

FACTS

8. Before the Court deals with the issue of what penalty to impose, it is only fitting that the factual background be set out first to get an appreciation of what happened. The facts are:-

- (a) Jacob Hevelawa was the Director General for the Office of Library and Archives from March 2011 to March 2014 and the co-accused, Timothy Numara was the Manager Corporate Services for the Office of Library and Archives. Miriam Hevelawa is the wife of accused Jacob Hevelawa and is the sole director of the company PAJA Sisters

Trading which was registered with the Companies Office on 6th December 2012.

- (b) The States allegation is that between the 1st day of December 2012 and 31st December 2013, the accused conspired to defraud the Independent State of Papua New Guinea for Mrs. Hevelawa to submit inflated invoices for grass cutting, landscaping and removal of rubbish through a contractor known as PAJA Sisters Trading of which the sole director is and was the accused, Miriam Hevelawa. The accused Jacob Hevelawa as the Director General of the Office of Library and Archives (OLA) and also the section 32 officer approved the payments knowing that the payments were to his wife's company.
- (c) The Contract of Agreement was signed by the Director General, Jacob Hevelawa and the Manager Corporate Service, Timothy Numara and Miriam Hevelawa on behalf of PAJA Sisters Trading on 2 January 2013.
- (d) There was no agreed value of the contract but payments were to be made to PAJA Sisters Trading upon lodgement of its invoices to the OLA.
- (e) Three invoices numbered 0005,0006 and 0008 all dated 21 June 2013 were submitted for payment by accused, Miriam Hevelawa to Timothy Numara for the sum of K103,250.00, K91,000 and K86,650.00 respectively all being for grass cutting, landscaping and removal of rubbish. These invoices did not specify the dates or periods when the alleged work was done. The amounts claimed were all inflated.
- (f) These invoices were submitted to the OLA and the relevant Financial Forms (FF3) were processed for payment. The accused, Jacob Hevelawa signed off on all these claims as the Section 32 officer approving the payments.
- (g) On 31 December 2013 three cheque payments were made to PAJA Sisters Trading in the amounts of K63,120.50 on BPNG Cheque no. 365 609; BPNG Cheque no. 365 473 for the sum of K20,000.00 and a third payment of K35,725.80 on BPNG Cheque no. 365 460.
- (h) These payments were all deposited into the bank account of PAJA Sisters Trading in January 2014 and then dishonestly applied to their own use and to the use of others.
- (i) The State says that the accused had conspired when they agreed to a cleaning contract without a value for the job done which allowed the

accused Miriam Hevelawa to invoice for simple work done for inflated amounts; the accused Jacob Hevelawa and Timothy Numara had abused the authority of their offices by approving and processing of the inflated payments despite a conflict of interest in the awarding of the contract and that all their actions were dishonest and they dishonestly applied the sum of K63,120.50; K20,000.00 and K35,725.80 respectively, the property of the Independent State of Papua New Guinea.

The State invoked section 7 of the *Criminal Code Act*.

PERSONAL PARTICULARS

(a) Miriam Hevelawa

9. Miriam Hevelawa is the wife of Jacob Hevelawa. She is now 49 years old from Tounumbu, Wewak, East Sepik Province. She and her family reside at Section 85, Allotment 15 Nasfund Compound, 9 Mile. From their marriage they have 4 children. She was educated to grade 6 level

(b) Jacob Hevelawa

10. Jacob Hevelawa is the husband of Miriam Hevelawa. He is now 56 years old and from Sufenduo village, East Sepik Province. His residential address is the same as his wife's. They have 4 children and have been married for 35 years. He has a Bachelors Degree in Social Work from the University of Papua New Guinea. He has served in the Ministry of Education for 32 years reaching the pinnacle of his career as the Director General of OLA for 9 years. He was displaced as a result of this case. He has no major health issues. He plays an active role in the community as a leader and is of sober habits.

