N9568

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) 118 OF 2019

THE STATE

V

PAUL PARAKA

Waigani: Berrigan, J
2021: 21st September, 12th & 13th October
2022: 17th & 18th February, 1st, 4th and 24th March

CRIMINAL LAW – PRACTICE AND PROCEDURE – ADMISSION OF BANK RECORDS SEIZED UNDER SEARCH WARRANTS – Sections 44, 49 and 57 of the Constitution - Section 6, 7, 8, 9, 10 of the Search Act, 1977 – Whether search warrants valid on their face – Whether search warrants validly issued – Whether statement of offence sufficient - Whether obtained in an abuse of process - Whether supporting material fundamentally defective – Whether information on oath capable of satisfying the Court of reasonable grounds for issuing warrants – Reasonable grounds for suspicion – Reasonable grounds for belief – Whether search warrants lawfully executed – Whether records should be excluded in exercise of discretion at common law or under the Constitution.

Cases Cited:
Papua New Guinean Cases

Goi v Bank South Pacific Ltd (2020) N8271
The State v James Popo [1987] PNGLR 286.
John Alex v Martin Golu [1983] PNGLR 117
The State v Evertius and Kundi [1985] PNGLR 109
Esso Highlands Ltd v Bidar (2014) N6386
SCR No.2 of 1980; Re s.14 (2) of the Summary Offences Act 1977 [1981] PNGLR 50
The State v Paul Paraka (Ruling on Application to Call Additional Evidence) (2020) N9159

Overseas Cases

Baker v. Campbell (1983) 153 CLR 52
George v Rockett [1990] HCA 26
Beneficial Finance Corporation v Commissioner of Australian Federal Police (1991) 58 A Crim R 1
Coward v Allen (1984) 52 ALR 320
Parker v Churchill (1986) 9 FCR 334
R v Rondo [2001] NSWCCA 540
Shaaban bin Hussien v Chong Fook Kam [1970] AC 942
Dunesky v Elder [1994] 54 FCR at [30].
Dunesky v Commonwealth of Australia [1996] FCA 624
Propend Finance Pty Limited v Commissioner of the Australian Federal Police (1995) 128 ALR 657
Inland Revenue Commissioners v Rossminster Limited [1980] AC 952
R v Adams [1980] QB 575
Bunning v Cross (1978) 141 CLR 54
The Queen v Ireland (1970) 126 CLR 321
Ridgeway v The Queen (1995) 184 CLR 19
Director of Public Prosecutions v Marijancevic [2011] VSCA 355

References Cited

Sections 44, 49 and 57 of the *Constitution*
Sections 6, 7, 8, 9, and 10 of the *Search Act*

Counsel

Ms H Roalakona and Ms S Mosoro, for the State
Mr P Paraka, for himself

DECISION ON VOIR DIRE: ADMISSION OF BANK RECORDS

24th March, 2022

1. **BERRIGAN J:** The accused is charged with five counts of dishonestly applying money belonging to the State. It is alleged that between 2007 and 2011 almost K162m was paid into the bank accounts of Paul Paraka Lawyers (PPL) through the bank accounts of eight other law firms – Sino & Company Lawyers, Jack Kilipi Lawyers, Harvey Nii Lawyers, PKP Nominees Ltd, Sam Bonner Lawyers, Korowi Lawyers and Yapao Lawyers - by the Finance Department, for which no services were provided.

2. Mr Paraka objects to the admission of bank records relied upon by the State on a number of grounds. The bank records were obtained pursuant to several search warrants obtained by police in 2013 and 2014. In all but one case the records were obtained from the records of the Bank of South Pacific Ltd (BSP). In the other the records were obtained from ANZ Ltd.

3. A voir dire was conducted. The State called Chief Inspector Timothy Gitua, of the Royal Papua New Guinea Constabulary, and officers from BSP and ANZ.

OUTLINE OF OBJECTIONS

4. Mr Paraka objects to the admission of the records on numerous grounds outlined in lengthy oral and written submissions, often without authorities, which I have endeavoured to summarise as follows.

5. Mr Paraka submits that the investigation into suspected offences by him was divided into two parts. The "primary case" was concerned only with allegations that K30m was paid by the Department of Finance to six law firms in 2012 – PPL, Paul Othas Lawyers, Harvey Nii Lawyers, Sino & Company Lawyers, Jack Kilipi Lawyers and PKP Nominees Ltd. The "secondary case" concerns payments in previous years, 2007 to 2011, and is the case currently before this Court. The investigating officer for the secondary case was Senior Sergeant Pius Peng.

6. Mr Paraka submits that in March 2012 the investigating officer in charge of the primary case, CI Gitua, obtained two search warrants, one of which is Exhibit P1. The District Court struck out those warrants on Mr Paraka's application and ordered that any further applications should be made with reasonable notice to him. Instead CI Gitua obtained 10 search warrants from the National Court more than a year later in August 2013, Exhibits P2 to P11, in a deliberate abuse of process. The National and District Courts share concurrent jurisdiction over search warrants. It was not possible for CI Gitua to apply to the National Court for warrants without first seeking an appeal or review of the decision of the District Court. CI Gitua deliberately did not do so. The resulting warrants are invalid.

7. Furthermore, those warrants, P2 to P10, were issued in respect of the primary case, and instead of obtaining new warrants, the police unlawfully re-executed those warrants in 2014 to obtain evidence for the secondary case in a deliberate abuse of process. Of those warrants only P6 and P7 were included in the Police hand up brief (PHUB).

8. Furthermore, only four warrants were obtained by the police for this

secondary case, P12, P13, P14 and P15. Of those warrants, only P13, P14 and P15 and the documents produced under them were contained in the secondary case PHUB.

9. By its decision in *The State v Paul Paraka (Ruling on Application to Call Additional Evidence)* (2020) N9159, the Court allowed the State to admit warrants P2, P9, P10 and P12 on the voir dire over objection. Those warrants and the documents produced under them were not part of the PHUB.

10. Furthermore, Mr Paraka was arrested in respect of the primary case on 2 October 2012 and 9 January 2014. The PHUB was served on 28 October 2019. The primary case was dismissed at the District Court on 10 June 2020: Exhibit D5. There has been no appeal or review of that decision and no ex officio indictment has been filed. Everything in the primary case, all statements and evidence has therefore been dismissed and rendered null and void and cannot be relied upon according to the principles of res judicata.

11. In particular, this includes the statement of John Maddison which produces all records on behalf of BSP. He died on 16 October 2016 but his statement formed part of the PHUB served on 28 October 2019. The District Court specifically rejected his evidence on the basis he was dead.

12. Furthermore, Mr Paraka was charged on 31 July 2014 in relation to the secondary case. All BSP bank documents were unlawfully included in the PHUB because the bank witness, Legal Manager, John Maddison died on 16 December 2016. The PHUB was served on 9 May 2017. The District Court dismissed all charges as an abuse of process on 10 December 2018. The Public Prosecutor presented an ex officio without obtaining a substitute witness. He did not wait for the primary case decision in the District Court but presented an ex officio indictment in 2019, unlawfully relying on the statement of a dead witness. All the State had to do was provide the name of a replacement witness but they did not do so.

13. The State and CI Gitua failed to lead records pertaining to K30m paid in 2012 on the voir dire. This was deliberately selective and intended to mislead the Court.

14. The monies in the bank records do not add up to K162m.

15. Furthermore, the warrants themselves contain numerous defects rendering them fundamentally defective and demonstrating again a deliberate intention on the part of authorities to maliciously pursue him.

16. Furthermore, the documents were seized outside the scope of the

warrants. All of the warrants sought documents in 2012 but the documents produced relate to earlier years.

17. In the circumstances Mr Paraka submits that the Court is obliged to exclude the material seized under the warrants pursuant to the *Constitution*, and should exclude the bank records in the exercise of its common law discretion.

18. The effect of the objections to the warrants and the materials produced under them may be summarised into the following categories:

1) The warrants are defective on their face.
2) The warrants were not validly issued:
    a. They were obtained in an abuse of process;
    b. The supporting materials were fundamentally defective;
    c. The supporting materials were not capable of satisfying the issuing court that the warrants should be issued.
3) The warrants were unlawfully executed:
    a. The warrants obtained and executed in 2013 were re-executed on the bank in 2014; and
    b. The documents seized were outside the scope of the warrants.

PRELIMINARY MATTERS

19. I will deal firstly with a number of issues raised by Mr Paraka.

20. None of the search warrants themselves were objected to at the time they were tendered on the voir dire. As above, I have already ruled on the admission of the material in support of those warrants on the voir dire.

21. Mr Paraka contends for the first time that some documents produced under the warrants were not contained in the PHUB. Whilst the State concedes that warrants P2, P9, P10 and P12 were omitted from the brief served on Mr Paraka, it says that the documents produced under those warrants with respect to Harvey Nii Lawyers, Sino & Co Lawyers, PKP Nominees Ltd and Korowi Lawyers were included in the brief.

22. It appears to me from the lists contained in both the State's Pre-trial Review Statement of 20 June 2020, and Mr Paraka's "Documentary Evidence Sought to be Tender (By Prosecutor) – Accused's Response" Document filed 13 August 2021 that the documents formed part of the brief served on him in May 2017. The objection is dismissed.

23. I am not hearing charges concerning alleged conduct by Mr Paraka in

2012. The fact that the District Court refused to commit him on such charges is irrelevant to the matters to be determined before me. It does not in any event render any statements or documents relied upon in that case "null and void". Res judicata has no application here. The objections are dismissed.

24. The fact that Mr Maddison is since deceased does not render the bank records initially produced by him to police under the warrants inadmissible. In general terms the admissibility of the records is to be determined by s 61 of the *Evidence Act*, for which any person from the bank with sufficient knowledge may give evidence. The State served the statements of the substitute witness, Asher Wafi, pursuant to my direction in April last year. The absence of Mr Maddison's evidence regarding the execution of the warrants is discussed below. The objection is dismissed.

25. I accept CI Gitua's explanation in evidence that the documents produced in relation to the charges alleged to have taken place in 2012 were not produced on the voir dire as they are not relied on by the State in this case. That does not demonstrate bad faith on the part of the prosecution. If Mr Paraka is of the view they are relevant he is at liberty to lead evidence of them on the trial.

26. As for whether or not the bank records establish a total payment of K162m does not affect their admissibility.

27. I turn now to the challenges to the warrants and the documents seized under them.

NONCONTENTIOUS FACTS

28. The following matters are not in dispute. On 15 March 2012 CI Gitua obtained a warrant from the District Court for execution at BSP in relation to "bank statements, customer record cards and vouchers (deposit slips, cheque copies, TT copies etc) for any transactions above K10,000, of all accounts including but not limited to trusts accounts, and operating accounts of the following below listed six law firms, covering the period between 1st February 2012 and 15th March 2012": Paul Paraka Lawyers, Paul Othas Lawyers, Harvey Nii Lawyers, Sino & Company Lawyers, Jack Kilipi Lawyers and PKP Nominees Ltd: Exhibit P1. Another warrant was apparently obtained in respect of the PNG Law Society on the same date.

29. Mr Paraka obtained orders in the District Court in SW Nos 32 and 33 of 2011, on 2 April 2012, setting aside the two search warrants obtained by CI Gitua on 15 March 2012. On application by Mr Paraka, the Court refused to grant permanent restraining orders against CI Gitua and members of the

NFACD and the Financial Intelligence Unit but ordered that they were "at liberty to apply for search warrants if reasonable grounds are shown to exist provided sufficient reasonable notice is given to Paul Paraka of PPL": Exhibits D1 and D2.

30. More than one year later, on 1 August 2013 Deputy Chief Justice Salika sitting in the National Court issued the following search warrants on application by CI Gitua:

a. P2 and P3 were issued to BSP and ANZ Bank respectively, with respect to the accounts of Harvey Nii Lawyers;
b. P4 and P6 were issued to ANZ Bank respectively with respect to the accounts of Jack Kilipi Lawyers;
c. P5 and P7 were issued to ANZ Bank and BSP respectively with respect to the accounts of PPL;
d. P8 and P9 were issued to ANZ Bank and BSP respectively with respect to Sino & Co Lawyers;
e. P10 and P11 were issued to ANZ Bank and BSP respectively with respect to PKP Nominees Ltd.

31. In 2014 the District Court issued the following four search warrants on application by CI Gitua:

a. P12 was issued on 10 April 2014 to BSP with respect to the records of Korowi Lawyers;
b. P13 was issued on 10 April 2014 to BSP with respect to Kipoi Lawyers;
c. P14 was issued on 2 July 2014 to ANZ with respect to Yapao Lawyers;
d. P15 was issued on 9 July 2014 to BSP with respect to Sam Bonner Lawyers.

32. On 1 July 2014 CI Gitua applied for a further search warrant in almost identical terms to P12: Exhibit D7.

33. There is no dispute that each of P1 to P12, and D7 were moved by a notice of motion supported by affidavit and information.

34. Bank records were produced by BSP in response to P2, P6, P7, P9, P10, P12, P13 and P15; and by ANZ in response to P14. Records were not produced in response to the other four warrants (P3, P4, P8 and P11). In the circumstances it is not, except other than in general terms where discussed below, necessary to consider those four warrants. See the following table.

