

N9388

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) NO. 347-356 OF 2017

**BETWEEN:
THE STATE**

**AND
JONAH POSA**

Mt Hagen: Salika CJ
2021: 8th February; 5th July
2022: 3rd January

CRIMINAL LAW – Practice and Procedure – Misappropriation charges – s. 383 A of the Criminal Code Act – Whether the accused received the cashed money – Whether the accused dishonestly applied the money.

Cases Cited:

Hagena v The State (2017) SC1659
Kindi Lawi v The State [1987] PNGLR 183
Roland Tom and Kalen Kopen v The State (2019) SC1833
State v Gabriel Ramoi [1993] PNGLR 390
The State v Amoko Amoko [1981] PNGLR 373
The State v Basse [2016] PGNC 131: N6322
The State v Laumadava [1994] PNGLR 291
The State v Titeva Fineko [1978] PNGLR 262

Counsel:

Mr F Popeu, for the State.
Ms E Wurr with *Mr D Pepson*, for the Accused.

3rd January,2022

1. **SALIKA CJ: INTRODUCTION:** The Accused in this matter is charged with 39 counts of dishonestly applying to his own use a total of K1,317,015.16, the property of the Western Highlands Provincial Government (WHPG), between 2013 and 2014. The charge is brought under s. 383 A (1) (a) of the *Criminal Code Act (CCA)*.
2. He denied all the 39 counts and a trial ensued.

Allegations on Arraignment

3.1 The Accused Jonah Posah was employed as the Acting Provincial Accountant with the Western Highlands Provincial Government (WHPG) here in Mt Hagen from 2013 to 2014. In 2014, a new Provincial Treasurer, a Mr Timothy Rupula was appointed.

3.2 Mr Rupula upon taking office in June 2014 conducted a quality check of the Western Highlands Provincial Government Operating Accounts namely the Western Highlands Provincial Government Operating Account No. 1000321067, the Western Highlands Government Grant Account No. 10001684852 and the Western Highlands Provincial Treasury Account No. 100874179 and noted that certain cheques showing in the Bank Statements were not showing in their Cheque Reconciliation Listings and Cash Book in the Treasury Office. Mr Rupula wrote to the Provincial Administrator (PA) Mr Joseph Neng of his investigation results. The PA wrote to the Department of Finance to do an audit of the accounts of the WHPG.

3.3 The National Finance Department carried out an investigation into these matters and it discovered that PGAS Cheques from the Western Highlands Provincial Treasury were being unlawfully printed outside of the normal cheque printing process and the cheques were being cashed.

3.4 Further investigations were carried out by the Police concerning the allegations and the accused was arrested and charged together with a number of other suspects employed in the WHPG Treasury Office.

3.5 It is alleged with respect to the Accused that whilst being the Acting Provincial Accountant, he was the immediate supervisor to all the other staff in the Treasury Office in the absence of a Provincial Treasurer.

3.6 By virtue of his position, he gained access to the Blank Cheques being kept in the Cheque Printing Office within the Treasury Office and with the assistance of 3 other female officers, lodged requisitions and FF3's and FF4's

and wrote out cheques in their own names and names of few other unsuspecting employees of the Treasury Office on the blank PGAS cheques and had the cheques paid out in Cash Advances in their own names and in the names of those other employees.

3.7 The Accused was a signatory to all 3 main Provincial Government Operating Accounts together with the 2 other female officers at the Treasury namely; Wilma Pole and Linah Mark, and all three were actively involved in, first of all, raising false FF3's and FF4's and then at the end of the process, had the cheques printed in their own names and in the names of some of the unsuspecting employees in the Treasury Office. All the confirmation letters for the payment of cash on the various cheques were signed off by the Accused and Wilma Pole would sign as the Counter Signing Officer. These cheques were then taken to the BSP Bank in Mt Hagen and cashed out on all occasions on the same day of presentation of the cheques.

3.8 Where it was required for the payees signature on the cheque, it is alleged that whoever of them took the cheques to the BSP Branch in Mt Hagen, that person would forge the signatures of those payees and the cheques would be encashed.

3.9 This was the *modus operandi* of the Accused and his accomplices who in the end paid themselves monies to the value of K1,317,015.16. It was such a simple scheme the Accused and others designed to commit the offences and it was working well.

3.10 It is alleged that the Accused by doing this between the 1st of March 2013 and August 2014, raised for himself, 11 cheques to the value of K419,000.00 and dishonestly applied the money to his own use.

3.11 It is also alleged that the Accused after raising cheques in the name of 5 other unsuspecting employees, had their cheques cashed at the BSP Bank in Mt Hagen and he received the cash and applied the money to his own use and purposes also.

3.12 The total amount of monies he received in this scheme is a further K410,459.16, bringing the total monies he directly received and benefited to the tune of K829,459.16.

3.13 It is further alleged that the 3 female officers received a total of K487,556.00 from cashing of 16 PGAS cheques. It is alleged that they cashed and applied the money to their own use.

3.14 It is also the State's allegation that because he aided the 3 female officers in raising their cheques and cashing them, the Accused by virtue of Section 7 of the *Criminal Code Act*, is considered and deemed to have

dishonestly applied the money totaling K487,556.00 to the use of his 3 colleagues. He therefore is responsible for the actions of the three female officers and the three female officers are similarly responsible for his actions.

3.15 It is the State's allegation therefore that the Accused Jonah Posa by his actions dishonestly applied K829,459.16, money belonging to the Western Highlands Provincial Government to his own use and he dishonestly applied K487,556.00 to the use of other persons as named in the indictment.

3.16 The total monies alleged to have been dishonestly applied to his own use and to the use of other persons is K1,317,015.16. However, that total amount is decreased as a result of 3 charges being dismissed on the no case submission.

4. Firstly, I put on record that this case was never pre-trialed by the resident Judges and visiting Judges alike until it came on for trial. I indicated to counsel that it was too late for that now and the matter went to trial without a pretrial. The advantages of pre-trial are that the allegations are properly identified and the defenses, made known and the issues crystalized. This makes the Trial Judge's work more focused on the issues and makes the work of the State Prosecutor and the Defense Counsel more focused on their respective cases, in terms of what witnesses to call and more focused cross-examination of the witnesses. In doing this, time is gainfully utilized and costs minimized.