(c) Timothy Numara

11. Timothy Numara is 57 years old and from Warapu Village, Aitape in West Sepik Province but is a resident in Hohola Section 350, Allotment 9, which is institutional property. He is married to a younger woman but they have no children of their own and have adopted a child. The younger wife after hearing of this case has now left him and he does not know where his wife and child are. He possess a Degree in Public Policy and Management from the University of Papua New Guinea. He has been with the Ministry of Education for 29 years and held various positions in the Ministry. He was promoted to Manager, Corporate Division with the OLA in 2006. He held that position until charged for this offence in March 2015. He has no major health issues. He takes alcohol once in a while.

MITIGATING FACTORS

(a) Miriam Hevelawa

- no prior conviction
 - co-operated with police
- (c) Jacob Hevelawa
- no prior conviction
 - co-operated with police
- (d) Timothy Numora
- no prior conviction
 - co-operated with police

AGGRAVATING CIRCUMSTANCES

- (a) Miriam Hevelawa
- went through her husband to get the cleaning contract
 - overcharged for the work done
 - overcharged a lot of money in the tune of K118, 000.00
 - charged for items which is not work
- (b) Jacob Hevelawa
- signed the cleaning contract drafted by Timothy Numara
 - effect of signing the cleaning contract was that he signed it for the benefit of Paja Sisters, his wife and himself.
- (c) Timothy Numara
- Drafted contract which his boss and his wife had a vested interest and conflict of interest in.
- Signed the contract which his boss had a vested interest and conflict of interest in.
 - Did not question the invoices when Paja Sisters lodged them with him for payment

BELAWA SENTENCING TARIFFS

9. The Supreme Court in *Belawa v. The State* (1988-89) PNGLR 486 set out some guide in terms of sentencing ranges. The following is what the Court suggested:-

- K1-00 to K1000 – no jail term imposed
- K1000 to K10,000.00 – 2 years imprisonment
- K10,000.00 to K40,000 – 2 to 3 years imprisonment
- K40,000 to K150,000 – 3 to 5 years imprisonment

10. Since the Supreme Court decision, circumstances in PNG have changed rapidly. The level of corruption and dishonestly has sky rocketed to a level that it was described by a former Prime Minister Sir Mekere Morauta as “systemic and systematic”. There is therefore a need to increase the tariffs from the *Belawa* suggested ones in my respectful opinion.

BELAWA SENTENCING CONSIDERATIONS

11. The following considerations are relevant in considering the appropriate sentence to impose on offenders.

(a) **How much did the offenders take?**

- altogether the offenders received K118, 846.30
- K20, 000.00 is deducted because they were probably entitled to that amount for the work done.
- therefore they got K98, 846.30

(b) **What was the level of trust held by the offenders?**

- Miriam Hevelawa, none but to protect her husband she should have been more vigilant and sought independent advice on at.
- Jacob Hevelawa and Timothy Numara were both in positions of high trust.
- Jacob Hevelawa was the Director General of OLA for the entire country while Timothy Numara was Manager Cooperate Service also for the entire country.

(c) **The period of time over which the fraud was perpetrated.**

- abuse of authority of office was from 31 December 2012 to 30 June 2015 a period of two and a half years.
- misappropriation was committed between 31 December 2013 to 30 June 2015 a period of one and a half years.

(d) **How was the money used?**

- presumably paid to people who worked but none of those people came to give evidence that they worked and got paid.
- no further evidence of how money was used.

(e) **What effect did the crimes have on victims?**

- the victim was the OLA which only had a budget of K4 million a year.
- over a quarter of the entire budget was to be spent on cleaning.
- Mr. Hevelawa was operating without a Board which he ought to have ensured it was operational.
- no books were bought because money was scarce.

(f) **What impact did the offences have on the public confidence?**

- there is no evidence on this aspect of the crime, however this is one of those cases where there was abuse of authority of office

and conspiracy to defraud when a cleaning contract was signed by Miriam Hevelawa with Jacob Hevelawa her husband

- this was improper
- public confidence in the State, its agencies and its officers integrity is questioned when contracts of this nature especially where there is abuse of authority of office, issues of conflict of interest and vested interest arise.
- when heads of State Departments or agencies enter into contracts with family members brings up issues of nepotism and corruption generally.