Table 1: Search Warrants (P1, P2, P6, P7, P9, P10, P12, P13, P14, P15), Supporting Information and Bank Records Produced

Description	Exhibit No
Search Warrant No. 132 of 2012 issued by the Waigani District Court to Chief Inspector Gitua to search Bank South Pacific, Port Moresby on 15 March 2012 with respect to Bank Statement, Customer Record Cards and Vouchers (deposit slips, cheque copies, TT copies etc) for any transactions above K10, 000 of all accounts including but not limited to trust accounts, and operating accounts of the following below listed firms: Paul Paraka Lawyers; Paul Othas Lawyers; Harvey Nii Lawyers; Sino & Company Lawyers; Jack Kilipi Lawyers; PKP Nominees Ltd	**P1**
Notice of Motion dated 15 March 2012;	P1 - A
Affidavit in Support by Timothy Gitua dated 15 March 2012;	P1 – B
Copy of Information dated 15 March 2012;	P1 – C
Further copy of Search Warrant No. 132 of 2012 dated 15 March 2012	P1 – D
Search Warrant No. CR (App) No. 189/13 issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search Bank South Pacific Ltd Headquarters Office, Down town, Port Moresby with respect to the records of Harvey Nii Lawyers	**P2**
Notice of Motion filed 26 July 2013 in the National Court	P2 – A
Affidavit in Support of Timothy Gitua filed 26 July 2013	P2 – B
Copy of Information signed 1 August 2013	P2 - C
Further copy of Search Warrant No. 189/13 dated 1 August 2013 issued by the National Court	P2 – D
Bank Records	
BSP Bank Statements of Harvey Nii Lawyers a/c # 1000138465 from 01/03/2007 to 31/01/2012	P2 – E
Copy of BSP deposit slip dated 27/08/07 for payment of K2, 900, 000 to Paul Paraka Lawyers, a/c # 1000586112 from Harvey Nii Lawyers, BSP cheque # 060478	P2 – F
Search Warrant Unnumbered issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search Bank South Pacific Limited, Head Office, Port Moresby with respect to the records of Jack Kilipi Lawyers	**P6**
Notice of Motion dated 10 July 2013 and filed on 26 July 2013 at the Waigani National Court	P6 – A
Affidavit in Support by Timothy Gitua dated 10 July 2013 and filed on 26 July 2013	P6 – B
Copy of Information signed by the court on 1 August 2013	P6 – C
Further copy of the Search Warrant No. 186/13 issued by the National Court on 1 August 2013	P6 – D
Bank Records	
BSP Bank Statement of Jack Kilipi Lawyers a/c # 1001 227 296 for period: 23 March 2007 – 9 May 2012	P6 – E
Search Warrant CR (App) No. 185/13 issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search Bank South Pacific Limited, Head Office, Port Moresby with respect to records of Paul Paraka Lawyers Operating Accounts, Trust Accounts, Salary Accounts	**P7**
Notice of Motion filed on 26 July 2013	P7 – A

	Affidavit in Support by Timothy Gitua dated 10 July 2013 and filed on 26 July 2013	P7 – B
	Copy of Information signed by the court on 1 August 2013	P7 – C
	Further copy of the Search Warrant No. 185/2013 issued to BSP on 1 August 2013	P7 – D
	Bank Records	
	BSP Bank Statement of Paul Paraka Limited Account No. 1000 586 112 for period: 8 March 2007 – 20/02/2012	P7 – E
	Copy of BSP deposit slip dated 24 January 2008 for payment of K200,000 deposited into Paul Paraka Lawyers operating account no. 1000 586 112 from PKP Nominees Ltd, BSP cheque # 145699	P7 – F
	Copy of BSP deposit slip dated 9 January 2009 for a total payment of K3, 894,000 paid to Paul Paraka Lawyers a/c # 1000586112 from; Sino Company Lawyers Trust Account - K1, 945,000, and Jack Kilipi Lawyers Account - K1, 949,000	P7 – G
Search Warrant CR (App) No. 184/13 issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search the Australia & New Zealand Banking Group (PNG) Ltd, Head Office Building, Port Moresby with respect to the records of Sino & Co Lawyers		**P8**
	Notice of Motion filed on 26 July 2013	P8 – A
	Affidavit in Support filed on 26 July 2013	P8 – B
	Copy of Information filed on 26 July 2013 and signed on 1 August 2013	P8 – C
	Further copy of the Search Warrant CR (AP) 184/13 endorsed by the court dated 1 August 2013	P8 – D
Search Warrant CR (App) No. 194/13 issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search the Bank South Pacific – Head Office Building, Port Moresby with respect to the records of Sino & Co Lawyers		**P9**
	Notice of Motion filed on 26 July 2013	9A
	Affidavit in Support filed on 26 July 2013	9B
	Copy of Information filed on 26 July 2013 and signed on 1 August 2013	9C
	Further copy of search warrant CR (App) No. 194/13 issued by the National Court on 1 August 2013	9D
	Bank Records	
	BSP Bank Statement for Sino & Co Lawyers cheque account No. 1001 246 161 from 2 March 2007 – 8 February 2012	P9 – E
	Copy of BSP deposit slip for payment of K2, 950, 000.00 dated 30/07/2007 to Paul Paraka Lawyers a/c no: 1000586112 from Sino & Co Lawyers, BSP cheque # 000044	P9 – F
	Copy of BSP deposit slip dated 28.03.2011 for K2,000,000 paid to Sino & Co Lawyers Trust a/c 1001246161 from Dept of Finance Drawing A/C, BPNG cheque # 001195	P9 – G

	Copy of BSP deposit slip dated 18.04.2011 for K3, 000,000 paid to Sino & Co Lawyers a/c no. 1001 246 161 from Department of Finance Drawing a/c, BPNG cheque # 001832	P9 – H
Search Warrant CR (App) 196/13 issued by the National Court to Chief Inspector Gitua on 1 August 2013 to search Bank South Pacific Limited, Head Office, Port Moresby with respect to the records of PKP Nominees Ltd		**P10**
	Notice of Motion filed 26 July 2013	P10 – A
	Affidavit in Support filed 26 July 2013 deposed to by Timothy Gitua	P10 – B
	Copy of the information filed on 26 July 2013	P10 – C
	Further copy of the Search Warrant CR (AP) 196/13 filed on 26 July 2013 and issued on 1 August 2013	P10 – D
	Bank Records	
	Bank Statements of PKP Nominees Ltd Account No. 1000 587 335 for period: 30 March 2007 – 24 February 2012	P10 – E
	Copy of BSP deposit slip dated 22.01.2008 for K3, 500,000.00 paid to PKP Nominees Ltd Account No. 1000 587 355 being for cheque from the Department of Finance – BPNG cheque # 872767	P10 – F
	Copy of BSP deposit slip dated 24.01.08 for K3, 450,000 paid to PKP Nominee Ltd a/c # 1000587335 drawn from Sino & Co Lawyers, BSP cheque # 000112	P10 – G
	Copy of BSP deposit slip dated 24.07.09 for K3, 900, 000 paid to PKP Nominees Ltd Acc no. 1000 587 325 from Dept of Finance, BPNG cheque no: 895501	P10 – H
	Copy of Jack Kilipi Lawyer's BSP cheque No. 009865 dated 27.07.2009 for K2,000, 000 to pay cash to PKP Nominees Ltd	P10 – I
	Copy of BSP deposit slip dated 27.07.2009 for K2, 000,000 paid to PKP Nominees Ltd, a/c # 1000 587 335 from Sino & Co Lawyers, BSP cheque # 000237	P10 – J
	Copy of BSP deposit slip dated 13.05.2010 for a total payment of K4, 998,000 paid to PKP Nominees Ltd, a/c # 1000 587 335 by Dept of Finance on two separate cheques; BPNG cheque # 906143 – K2, 000, 000.00 BPNG cheque # 906145 – K2, 998, 000.00	P10 – K
	Copy of BSP deposit slip dated 28.11.2010 for K4,998,000 paid to PKP Nominees Account No. 1000 587 355 from the Dept of Finance, BPNG cheque # 891321	P10 – L
	Copy of BSP deposit slip dated 28.03.2011 for K2,000,000 paid to PKP Nominees Account No. 1000 587 355 drawn from Department of Finance, BPNG cheque # 001191	P10 – M

	Copy of BSP deposit slip dated 18.04.2011 for K3,000,000 paid to PKP Nominees account no. 1000587 355 from Dept of Finance Drawing account, BPNG cheque # 001829	P10 – N
Search Warrant Unnumbered issued by the District Court to Chief Inspector Gitua dated 10 April 2014 to search Bank South Pacific (BSP) Account Number 1000879717 with respect to the records of Korowi Lawyers.		**P12**
	Notice of Motion dated 10 April 2014	P12 – A
	Supporting Affidavit sworn on 10 April 2014 by Timothy Gitua	P12 – B
	Copy of Information signed by the court on 10 April 2014	P12 – C
	Further copy of the Search Warrant issued by the District Court on 10 April 2014	P12 - D
	Bank Records	
	Bank Statement for Korowi Lawyers account No. 1000 879 717 for the period: 08/08/2007 – 10/04/2013	P12 - E
	Copy of BSP deposit slip dated 22.01.08 for K3,000, 000 paid to Korowi Lawyers Trust a/c 1000879717 from cheque drawn from Department of Finance, BPNG cheque # 872750	P12 - F
Search Warrant Unnumbered issued by the District Court to Chief Inspector Gitua dated 10 April 2014 to search Bank South Pacific (BSP) with respect to the records of Kipoi Lawyers BSP a/c # 1001547943		**P13**
	Bank Records	
	BSP Bank Statement of Kipoi Lawyers Account No. 1001 547 943 from 08/02/2010 – 02/03/2010	P13 - E
Search Warrant Unnumbered issued by the District Court to Chief Inspector Gitua on 2 July 2014 to search ANZ Bank with respect to the records of Yapao Lawyers accounts, Trust Account – 11816302, Operational Account - 11816313		**P14**
	Bank Records	
	ANZ Bank Statement for Yapao Lawyers Account No. 1181 6302 for period: 22 January 2007 – 11 July 2007	P14 - E
	Copy of Bank Cheque # 862402, drawn from the Department of Finance dated 8 June 2007 for K2,000,000 paid to Yapao Lawyers	P14 - F
Search Warrant Unnumbered issued by the District Court to BSP on 9 July 2014 with respect to the records of Sam Bonner Lawyers BSP a/c # 1001252784		**P15**
	Bank Records	
	BSP Bank Statement of Sam Bonner Lawyers Account No. 1001 252 784 for period: 18.01.2007 – 11.01.2012	P15 - E

35. Given the number of warrants concerned, I do not intend to set all of them out in full. For the purposes of the following discussion, and given that there is some divergence, it is also useful, however, to set out here the key features of the warrant and the supporting material in each case.

Table 2: Extracts from Warrants (P1, P2, P6, P7, P9, P10, P12, P13, P14, P15), Affidavits and Informations

WARRANT P2 ISSUED BY THE NATIONAL COURT ON 1 AUGUST 2013

Warrant, Extract

Whereas an information on oath of Chief Inspector Timothy Gitua …stating that there are reasonable grounds to believe that there is at Bank South Pacific Ltd – Headquarters Office, Down Town Port Moresby

- ***anything with respect to which any offence has been or is believed on reasonable grounds to have been committed;***
- ***anything as to which there are reasonable grounds for believing it is likely to afford evidence of the commission of any offence; or***
- ***anything as to which there are reasonable grounds for believing is intended to be used to commit any offence;***

Namely alleged Fraud & Theft of public funds sum in access of K6 million paid by the Dept of Finance in purported legal bills & judgement debts to a Harvey Nii Lawyers in contrary to certain provisions of the CCA and Proceeds of Crime Act. *(here state nature of thing)*

YOU ARE HEREBY ORDERED to search the said Office of BANK SOUTH PACIFIC Ltd, PORT MORESBY – National Capital District. *(here state building, craft vehicle or place)*

and seize anything you may find that relates to the offence of Stealing by False Pretence, Misappropriation of public funds and Money Laundering which are likely to contain evidence contrary to Sections 404 (1) and 383A (1) of the CCA and Section 34 of the POCA. *(state the offence or matter of the information)*

Affidavit, paragraph 2, 3, 4, 5, 6

The Solicitor General had filed a complaint with the police regarding alleged fraudulent payments made by Department of Finance to a number of Law Firms including Harvey Nii Lawyers. The payments were allegedly for settlement of legal bills incurred by the State. The Solicitor General complained that the subject payments were illegal and fraudulent in nature in that the attorney Generals' Office did not gave Clarence for the State to settle these legal bills and judgement debts. The complained was filed at the National Fraud & Anti Corruption Directorate office in a letter dated 14th March 2012.

Annexed hereto and marked with the letter 'A' is a true copy of the Solicitor General's letter dated 14th March 2012.

Further allegations were raised on the floor of Parliament by the leader of the Opposition, Hon. Beldan Namah, MP on 17th May 2013 concerning payments made to legal firms of which Harvey Nii Lawyers are also mentioned.

The Prime Minister, Hon Peter O'Neill in his Prime Ministerial Directive dated 13th May 2013 directed an investigation into payments made to legal firms by the Department of Finance. The directive was issued to Heads of key government agencies including the Minister for Police.

Annexed hereto and marked with the letter 'B' is a true copy of the Prime Ministerial directive.

Police is obliged under the law to verify the genuineness of these payments by conducting its own investigations under its powers and take appropriate actions where necessary.

As part of the police investigation police will require details of all bank accounts operated by Harvey Nii Lawyers including bank statement printouts, account records/authority, vouchers, deposit forms, cheque debits and money or electronic transfers associated with the funds paid by Department of Finance including transaction specific to the K6, 000, 000 paid in February 2012.

Information, Extract

Police have information in reference to alleged illegal payments being paid by the Department of Finance to Harvey Nii Lawyers in purported legal fees owed by the State. One such payment sum of K6 million was allegedly paid to the said Law Firm on a cheque # 177131 dated 17/02/12. It is believed that Dept. of Finance had made a number of such payments previously since 2006 up till the present time and may add up to substantial amount of public funds being illegally and fraudulent being disbursed.

WARRANT P6 ISSUED BY THE NATIONAL COURT ON 1 AUGUST 2013

Warrant, Extract

Namely;

- Bank Statement of Jack Kilipi Lawyers – Operating Accounts, Trust Accounts, Salary Accounts
- Copies of Government cheques (K6 million Treasury cheque no. 177134, dated 17/02/2012) paid into Jack Kilipi Lawyers accounts between period March 2007 and 31st May 2013
- Any other related correspondence/documents.

(state nature of thing/s)

YOU ARE HEREBY ORDERED to search the Bank South Pacific Limited, Head Office, Port Moresby.

(state building, craft, vehicle or place)

and seize anything you may find that relates to the offence of stealing by false pretence, misappropriation of public funds belonging to the state and convey it to a safe place. *(state the offence or the nature of the information)*

Affidavit, paragraph 2, 3, 4, 5, 6, 7, 8

The Police National Fraud & Anti-Corruption Directorate (NFACD) is in receipt of a complaint from the Office of the Solicitor General alleging that purported illegal payments had been made to various law firms by the Department of Finance. The matter was registered at the NFACD and given reference # 056/2012.

Annexed hereto and marked with the letter 'A' is a true copy of the Solicitor General's letter dated 14th March 2013.

The complaint alleged that the payments were made under suspicious circumstances in that these law firms were not engaged by the State and therefore did not warrant such payments. Proper processes (which include getting clearance from the Solicitor General) were not followed in the procurement of these funds.

It was further alleged that these payments or some of these payments were actually for Paul Paraka Lawyers and solicited via these law firms (refer list below). Information filed revealed that the following payments were made by the Department of Finance which are now being questioned.

1.	Paul Othas Lawyers	- K6 million d/d 17/02/2012	Ref # 177132
2.	Harvey Nii Lawyers	- K6 million d/d 17/02/2012	Ref # 177131
3.	Twivey Lawyers	- K6 million d/d 17/02/2012	Ref # 177129
4.	Sino & Company Lawyers	- K6 million d/d 17/02/2012	Ref # 177133
5.	Jack Kilipi Lawyers	- K6 million d/d 17/02/2012	Ref # 177134
6.	PKP Nominees Ltd	- K6 million d/d 17/02/2012	Ref # 177135

Further allegations were raided on the floor of Parliament by the leader of the Opposition, Hon. Belden Namah, MP on the 17th May 2013 concerning payments made to legal firms of which Paul Paraka Lawyers are also mentioned.

The Prime Minister, Hon. Peter O'Neill in his Prime Ministerial Directive dated 13th May 2013, directed an investigation into payments made to legal firms by the Department of Finance.

Police is obliged under the law to verify the genuineness of these payments by conducting its own investigations under its powers and take appropriate actions.

As it is, police will require bank account details, vouchers, cheques, printouts, court documents, and any other records associated with the alleged transactions kept by the bank in order to help ascertain the legality of these payments.

Information, Extract

It was alleged that between the period of March 2007 and 31st May 2013, the Department of Finance paid K6 million to Jack Kilipi Lawyers (cheque no. 177134, dated 17/02/2012) in settlement for purported outstanding legal fees owned by the State.