5. That said, this case was trialed in a long-winded way and to me the most concerning things in this case are how fragile the country's procurement process is, and secondly, how very serious fraud cases are assigned to fairly junior officers to investigate. This was one such case.

ISSUES

6. The issues for the Court to determine are:

- (i) Whether the Accused was involved in any manner in the raising of the requisition forms, the Finance Form 3 and Finance Form 4 (FF3's and FF4's);
- (ii) Whether the accused followed the procurement process under the Public Finance Management Act (PF(M)A);

- (iii) Whether the accused received any of the cash proceeds from the 33 PGAS cheques cashed.
- (iv) Whether the cash money was used for the purposes requested and applied for by the accused.
- (v) If he did, whether the accused dishonestly applied the cash money for his own use or to the use of others.

ELEMENTS OF CHARGES OF MISAPPROPRIATION

7. Section 383 A (1) (a) of the *Criminal Code Act* provides:

383A. MISAPPROPRIATION OF PROPERTY.

[\[122\]](#) (1) *A person who dishonestly applies to his own use or to the use of another person—*

(a) property belonging to another; or

(b) ...

is guilty of the crime of misappropriation of property.

8. The following are elements of the charge:

- a) The accused.
- b) On a date;
- c) At a place;
- d) Dishonestly apply to his own use, or use of another;
- e) Property belonging to another.

9. The State has the burden of proof to prove each and every element of the charge beyond reasonable doubt. To do that, the State must adduce credible evidence from witnesses who saw and heard first-hand what happened. The State may also adduce circumstantial evidence to prove its case.

Explanation of Charges

10. Jonah Posa is charged with 39 counts of misappropriation of K1,317,015.16. Counts 1 to 4 and 6 to 11 are payments allegedly made out in the name of Jonah Posa and are monies allegedly applied by him for his own use. Counts 12 to 22 relate to Provincial Government Accounts System (PGAS) cheque payments made in the name of other officers in the Provincial Treasury Office and to an entity but the monies in the cheques were used by the Accused Jonah Posa for his own use. Counts 23 and 25 to 34 and 36 to 38 relate to PGAS cheque payments raised in the names of three female officers and allegedly allowed to be used for the benefit of those three female officers by the Accused, their Supervisor.

Facts not Disputed

11.1 Jonah Posah was at the material times (between December 2013 and August 2014) the Acting Provincial Accountant with the Western Highlands Provincial Treasury in Mt Hagen.

11.2 On occasions in the absence of the Provincial Treasurer, he was the overall immediate supervisor to all the staff/officers at the Provincial Treasury Office and that included all those officers who had the PGAS Cheques raised in their names in that period in question.

11.3 He was a signatory to all 3 WHP Government Operating Accounts held at BSP Mt Hagen namely:

- a) The WHP Government Operating Account # 1000321067,
- b) The WHP Government Operating Account # 1001684852, and
- c) The WHP Treasury Operating Account # 100874179.

11.4 Two other female officers namely Wilma Pole and Linah Mark were counter signatories to these same accounts and in those capacities, they raised PGAS Cheques as Advances in their own names and in the names of other Provincial Treasury Officers and had them cashed at the BSP Mt Hagen Branch.

11.5 Of all the cheques cashed, in this case, Jonah Posa signed as signing officer and Wilma Pole signed as counter signing officer in most of the cheques whilst Linah Mark signed only 4 of the cheques.

11.6 In all, Letters of Authority or Confirmation produced to the bank in

respect of the cheques, Jonah Posah signed on all of them with Wilma Pole and only on two of these letters, Linah Mark signed in place of Wilma Pole.

11.7 Except for K10,000 being for the purchase of bank cheque application in the name of Jonah Posa and K7,750 in the names of Linah Mark and Wilma Pole respectively for the same purpose that were deposited into their respective accounts, all the other 33 remaining cheques were cashed at the counter at BSP Mt Hagen on the same day of presentation of the cheques with letters of authorization.

Facts in Dispute

12.1 The Accused was not involved in the cashing of the 33 PGAS cheques at BSP Mt Hagen Branch directly or indirectly.

12.2 That the cashed proceeds of those 33 PGAS cheques were lawfully and genuinely applied for their intended purposes.

12.3 That he did not dishonestly apply the proceeds of the cheques totaling K1,109,015.16 to his own use and, or to the use of other persons.

Evidence

13. The State's first witness was Tom Tiki. He is the First Assistant Secretary, Department of Finance Internal Audits and Compliance Section. A request was made by the Western Highlands Provincial Government to the Department of Finance to conduct an audit investigation into the accounting anomalies found in reconciliation of the books of accounts of the Western Highlands Provincial Government. The witness was part of the investigation team to Mt Hagen and he compiled an audit report which was tendered into evidence with no objection from the defense counsel.

14. The Audit Report relevantly, among other things, contains the following:

- a) Executive Summary;
- b) Objectives;
- c) Scope;
- d) Audit Findings; and
- e) Recommendations.

15. The audit report says that most, if not all cheques were printed and made payable to individual Provincial Treasury Officers, namely the accused

Jonah Posa, Wilma Pole, Linah Mark, Priscilla Nasa, Suka Wagame, Maria Agil, Joe Pawa and Peter Pombone for various amounts which now form the basis for the various cheques. Mr Tiki's oral evidence supports the audit report he authored.

16. The audit report also highlighted and is critical of the fact that the normal procurement procedure would have been for the finance forms 3 and 4 (FF3's and FF4's) also referred to as payment vouchers are to be prepared and submitted by the authorized requisition officer(s) for cheques to be drawn out in favour of the suppliers of goods and services. In this case, some FF3's and FF4's were submitted purposely for District Treasury rollout programs for cash advances for the supply of white and brown goods. The cash advances requested were to be paid out to the Provincial Treasury Officers namely, Jonah Posa, Wilma Pole, Linah Mark, Priscilla Nasa, Suka Wagame, Maria Agil, Joe Pawa and Peter Pombone. All the claims submitted for payment were all under K50,000.00, which was in the financial threshold authority of the Deputy Branch Manager of BSP, Mt Hagen Branch. Again, Mr Tiki's oral evidence supports the audit report.