(g) **What effect has the conviction for the crime had on the offenders?**

- Mr. Hevelawa and Mr. Numara will be adversely affected by these convictions; may lose their jobs.
- it is disappointing for both officers who have put in a combined 61 years of unblemished service to the country to be in this situation.

(h) **Has restitution been made?**

- restitution has been offered but not been made.
- all prisoners have the means to retribute.

SENTENCING TRENDS

12. The Court will usually take into account the range of sentences imposed by other courts in previous cases. The Court will also normally consider what the maximum penalty for this offence is and work down to arrive at a sentence. Sentencing tariffs as suggested by the *Belawa* case give some guide as to what sentence to impose and the range of sentences to impose in the given circumstances of a case.

13. Sentencing is the exercise of the discretion of the court after a conviction has been recorded or after an accused has been found guilty of committing an offence under the *Criminal Code Act*.

14. Sentencing is therefore the exercise of the power conferred by the *Constitution*. Section 158 (1). It says:-

“Subject to this Constitution, “the judicial authority of the People is vested in the National Judicial System”.

15. The National Judicial System consist of:

- **the Supreme Court of Justice;**
- **the National Court of Justice; and**

- **such other courts as are established under section 172**

16. This court is therefore a court which exercises the judicial authority of the people of this country. One of the functions of this court is to try the cases and where convictions are recorded it has the power then to sentence offenders. This court is now exercising that function.

CASE PRECEDENTS

17. The National Court in *The State v David Kang* (2009) N3603 said:-

“the type of “white collar crimes like conspiracy to defraud are perpetrated by very smart and intelligent people. It may sometimes involve little or big planning depending on the size and the complexity of the unlawful activity to be undertaken by the accused person”.

18. Sakora J in *The State v Iori Veraga* (2005) N2921 sentenced Iori Veraga to 4 years imprisonment for conspiracy to defraud. In that case there was a conspiracy by the prisoner and others for the prisoner to inflate land valuation prices and to submit those valuation reports and Invoices for his professional fees to the National Provident Fund Board for payment. The maximum penalty for conspiracy to defraud is 7 years imprisonment.

19. In the *State v Niso* (2005) N2930 Gavara-Nanu, J sentenced the prisoner to 3 years 6 months for the offence of conspiracy to defraud and 7 years 6 months for misappropriation of K500,000.00.

20. The National Court in *The State v Nancy Leah Uviri* (2008) N5468 sentenced the prisoner to 7 years imprisonment for misappropriation of K300,000.00. The prisoner there was employed by Kimbe Bay Shipping Agencies Limited. She was in charge of the Section of the Company that received invoices from fishermen, who were selling fish to the company, which would hold the fish in the freezer department. Over a period of 19 months the prisoner issued invoices in bogus names and then used the invoices to obtain cash from the accounts section of the company to pay fishermen. Instead of paying the fishermen she used the money herself for her own use.

21. In *The State v Augustine Sekry* (CR 376 of 2005) *Unreported National Court judgment*, the prisoner pleaded guilty to misappropriation of K18,000. He was sentenced to 4 years imprisonment.

22. In the *State v Rictor Naiab* (CR 387 of 2005) *Unreported National Court judgment*, the prisoner there cashed company cheques in his custody as an Accounts Clerk by Hargy Oil Palm. He misappropriated K2,000 and pleaded

guilty to the charge and was sentenced to 18 months imprisonment.

23. In the *State v Joyce Gulum (CR 1620 of 2005) Unreported National Court judgment*, another accounts clerk with Hargy Oil Palm misappropriated K14,000.00. She pleaded guilty to the charge and was sentenced to 2 years imprisonment.