WARRANT P7 ISSUED BY THE NATIONAL COURT ON 1 AUGUST 2013

Warrant, Extract

namely;

- Bank Statement of Paul Paraka Lawyers Operating Accounts, Trust Accounts, Salary Accounts nos: 1000586112 & 1000587335.
- Copies of Government cheques paid into Paul Paraka Lawyers accounts between period March 2007 and 31st May 2013
- Copies of supporting documents produced to BSP for clearance of funds including, but not limited to: i) Letter dated 20th February 2012, jointly signed by Messers Melton Bogege (Financial Controller) and Yeme Kaivila (Senior Accountant) of the Department of Finance addressed and sent to Mrs. Vegume Mainokora, Business Relations Manager, Corporate and International, Bank of South Pacific Limited, ii) Mr. Paul Paraka of Paul Paraka Lawyers' letter dated 21st February 2012, to Mrs Vegume Mainokora, Business Relations Manager, Corporate and International, Bank of South Pacific Limited, iii). Prime Minister Peter O'Neill's letter dated 24th January 2012 as produced by Paul Paraka Lawyers to support the clearance of funds obtained from Department of Finance and, iv). Any other related correspondence/documents.

(state nature of thing/s)

YOU ARE HEREBY ORDERED to search the Bank South Pacific Limited, Head Office, Port Moresby.

(state building, craft, vehicle or place)

and seize anything you may find that relates to the offence of stealing by false pretence, misappropriation of public funds belonging to the state

Affidavit, paragraph 2, 3, 4, 5, 6, 7, 8

As for P6

Information, Extract

It was alleged that between the period of March 2007 and 31st May 2013, the Department of Finance paid more than K30 million in Government cheques to Paul Paraka Lawyers in settlement for purported outstanding legal fees owned by the State

WARRANT P9 ISSUED BY THE NATIONAL COURT ON 1 AUGUST 2013

Warrant, Extract

Namely (1) alleged Fraud & Misappropriation of public funds sum of K6 million paid to Sino & Co Lawyers per cheque # 177133 dated 17/02/2012 copy of cheque. (2) Bank statements for period March 2007 and December 2012. (3) Copies of documents produced in support of clearance of funds, including but not limited to correspondences for funds to be transferred to Paul Paraka Lawyers or PKP Nominees Ltd.

(here state nature of thing)

YOU ARE HEREBY ORDERED to search the said Office of the Manager, Bank South Pacific Ltd - Head Office, Port Moresby. *(here state building, craft, vehicle or place)*

and seize anything you may find that relates to the alleged offence of fraudulent application of monies are likely to contain evidence Contrary to Section 383A (1) of the PNG Criminal Code Act.

(state the offence or matter of the information)

Affidavit, paragraph 2, 3, 4, 5, 6

The Solicitor General had filed a complaint with the Police regarding alleged fraudulent payments made by Department of Finance to a number of Law Firms including Sino & Co Lawyers. The payments were allegedly for settlement of legal bills incurred by the State. The Solicitor General complained that the subject payments were illegal and fraudulent in nature that the Attorney General's Office did not give clearance for the State to settle these legal bills and judgement debts. The complaint was filed at the National Fraud & Anti-Corruption Directorate office in a letter dated 14th March 2013.

Annexed hereto and marked with the letter 'A' is a true copy of the Solicitor General's letter dated 14th March 2013.

Further allegations were raised on the floor of Parliament by the Opposition Leader, Hon Beldan Namah, MP on 17th May 2013 concerning payments made to legal firms of which Sino & Co Lawyers are also mentioned.

The Prime Minister, Hon. Peter O'Neill in his Prime Ministerial Directive dated 13th May 2013 directed an investigation into payments made to legal firms by the Department of Finance.

Police is obliged under the law to verify the genuineness of these payments by conducting its own investigations under its powers and take appropriate actions.

As it is Police will require bank account details, vouchers, cheques, printouts, court documents and any other records associated with the alleged transactions kept by the bank in order to help ascertain the legality of these payments.

Information, Extract

Police have information in reference to illegal payments being paid by the Department of Finance to Sino & Co Law Firm in purported legal fees owed by the State. One such payment sum of K6 million was allegedly paid to the said law firm on cheque # 177133 dated 17/02/2012. It is believed the Department of Finance had made a number of such payments previously since 2006 up till present time and may add up to substantial amount of public funds being illegally and fraudulently being disbursed.

WARRANT P10 ISSUED BY THE NATIONAL COURT ON 1 AUGUST 2013

Warrant, Extract

namely;

- Bank Statement of PKP Nominees Ltd Operating Accounts, Trust Accounts, Salary Accounts.
- Copies of Government cheques (K6 million Treasury cheque no. 177135, dated 17/02/2012) paid into PKP Nominees Ltd accounts between period March 2007 and 31st May 2013.
- Any other related correspondence/documents.

(state nature of thing/s)

YOU ARE HEREBY ORDERED to search the Bank South Pacific Limited, Head Office, Port Moresby.

(state building, craft, vehicle or place)

and seize anything you may find that relates to the alleged offence of stealing by false pretence and misappropriation of public funds belonging to the State and convey it to a safe place.

(state the offence or the matter of the information)

Affidavit, paragraph 2, 3, 4, 5, 6, 7, 8

As for P6, P7

Information, Extract

It was alleged that between the period of March 2007 and 31st May 2013, the Department of Finance paid K6 million to PKP Nominees (cheque no. 177135, dated 17/02/2012) in settlement for purported outstanding legal fees owned by the State.

WARRANT P12 ISSUED BY THE DISTRICT COURT ON 10 APRIL 2014

Warrant, Extract

namely;

- Customer Record Card/Signature Card
- Bank Statement from 01st January, 2007 to current date
- Copies of Department of Finance Cheques deposited between January 2007 to current date
- Copy of deposit slip for K2, 600, 000.00 dated 22nd January, 2008
- Copy of deposit slip for K1, 300, 000.00 dated 29th February, 2008
- Copy of deposit slip for K1, 462, 422.77 dated 22nd July, 2008
- Copy of deposit slip for K3, 595, 000.00 dated 19th February, 2010
- Copies of withdrawal slips after each deposits were made
- Copies of debit & credit forms after each deposits were made
- Copies of other documents that are related to these deposits

(state nature of thing/s)

YOU ARE HEREBY ORDERED to search the Korowi Lawyers account at Bank of South Pacific, account number 1000879717 *(state building, craft vehicle or place)*

and seize anything you may find that relates to the offence of stealing by false pretence under section 404 (1) (a) of Criminal Code Act and convey it to a safe place. *(state the offence or the matter of the information)*

Affidavit, paragraph 2, 3, 4, 5,

The Police National Fraud & Anti-Corruption Directorate (NFACD) is in receipt of a complaint from the Office of the Solicitor General alleging that purported illegal payments had been made to various law firms by the Department of Finance. The matter was registered at the NFACD and given reference # 056/2012.

The complaint alleged that the payments were made under suspicious circumstances from the state to Paul Paraka Lawyers, his service company PKP Nominees Ltd and Mr. Paraka's associates. Proper processes (which include getting clearance from the Solicitor General) were not followed in the procurement of these funds.

It was alleged that Mr. Paul Paraka conspired with officers at Department of Finance for Department of Finance to pay Korowi Lawyer's on behalf of Paul Paraka Lawyers. Department of Finance then made four separate payments to Korowi Lawyers between 2008 and 2010.

Paul Paraka Lawyers trust account number 1000586112 showed that Korowi Lawyers transferred K2, 600, 000.00 on 22nd January, 2008, K1, 300, 000.00 on 29th February, 2008, K1, 462, 422.77 on 22nd July, 2008 and K3, 595, 000.00 on 19th February, 2010. Korowi Lawyers transferred approximately K9, 000, 000.00 into Paraka Lawyer's account between 2008 and 2010.

Information, Extract

Police National Fraud & Anti-Corruption Investigating Team (Task Force Sweep) are conducting investigation into allegation of Stealing from Government funds which were obtained from Department of Finance and paid to Paul Paraka Lawyers. Between 2008 and 2010 Department of Finance paid approximately K9 million to Korowi Lawyers. Approximately K8.9 million were transferred from Korowi's bank account to Paul Paraka Lawyers Trust Account. State has never brief out any taskings to Korowi Lawyers to carry out for the State. Korowi Lawyer has conspired with Paraka Lawyer and they defraud the State.

WARRANT P13 ISSUED BY THE DISTRICT COURT ON 10 APRIL 2014

Warrant, Extract

namely;

- New Account Form/Signature Card
- Bank Statement from 01st January, 2010 to current date
- Copy of cheque deposited on 19th February, 2010
- Copy of deposit slip for K3, 940, 000.00 dated 19th February, 2010
- Copies of withdrawal slips after each deposits were made
- Copies of debit and credit forms after each deposits were made
- Copies of other documents that are related to these deposits

(state nature of thing/s)

YOU ARE HEREBY ORDERED to search the Kipoi Lawyer's account at Bank of South Pacific, Account number 1001547943. *(state building, craft, vehicle or place)*

and seize anything you may find that relates to the offence of Stealing by False Pretence, under section 404 (1) (a) of Criminal Code Act and convey it to a safe place. *(state the offence or the matter of the information*)

Affidavit – Not produced

Information – Not produced

WARRANT P14 ISSUED BY THE DISTRICT COURT ON 2 JUNE 2014

Warrant, Extract

namely, Customer Signature Card, A/C Operating Forms, Cheque copies, Deposit Forms withdrawals, Bank Statements starting from 01st/06/2007 to the 30th/07/2007 for two different accounts for A.11816302 Trust Account and B.11816313 Operational Account, named; YAPAO LAWYERS

(Here state nature of thing)

ANZ Bank, Harbor City, Konedobu, Port Moresby.

(Here state building, craft, vehicle or place)

and seize anything you may find that relates *(state the offence or matter of the information)* Stealing by False Pretence from the state, Conspire to Steal and Money Laundering And convey it to a safe place.

Affidavit - Not Available

Information- Not available

WARRANT P15 ISSUED BY THE DISTRICT COURT ON 9 JULY 2014

Warrant, Extract

namely;

- New account form/Signature Card
- Bank Statement as at 01st of April 2007 to 1st of June 2007
- Copy of Department of Finance cheque for K2, 000, 000. 00 dated 15th May 2007
- Copies of the Department of Finance cheques paid between January 2007 and December, 2013
- Copy of deposit slip for K1, 950, 000.00 dated 16th May, 2007
- Copy of Debit/Credit (transfer) forms for K1, 950, 000.00 dated 16th May, 2007
- Copies of withdrawal slips after K2, 000, 000.00 was deposited
- Copies of other documents/correspondence that are related to these deposits

(state nature of thing)

YOU ARE HEREBY ORDERED to search the Sam Bonner Lawyer's Bank of South Pacific Account number 1001252784 at BSP *(state building, craft, vehicle or place)*

and seize anything you may find that relates to the offence of Stealing by False Pretence under section 404 (1) (a) of Criminal Code Act and convey it to a safe place. *(state the offence or the nature of the information)*

Affidavit – Not produced

Information – Not produced

VALIDITY OF THE WARRANTS

General Principles

36. The effect of Mr Paraka's submissions is to challenge the search warrants on the basis that they are both defective on their face, and that they were not validly issued.

37. The *Constitution* the rights of all people to freedom from arbitrary search and entry (s 44) and to privacy (s 49).

38. Section 44(1)(a)(i)(ii) of the *Constitution* provides that no person shall be subjected to the search of his person or property, or the entry of his premises except to the extent that the exercise of that right is regulated or restricted by a law that makes reasonable provision for a search or entry: (i) under an order made by a court; or
(ii) under a warrant for a search issued by a court or judicial officer on reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search.

39. Section 49 provides that every person has the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38 (general qualifications on qualified rights).

40. Subject to the exceptions prescribed under ss 2 and 16, of the *Search Act*, 1977 is that law and applies to any search conducted in this jurisdiction.

41. Sections 6, 7 and 8 govern the issue and execution of search warrants.

6. ISSUE OF WARRANTS.

(1) If a court, other than a Local Court, is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any building, craft, vehicle or place–
(*a*) any thing with respect to which any offence has been or is believed on reasonable grounds to have been committed; or
(*b*) any thing as to which there are reasonable grounds for believing it is likely to afford evidence of the commission of any such offence; or
(*c*) any thing as to which there are reasonable grounds for believing is intended to be used to commit any such offence,
it may issue a warrant to search that building, craft, vehicle or place.

(2) If a court is satisfied by information on oath by a commissioned officer of the Police Force that there are reasonable grounds for suspecting that there is in any building or buildings in a village or in any part of a village or village garden any thing specified in Subsection (1)(a), (b) or (c), it may issue a warrant to search the building, buildings, village, part of the village or village garden.

(3) Where a warrant has been issued under Subsection (2) the person, policeman or policemen to whom the warrant is directed shall, where it is practicable to do so, before executing the warrant, endeavour to obtain the co-operation of those persons who, by custom, are regarded as the leaders of the village in respect of which the warrant has been issued.

(4) Subsection (1) or (2) does not justify the use of greater force than is reasonable in the circumstances.

7. DIRECTION OF WARRANT.

A warrant may be directed to all or any of the following:–
(*a*) to a named person;
(*b*) to the officer for the time being in charge of police in a particular province or place;
(*c*) to all members of the Police Force.

8. FORM OF WARRANT.

A warrant shall–
(*a*) describe the place to be searched; and
(*b*) state briefly the offence or matter of the information on which it is founded; and
(*c*) order the person to whom it is directed to search the place and seize any thing he may find in that place which relates–
(i) to the offence or the matter of the information on which the warrant is founded; or
(ii) to any other offence.

42. A search warrant is "part of the investigative pre-trial process of the criminal law, often employed early in the investigation and before the identity of all of the suspects is known". The “important characteristics of the search warrant procedure are that its foundation is the making of an order by a judicial officer and that the warrant which issues by virtue of the order authorizes the search and seizure of documents in the possession of another for use in the investigation and in any subsequent trial arising out of the investigation”: per Mason J. in the Australian High Court case of *Baker v. Campbell* (1983) 153 CLR 52, at p 82.

43. In giving effect to the *Constitution*, the conditions prescribed by the Act seek to balance the need to protect the individual from arbitrary invasions of

privacy and property with the public interest of an effective justice system. The validity of a search warrant is dependent on the fulfilment of the conditions governing its issue: *George v Rockett* [1990] HCA 26 at [4].

44. Non-compliance with the strict requirements of the provisions of the *Search Act* is in effect to breach the *Constitution*, s 44 or s 49, as the case may be: *The State v James Popo* [1987] PNGLR 286, per Amet J.

1): WHETHER THE SEARCH WARRANTS WERE INVALID ON THEIR FACE

45. Mr Paraka submits that: a) the "case" was initiated against a non-legal entity, namely the Manager, Bank South Pacific, Port Moresby, and at the time "Bank South Pacific" was a business name only, and not a legal entity and therefore not capable of being sued; b) the search warrants failed to identify "the jurisdictional basis" upon which they were issued; c) failed to specify the period for which the bank statements were required; and d) failed to identify the offence to which they relate. These are challenges to the validity of the warrants on their face.