17. The audit report further highlighted that the PGAS cheques were printed in the Provincial Treasury Office in the name of those officers and presented to the Bank for cash payments. A "PLEASE PAY CASH" rubber stamp designed for that purpose was imprinted on the face of each of the cheques to authorize payment by cash and would be signed off on all those cheques by Jonah Posa, the Provincial Treasurer, and the accused in this matter. The cheque would be taken to the BSP Mt Hagen Branch and presented with a letter by either the payee of the cheque or Jonah Posa to the Bank Tellers to be cashed. The cash was paid out to whoever was present at the bank counter who presented the cheque to the teller for payment. Once the cash was paid out, the transaction was never recorded on the cash register book kept at the Provincial Treasury Office. From that time on, there was no record of whether the payee used the cash money to purchase those white and brown goods from the suppliers to furnish the District Treasury Office and the accommodation. That with respect appeared on the evidence to be the scheme from December 2013 through to August 2014, a period of 9 months. Mr Tiki supported his written audit report with his oral testimony.

18. The next witness Joseph Neng was the Acting Provincial Administrator at the material time. He is no longer in office. From what I gather from him he did not know whether he was the S32 officer, for the purpose of the PF(M)A, whether he was a signatory to the relevant Provincial Government Bank Accounts and whether he signed any of the cheques in question. In the end, he agreed he was the S32 Officer under the PF(M)A and that he was a signatory to the relevant Provincial Government Accounts involved in this

case.

19. With respect, this witness only became involved in requesting the Department of Finance to do the audit inspection of the Provincial Government bodies of accounts. His involvement in the alleged fraud was after the event and with respect the casual attention this witness gave to what was happening right under his very watch is alarming. For instance, the very officers allegedly involved in the scheme are still employed in the Provincial Treasury Office.

20. Mr Neng was shown an FF3 and FF4 requisition forms wherein he saw his signature on the form and agreed he signed the FF3 form approving the requisition for K40,000.00 as cash advance for white goods for the District Treasury Rollout Program in the name of Jonah Posa, the accused. That documentation related to only Count 11 on the indictment and that was the only FF 3 he signed and approved.

21. The next witness was Timothy Rupula, the current Provincial Treasurer (PT) or Provincial Finance Manager (PFM). He became the PFM in 2013 and discovered the anomalies and the gross abuse of the procurement process by the Provincial Treasury Officers including the Acting Provincial Accountant, Jonah Posa. His evidence was that cash advances should not be given to individual finance officers, but if there were cash advances to the officers, those officers must do the acquittals before another cash advance is requested and a cheque is raised.

22. This witness said he alerted the PA of what he discovered and asked him to write to the Finance Secretary, Dr Ken Ngangan, to commission an audit of the WHPG accounts. His evidence was that a Provincial Capacity Building Program was carried out by him to assist provincial officers to do proper monthly reconciliations and using that program, he discovered the WHPGAS cheques were showing in the bank statements but not in the Provincial Treasury Records. On checking with the BSP in Mt Hagen, he discovered that while the bank balance was showing that monies were being paid out, the cash book records at the Treasury Office did not balance out and was not reflecting the payouts being done at the bank.

23. On closer examination, the physical cheques presented for payments at the BSP in Mt Hagen did not match the records held at the Treasury Office. This meant that the cheques were not raised within the system and that no proper processes were followed to raise those cheques presented at the bank. In other words, the proper procurement process was not followed to have the cheques processed.

24. It was put to Mr Rupula in cross examination that records were kept and the acquittals were made by the Accused but those records were deliberately hidden or kept away from the audit team. Mr Rupula denied this suggestion. It was also suggested to him that he had a personal interest in the matter and did not give the documents to the audit team. He denied these suggestions too. It was put to him that he was lying about cash advances paid out as he was himself a recipient of such cash advance to which he said he acquitted his cash advance.

25. He was questioned about the Provincial Finance Advisor approving the FF3 and FF4 requisitions for cash advance to suggest that what the accused and others were doing was an accepted practice. Mr Rupula said while the PA signed as the S32 officer, he (Mr Rupula) was required to sign the FF3 and FF4 as the financial delegate and in this case, he did not. He said he did not sign on the FF3 and FF4 forms therefore the requisitions were invalid.

26. The next witness, Maria Argil, is an employee of Western Highlands Provincial Treasury Office, working as a Revenue Registry Clerk, and in 2013 and 2014, she was the Cash Office Clerk and her role was to collect revenue for the Provincial Government. Her other critical evidence was that she never filled an FF3 and FF4 requisition for cash advances for herself or anyone. She denied seeing and receiving any cheque raised in her name and denied receiving any money advances from that cheque.

27. The next witness was Philip Kunjil, an employee of the Western Highlands Provincial Treasury Office, as an examiner. His duty there was to examine all claims that came through the process before cheques were issued. His evidence was that a cheque in the sum of K35,000 was raised in his name which he was not aware of. He also said the requisition for that cheque payment was never examined by him. Someone else benefited with the K35,000.00 cheque that was raised in his name. The witness's evidence was in relation to Count 39 of the charges.

28. The next witness was Elizabeth Pym, who is the Certifying Officer with the Western Highlands Treasury Office at the material time. Part of her duty was to maintain accurate financial records of the Provincial Treasury Office; maintain a register of all Advances and Acquittals and ensure all claims coming into the Treasury Office Accounts were registered. Her job was to examine all claims to ensure they were approved by S32 officers and Financial Delegates and ensured all supporting documents were attached to the claims.

29. The witness was shown Exhibit G, which is an FF4 concerning cheque voucher 138570 for K40,000.00 in the name of Jonah Posa relating to Count

11. She was shown the FF4 and said she was supposed to sign as the certifying officer on it but Linah Mark signed instead. She said if she is not available, Jonah Posa would sign but in this case Linah Mark signed. She said she never benefited from any of the cash advances in this case.

30. Peter Pembono was the next witness. He worked as a cleaner at the Provincial Treasury Office at the material time. A cheque numbered 9753 in his name for K23,105.16 was shown to him and agreed the cheque was in his name, but said he never put in a requisition for cash advance and never got the money. He was not aware that such a claim had been raised in his name and that a cheque for the said amount had been raised in his name. He never benefited from this cheque. The cheque was tendered into evidence and is Exhibit I in relation to Count 21.