24. In *The State v Paul Taro (CR 237 of 2006) Unreported National Court judgment*, the prisoner pleaded guilty to misappropriation of K22,000.00. He was the branch manager of Hertz Hire Car. He received cash for hire vehicles but never receipted them. He was sentenced to 4 years imprisonment.

25. In *The State v Steven Lasin (2007) N5052*, the prisoner pleaded guilty to misappropriation of K10,888.00. He was sentenced to 4 years imprisonment. Those monies were for payment to be made to 4 electoral officers.

26. While the factual circumstances of each of the case precedents I have mentioned above are different to this case, the sentencing trend demonstrated by the above case precedents is quite telling. Offenders are sentenced to imprisonment for misappropriation of as little as K2,000 (18 months), K14,000 (2 years), K18,000.00 (4 years), K22,000.00 (4 years), K10,888 (4 years). In this case K118,000 was misappropriated. The factual circumstances of this case are such that I think the two men should get the most blame. I say this because the men have so many years of public service experience. They should have known better and protected themselves from such charges to be laid against them. Instead they went along with the plan and signed the cleaning contract to their own detriment and the detriment of Mrs Hevelawa. Mrs Hevelawa on the other hand should have used her good sense to be honest and charge for real values for work and not over charge and claim for things which was not work.

27. Misappropriation is a serious crime of dishonesty, deceit and fraud. It displays all the attributes of what is commonly known as corruption. This was corruption in the public sector. This type of conduct eats away at the fabric of our society. Our society should and must be made up and based on honesty, decency and fairness. Justice is about creating fairer societies and decent hard work. Justice is also about being fair and decent. All of them failed to be honest, decent and fair. Instead they all wanted to cash in on the authority of their positions.

28. You have proposed a scheme for repayment. That is fine but I do not want this to be seen as you paying your way out. I think you should serve some time in prison for the crimes you all committed. Moreover I am aware the savings you want to use for repayment are your superannuation funds and are only available after you retire or get retrenched. You can also access them at this time.

SENTENCE

29. I take into account all the mitigating factors for each of the prisoners. They are all first time offenders. Jacob Hevelawa has clocked 32 years with an unblemished record until this one off case. That is also same for Timothy Numara. He has put 29 years of unblemished record. This was a crime they could easily have realised and avoided if they, that is especially Mr. Hevelawa and Mr. Numara, had put their minds into what they were doing. Unfortunately, they did not put their minds as to whether there may be a conflict of interest or vested interest before signing the cleaning contract. Mr. Hevelawa was the boss; he should have picked it up and advised Mr. Numara not to go on with it. Moreover the fact that he was the boss and Mr. Numara was Manager Corporate Services, they ought to have realised that they were abusing the authority of their respective positions and both should have advised Miriam Hevelawa that it would not look good to engage family members in the cleaning activity. They failed and now find themselves in this situation.

30. Taking into account all the mitigating factors and the aggravating factors I have decided to deal with them this way. They are each that is Mirriam Hevelawa, Jacob Hevelawa and Timothy Numara sentenced to 5 years imprisonment for the charge of conspiracy to defraud. For the charge of abuse of authority of office Jacob Hevelawa and Timothy Numara are sentenced to 2 years imprisonment. For charge of misappropriation they are each that is Mirriam Hevelawa, Jacob Hevelawa and Timothy Numara sentenced to 5 years imprisonment. All those sentences are to be served concurrently with each other, meaning that altogether they are sentenced to 5 years imprisonment. However 3 of those years are suspended on conditions that each of them repay K32,945.50 to the OLA within 12 months of today's date. Both Mr Hevelawa and Mr Numara have sought money in their super fund to repay and so I order that K65,890 be paid from Mr Hevelawa's Nambawan Super Fund to pay OLA for himself and Mrs Hevelawa and that K39,945.50 be paid from Mr Numara's Nambawan Super Fund to repay OLA. They will each serve 2 years imprisonment which is the balance to be served from the 5 years.

Ordered accordingly.

Public Prosecutor: *Lawyer for the State*

Public Solicitor: *Lawyer for the Accused*