46. Sections 6, 7 and 8 of the *Search Act* govern the issuance and form of search warrants. Section 6 provides the court with power to issue a search warrant in certain circumstances. Section 7 provides to whom a warrant may be directed. Section 8 prescribes the form a warrant must take.

47. Section 6(1) provides the court power to issue a warrant to search any building, craft, vehicle or place. Section 6(2) provides the court with similar power in relation to any building, buildings, village, part of a village or village garden. There is no dispute that it has no application here.

48. There is nothing in s 8 of the Act to require that a warrant must refer to s6. Section 6(1) and (2) is concerned with the circumstances in which an issuing authority may issue a warrant in either case. Whilst the warrants refer only to "s 6" and not to s 6(1), they sufficiently identify the relevant section of the *Search Act* under which they are issued, and furthermore by the description given, there can be no doubt that the warrant authorises a search at the premises described, and that considerations under s 6(2)(3) do not arise. Furthermore, each of the warrants in this case refer in the top left hand corner to "*Search Act*. Sec 6. Reg. Sec. 2. (a)" in compliance with Form 3 prescribed in regulation 2(a) of the *Search Regulation* 1977.

49. According to s 7, a warrant may be directed to all or any of the following: a) a named person; b) the officer for the time being in charge of police in a particular province or place; and c) to all members of the Police Force.

50. Mr Paraka's submission that all of the warrants are directed to the Manager, BSP is misconceived.

51. Each of warrants P2 to P11 are directed to "Chief Inspector Gitua of National Fraud & Anti-Corruption Directorate, Police Headquarter, Konedobu", and the "Officer in charge of Police at National Fraud & Anti-Corruption Directorate", and "all officers and members of the Police Force". Warrants P12 to P15 are in similar terms. All are directed to Timothy Gitua, of the NFACD, and to "all officers and members of the Police Force". P12 and P15 do not state who the Officer in charge of the Police is but this is not mandatory.

52. The warrants comply with s 7 of the Act.

53. Section 8 prescribes the form of the warrant, the form for which is again provided in s 2(a) of the *Regulation*. Pursuant to s 8 a warrant shall: a) describe the place to be searched; b) state briefly the offence or matter of the information on which it is founded; and c) order the person to whom it is directed to search the place and seize any thing he may find in that place which relates – (i) to the offence or the matter of the information on which the warrant is founded; or (ii) to any other offence.

54. Each of the warrants comply on their face with Form 3 in the Regulations. All except P2 and P3 contain the words "this search may be carried out at any time", a matter I will return to below.

55. Pursuant to s 8(a), each of the warrants describe the place to be searched, namely: in the case of P2, "the Office of Bank South Pacific Ltd, Port Moresby – National Capital District"; in the case of P6, P10, "Bank South Pacific Limited, Head Office, Port Moresby"; P7, "Bank South Pacific Limited, Head Office, Port Moresby"; P9, "the Office of the Manager, Bank South Pacific Ltd – head office, Port Moresby"; and P14 refers to "ANZ Bank, Harbour City, Konedobu, Port Moresby". P12, P13 and P15 are expressed in different terms. P12 identifies the place to be searched as "Korowi Lawyer's account at Bank of South Pacific, Account number 1000879717". P13 and 15 are in similar terms but refer to the accounts of Kipoi and Sam Bonner Lawyers.

56. The banks referred to in the search warrants are not the persons to whom the warrants are directed but the *places* at which the searches are to be conducted. Whilst great care should be taken to ensure that descriptions of buildings, places etc are accurate, contrary to Mr Paraka's submission, most of the warrants do refer to the Bank South Pacific Limited and not just "Bank South Pacific". Critically, the place to be searched in each of the warrants is clearly and sufficiently identified in compliance with s 8(a) of the *Search Act*.

57. Mr Paraka initially submitted that the warrants do not identify the offence to which they relate at all. When he was directed to the offence statement at the bottom of the warrants during submissions, he submitted that the warrants failed to refer to any particular section of the law. He further submits that the warrants do not identify the particular documents that are being authorised for seizure, and that the warrants do not refer to any specific time frame.

58. The warrants refer to the offences as follows:

a. P2: "the offence of Stealing by False Pretence, Misappropriation of public funds and Money Laundering which are likely to contain evidence contrary to Sections 404 (1) and 383A (1) of the CCA and Section 34 of the POCA";
b. P6, P7, P10: "the offence of stealing by false pretence, misappropriation of public funds belonging to the state";
c. P9: "the alleged offence of fraudulent application of monies are likely to contain evidence Contrary to Section 383A (1) of the PNG *Criminal Code* Act.";
d. P12, P13, P15: "the offence of stealing by false pretence under section 404 (1) (a) of *Criminal Code* Act"; and
e. P14: "stealing by false pretence from the state, conspire to steal and money laundering."

Principles governing the statement of the offence

59. It is not necessary for a warrant to specify with particularity the item to be seized. In some cases the precise thing that will afford evidence of a suspected offence will not be known. That is particularly so in a case involving fraud or other financial crime. It does not follow that the warrants are necessarily impermissibly wide or oppressive. Nor does it follow that the fact that the warrant may capture a very large amount of material make it invalid. It should be borne in mind that even where an offence is alleged to have occurred during a particular period documents that may afford evidence of that offence may well extend beyond that period.

60. It is for this reason, however, that the statement of the offence in a search warrant is important. Its function is to authorise seizure by reference to that offence. It establishes a "nucleus for the search": Burchett J in *Beneficial Finance Corporation v Commissioner of Australian Federal Police* (1991) 58 A Crim R 1.

61. It is clear from the terms of s 8(b) of the *Search Act* that it is not necessary for the warrants to state the offence with the same particularity that

would be required in an information or indictment. Section 8 provides that the warrant must state briefly "the offence or matter of the information on which it is founded". This is to allow for the fact that warrants are often issued at the early stages of an investigation when the suspected actors and/or the precise offences may not be yet known.

62. In the leading case on the issue in Australia, Burchett J in *Beneficial Finance Corporation v Commissioner of Australian Federal Police*, after considering in detail authorities from Canada and Australia (a passage which was later approved by the High Court) said (emphasis mine):

> *"The authorities make it clear that the statement of the offence in a search warrant need not be made with the precision of an indictment. That would be impossible, and indeed to attempt it would be irrational, bearing in mind the stage of the investigation at which a search warrant may issue. The purpose of the statement of the offence in the warrant is not to define the issues for trial;* ***but to set bounds to the area of search which the execution of the warrant will involve****, as part of an investigation into a suspected crime. The appropriate contrast is not with the sort of error which might vitiate an indictment, but with the failure to focus the statutory suspicion and belief upon any particular crime, with the result that a condition of the issue of the warrant is not fulfilled, and it purports to be a general warrant of the kind the law decisively rejected in the 18th century. There should be no going back on that rejection, which is an essential bulwark of respect for the integrity and liberties of the individual in a free society, but what the rule requires is identification (and so limitation) of an area of search by reference to a suspected offence, not the formulation of a pleading before the offence is capable of prosecution."*

63. And later, quoting from *Coward v Allen* (1984) 52 ALR 320 at p 332:

"At the stage of the investigation when a search warrant is granted, it may not be known what particular offence or offences have been committed. It is sufficient that the warrant specifies the offences in such a way as to enable the constable executing it, as well as those assisting him, to decide if the things seized come within the things described in the warrant."

64. It is the nature and substance of the offence that is critical and whether it is sufficiently described to enable both the officer executing the warrant, as well as those assisting him, and the occupier of the place being searched to know what is authorised to be searched for and seized.

65. There must be strict compliance with the *Search Act* but that does not mean that an overly technical or restrictive approach should be applied. In determining the question a broad and practical approach should be applied, having regard to the warrant as a whole and all the circumstances of the case at hand.

66. Again Burchett J said at 543 in *Beneficial Finance*:

> *"The matter should be viewed broadly, having regard to the terms of the warrant in the circumstances of each case. The question should not be answered by the bare application of a verbal formula, but in accordance with the principle that the warrant should disclose the nature of the offence so as to indicate the area of search. The precision required in a given case, in any particular respect, may vary with the nature of the offence, the other circumstances revealed, the particularity achieved in other respects, and what is disclosed by the warrant, read as a whole, and taking account of its recitals".*

67. The effect of Mr Paraka's submission is to argue that the warrants did not disclose the nature of the offences with sufficient clarity and particularity to define the permissible area of search. This was again a challenge to the warrants on their face.

68. As a general observation the statements of the offence in the warrants in this case could have been drafted with greater particularity. For the most part they do not refer to the relevant offence provision by its number. The statements of the offences do not refer to the offences occurring over a specific period, nor do they identify by whom it is alleged that the offences were committed. None of these things necessarily render the warrant invalid: see *R v Tillett; Ex parte Newton* (1969) 14 FLR 101 at 114; (supra at 114); *Parker v Churchill* (1986) 9 FCR 334 at 348. In some cases the persons involved, or the date of the offence will not be known. Provision numbers on their own are unlikely to provide much assistance. The critical question in each case is whether the statement of the offence when read in the context of the warrant as a whole is sufficient to identify the area of search.

69. In each of the warrants P2 to P10 the nature and substance of the offence is sufficiently described as the misappropriation or stealing by false pretence of public monies or monies belonging to the State. P14 also includes conspiracy to steal and money laundering. The reference to "s 34 of the POCA" in P2 does not sufficiently describe the nature or substance of the offence but it may be severed from the warrant without rendering it otherwise invalid: *Parker v*

Churchill (1986) 9 FCR 334 at 348.

70. Furthermore, when warrants P2 to P10 are read as a whole it is clear that the items authorised for seizure are records relating to the stealing by false pretence or the misappropriation of public monies between 2007 and 2013. In the case of P14 the items authorised for search relate to stealing by false pretence from the State, conspiracy to steal and money laundering between June and July 2007.

71. P12, P13 and P15 describe the offence only as stealing by false pretence contrary to s 404(1)(a) of the *Criminal Code* but without identifying from whom by reference to the State or any other person. On its own that might be regarded as impermissibly vague. Given the description of the things described in the warrant, however, it is clear that the search authorises the seizure of things relating to the stealing by false pretence of certain monies paid into the account between 2007 and 2014.

72. That is not to say that the offences would not have benefited from greater clarity and particularisation, for instance as to period, and persons alleged to have been involved, even if in broad terms, including by reference to others unknown if necessary. In each case, however, the nature or substance of the offence or offences is sufficiently stated to indicate the authorised area of search.

73. Furthermore, warrants P6 to P15 do identify with some precision particular documents sought under the warrants, together with documents that are related to them.

74. Warrants P6, P7, P 9 and P10 are valid on their face. Whilst the descriptions of the offences lacked some particularly, they were nevertheless sufficient to enable the bank and the police to identify what was authorised for search and seizure for the purposes of s 8.

75. Warrant P2 is poorly expressed with respect to the nature of the thing to be searched for. It appears to be missing some words after the word "namely" but on any fair reading it authorises the search and seizure of any thing relating to the stealing or misappropriation of public monies paid by the Department of Finance to Harvey Nii Lawyers. When the description of the place, thing and offence are read together it is sufficient to identify to both the executing officer and the bank what it is that is authorised for seizure under the warrant.

76. The warrants comply with s 8 of the Act.

77. The warrants are valid on their face.

2) WHETHER THE SEARCH WARRANTS WERE VALIDLY ISSUED

78. The critical requirement for the purposes of s 6 of the *Search Act* is that the court is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any building, craft, vehicle or place– (*a*) any thing with respect to which any offence has been or is believed on reasonable grounds to have been committed; or (*b*) any thing as to which there are reasonable grounds for believing it is likely to afford evidence of the commission of any such offence; or (*c*) any thing as to which there are reasonable grounds for believing is intended to be used to commit any such offence.

79. The documentation relied upon by CI Gitua to apply for the warrants was admitted through him for each of the Warrants P2 to P12. In each case he filed a notice of motion, affidavit, information and draft search warrant. Key extracts from that documentation are set out in the table above.

2)a): WHETHER THE SEARCH WARRANTS WERE OBTAINED IN AN ABUSE OF PROCESS

Submissions

80. Mr Paraka contends that the warrants were obtained as an abuse of process. He obtained orders in the District Court in SW Nos 32 and 33 of 2011, on 2 April 2012, joining him as a party to proceedings, and setting aside two search warrants obtained by CI Gitua on 15 March 2012, one of which is Exhibit P1. The other was apparently issued in respect of the PNG Law Society and is not before the Court.

81. On application by Mr Paraka, the District Court refused to grant permanent restraining orders against CI Gitua and members of the NFACD and the Financial Intelligence Unit, but ordered that they were "at liberty to apply for search warrants if reasonable grounds are shown to exist provided sufficient reasonable notice is given to Paul Paraka of PPL": Exhibits D1 and D2. Mr Paraka submits that CI Gitua unlawfully failed to give notice to Mr Paraka of the search warrants sought at the National Court in 2013 and 2014. Mr Paraka further submits that CI Gitua deliberately failed to inform the issuing authority in the National Court of the District Court orders.

Consideration

82. The submissions are rejected. There was no abuse of process or misconduct by CI Gitua. It was permissible for police to seek search warrants

before the higher court. Applications under the *Search Act* may be made before "any court, other than a Village Court, and includes a judge or Magistrate of any court, other than a Village Court": s 1. Deputy Chief Justice Salika, sitting in the National Court, was made aware of the restraining orders by CI Gitua. Each of the affidavits filed in support of search warrants, P2 to P12 expressly stated over several paragraphs that previous search warrants had been applied for and obtained at the District Court, but set aside on the order of Principal Magistrate Bidar, and attached the initial warrant, decision and orders of the District Court. Whilst the annexures to the affidavits have not been produced by the State, I accept CI Gitua's evidence that they were attached to the affidavits. The affidavits referred to the restraining order and expressed the view that the orders were inconsistent with the purpose of a warrant and should not bind the Court. The issuing authority can have been under no misapprehension as to the existence of the orders in the circumstances. It was the reason for the applications to be made to the National Court.

83. Furthermore, it was entirely proper for the search warrants to be sought in the absence of Mr Paraka. As observed by Salika DCJ on 23 August 2013, in his written decision refusing Mr Paraka's amended notice of motion filed on 8 August 2013, there is no requirement for an individual who is directly interested or affected by a search warrant to be a party to it: Exhibit D6. For obvious reasons, such a requirement would in some circumstances defeat the purpose of a warrant. Search warrants are often employed at an early stage of an investigation before the identity of all suspects is known, and their purpose is to identify and secure evidence that might be used in any subsequent trial of a person for the offence described: see *Baker v Campbell* (1983) 153 CLR 52 at 81. That is not to say that a person does not have the right to challenge a warrant in certain circumstances but that is a different matter.

84. It is unclear whether Mr Paraka submits that the warrants obtained in 2014 were also obtained in an abuse of process following the orders of 2012. I reject any such submission. Whilst made before the District Court they were issued in respect of law firms not referred to in P1 and were not covered by the orders.

2)b) WHETHER THE SUPPORTING MATERIAL WAS FUNDAMENTALLY DEFECTIVE

Submissions

85. Mr Paraka further submits that the documentation relied upon in support of the warrant applications is fundamentally defective on several grounds.