31. The next witness for the State was Vincent Minagu, an investigator with the Bank South Pacific. He was attached to the Highlands Regional Investigation Unit at the time of the investigation in this matter. His evidence is that he responded to search warrants served by the Police on the BSP Mt Hagen Branch. He said by virtue of the search warrants issued, the Bank was required to produce copies of the PGAS cheques, payment vouchers and other related supporting documents relating to this case including FF3's and FF4's. He complied with the search warrants and located the relevant cheque copies, confirmation letters and payment vouchers and handed them over to the Police Investigator, Detective Constable Joyce Pinia, of the Fraud and Anti-Corruption Division of the Constabulary.

32. Bank documents tendered into evidence through this witness by the State without objection are now exhibits before the Court. There were instances where the confirmation letters signed by the accused did not accompany cheque copies. The following bank documents tendered through this witness were:

1. Indemnity Receipt dated 27.10.16 relating to WHP Govt Grant AC No. 1001684852	Exhibit J
2. Bank Statement of WHPG Grant AC 1001684852	Exhibit K
3. Let for Prov Treasurer requesting change of Signatories to above AC (pges)	Exhibit L

4. Copy of Purchase of Bank Chq Application showing 3 names Linah Mark K7,750, Wilma Pole K7,750 and Jonah Posa K10,000.	Exhibit M (subject of Count 38, Count 33 and Count 10 respectively).
5. Chq No. 9759 (9550) in name of Wilma Pole for K40,000 dated 31.12.13.	Exhibit N (Subject of Count 29)
6. Chq No. 9757 (9548) dated 31.12.13 for K49,500.00 in name of Jonah Posa	Exhibit O (Subject of Count 2)
7. Chq No. 9753 (9750) dated 20.12.13 in name of Jonah Posa for K40,000.00.	Exhibit P (Subject of Count 1)
8. Chq No. 9755 (9752) dated 20.12.13 in name of Suka Wagame for K30,000.00.	Exhibit Q (Subject of Count 13)
9. Chq No. 9551 (9760) dated 31.12.13 in name of Suka Wagame for K38,500.00	Exhibit R (Subject of Count 12)
10. Chq No. 9772 dated 31.12.13 in name of Priscilla Nasa for K15,000.00.	Exhibit S (Subject of Count 23)
11. Chq No. 9803 dated 26.05.14 in name of Jonah Posa for K40,000.00.	Exhibit T Cheque not subject of any charge.
12. Chq No. 9552 (9761) in name of Maria Argil for K37,554.89.	Exhibit U (Subject of Count 16)
13. Chq No. 9754 dated 31.12.13 in name of Air Niugini for K40,000.00.	Exhibit V (Subject of Count 22)
14. Statement for 2013 for WHPG Treasury Operating AC 1000874179 plus Indemnity Receipt.	Exhibit W
15. Bank Statement as above for 2014	Exhibit X
16. Chq No. 17435 dated 26.5.13 in name of Wilma Pole for K30,000.00.	Exhibit Y (Subject of Count 32)
17. Indemnity receipt dated 27.10.16 re WHPG Operating AC N 10000321067	Exhibit Z

18. Bank Statement of AC for WHPG Operating AC for Jan 2013 to Dec 2013 and Jan 2014 – Aug 2014.	Exhibit AA
19. Chq No. 138224 dated 12.2.14 in name of Wilma Pole or K30,000.00.	Exhibit BB (Subject of Count 30)
20. Chq No. 138240 (138217) dated 23.12.13 in name of Wilma Pole for K39,306.00	Exhibit CC (Subject of Count 31)
21. Chq No. 139009 dated 31.7.14 in name of Wilma Pole for K40,000.00.	Exhibit DD Cheque not subject of any charge.
22. Chq No. 138226 (138025) dated 6.2.14 in name of Suka Wagame for K35,000.00.	Exhibit EE (Subject of Count 14)
23. Chq No. 138220 (1382390) dated 21.02.14 in name of Priscilla Nasa for K32,500.00.	Exhibit FF (Subject of Count 25)
24. Chq No. 138368 (138366) dated 29.4.14 in name of Priscilla Nasa for K30,000.00.	Exhibit GG (Subject of Count 27)
25. Chq No. 138284 dated 11.4.14 in name of Priscilla Nasa for K34,000.00.	Exhibit HH (Subject of Count 26)
26. Chq No 13804 and 138225 dated 6.2.14 in name of Priscilla Nasa for K30,000.00.	Exhibit II (Subject of Count 24) Dismissed at No Case Submission stage)
27. Chq No 138571 dated 26.5.14 in name of Priscilla Nasa for K25,000.00.	Exhibit JJ (Subject of Count 28)
28. Chq No. 138027 dated 21.2.14 in name of Maria Argil for K40,000.00.	Exhibit KK (Subject of Count 18)
29. Chq No 138223 dated 6.2.14 in name of Maria Argil for K40,000.00.	Exhibit LL (Subject of Count 17)
30. Chq No. 138366 or 137481 in name of Maria Argil for K30,000.00.	Exhibit MM Cheque not subject of any charge.
31. Chq No. 139102 dated 6.8.18 in name of Maria Argil for K42,000.00.	Exhibit NN Cheque not subject of any charge.

32. Chq No. 138224 or 138023 dated 6.1.14 in name of Jonah Posa for K45,000.00.	Exhibit OO (Subject of Count 3)
33. Chq No. 139008 dated 31.7.14 in name of Jonah Posa for K40,000.00.	Exhibit PP Cheque not subject t of any charge.
34. Chq No. 138570 dated 26.5.14 in name of Jonah Posa for K40,000.00.	Exhibit QQ (Subject of Count 11)
35 Chq No. 138263 or 138367 dated 29.4..14 in name of Jonah Posa for K40,000.00.	Exhibit RR (Subject of Count 9)
36. Chq No. 138291 or 138238 dated 21.2.14 in name of Jonah Posa for K48,500.00.	Exhibit SS (Subject of Count 4)
37. Chq No. 138285 dated 2.4..14 in name of Jonah Posa for K25,000.00.	Exhibit TT (Subject of Count 7)
38. Chq No. 138274 dated 6.1.14 in name of Jonah Posa for K45,000.00.	Exhibit UU (Subject of Count 6)
39. Chq No. 138283 dated 11.4.14 in name of Jonah Posa for K36,000.00.	Exhibit VV (Subject of Count 8)
40. Chq No. 138572 dated 26.5.18 in name of Wilma Pole for K35,000.00.	Exhibit WW (Subject of Count 34)
41. Chq No. 136764 dated 23.6.14 in name of Wilma Pole for K40,000.00.	Exhibit XX Cheque not subject of any charge.
42. Chq No. 138218 dated 21.2.14 in name of Linah Mark for K42,700.00.	Exhibit YY (Subject of Count 37)
43. Chq No. 139105 dated 6.8.14 in name of Linah Mark for K35,000.00.	Exhibit ZZ Cheque not subject of any charge.
44. Chq No. 138026 or 138227 dated 6.2.14 in name of Linah Mark for K40,000.00.	Exhibit AAA (Subject of Count 36)
45. Chq No. 138286 dated 10.4.14 in name of Joe Pawa for K18,000.00.	Exhibit BBB (Subject of Count 15)