86. Mr Paraka says that the: a) The warrants were applied for by notice of

motion which was not permitted – the only documents permitted were the information and affidavit; b) CI Gitua did not apply under s 185 *Constitution* to apply by notice of motion; c) the notices of motion contain no return date, which is a fundamental error demonstrating unclean hands and leading the issuing judge into error; d) the notices fail to identify the jurisdictional basis under s 6 of the *Search Act*, and refer to s 155(3) and 155(5) of the *Constitution* when there was no review or appeal against the District Court order; e) the notices do not contain the facts and circumstances demonstrating a reasonable basis for the warrant; f) the notices do not set out the relief sought and it was improper for the notices to state that the purpose of the application was to seek bank records related to the allegation set out in the affidavit and search warrant; and g) it was improper for the search warrant to be drafted for the issuing authority.

87. Mr Paraka submits that the informations relied upon: a) do not set out the jurisdictional basis; b) contain only a general allegation or in some cases simply a statement and do not set out the offence and the specific grounds for the belief; c) do not set out the relief sought from the bank; and d) do not identify the specific documents sought, or identify the bank accounts by numbers to be searched. In respect of P7, the warrants for PPL, the information only refers to other law firms and does not refer to Mr Paraka or his law firm, there is no direct connection between PPL and reasonable suspicion of an offence.

88. Furthermore, that the affidavits: a) were sworn on 15 March 2012 according to the first page of the affidavit but 10 July 2013 on the last page of the affidavit and there was no attempt by CI Gitua to apply for an application to amend the affidavit before the issuing judge; b) the oath is in breach of s 12 A of the *Oaths Affirmation and Statutory Declaration Act* 1962 in that Commissioner for Oaths is not properly identified in a separate clause, it is not clear whether he is a solicitor or a clergyman, the number of his practising certificate if is a lawyer, or whether he administered the oath; c) by CI Gitua's admission during cross-examination, the affidavits were missing Annexures A to D at the time they were put before the issuing judge; d) the affidavits are speculative, hearsay and insufficient for the purposes of s 6(1) of the *Search Act*; e) were not sworn by officers of the Finance Department or Solicitor General's Office would vouch to the facts alleged; f) do not relate to payments between 2007 and 2011; and g) do not identify the specific relief sought. For P7, the information does not identify the basis for searching Mr Paraka or his law firms.

89. There are in fact two separate issues effectively raised by Mr Paraka's submissions. The first is whether the documents upon which the issuing judge relied were fundamentally defective thus invalidating the warrants. The second is whether the information before the issuing judge was capable of satisfying the issuing judge that the warrants should be issued. I will deal with the issues

separately.

Consideration – Notices of Motion

90. I reject Mr Paraka's submission that the notices of motion are impermissible, and otherwise fundamentally flawed and therefore render the search warrants invalid.

91. The State submits that the notices of motion were permitted under Order 4 Rule 37 of the *National Court Rules*. Order 4 relates to the commencement of civil proceedings. It is not immediately clear to me that this Order applies. An application for a search warrant is not a civil proceeding against any person, it is an order permitting police to search a particular place and seize documents authorised by the warrant. The notices of motion were not required by the *Search Act*. As Mr Paraka himself submits, the only documents required were the information and affidavit. To the extent that the notices were required to bring the application before the National Court, they were sufficient for that purpose. It was not necessary for C I Gitua to apply for ad hoc directions under s 185 of the *Constitution* to apply by notice of motion. Section 185 is a facilitative not an exclusory provision.

92. It is a misnomer for the reasons stated above to state that the proceedings are between CI Gitua and the Manager, BSP. The application is one made to the Court by the applicant. It is not a contested proceeding, or a proceeding brought against the bank as a defendant, but an application for a warrant to search a particular place pursuant to s 6(1) of the *Search Act*. The warrants do not fail because the notices of motion were not required under the *Search Act*, nor because they referred to the "respondent" as "The Manager, BSP, Port Moresby" in circumstances where BSP was only a business name and not a legal entity capable of being sued. Nor are the notices of motion in some cases defective because they were not dated by CI Gitua as the applicant, or do not contain a return date for the Court. None of those matters render the search warrants issued by the Deputy Chief Justice in relation to the motions defective. None of those matters demonstrate "a lack of clean hands" on the part of CI Gitua.

93. The notices of motion sought orders pursuant to s 6 of the *Search Act* and s 155(3) and 5 of the *Constitution*. In all but P6 and P12, the notices of motion referred to s 6(1) of the *Search Act*. P6 referred to s 6 of the Act. P12 simply sought that a search warrant be issued to effect a search pursuant to the *Search Act*. The face of each warrant was sufficiently clear as to the purpose of the motion, namely to seek a search warrant.

94. The notices of motion referred to s 155(3) and 155(5) of the *Constitution*.

Section 155(3)(b) provides that the National Court has such other jurisdiction and powers as are conferred on it by any law but it was unnecessary to refer to it. Section 155(5) provides that in a case referred to in Subsection (3)(e), the National Court has nevertheless an inherent power of review where, in its opinion, there are over-riding considerations of public policy in the special circumstances of a particular case. Section 155(3)e provides that: The National Court—

> (*a) has an inherent power to review any exercise of judicial authority; and*
> *(b) has such other jurisdiction and powers as are conferred on it by this Constitution or any law,*
> *except where—*
> *(e) the power of review is removed or restricted by a Constitutional Law or an Act of the Parliament.*

95. C I Gitua was unable to recall why he referred to those *Constitution*al provisions. He agreed that he did not seek to appeal or review the orders of the District Court by separate proceedings. The inclusion of the references to ss 153 and 155 does not render the motion or the resulting warrant invalid. The reference to s 155(3) and (5) is unclear. To the extent it sought to overcome the District Court orders by review it was misconceived but the key point is that it was consistent with C I Gitua's evidence, which I accept, and his affidavits, discussed below, that he informed Salika DCJ of the fact of the District Court orders.

96. The notices were not required under the *Search Act*. It was not necessary for them to set out the facts and circumstances demonstrating a reasonable basis for the warrant, those were matters to be provided by information on oath. It was not improper for the notices to refer to the allegation set out in the affidavit and draft search warrant.

97. It was certainly not improper for the issuing judge to be provided with a draft search warrant for consideration. It was entirely appropriate, and to be expected by the Court, to facilitate the efficient administration of justice, particularly in the circumstances of this case involving multiple warrants.

Consideration - Informations

98. Contrary to Mr Paraka's submission, the informations relied upon in support of P2 to P12 refer to s 6(1) of the *Search Act*, consistent with the information prescribed in Form 1 pursuant to s 1(a) of the Regulations.

99. Section 6(1) of the Act requires that the court be satisfied "by information on oath". S 1(a) of the Regulations provides that information sufficient to issue a warrant shall be on oath in Form 1, which provides that the person declare that: "(*state belief in respect to commission, or likely commission, of offence*) being the grounds for which a search warrant may be issued in respect of (*state particulars of building, craft, vehicle or place*)". The place in the information in each case is consistent with the place identified in the corresponding search warrant.

100. The informations set out CI Gitua's belief as to the commission of the offence(s). ("The information" for the purpose of the Regulations is different from an information for the purpose of commencing criminal proceedings at the District Court.) As is apparent from the table above, the belief stated in the informations in support of P9 and P12 is succinctly but clearly stated. The belief stated in the other informations is poorly expressed. It seems to me that there is some misunderstanding as to the meaning of the word "purported" but the effect is nevertheless clear enough. As for P7 it does expressly refer to payments to PPL. In any event, however, the informations comply, on their face, with Form 1. Whether or not they are sufficient for the purposes of satisfying s 6(1) is a different question dealt with below.

Consideration - Affidavits

101. Each application was also supported by an affidavit. This is appropriate where the information to be provided to the issuing officer is quite detailed and facilitates the reception of information on oath before the court required to consider the application consistent with s 6(1) and the *Constitution*. It is appropriate that the information and affidavit be read together.

102. There is no legislative requirement for a Commissioner of Oaths who is a lawyer to include his practising certificate number. There is no obligation for a separate clause to be inserted into the affidavit. The endorsement or attestation of the Commissioner is sufficient to comply with the *Oaths Affirmation and Statutory Declaration Act*. In the case of P2, P6, P7, P9, and P10 the name of the commissioner is clear. In P12 the name is not clear but it appears that it was an officer from the Officer of the Public Prosecutor.

103. The fact that the date referred to in the first paragraph of the affidavit was not corrected by the Commissioner, nor formally amended before the issuing judge, does not render the affidavit fundamentally defective.

104. I am, however, concerned by one matter but not for the reasons identified by Mr Paraka. CI Gitua gave evidence that the normal practice is for the person

making the affidavit to do so before the Commissioner for Oaths. But he also said that an affidavit may be sworn at a date different to that on which it is endorsed, and admitted that it was possible that some of the affidavits were taken by his officers to the Commissioner for Oaths for endorsement. That is fundamentally wrong. An affidavit must be taken, i.e. sworn before a Commissioner of Oaths, who must administer the oath. That is what the endorsement attests to. Neither counsel appeared to appreciate the significance of CI Gitua's evidence. It is also unclear which affidavits were not properly sworn.

105. Accordingly, I find that the affidavits relied upon to obtain the warrants had not been sworn in accordance with ss 14 and 17 of the *Oaths Affirmation and Statutory Declaration Act*. For obvious reasons the Deputy Chief Justice was not aware of that. Other than for P12, the informations are insufficient to support the warrants on their own. In the circumstances the search warrants are invalid. The reasonable grounds of which a court must be satisfied before it issues a warrant can only be established by information on oath: s 6(1).

106. I will deal with the import of that below.

2)c): WHETHER THE INFORMATION ON OATH WAS CAPABLE OF SATISFYING THE COURT THAT THERE WERE REASONABLE GROUNDS FOR ISSUING THE WARRANTS

107. The other question effectively raised by Mr Paraka's submissions is whether, assuming that the information before Salika DCJ (the affidavit and information of CI Gitua) was on oath, it was capable of satisfying him that there were reasonable grounds for suspecting that there was any thing at the bank likely to afford evidence of the commission of any such of the offences identified for the purposes of s 6(1).

General principles

108. George v Rockett [1990] HCA 26, is the unanimous seven-member decision of the High Court concerning s 679(b) of the *Criminal Code* of Queensland, since repealed, which was in substantially the same terms as s 6(1), and whilst not binding is highly persuasive and from which a number of principles might be discerned.

109. The opening words of s 6 "if a court … is satisfied", impose on a court to which an application is made a duty of satisfying itself that the conditions for the warrant are fulfilled: *George v Rockett* at [6].

110. Where a statute prescribes that there must be "reasonable grounds" for a

state of mind, it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person: *George v Rockett* at [8].

111. It is not necessary, however, for the court to entertain the relevant suspicion or belief itself; it is only necessary for it to be satisfied that there are *reasonable grounds* for entertaining the suspicion or belief: *George v Rockett* at [7].

112. It is also important to bear in mind that suspicion and belief are different states of mind, and s 6(1) prescribes distinct subject matters of suspicion on the one hand and belief on the other. The court must be satisfied that there are reasonable grounds for suspecting that "there is in any building, craft vehicle or place – any thing" and that there are reasonable grounds for believing that the thing "will ... afford evidence as to the commission of any offence": see *George v Rockett* at [13].

113. Suspicion is a "state of conjecture or surmise where proof is lacking" or a "slight opinion without sufficient evidence": *George v Rockett* (1990) 170 CLR 104 at [14], citing *Shaaban bin Hussien v Chong Fook Kam* [1970] AC 942, 948 and *Queensland Bacon v Rees* (1966) 115 CLR 266, 303. There must, however be some factual basis for the conjecture, surmise or opinion: *George v Rockett* at [14].

114. As to belief, the High Court in George v Rockett said at [14]:

> *"The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture."*

115. It follows that whilst there must be some factual basis for both the suspicion and the belief, the state of mind may be based on hearsay material or materials which may be inadmissible in evidence. Or in other words the technical rules of evidence do not apply. Nevertheless, the materials must have some probative value: *R v Rondo* [2001] NSWCCA 540; (2001) 126 A Crim R 562 (at [53] (b)) per Smart AJ (Spigelman CJ and Simpson J agreeing); *Shaaban Bin Hussien v Chong Fook Kam* (at 949).

116. In this regard I would respectfully decline to follow the decision of the Court in *Esso Highlands Ltd v Bidar* (2014) N6386 which held that the grounds upon which the search warrant was issued had to be capable of proof on the balance of probabilities. The Court relied on the decision of the Supreme Court in *SCR No.2 of 1980; Re s.14 (2) of the Summary Offences Act, 1977* [1981] PNGLR 50 for that proposition. In that case the defendant had to establish, as a defence to a summary offence, that he personally believed on reasonable grounds that a cheque would be paid on presentation. As observed by the Supreme Court, according to the underlying law, in such circumstances where a defendant or accused is required to establish a defence, he must do so to the balance of probabilities, and not beyond reasonable doubt. That is different from the situation under the *Search Act*, however, where the court is not required to hold the belief itself only to be satisfied that there are reasonable grounds for holding the belief, which may be given on more slender evidence than proof and which may leave something to conjecture or surmise.

117. It is also necessary to identify the subject matter of suspicion and the subject matter of belief. The subject matter of suspicion is the existence of the thing, or in other words, there must be reasonable grounds for suspecting that the things sought under the warrant will be in the building, craft, vehicle or place identified in the warrant. The subject matter of belief is whether the thing identified will afford evidence as to the commission of an offence: George v Rockett at [16].

118. The critical questions in this case is whether there was sufficient material in the affidavit and information oath to satisfy the court that there were reasonable grounds for: a) suspecting that the things sought in the warrant would be in the bank; and for b) believing that those things were "likely to afford evidence of the commission of any such offence" for the purpose of s 6(1)(b).

119. In considering these questions it should be borne in mind that a thing will be likely to afford evidence of the commission of an offence if "there are reasonable grounds for believing that it will assist directly or indirectly in disclosing that an offence has been committed or in establishing or revealing the details of the offence, the circumstances in which it was committed, the identity of the person or persons who committed it or any other information material to the investigation of those matters": George v Rockett at [21].

120. Furthermore, it is not impermissible for the object of a search, or the thing, to be described in a broad non-specific fashion: *Dunesky v Elder* [1994] 54 FCR at [30].

121. As the High Court observed in Rockett at [16], "the broader and less

specific the description, the more difficult it is likely to be to satisfy the requirement of reasonable grounds for believing that a thing answering the description will afford evidence of the commission of an offence." At the same time the "more specific the description, the more difficult it may be to satisfy the requirement of reasonable grounds for suspecting that the designated object is in the particular location".

122. The onus of proof is on Mr Paraka to establish on the balance of probabilities that there were no reasonable grounds for the relevant suspicion or belief.

Consideration

123. Subject to my finding above, the information on oath in support of P7 was set out in the affidavit and information of CI Gitua. Both could have been better expressed and contained additional detail. General statements about the role of police or instructions to investigate are largely irrelevant. What is to be established is that there are reasonable grounds for believing that an offence has been committed and reasonable grounds for suspecting that things that will afford evidence of that offence will be at the building, craft, vehicle or place. Direct language should be used to describe the information in the possession of the police and in brief terms how it has been obtained.

124. Nevertheless the affidavit and information in support of P7 disclosed the following facts, such that: CI Gitua as the Director of the NFACD had personal knowledge of the fact that the NFACD had received a complaint from the Office of the Solicitor General, which complaint I also find was attached to the affidavit of CI Gitua when the warrants were applied for (see Exhibit D3, albeit that that exhibit too is missing its own attachment); the complaint alleged that payments had been made to six named law firms without clearance from the Solicitor General; the NFACD was also in receipt of information that some of the monies had been solicited for PPL through the six named law firms, and that the Department of Finance had paid amounts of K5m or K6m each to those law firms on 17.2.12; and it was further alleged on the information, whilst poorly expressed, that similar payments totalling more than K30m had been made by the Department of Finance between March 2007 and 31 May 2013 to PPL.

125. Those facts were clearly capable of establishing that there were reasonable grounds for believing that the offences of stealing by false pretence and/or misappropriation of State monies had been committed by persons associated with PPL and the named law firms and that there were reasonable grounds for suspecting that the things identified in the warrant – namely bank statements for PPL's accounts and copies of government cheques, together with related documentation - were at the bank, and that there were reasonable

grounds for believing that those things would be likely to afford evidence as to the commission of those offences.

126. For the reasons outlined above, it was not necessary for officers from the Solicitor General's Office or the Department of Finance to swear affidavits to establish the facts alleged. The information from a senior officer as to the materials in police possession including a complaint from the country's Solicitor General, and information obtained during the course of investigations with a government department, clearly has probative value. Not that information must always be based on such materials. In some cases it will be based on information from a member of the public, an eye witness, a whistle-blower, or a police informant. Again, a police officer would need to depose as to nature of the source of the information. It should also be borne in mind that warrants are usually sought at an early stage of an investigation, and that at that stage the information may be confidential and the source may not be named in the information. The question is always whether the information reveals reasonable grounds for the belief.

127. The situation in this case was very different from that in *Esso,* in which the court found that there were no materials or information before the swearing officer other than a highly suspicious and unsubstantiated complaint, which the officer had not taken any steps to verify.

128. Mr Paraka submits that the documents sought were not specifically described. As above, it is not impermissible to describe the object of the search in a broad non-specific fashion. Whilst the period of the bank statements was on its face unlimited, that was to be read together with the balance of the warrant, including the offences named and the period identified for the payment of cheques, which was identified. Some of the correspondence between BSP and PPL was very specifically identified.

129. The information on oath should state the basis for suspecting that the things sought in the warrant will be found at the premises or place identified, for instance the suspect is known to live at a particular address, or operate a business at that particular place. The affidavit and information did not set out the basis for suspecting that PPL operated a bank account at BSP. Warrants were sought at both BSP and ANZ. In my view the fact that warrants were so sought does not invalidate the warrants. It was not unreasonable for the Court to find that there were reasonable grounds for suspecting – surmising, conjecturing - that PPL would operate a bank account at one or other of the two major commercial banks operating in the country at the time.

130. Whilst helpful, it was not necessary for the bank account numbers and the correspondence to be described in specific terms. As it was the information

should have set out why those particular bank account numbers and correspondences were suspected to be at the bank. Again, however, it was on the information open to the issuing to have found that there were reasonable grounds to suspect that those things were at the bank on the basis of inquiries conducted with the Department of Finance. To the extent that I am wrong about that, it speaks to an omission to include detail in the affidavit and information that was in the possession of police, rather than an attempt to conduct a search without reasonable grounds.

131. The affidavit in support of P2 is in similar terms to that relied on in support of P7 albeit only identifies Harvey Nii Lawyers by name as one of the firms, and does not refer to the payments being solicited to PPL. In addition, the information states that police have information that illegal payments were made by the Department of Finance to Harvey Nii Lawyers purportedly for legal fees, "since 2006 up to the present time", including in particular "one such payment being an identified cheque dated 17.2.12.

132. The affidavit and information in support of P2 was clearly capable of satisfying the issuing officer that there were reasonable grounds for suspecting that there were things relating to the alleged fraud and theft of public funds in excess of K6m paid by the Department of Finance to Harvey Nii Lawyers at the bank, and reasonable grounds for believing that those things would be likely to afford evidence of the commission of the offences of stealing by false pretence or misappropriation of State monies. As above P2 itself was poorly expressed. It did not identify the type of thing sought from the bank, for instance by inserting the words "records" or "documents" or "bank statements", "deposit slips" etc. But it cannot be said it was unintelligible.

133. P9 and the affidavit and information in support of it are in essentially the same terms as those for P2 but in respect of Sino & Co Lawyers. That information was capable of satisfying the court that there were reasonable grounds for suspecting that the things identified - bank statements for the period 2007 to 2012, a cheque dated 17.2.22, and documents produced in support of clearance of the funds - were at the bank, and reasonable grounds for believing that those things would be likely to afford evidence of the commission of the offences of stealing by false pretence or misappropriation of State monies. There was, however, neither in the information nor the affidavit in support of this warrant, looked at in isolation, facts establishing reasonable grounds for suspecting that there would be correspondence for funds to be transferred to PPL or PKP Nominees. It must be borne in mind, however, that the applications for P2 to P10 were heard together in chambers before the Deputy Chief Justice Exhibit D6 at [2]), and all concern the same central allegation. It was therefore permissible for the Court to take into account all of the affidavit and informations on oath before it, and which provided reasonable grounds for

suspecting that there would be such correspondence.

134. In the case of P6, the affidavit in support is in identical terms to that for P7. The information is not well drafted. Unlike P7-C which speaks of payments of "more than K30m" over the five year period, or P9-C which refers to payments being made since 2006, P7-C alleges that payments were made between 2007 and 2013 for K6m but specifically identifies one cheque for that amount paid in 2012. The information was certainly capable of satisfying the court that there were reasonable grounds for suspecting that bank statements for the operating, trust or salary accounts of Jack Kilipi Lawyers, and copies of government cheques during the period, including the particular cheque identified, and related correspondence, would be at the bank, and reasonable grounds for believing that they would be likely to afford evidence of the commission of the offences of stealing by false pretence or misappropriation of State monies. The question is whether the warrant was impermissibly wide for authorising the seizure of those things for the period of six years, March 2007 to May 2013 given the specific manner in which the affidavit/information was drafted. In isolation arguably not but taking into account the other affidavits and information on oath before the Court it was permissible.

135. I reject the suggestion that CI Gitua or one of his officers deliberately altered the affidavit by crossing out and handwriting the date of 10 July 2013 over the original date of 10 March 2012. Amending a date may be required when an affidavit is sworn on a later date than when it is drafted. The date should be amended by the deponent and initialled by the deponent at the time of swearing. It is not possible to say who made the alteration but there is no evidence to suggest it was done for any improper purpose.

136. For similar reasons, I make the same findings in respect of warrant P10, the affidavit, information and search warrant for which are drafted in almost identical terms to that of P6 but with respect to PKP Nominees Ltd.

137. Warrant P12 was applied for before the District Court on 10 April 2014. The affidavit and information in support is more detailed as to the alleged role of PPL, its service company, PKP Nominees Ltd. The effect of the affidavit and information read together is that the police had information that the Department of Finance paid about K9m to Korowi Lawyers between 2008 and 2010, and that PPL's bank account records showed that about K9m in total had been paid from Korowi Lawyers to PPL on 4 separate dates, during that period, in circumstances where Korowi Lawyers was never instructed by the State.

138. That information was capable of satisfying the court that there were reasonable grounds for suspecting that the things identified were at the bank, and reasonable grounds for believing that those things would be likely to afford

evidence of the commission of the offences of stealing by false pretence.

139. Mr Paraka submits that Warrants P13, P14 and P15 are null and void as the State has failed to produce the supporting documentation. Mr Paraka has been in possession of the warrants since the brief was served on him in May 2017. If he wished to challenge the warrants he was at liberty to obtain the supporting documentation from the District Court. CI Gitua's evidence that the District Court lost the documents in a move is hearsay but I accept his evidence that he was unable to produce the materials from police records and that his officers were unable to retrieve them from the District Court. That is regrettable. Whilst I appreciate that it is now almost eight six years since the warrants were applied for and issued, the police have a responsibility to keep such records themselves, especially where the matter is still before the courts.

140. What is clear is that P12 and D7, initiated in 2014, contain additional and more detailed information presumably obtained as the investigation progressed. Even assuming that there were deficiencies in the affidavit and information in support, I reject the suggestion that the warrants have been fabricated by police and were not applied for before the District Court. There is nothing before me to support that submission.

141. In summary, and subject to my finding above, there was in the case of P2, P6, P7, P9, P10 and P12 information before the issuing officer to support a finding that there were reasonable grounds for suspecting that there was, at the respective bank in each case, things with respect to which there were reasonable grounds for believing that they would afford evidence as to the commission of the offences stated for the purpose of s 6(1)(b).

142. It is not possible to make a definite finding in the case of P13, P14 and P15 due to the unavailability of supporting documentation but there is no evidence to suggest that there was any misconduct on the part of police in applying for the warrants.

143. The warrants were also issued on the basis that there were reasonable grounds for believing that there were things at the bank "with respect to which any offences has been or is believed on reasonable grounds to have been committed" for the purpose of s 6(1)(a). There were reasonable grounds for believing that the offences had been committed with respect to State monies, and that those monies were at the bank. The things sought were with respect to those monies and so the findings outlined above would arguably also apply.

144. Warrants P2, P6, P7, P10, and P11 were also issued with respect to "any thing as to which there are reasonable grounds for believing is intended to be used to commit any such offence" for the purpose of s 6(1)(c). The affidavit and

information in support contained facts on which there were sufficient grounds to believe that there were things at the bank, namely monies, that were intended to be used to commit an offence, namely misappropriation, or potentially money laundering, but it does not really take the matter any further.

3): EXECUTION OF THE WARRANTS

145. When a warrant has been issued and is in force under s 6(1) of the *Search Act*, ss 9 and 10 authorises the executing officer and any persons assisting to enter the building, vehicle, craft or place and search for and seize evidential material. Ss 9 to 13 are relevant.

9. POWERS AND DUTIES RELATING TO SEARCHES OF PREMISES, CONTAINERS, ETC.

(1) A person conducting a search under Sections 5 and 6 in any place (other than in a baggage or freight container) and his assistants (if any)–

(*a*) have power–

(i) to enter and be in that place for the duration of the search and for that purpose to use such force as is reasonably necessary; and

(ii) to the least extent necessary with the least amount of damage–to interfere with the structure of the place for the purpose of search; and

(iii) to touch any article in that place; and

(iv) to stop and search any person found in that place in accordance with Section 4; and

(*b*) shall, within a reasonable period after the conclusion of the search, restore the place or cause the place to be restored as nearly as possible to the same state of cleanliness and neatness that existed immediately before the commencement of the search.

(2) A person conducting a search under Sections 5 and 6 in any baggage or freight container and his assistants (if any)–

(*a*) have power–

(i) to enter and be in the place where the baggage or freight container is situated and for that purpose to use such force as is reasonably necessary; and

(ii) to the least extent necessary and with the least amount of damage–to interfere with the structure of the container for the purpose of search; and

(iii) touch any article in the container; and

(*b*) shall, within a reasonable period after the conclusion of the search, restore the container and any article in the container as nearly as possible to the same state of cleanliness and neatness that existed immediately before the commencement of the search.

(3) Where a search of a container under Subsection (2) cannot otherwise be made, a person conducting a search referred to in that subsection and his assistants may destroy the container for the purpose of search .

(4) This section does not require the restoration of the structure of any place or container interfered with by virtue of the powers conferred by this section.

Division 4.

Property Located During Search .

10. CERTAIN PROPERTY MAY BE SEIZED.

(1) Where, during the course of a **search** that is authorized by this Act, a policeman finds any thing that he believes on reasonable grounds–

(*a*) has been stolen or otherwise unlawfully obtained; or

(*b*) has been used or is intended to be used in the commission of any indictable offence; or

(*c*) will provide evidence of an offence,

he may seize that thing.

(2) For the purposes of Sections 3(2), 5(2) and 5(3), where the person searching finds a firearm or offensive weapon he may seize it.

(3) For the purposes of Sections 3(3) and 3(4), where the person searching finds any thing which in his opinion may be dangerous or inexpedient to leave in the possession of the person searched he may seize that thing.

(4) For the purposes of Sections 3(5) and 5(4), where the person searching finds any thing that in his opinion–

(*a*) constitutes a danger or is capable of constituting a danger to the safety of the craft; or

(*b*) is capable of being used to threaten a person on the craft,

he may seize that thing.

11. THINGS SEIZED MAY BE HANDED TO POLICE, ETC.

(1) Where a person seizes any thing under this Act and in his opinion that thing may be evidence relating to an offence he may hand that thing to a policeman.

(2) Where the person in command of a craft is of the opinion that property seized under this Act, on board the craft during the journey may be evidence relating to an offence committed during that journey on the craft he may on behalf of the owner of the craft give possession of that property to the person he believes on reasonable grounds is a representative of the authority responsible for law enforcement in the country where the offence will be tried.

12. POLICE TO MAINTAIN RECORD OF THINGS SEIZED, ETC.

Where any thing is seized by a policeman under this Act or is handed to a policeman, he shall enter in a

146. As above, Mr Paraka contends that the search warrants were obtained for the primary case in 2013 and were unlawfully re-executed in 2014, and furthermore that the bank records produced by the bank and seized by police were outside the scope of the warrants.

147. Contrary to submissions, neither CI Gitua nor Mr Wafi conceded in evidence that the documents seized fell outside the scope of the warrant. They each agreed that some of the documents seized were not specifically identified in the warrants. Whilst Mr Wafi was careful not to speak for Mr Maddison, both said that the seizure was authorised in accordance with the terms of the warrant.

General principles governing execution

148. Section 10(1)(c) of the *Search Act* authorises a policeman authorised to conduct a search under s 6 to seize any thing that he believes on reasonable grounds, will provide evidence of an offence. It is clear from the terms of s 10 that the officer must hold the relevant belief at the time he seizes the thing.

149. Again, I have found authorities from Australia helpful, in particular the decision of Lockhart J in *Dunesky v Commonwealth of Australia* [1996] FCA 624, in which he said:

> *"A search warrant is a severe intrusion into a person's privacy, home or place of business. The law takes care to ensure that the powers of police officers entrusted with the task of executing a search warrant are not exceeded; but at the same time it must be borne in mind that execution of a search warrant is a practical exercise carried out by police officers who, though trained in their task of law enforcement, are generally not qualified lawyers. Just as a person's privacy must be respected so must the investigation of criminal offences not be unreasonably impeded."*
>
> *To adopt the language of Mason J. in Baker v Campbell at 83:*
>
> > *'In approaching the scope of the authority given by the warrant we must keep practical considerations steadily in mind. It is simply impossible for a police officer executing a warrant to make an instant judgment on the admissibility, probative value or privileged status of the documents which he may encounter in his search. Generally speaking, it is in the course of the subsequent investigation following seizure*

of the documents that informed consideration can be given to the documents and an assessment made of their worth or significance in the respects already mentioned."