46. Chq No. 138275 dated 2.4.14 in name of Maria Paka for K45,000.00.	Exhibit CCC (Subject of Count 20)
47. Chq No. 174354 dated 26.3.14 in name of Jonah Posa for K40,000.00.	Exhibit DDD (Subject of Count 5) Dismissed at No Case Submission stage relating to Count Number 5.

33. The next witness for the State was Joe Pawa, a security guard employed at the Western Highlands Province Treasury Office. A PGAS cheque for K18,000.00 was raised in his name but in evidence he said he never knew anything about the cheque raised in his name and never benefited. The cheque in his name was cashed but said he never saw the money.

34. The next State witness was Detective First Constable Joyce Pinia. She was the arresting and investigation officer of this case. She gave evidence of events leading to the arrest of the accused and others including BSP Mt Hagen Branch officers. Her evidence also covered obtaining of the accused's personal bank account statements which showed some unusual bank deposits during that material period and cashed.

35. The State's next witness was Linah Mark. She was and is one of the officers who worked with the accused at the Provincial Treasury Office in Mt Hagen. She was also one of the officers who was charged by the Police. The State filed a *Nolle Prosequi* in relation to her charges with a view to give her immunity from prosecution and to have her testify against the accused. On that basis she gave evidence for the State.

36. Her evidence at the time of giving her evidence, was that she was the Acting Provincial Accountant although she admitted she was not qualified for the job. She recalled one particular cheque for cash payment to pay casual labourers in her name. She said she did not submit any requisitions for such payment, but someone at the accounts did and when the cheque was raised, she collected the cheque and had the cheque cashed and said she gave all the cash to Jonah Posa. The defense counsel never disputed her evidence on this through cross-examination. This evidence remains uncontradicted.

37. The witness was asked if the raising of the cheques in the name of employees in the Provincial Treasury Office was a normal practice and she said at times when there was an urgent need for cash for whatever reason, a cheque would be raised in someone's name and cashed the same day. However, the PF(M)A does not authorize such a practice, therefore is not lawful. In any case, even if raising cash advances were proper, there is no suggestion that the cash advances made and cheques processed were for emergency purposes. There is no urgent situation in evidence why the

cheques were raised for the urgency.

38. She went on to say that the cheque raised in her name to pay the casual labourers in the sum of K46,821.70 was raised in that manner which she then cashed and gave the cash to Jonah Posa, because she said he was her superior. She was never asked if there was a list of labourers names to be paid attached to the requisition forms and the FF3's and FF4's, either by the State or the defense.

39. She was shown other cheques raised in her name and her evidence is that she assisted in cashing the cheques and giving the cash to Jonah Posa or she would give the cheques to Jonah Posa which were open for encashment. When asked why she gave the cash and cheques to Jonah Posa, she said he was her superior and that those were his instructions.

40. The final witness for the State was Amnesia Sisi, a BSP officer in Mt Hagen at the material time. She was questioned about the PGAS cheques which were cashed so easily at the BSP Mt Hagen Branch and her explanation was that when a cheque was signed three times on the face or front of it, it meant that the cheque was open to be cashed and that usually all supporting documents and a letter of confirmation for payment would be attached to the cheque to be encashed.

41. A critical aspect of her evidence is that all claims raised in all the cheques which were raised were all below the amount of K50,000.00. All claims and cheques raised for amounts below K50,000.00 were all in the financial threshold authority of the Deputy Manageress of the BSP Mt Hagen Branch. In this case, all requisitions and all FF3's and FF4's and all cheques raised were all below K50,000. Was this a mere coincidence or was it a deliberately played out scheme, so that only selected persons or officers were involved in cashing the cheques?

42. In relation to confirmation or authorization letters, this witness said the signatories on the letter would be called on their phone numbers to confirm the transactions and verify the payments before the actual payment is made. This meant that the accused would have been called by the bank tellers and he would confirm the transaction and the cash payout. This evidence remains uncontradicted.

43. The Deputy Manageress of the BSP in Mt Hagen Branch at the time of trial was not available to be called to give evidence having either transferred or terminated.

44. At the end of the State evidence, the Defence made a no case submission which was upheld in part in relation to three counts on the indictment. In relation to other 36 charges, the Court found he had a case to

answer.

DEFENCE CASE

45. The accused exercised his rights by declining to give evidence and remain silent.

EVIDENCE OF LINAH MARK, AN ACCOMPLICE

46. The evidence of Linah Mark may in fact be evidence of an accomplice. Evidence of accomplices must be treated with care and caution because often accomplices will downplay their own role in a crime. In *The State v Basse* N6322, this Court said, “***an accomplice is a person who helps others to commit a crime or do something wrong***”. In the matter of *Hagena v The State* (2017) SC 1659, the Supreme Court held that the need for a primary Judge to warn himself of the dangers of relying on an accomplice’s testimony is only necessary when the only evidence before the Court to make a determination of guilt is dependent on an accomplice’s uncorroborated testimony.

47. The law on whether or not to accept the evidence of an accomplice against another accomplice is that an accomplice accused may be convicted on the evidence of an accomplice witness, however, before convicting the accomplice accused, the trial judge must warn himself or herself of the dangers in relying on the sole evidence of an accomplice witness. See *The State v Titeva Fineko* (1978) PNGLR 262 and *State v Amoko Amoko* (1981) PNGLR 373.

48. In this case, there is other credible evidence from other witnesses, thus the need to warn myself does not exist. If I am mistaken on this, I will still warn myself of the danger of relying on Linah Mark’s evidence. Her evidence is consistent with the paper and cheque trail and in that regard credible.