150. The obligation of a police officer executing a search warrant is to act reasonably in all the circumstances of the case: *Dunesky v Commonwealth of Australia*; *Crowley v Murphy*.

151. The warrant must be executed according to its terms and in accordance with the requirements of s. 10: *Dunesky v Elder* at 556.

152. It is for Mr Paraka to establish on the balance of probabilities that the police acted unreasonably and had no reasonable grounds for seizing the items under the search warrants.

153. In determining this issue the expression "will provide evidence of an offence" means that it is sufficient if the thing, or in this case the documents, will in some way implicate the persons named in the warrant, or if no person is named, someone in the commission of the offence: *Crowley v Murphy* at 143 and 151. The expression does not "import a requirement that the documents must be necessarily sufficient to achieve a conviction; it is sufficient that they have relevance or probative connection with, an issue arising upon an allegation of the offence alleged": *Parker v Churchill* per Burchett J.

154. Consideration can be given to what is contained in the information in order to decide whether or not documents fall within the scope of the warrants. Consideration may also be given, particularly in complex cases, to information or briefings given to executing officers by other officers about the issues involved: *Dunesky v Commonwealth of Australia*; *Parker v Churchill*.

155. A warrant may authorize the taking of a bundle of pages 'if the bundle of pages should, in the circumstances, be seen as a single thing' or if 'pages in the bundle other than those containing relevant statements should be seen as part of the evidentiary context within which the relevant statements should be read': *George v Rockett* at [22].

156. Where the classes of documents which may be seized pursuant to the terms of the warrant are wide, documents will not fail to satisfy the terms of the warrant merely because (a) they bear dates outside the period of the commission of the alleged offences specified in the warrant; or (b) they relate also to persons other than persons revealed by the warrant as being suspected of committing the offences; or (c) they relate to some subject distinct from the matter under investigation: *Dunesky v Commonwealth of Australia*.

157. Documents must be judged in their context and in the context of other

documents, not in isolation from them: Per Lockhart J in *Dunesky v Commonwealth of Australia*.

158. Nor does it follow that if a relatively small number of documents might fall outside the scope of the warrant that the execution is excessive or unlawful: *Dunesky v Commonwealth of Australia*; *Propend Finance Pty Limited v Commissioner of the Australian Federal Police* (1995) 128 ALR 657 per Hill J. at 682; *Inland Revenue Commissioners v Rossminster Limited* [1980] AC 952 per Viscount Dilhorne at 1006.

3)a): WHETHER THE WARRANTS WERE IMPROPERLY RE-EXECUTED

159. As above, Mr Paraka submits that warrants P2, P6, P7, P9 and P10 were obtained and executed in 2013 for the purpose of the primary investigation concerning allegations about payments made in 2012 and unlawfully re-executed one year later in 2014 in relation to the secondary case for the purpose of obtaining records between 2007 and 2011 instead of obtaining fresh warrants. Furthermore, police were not entitled to investigate the payments prior to 2012 without a fresh complaint from the Solicitor General. Nor were police permitted to use the records for the purpose of the secondary case.

160. There was no requirement for a formal complaint from the Solicitor General before police could investigate payments prior to 2012. I have dismissed this argument before. Given the nature of the allegations it was entirely permissible for police to enquire into whether payments had been made prior to 2012. Enquiries with the Department of Finance revealed similar suspicious transactions and it was incumbent on the police to investigate those payments.

161. Furthermore, there is nothing that precludes the use by police of evidence lawfully obtained, regardless of whether it is obtained under search warrant or not, during the course of one investigation in the investigation and prosecution of another offence, or another person. Moreover, there was one central investigation here regarding the suspected misappropriation of monies belonging to the State through various law firms. The fact that different officers had primary responsibility for investigating different parts of it for administrative purposes is beside the point.

162. Returning to the re-execution issue. In the English case of *R v Adams* [1980] QB 575 the Court held that, in the absence of contrary statutory provisions, only one entry is allowed on a search warrant. The only provision in the *Search Act* that seems to touch on this issue is s 9(1)(a)(i) which provides that a person conducting a search under s 6 may "enter and be in that place for

the duration of the search". What is meant by "duration of the search" is not made clear. In other jurisdictions legislative provisions seek to resolve such issues by providing for multiple entry, or renewal or extension without a fresh application and on an expedited basis. The fact that the warrants bear the words, "may be executed at any time", consistent with the Regulations, does not assist.

163. In my view the question is to be determined by considering whether the search might properly be regarded as still being on foot and whether authorities acted reasonably in all the circumstances. In this case it is relevant to consider that the warrants were served on a bank in each case.

164. The warrants were required because of the bank's fiduciary obligation to its customer, and because of the qualified right of all people to privacy under s 49 of the *Constitution*.

165. It is an implied term of the contract between a banker and his customer that the banker will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a Court, or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it: *Goi v Bank South Pacific Ltd* ([2020) N8271 at [63]; adopting *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461.

166. In practice banks produce the documents required under a search warrant rather than have police search through all of their records.

167. As the evidence of both CI Gitua and Asher Wafi makes clear, banks are regularly required to respond to search warrants, retrieving records can take considerable time, a number of weeks, and resources, and records will often be provided to police as they become available. It is reasonable in those circumstances for the production of records to police by the bank to take some time, and for police to continue to advise the bank as to what is required during that period as they review the documents produced. That is particularly so in a complex financial case. But it cannot go on indefinitely. Nor would police be permitted to do what is suggested here, that is execute a warrant in 2013 for certain documents and then go back one year later and seek additional documents based on the outcome of further investigations.

Chief Inspector Timothy Gitua's Evidence

168. CI Gitua is a police officer of 26 years' standing and currently the Deputy

Director of the National Fraud and Anti-Corruption Directorate (NFACD), a position he also held in 2013. At the time, whilst remaining a police officer, he was also the Team Leader of the Taskforce Sweep (TFS) investigation team formed to investigate high level cases, including misappropriation of public funds from government organisations. The team comprised police officers from the NFACD and other fraud investigators brought in from the provinces. He led all investigations undertaken by TFS. He obtained several search warrants following a complaint by the former Solicitor-General, Neville Devete, of illegal payments by the Department of Finance to Paul Paraka Lawyers (PPL) and other law firms. The search warrants were issued to BSP and ANZ for execution on the bank accounts of PPL and other law firms identified from the letter of complaint by Devete together with others identified through initial inquiries with the Department of Finance.

169. He initially raised two warrants in the District Court. PPL obtained an order in the District Court staying the execution of the warrants issued by it. Applications were made in the National Court following a directive by the Prime Minister in May 2013 for an intergovernmental investigation to be conducted. In each case the application was made by notice of motion, supported by an affidavit, information outlining the offence under investigation, and a draft search warrant for endorsement.

170. Once issued the search warrants were served on the respective banks through their legal officers. No issues were taken by the banks and various documents were produced to himself and other officers working on the investigation, including Senior Sergeant Pius Peng. Documentation and transaction details were analysed and further investigations conducted with the Department of Finance following which various arrests were effected. He arrested the accused in relation to payments between 2012 and 2013. Senior Sergeant Pius Peng arrest Mr Paraka in relation to the case now before the court. In 2014 a further four search warrants were issued in the District Court.

171. There were not two separate investigations. There was one investigation. The investigation began with the complaint by the Solicitor General, which referred to K30m that was paid by Department of Finance to PPL and other law firms in purported legal bills in 2012, which payments were not vetted by the Attorney General. Search warrants were raised with respect to PPL and various other law firms, including PKP Nominees Ltd which investigations revealed is a company associated with PPL. Enquiries with the Department of Finance also revealed that there were other payments made prior to 2012, and even after 2012, so it was decided to split the investigation into two parts, that for payments prior to 2011, and that for after. Senior Sergeant Pius Peng became the lead investigator for the 2001 to 2011 payments. There was no need to obtain a separate search warrant.

172. Under cross-examination in relation to P7, he said that when they initially applied for a search warrant, the application was based specifically on the K30m payment but as the investigation proceeded information came to light showing payments from as early as 2007 under similar circumstances, which the Solicitor General indicated were also not cleared. As it formed part of the same scenario police did not apply for another search warrant to search the same bank account. They applied for the search warrants in 2014 because they had not obtained search warrants in respect of those law firms earlier. He did not agree that police needed a fresh complaint letter to investigate or to apply for fresh warrants when they realised there were suspect payments made before 2012.

173. Search warrants are usually served on the legal branch of the bank. The responsible case officer, Senior Sergeant Peng, would have received the documents from the bank. He denied repeated suggestions that he went to his wantoks or friends at the bank to obtain the records from 2007 without a warrant. He was not able to say specifically how police would have obtained bank documents for 2007 to 2011, but the investigating officer would have written a letter to the bank, referring to the search warrant, and listing the information sought. It was not a different or separate allegation.

174. The term "re-executed" is misleading. The search warrant was already served on the bank. When the investigation progressed and police became aware that similar transactions had been done earlier they asked for that information on reasonable grounds using the same search warrant.

Consideration

175. Having heard and observed CI Gitua give evidence over a number of days I find him to be an honest witness. I make this finding having regard to his demeanour and the content of his evidence, on its own and in the context of the other evidence on the voir dire. He impressed me with his demeanour under lengthy cross-examination in relation to several issues. He candidly conceded certain matters and admitted that he was unable to recall others, which is to be understood given the lapse of time and the fact that whilst he oversaw all investigations, primary responsible for the 2007 to 2011 payments was given to Senior Sergeant Peng.

176. In my view, however, his evidence that police may have written back to the bank in 2014 to obtain documentation pertaining to 2007 to 2011 under the warrants served on the banks in 2013 is not borne out by the documentary evidence.

177. It does appear from P1 that at the time that warrant was applied for before

the District Court in 2012 it was concerned only with payments in 2012. But it is apparent from the face of the warrants and the affidavits and informations in support of P2 to P10 that by August 2013 the investigation had, as one would have expected, moved on and police were already investigating suspect payments from as early as 2006. The submission does not make sense on the face of the documents.

178. As for the warrants that were issued in 2014, P12 to P15, they relate to additional law firms, i.e. law firms not first identified by the initial complaint of the Solicitor General.

179. CI Gitua appears to be confusing the initial warrant obtained in 2012, P1, with the warrants obtained in 2013.

180. It is also not borne out by the evidence from BSP. Whilst John Maddison, the former Senior Manager Legal, who produced the material under the warrants died in 2016, Asher Wafi, Senior Legal Officer, Litigation, BSP, gave evidence. He was an excellent witness. He had checked the bank's records and was able to confirm that the warrants had been served on the bank and that the records had been produced to police. He said that time lines are set by the police in most instances, and in most instances documents are not necessarily furnished within those times because it can be difficult to locate documents that are not electronic records or not enough resources are allocated. Provided the search warrant did make provision for additional information, the practice is for police to write to the bank setting out additional documents that are required and documents are provided within the scope of the search warrant. If there was any uncertainty the process is for the bank to ask for clarification from police or ask for a new search warrant.

181. It also appears from his evidence that the warrants were only executed once, in 2013. He had not seen any reference in the bank records to the warrants being re-executed in 2014.

182. I make this finding despite the fact that the State failed to call the investigating officer for the 2007 to 2011 charges who was the executing officer. He should have been called despite the fact that Mr Paraka indicated on a number of occasions he was not required for cross-examination. In the circumstance I must consider the documents on the evidence available before me.

183. All of this would have been avoided, however, if police had complied with their obligation under the *Search Act* to maintain a registry of all things seized by a policemen or handed to him under the Act pursuant to s 12 of the *Search Act*. It is a statutory requirement that must be complied with by police

for obvious reasons. The failure of police to do so, whilst a serious matter, does not render the warrants invalid or the seizure of the documents unlawful. I am not satisfied that it demonstrates deliberately improper conduct on the part of police.

3)b): WHETHER THERE WERE REASONABLE GROUNDS FOR SEIZING THE RECORDS

184. For the following reasons Mr Paraka has also failed to demonstrate that the items seized under the warrants were not authorised by the terms of the search warrant and the relevant provisions of the *Search Act*.

185. With respect to P7, bank statements for the period 2007 to 2012 (P7E) were within the scope of the warrant on its face, particularly having regard to the reference to government cheques paid between March 2007 and 31 May 2013. It was reasonable to believe that a complete set of bank statements for the period would provide evidence of the alleged offences. Bank statements might properly be regarded as a single thing in my view: see *George v Rockett.* Furthermore, they provide evidentiary context in which suspect payments were received into and moved out of the account. They have relevance or probative connection with the issues arising on the alleged offences: *Parker v Churchill*.

186. For similar reasons there were reasonable grounds for believing that two bank deposit slips: P7-F – dated 24 January 2008 with respect to the deposit of K2m deposited into PPL from PKP Nominees Ltd; and P7-G – dated 9 January 2011 with respect to K3,894,000 and K1,945,000 deposited to the account of PPL from Sino Company Lawyers trust account and Jack Kilipi Lawyers account, would provide evidence of the alleged offences. Furthermore, whilst the warrant specifically referred to government cheques paid into the account, it authorised the seizure of any thing that would provide evidence of the offences of stealing by false pretence and misappropriation of public funds between 2007 and 2013. Relevant to that consideration is the material contained in the affidavit and information upon which the warrant was based. It specifically referred to the payment of State monies to PPL through a number of law firms, including in particular, PKP Nominees Ltd, Sino Company Lawyers and Jack Kilipi Lawyers. The fact that warrants were also being executed on the accounts of those firms in relation to the same or similar offences at the same time is also a relevant consideration. In the circumstances there were reasonable grounds for believing that the items seized would afford evidence of the offences specified in the warrant. If a more restrictive view is taken and those deposit slips were seized outside the scope of the warrant then that is a result of omissions on the face of the warrant and not a lack of reasonable grounds.

187. Mr Paraka submits that the warrant is incorrect in that it refers to PPL's

accounts when one of those identified 1000587335 belongs to PKP Nominees Ltd. That would not necessarily invalidate execution. In any event it does not seem that PKP records were seized under this warrant.

188. With respect to P6, bank statements for Jack Kilipi Lawyers account for the period 2007 to 2012 were within the scope of the warrant on its face, particularly having regard to the period identified in relation to the reference to government cheques between March 2007 and 31 May 2013.

189. With respect to P10, bank statements for PKP Nominees Ltd Account for the period 2007 to 2012 (P10-E) were within the scope of the warrant on its face, particularly having regard to the period identified in reference to government cheques between March 2007 and 31 May 2013. As for the deposit slips showing deposits from the Department of Finance for K3.5m 22 January 2008 (P10-F), K3.9m on 24 July 2009 (P10-H), K4,998,000 on 13 May 2010 (P10-K), K4,998,000 on 28 November 2010 (P10-L), K2m on 28 March 2011 (P10-M), K3m on 18 April 2011 (P10-N), they were "related correspondence/ documents" to the government cheques referred to on the face of the warrant.