ANALYSIS OF THE EVIDENCE

49. First of all, I take note of the undisputed facts and the disputed facts. The primary pertinent undisputed facts are that Jonah Posa was the:

- a) Acting Provincial Accountant at the Provincial Treasury Office in Mt Hagen;
- b) The Provincial Treasurer is the immediate boss responsible for the Provincial Treasury Office;

- c) In the absence of the Provincial Treasurer, the Accountant would act as the boss;
- d) Was a signatory of all three WHPG Operating Accounts held at the BSP Mt Hagen Branch;
- e) Wilma Pole and Linah Mark, employees at the PTO in Mt Hagen were counter-signing officers to those three WHPG Operating Accounts held at the BSP Mt Hagen Branch, and in this case, both signed as counter signing officers.
- f) All the cheques, the subject of the charges were signed by Jonah Posa, while Wilma Pole signed as a counter-signing officer on most of those cheques, except 4 of the cheques which were counter-signed by Linah Mark;
- g) The letters of confirmation and authority were signed by Jonah Posa and counter-signed by Wilma Pole, while Linah Mark counter-signed two of those letters.
- h) The PGAS cheques were signed 3 times on the face of it meaning that the cheques were open to be cashed with not much questions asked.
- i) No direct evidence that Jonah Posa cashed any of the said cheques.
- j) The proper procurement process under the PF(M)A was not adhered to.

50. From all the evidence before the Court, it is clear to me that the proper procurement process under the PF(M)A being so fragile was not adhered to by Jonah Posa and his team of Treasury officers. For instance, Philip Kunjil, the Examiner and Elizabeth Pym, the Certifying Officer, in my respectful opinion, never performed their respective roles with due diligence. Philip Kunjil said he never examined the claim in his own name. Well, how did it get past him? Elizabeth Pym said she maintained a register of all advances and acquittals and ensured all claims were examined by her were approved by authorized S32 officers. In this case, only one claim was signed by the properly authorized S32 officer. Her evidence, to me with respect, demonstrates lack of proper attention to detail in her line of duty and lack of due diligence in her paid role.

51. Moreover, the normal process for an institution to order goods and services is to get three separate quotations for whatever it is that one is ordering from three credible prospective suppliers and when a preferred

supplier is chosen, the FF 3 and FF 4 will indicate which supplier of the goods and services is preferred and a cheque is raised in the name of the supplier. In this case, none of this happened. Instead, cheques in this case were raised in the name of Jonah Posa and other Treasury Officers, in total defiance of the proper procurement process and it can safely be concluded that Jonah Posa allowed the improper scheme to be played out.

52. In more than one instance, cash advances were raised in the name of Jonah Posa for the purchase of brown and white goods for the District Treasury roll out programme. There is no evidence the money was used to buy the white goods and brown goods from any supplier in Mt Hagen. The defence counsel submitted that the State did not produce or adduce that evidence. True, the State has the burden to prove that no money from the cheques was used to buy the goods from any of the suppliers in Mt Hagen or elsewhere. On the other hand, the defence never suggested to any State witness that the goods were purchased and from which supplier with the cash. What happened to that money from the cheques raised in the name of Jonah Posa? He has not said what happened to the money. Linah Mark said the money after being cashed were given to the accused as the Supervisor. What happened to the money after he received them? It appears to have disappeared from his hands.

53. Moreover, the cheques to be cashed bore the authorization and confirmation signatures of Jonah Posa, Wilma Pole and Linah Mark. To my mind, with respect, the processes invoked in this scheme was to get the cash money in the hands of Jonah Posa, Wilma Pole and Linah Mark. The cash disappeared in their respective hands. What happened to the cash? No one appears to know. The money trail ended with them.

54. There is no direct evidence Jonah Posa cashed any of the subject cheques at the BSP, Mt Hagen. I am however mindful of the evidence given by the Bank Officer that all the claims and the cheques raised in this case were for amounts of less than K50,000 which meant that the cheques could be approved for encashment by the Deputy Bank Manager. I earlier raised a question whether keeping all the claims and the cheques below the K50,000 financial threshold of the Deputy Branch Manager of BSP Mt Hagen Branch was a mere coincidence. I can only speculate as I have no direct evidence on that point.

DEFENCE SUBMISSIONS

55. The defence does not dispute the monies misappropriated belongs to the State and so that element of the charge is not disputed. However, the defence submitted that the State has not proved the elements of the accused

dishonestly applying the money to his own use or to the use of others. The defence also submitted that while most of the cheques were cashed, the State did not adduce any evidence to prove that the funds were used or applied for purposes other than for which they were appropriated for and that there is no direct evidence the funds were used for other purposes. There is no dispute all 33 cheques involved were cashed. The question keeps coming back, what happened to the cash?

56. The following cheques were drawn in the name of Jonah Posa, and cashed. What happened to the cash?

No.	Cheque Date	Description of Cheque
1.	20/12/2013	PGAS Cheque No. 9753, Jonah Posa, K40,000.00 drawn from WHP Government Grant Account No. 1001684852
2.	31/12/2013	PGAS Cheque No. 9757, Jonah Posa, K49,500.00, drawn from WHP Government Grant Account No. 1001684852
3.	6/2/2014	PGAS Cheque No. 138224, Jonah Posa, K45,000.00, drawn from WHP Government Operating Account No. 1000321067
4.	21/2/2014	PGAS Cheque No. 138238, Jonah Posa, K48,500.00, drawn from WHP Government Operating Account No. 1000321067
5.	2/4/2014	PGAS Cheque No. 138274, Jonah Posa, K45,000.00, drawn from WHP Government Operating Account No. 1000321067
6.	10/4/2014	PGAS Cheque No. 138285, Jonah Posa, K25,000.00, drawn from WHP Government Operating Account No. 1000321067.
7.	11/4/2014	PGAS Cheque No. 138283, Jonah Posa, K36,000.00, drawn from WHP Government Operating Account No. 1000321067
8.	29/4/2014	PGAS Cheque No. 138367, Jonah Posa, K40,000.00, drawn from WHP Government Operating Account No. 1000321067

9.	15/5/2014	PGAS Cheque No. 1116166, Jonah Posa, K10,000.00, drawn from WHP Government Grant Account No. 1001684852.
10.	26/5/2014	PGAS Cheque No. 138570, Jonah Posa, K40,000.00, drawn from WHP Government Operating Account No. 1000321067

57. The following cheques were drawn out in the names of employees in the Western Highlands Provincial Government Treasury Office and cashed. What happened to the cash?

1.	31/12/2013	PGAS Cheque No. 9760, Suka Wagame, K38,500.00, drawn from WHP Government Grant Account No. 1001685852.
2.	20/12/2013	PGAS Cheque No. 9755, Sukar Wagame,, K30,000.00, drawn from WHP Grant Account No. 1001685852.
3.	31/12/2013	PGAS Cheque No. 138226, Suka Wagame, K35,000.00, drawn from WHP Government Operating Account No. 1000321067.
4.	10/4/2014	PGAS Cheque No. 138286, Joe Pawa, K18,000.00, drawn from WHP Government Operating Account No. 1000321067.
5.	31/12/2013	PGAS Cheque No. 9761, Maria Agil, K37,554.89, drawn from WHP Grant Account No. 1001685852.
6.	6/2/2014	PGAS Cheque No. 138223, Mariah Agil, K40,000.00, drawn from WHP Government Operating Account No.. 1000321067.
7.	21/2/2014	PGAS Cheque No. 138237, Mariah Agil, K38,300.00, drawn from WHP Government Operating Account No. 1000321067.
8.	29/4/2014	PGAS Cheque No. 138368, Mariah Agil, K30,000.00, drawn from WHP Government Operating Account No. 1000321067.
9.	2/4/2014	PGAS Cheque No. 138725, Maria Poka, K45,000.00, drawn from WHP Government Operating Account No. 1000321067.

10.	20/12/2013	PGAS Cheque No. 9753, Peter Pombono, K23,105.16, drawn from WHP Grant Account No. 1001685852.
11.	31/12/2013	PGAS Cheque No. 9754, Air Niugini Mt Hagen, K40,000.00 drawn from WHP Government Operating Account No. 1000321067.
12.	31/12/2013	PGAS Cheque No. 9772, Priscilla Nasa, K15,000.00, drawn from WHP Grant Account No. 1001685852.
13.	21/2/2014	PGAS Cheque No. 138239, Priscilla Nasa, K32,500.00 drawn from WHP Government Operating Account No. 1000321067.
14.	11/4/2014	PGAS Cheque No. 138284, Priscilla Nasa, K34,000.00, drawn from WHP Government Operating Account No. 1000321067.
15.	29/2/2014	PGAS Cheque No. 138366, Priscilla Nasa, K30,000.00, drawn from WHP Government Operating Account No. 1000321067.
16.	26/5/2014	PGAS Cheque No. 138571, Priscilla Nasa, K25,000.00, drawn from WHP Government Operating Account No. 1000321067.
17.	31/12/2013	PGAS Cheque No. 9759, Wilma Pole, K40,000.00, drawn from WHP Grant Account No. 1001685852.
18.	12/2/2014	PGAS Cheque No. 138224, Wilma Pole, K30,000.00, drawn from WHP Government Operating Account No. 1000321067.
19.	21/2/2014	PGAS Cheque No. 138240, Wilma Pole, K39,306.00, drawn from WHP Government Operating Account No. 1000321067.
20.	26/3/2014	PGAS Cheque No. 174355, Wilma Pole, K30,000.00, drawn from WHP Treasury Operating Account No. 100874179.
21.	15/5/2014	PGAS Cheque No. 1116165, Wilma Pole, K7,775.00, drawn from WHP Grant Account No. 1001685852.
22.	26/5/2014	PGAS Cheque No. 138572, Wilma Pole, K35,000.00, drawn from WHP Government Operating Account No. 1000321067.

23.	6/2/2014	PGAS Cheque No. 138227, Linah Mark, K40,000.00, drawn from WHP Government Operating Account No. 1000321067.
24.	21/2/2014	PGAS Cheque No. 138241, Linah Mark, K42,700.00, drawn from WHP Government Operating Account No., 1000321067.
25.	15/5/2014	PGAS Cheque No. 1116164, Linah Mark, K7,750.00, drawn from WHP Grant Account No., 1001685852.
26.	5/8/2014	PGAS Cheque No. 139106, Philip W Kunjil, K35,000.00, drawn from WHP Government Operating Account No. 1000321067.

58. All these cheques were raised during the time Jonah Posa was in charge of the Provincial Treasury Office and when Joseph Neng was the Provincial Administrator. There is no evidence before me what triggered the Treasury officers to devise such a scheme as in this case, but the evidence suggests that the *modus operandi* was carefully and deliberately designed in a way that all claims would be below K50,000.00 so that the cheque could be cashed easily and quickly with no questions asked. The 50,000 threshold was within the financial authority of the BSP, Mt Hagen Branch, Deputy Manageress. In this case all the cheques cashed were all below K50,000.00. The National Treasury roll out programme to all Districts in the Western Highlands and rest of PNG became a good excuse to support the scheme in getting the cash advances.

59. The Defence submission was that although the cheques were made out to Jonah Posa, there was no evidence he cashed the cheques and how the cash proceeds were spent. The Defence further submitted that there is no direct evidence that Jonah Posa dishonestly used or apply the money for the benefit of himself and others. I agree there is no direct evidence to incriminate Jonah Posa and that he misused the money.

60. The same submissions were advanced by the defence in relation to cheques raised in the name of other Treasury officers.

THE LAW

61. Intention of a person is critically important in this case as to what is played out in the mind of that person or a group of persons prior to, during and after the event. In other words, it is what is played out in a person's mind or head that matters. It is the mental state of mind of a person. Intention is a mental state that represents a commitment to carry out an action or actions in

the future. It involves planning and fore thought. Whether a person has a particular state of mind in relation to the application of property is a question of fact. See *The State v Gabriel Ramoi* (1993) PNGLR 390.

62. In this case, the Court will need to get into the minds of Jonah Posa, Wilma Pole and Linah Mark in order to determine their respective state of mind; before, during and after the event to determine whether or not they had dishonest intentions. See *The State v Laumadava* (1994) PNGLR 371.

63. All the above named officers were employed for some time with the Provincial Treasury Office in Mt Hagen. One would expect each one of them to be familiar and to be experts in their respective line of duty in the Treasury Office especially relating to the procurement processes. One would also expect each one of them to have developed and acquire some level of expertise and a good grasp of the processes and requirements for procurement of goods and services under the PF(M)A where such a need arose in the Provincial Treasury Office.

64. However, what has come out in evidence in this case shows a total disregard and defiance of the proper procurement processes and procedures laid down under the PFMA by Jonah Posa, Wilma Pole and Linah Mark, the very people who were meant to live and administer the PFMA.

65. The requirement for acquittals under the PM(F) Act before a new advance is applied for was completely and blatantly ignored and disregarded as is demonstrated through the evidence before the Court by the Treasury officers. The invoices and receipts which ought to have accompanied the acquittals were no where to be found in the Treasury Office when the audit inspection was mounted. If the cash money was used to purchase the goods and services, why is it that no such paperwork was found in the Treasury Office to demonstrate that the goods and services were provided and the money was expended for the intended purposes? There being no direct evidence on this, the Court will consider applying the principles applicable in the reception of circumstantial evidence. Circumstantial evidence could be physical, scientific, human behaviour and indirect witnesses testimony.

66. The Supreme Court in *Paulus Pawa v The State* (1981) PNGLR 498 (Kearney DCJ, Andrew J and Kapi J) said:

- The accused must be acquitted unless the facts proved in evidence are inconsistent with any reasonable hypothesis other than guilty.
- To enable the Court to be satisfied beyond reasonable doubt of

the guilt of the accused. It is necessary not only that his or her guilt should be a rational inference but that it should be the only rational inference that the circumstances would enable it to draw.

67. In *David v State* (2006) SC 881, 22 November 2006, the Supreme Court (Salika J, Cannings J and Gabi J) expanded on the *Paulus Pawa* decision and said that the principle promulgated in the *Paulus Pawa* case meant that in any case where the State case is substantially reliant on circumstantial evidence, the question to be asked is:

- Do the proven facts lead reasonably to only one conclusion – that the accused did all the things constituting the elements of the offence? If yes, the accused is guilty. If no, the accused is entitled to an acquittal.

68. In this case, the proven facts are:

- (i) at the material time the accused was employed in the WHPG Treasury Office;
- (ii) the accused was the accountant in that office;
- (iii) The FF3's and FF4's forms were raised and processed by the Treasury officers;
- (iv) the cheques were sourced from the PGAS;
- (v) the cheques were processed by the Treasury officers;
- (vi) the confirmation and authorization of the cheques for cashing came from Jonah Posa, Wilma Pole and Lina Mark;
- (vii) all the cheques were cashed at the BSP Mt Hagen Branch;
- (viii) the cash from those cheques were then given to Jonah Posa;
- (ix) ten of the cheques were made payable to Jonah Posa for no good or legitimate reason and for which he was not entitled to, paid for which he never provided acquittals for, and which were never acquitted.
- (x) twenty-three of the cheques were made payable to other Treasury officers for no good reason, without their knowledge and for

purposes they were not entitled to.

(xi) All cheques raised were not compliant with the law - the PFMA.

69. With respect, those are the proven facts in this case. Do those proven facts lead reasonably to only one conclusion – that the accused at the material time and place alleged in the indictment, dishonestly applied to his own use and to the use of others the cash monies he was given, which was the property of the State?

70. I set the elements of the charge right at the outset on paragraphs 8 and 9 of this judgment. There is no contention and issue taken on elements b), c), e) and f) of the charge. That means these elements are proven beyond reasonable doubt. The only elements in contention and in issue are elements a) and d).

Element a)

71. It is alleged that Jonah Posa dishonestly applied to his own use and to the use of others. There were three main players in the cashing of the PGAS cheques namely:

Jonah Posa

Wilma Pole, and

Linah Mark.

In order to have the cheques processed, false requisitions and false FF3 and FF4 forms were processed by the Treasury officers without their knowledge under the watch of Jonah Posa. PGAS cheques were then drawn in the names of Jonah Posa, Wilma Pole, Linah Mark and other unsuspecting Treasury officers who knew nothing about the raising of the false requisitions and false FF3 and false FF4s.

72. There is undisputed evidence that Jonah Posa, Wilma Pole and Linah Mark were all signatories to all three WHPG operating accounts. The undisputed evidence, as well as evidence that Jonah Posa, Wilma Pole and Linah Mark were the authorization officers to the cheques to be cashed. There is uncontradicted evidence from Linah Mark that she gave all the cash to Jonah Posa after she cashed the cheques. All that evidence points to accused Jonah Posa involved in the scheme and the *modus operandi*.

73. Did the accused and others involved in this scheme have dishonest intention to get the money and to use the money themselves? Going by the

proven facts alluded to earlier in this judgment, all the evidence; direct, circumstantial, and otherwise including behavioral and conduct evidence, point to the “yes” inference and answer and that is that Jonah Posa did have a dishonest intention to get the money. He never filed any acquittals for those monies to exonerate himself. The non filing of the acquittals on the cash advances he received is strong evidence that he did not spend the money for the purposes for which the cheques were raised. I apply the principles enunciated in the long line of case authorities of *Kindi Lawi v The State* (1987) PNGLR 183, *The State v Gabriel Ramoi* (1993) PNGLR 390, *State v Laumadava* (1994) PNGLR 291 and *Roland Tom and Kalen Kopen v The State* (2019) SC 1833.

74. All the proven facts and reasonable inferences in this case leads to one conclusion and that is Jonah Posa is guilty of the remaining charges on the indictment. Accordingly, I find the accused guilty beyond reasonable doubt of all the 36 remaining counts of the indictment.

75. In the circumstances as highlighted above by the evidence, it is not difficult for this Court by reasonable inferences to conclude the respective conduct of the Officers and whether their respective conducts were honest or dishonest, before, during and after the event. In this instance, applying the principles in circumstantial evidence cases, I have come to the conclusion that the only reasonable hypothesis open to me is that the respective actions of Jonah Posa, Wilma Pole and Linah Mark, and their respective state of minds coupled with their respective conduct were dishonest and I so find beyond reasonable doubt.

76. This case only relates to the prosecution of Jonah Posa and my finding of dishonesty in this case only relates to Jonah Posa. I find that the accused on dates specified in each of the respective counts in Mt Hagen dishonestly applied to his own use and to the use of others, K1,317,015.16, the property of the State. My findings are that the State has proved each of the remaining counts or charges beyond reasonable doubt.

77. Accordingly, I find Jonah Posa guilty of all the remaining 36 counts left on the indictment beyond reasonable doubt.

Public Prosecutor: *Lawyer for the State*
Public Solicitor: *Lawyer for the Accused*