190. Again, the warrant authorised the seizure of any thing relating to the offences of stealing by false pretence and misappropriation of public funds between 2007 and 2012. The supporting affidavit also alleged that State monies were paid to PPL through other law firms including Sino & Co, Jack Kilipi and PKP Nominees. On that basis there were reasonable grounds for seizing deposit slips showing deposits to PKP Nominees of K3.45m from Sino & Company on 28 January 2008 (P10-G), K2m from Jack Kilipi Lawyers on 27 July 2009 (P10-I), and K2m from Sino & Company on the same day, 27 July 2009 (P10-J). That is particularly so given that warrants were also executed on those law firms accounts in relation to the same or similar offences. There were also reasonable grounds for seizing the documents as part of the evidentiary context. If a more restrictive view is taken and those deposit slips were seized outside the scope of the warrant then that is a result of omissions on the face of the warrant and not a lack of reasonable grounds.

191. With respect to P9, the bank statements of Sino & Lawyers for the period March 2007 to February 2012 (P9-E) were specifically authorised for seizure under the warrant. There were reasonable grounds for believing that deposit slips showing the deposit of K2m on 28 March 2011 and K3m on 18 April 2011 by the Department of Finance to Sino & Lawyers account (P9-G and P9-H) were related to the cheques paid by the Department of Finance during the same period. Having regard to both the face of the warrant and the material contained in the information on oath regarding the payment of monies from the named law firms to PPL, there were reasonable grounds for the seizure of the deposit slip for K2m from Sino & Co to PPL on 30 July 2007 (P9-G).

192. With respect to P2, there were reasonable grounds for seizing bank statements for the period 2007 to 2012 (P2-E) on the face of the warrant. There were also were reasonable grounds for seizing the deposit slip from Harvey Nii Lawyers to PPL for K2.9m on 28 August 2007 (P2-F). What happens to suspect monies after they are received may provide evidence of misappropriation. Whilst the affidavit and information in support of P2 did not refer to payments to PPL, other affidavits and information did.

193. With respect to P12, the seizure of bank statements was specifically authorised by the warrant for the period 2007 to April 2014 (P12-E). Whilst specific deposit slips were identified in the warrant, there were reasonable grounds for believing that the deposit slip dated 22 January 2008 for K3m to Korowi Lawyers by the Department of Finance would afford evidence of the offence of stealing by false pretence. The warrant sought copies of cheques from the Department between January 2007 and April 2014, together with other documents related to the deposits. This is particularly so when regard is given to the allegations contained in the affidavit/information.

194. Bank statements, P13-E, for the period February to March 2010 were clearly within the warrant which authorised the seizure of statements from January 2010 to 10 April 2014.

195. On the face of P14, there were reasonable grounds for officers to believe that the bank statements for Yapao Lawyers for the period 22 January 2007 to 11 July 2007 (P14-E), and the Department of Finance bank cheque in the sum of K2m (P14-F), would afford evidence of the offences contained in the warrant.

196. For P15 bank statements were produced for the period 2007 to 2012. Whilst the warrant only sought bank statements for the period 1 April to June 2007, it was reasonable for officers to believe that bank statements would afford evidence of the offences as the warrant also sought copies of cheques paid by the Department of Finance between 2007 and December 2013.

197. In summary, the seizure of the records produced by the bank was authorised under the warrants in my view. If, however, deposit slips P7-F, P7-G, P10-G, P10-I, and P10-J were seized outside the scope of the warrant then that is a result of omissions on the face of the warrants in each case and not a lack of reasonable grounds.

SUMMARY OF FINDINGS

198. The search warrants were valid on their face. The warrants complied with ss 7, 8 and 9 of the *Search Act*. Whilst the offences lacked particularity the

nature and substance of the offences was sufficiently stated to indicate the authorised area of search, particularly when read in the context of the warrant as a whole. They were capable of informing the bank and the officer executing the warrant of the things authorised for search and seizure.

199. In the case of Warrants P2, P6, P7, P9, P10 and P12, the information before the Court was sufficient to support a finding that there were reasonable grounds for suspecting that there was at the bank in each case, things with respect to which there were reasonable grounds for believing that they would afford evidence as to the commission of the offences set out in the respective warrants. The searches permitted by the warrants did not exceed what was justified by the material before the Court.

200. There is nothing to suggest anything to the contrary with respect to Warrants P13, P14 and P15. Assuming in the absence of supporting documentation that there were such deficiencies, there is nothing to suggest any deliberately or recklessly improper conduct on the part of police or a lack of reasonable grounds.

201. The Court cannot be satisfied, however, that the affidavits in support of the warrants were properly sworn on oath before a Commissioner for Oaths pursuant to *Oaths Affirmation and Statutory Declaration Act* for the purposes of s 6 of the *Search Act*. The warrants were therefore invalidly issued. I do not find that this was done with deliberate or reckless intent on the part of CI Gitua.

202. The warrants were not unlawfully executed. The warrants were not re-executed in 2014. There were reasonable grounds for the executing officer to believe that the documents seized would provide evidence of the offences contained in the warrants in each case. To the extent that deposit slips P7-F, P7-G, P10-G, P10-I, and P10-J were not authorised for seizure this was due to omissions on the face of the warrant and not due to a lack of reasonable grounds.

REMEDIES

Discretions at Common Law and under the *Constitution*

203. It follows from my findings regarding the swearing of the affidavits that the warrants P2 to P15 were invalidly issued and consequently that the material seized under the search warrants was unlawfully obtained. The question remains as to what the appropriate remedy is in the circumstances.

204. The fact that the bank records were seized unlawfully does not of itself render the documents inadmissible. The court retains a discretion both at

common law and a wider power under the *Constitution.*

205. As above, the protections to freedom from arbitrary search and seizure, and to privacy, are enshrined in the *Constitution*. Non-compliance with the strict requirements of the provisions of the *Search Act* is in effect to breach ss 44 and/or 49 of the *Constitution*, as the case may be: *The State v James Popo* [1987] PNGLR 286.

206. The power under s 57(3) to exclude evidence has that been obtained in breach under s 57 of the *Constitution* is separate and independent of the common law discretionary power to reject evidence unlawfully or improperly obtained: *John Alex v Martin Golu* [1983] PNGLR 117; *The State v Evertius and Kundi* [1985] PNGLR 109; *Constitutional Reference No 1 of 1977* [1977] PNGLR 362; *The State v Popo*.

207. The onus of proof of satisfying the court that material obtained following a breach of a fundamental right or freedom ought to be prohibited lies with the accused on the balance of probabilities: *The State v Evertius and Kundi.*

208. Having regard to the authorities outlined above I reject Mr Paraka's submission that the Court has no discretion under the *Constitution*.

209. It is worthwhile to note briefly the divergence between the development of the law in this country and the English common law on search warrants which respect to which the comments in *Evertius and Kundi* were made. In England at the time "A trial judge in a criminal trial has always a discretion to refuse to admit evidence if in his opinion its prejudicial effect outweighs its probative value. Save with regard to admissions and confessions and generally with regard to evidence obtained from the accused after commission of the offence, he has no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means. The court is not concerned with how it was obtained." As Pratt J said in Evertius and Kundi the *Constitution*al requirements make that wholly unacceptable and inappropriate to the circumstances of Papua New Guinea:

> *"Both s 44 and s 49 of the Constitution do in fact secure the integrity of the judicial process by not having that process appear to sanction official lawlessness by allowing evidence to be used notwithstanding the manner of its seizure. "*

210. I agree. The decision of the High Court of Australia in *Bunning v Cross* (1978) 141 CLR 54, is however highly persuasive. It reflects "a marked contrast" in the law between the law of England and Australia at the time, and follows the High Court's decision in *The Queen v Ireland* (1970) 126

CLR 321 in which Barwick CJ made the following now famous remarks, unanimously adopted by the Court:

> *"Whenever such unlawfulness or unfairness appears, the judge has a discretion to reject the evidence. He must consider its exercise. In the exercise of it, the competing public requirements must be considered and weighed against each other. On the one hand there is the public need to bring to conviction those who commit criminal offences. On the other hand is the public interest in the protection of the individual from unlawful and unfair treatment. Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price. Hence the judicial discretion."*

211. The decision in Ireland was concerned with the discretion to exclude statements made by an accused in the face of improper conduct by police and has been adopted and applied in this jurisdiction: see *Gasika v The State* [1983] PNGLR 58; *State v Kwainfelia et al* [1986] PNGLR 106; *State v Paru* (2021) N9108; see also *State v Toiamia* (1978) N145; *Pritchard v The State* (2016) SC1541. Bunning, however, was concerned with the discretion in the context of real evidence as opposed to confessional material. In that case, on a charge of driving while under the influence of alcohol, police had mistakenly believed they were entitled to require the defendant to undertake a breathalyser test without first conducting a preliminary on-the-spot test. The results of the test were thrown out by the magistrate.

212. Relying on Ireland, Stephen and Aitken JJ identified the object or purpose of the discretion: at [27] to [29]:

> *"What Ireland involves is no simple question of ensuring fairness to an accused but instead the wighting against each other of two competing requirements of public policy, thereby seeking to resolve the apparent conflict between the desirable goal of bringing to conviction the wrongdoer and the undesirable effect of curial approval, or even encouragement, being given to the unlawful conduct of those whose task it is to enforce the law. This being the aim of the discretionary process called for by Ireland it follows that it by no means takes as its central point the question of unfairness to the accused. It is, on the contrary, concerned with broader questions of high public policy, unfairness to the accused being only one factor which, if present, will play its part in the whole process of consideration."*

213. As can be seen this is consistent with the public policy considerations recognised by the *Constitution* in ss 44 and 49.

214. Whilst emphasising that it is a matter to be decided in the particular circumstances of any case Stephen and Aitkin JJ also identified a number of considerations to be taken into by trial judges in exercising their discretion, which might be summarised as follows:

a. the nature and extent of the impropriety, in particular whether it was deliberate, reckless or a mistake, the real evil being "deliberate or reckless disregard of the law by those whose duty it is to enforce it";
b. whether the illegality affects the cogency of the evidence. As a general rule, cogency should play no part in the exercise of discretion where the illegality was intentional or reckless;
c. the ease with which the law might have been obeyed in procuring the evidence in question. While a deliberate 'cutting of corners' ought not to be tolerated, the fact that the evidence could easily have been procured without illegality had different procedures been adopted may point towards admissibility;
d. the nature of the offence charged, the more serious the offence, the stronger are the arguments in favour of admissibility;
e. the legislative intent in relation to the safeguards in place. If the legislation shows a deliberate attempt to restrict the powers of investigating authorities from obtaining certain evidence, that consideration will point towards rejection of evidence obtained in breach of such legislation.

215. Applying these considerations, the Court held that the results of the breathalyser test should have been admitted as evidence. Two factors were crucial: first, the unlawful conduct of the police had resulted from a mistake and not from deliberate or reckless disregard of the law; and secondly, the nature of the illegality had in no way affected the cogency of the evidence.

216. It is clear that the list is not an exhaustive one. Other factors, including the position of the accused, and the nature of the investigation may also be relevant: *King v. The Queen* (1969) 1 AC 304, quoted in *Bunning v Cross.*

217. As observed by the High Court in *Ridgeway v The Queen* (1995) 184 CLR 19, at 38, per Mason CJ, Deane and Dawson JJ the Court, (emphasis mine):

> *"The weight to be given to the principal considerations of public policy favouring the exclusion of the evidence – the public interest in maintaining the integrity of the courts and in ensuring the observance of the law and minimum standards of propriety by those entrusted with powers of law enforcement – will vary*

> *according to other factors of which the most important will ordinarily be* ***the nature, the seriousness and the effect of the illegal or improper conduct engaged in by the law enforcement officers and whether such conduct is encouraged or tolerated by those in higher authority in the police force or, in the case of illegal conduct, by those responsible for the institution of criminal proceedings****. When assessing the effect of illegal or improper conduct, the relevance and importance of* ***any unfairness either to a particular accused or to suspected it or accused persons generally will likewise depend upon the particular circumstances. Ordinarily, however, any unfairness to the particular accused will be of no more than peripheral importance****."*

218. It is important to note that these principles are distinct from those that apply with respect to confessional evidence. The principles are concerned with the admissibility of "real evidence", such as things found by search, recordings of conversations, fingerprint evidence and so forth. As in all cases, it is in addition to the discretion to exclude evidence where the prejudicial value outweighs the probative value.

219. In this case there is no evidence before me to establish that the matters rendering the warrants unlawful were deliberate or reckless, reckless meaning that the person in question recognised that the conduct might be improper but determined to engage in it not caring whether it was or was not: *Director of Public Prosecutions v Marijancevic* [2011] VSCA 355 at [86].

220. It was evident from his testimony that CI Gitua honestly believes an affidavit may be sworn in the absence of a Commissioner. That is a very serious error on the part of a senior officer but it is clear that he did not recognise that his conduct might be improper. There was no deliberate cutting of corners.

221. The fact that the evidence could have easily been procured without illegality also points towards its admission in this case. The failure to swear the affidavits before a Commissioner in person is a vital matter that must be adhered to but the failure to do so could have been easily remedied.

222. Assuming that the affidavit and information in support of Warrants P13 to P15 did fail to disclose sufficient grounds, which is unlikely having regard to the background of the applications, and the stage at which they were obtained, it cannot be said that Mr Paraka has demonstrated that there was any improper conduct on the part of police.

223. The warrants and their underlying affidavits and informations would have benefited from greater uniformity adjusted as required in each particular circumstance. The offence provisions in particular would have benefited from greater particularity. But taken as a whole the evidence shows that CI Gitua and the police officers concerned gave some care and attention to the drafting of ten different warrants in 2013 and a further four in 2014. It is not clear why a warrant in the same terms as P12 was applied for by CI Gitua a couple of months later but I do not understand how it demonstrates bad faith on the part of police.

224. Furthermore, it is clear that there was no broad brush attempt to obtain all records of the accounts targeted, nor was it a fishing expedition. In many respects the warrants suffered from an attempt to define the items sought in very specific terms. It is also clear from the documents produced that despite the time period covered very few records were in fact seized, a total of 26 on my count. Given the nature, potential complexity and the size of the monies involved in this case it would not be unreasonable to expect that many more bank records would have been seized. This demonstrates deliberate and focused attention in the execution of the warrant.

225. For obvious reasons there is nothing about the manner in which the bank records were seized that affects or undermines their cogency. These are records that have been maintained and produced from their records by the banks themselves. The provenance and reliability of the bank records is not in question.

226. For equally obvious reasons the bank records are highly probative to the matters in issue in this case, that is whether Mr Paraka misappropriated monies belonging to the State as alleged, including that monies were paid to the accounts of PPL through the six named law firms.

227. Moreover, the gravity of the offences alleged in this case is very high. The charges are very serious alleging the ongoing misappropriation of many millions of kina of State monies over a period of years.

228. It is also highly relevant that any illegality could be immediately remedied by the issuance of summons by this Court on the bank to produce the very same documents now before it. But there would be no utility in that other than to delay the matter by the little time that it would take the bank to produce the documents already produced.

229. The legislative intent of the *Search Act* relevant for the common law discretion reflects the fundamental importance of the protections outlined in the *Constitution* under s 44 and 49 of the *Constitution*.

230. Section 57(3) provides the power to make such orders are "necessary or appropriate" to protect a right or freedom under the *Constitution*. Whilst the discretion under s 57(3) might be wider, the considerations outlined above when considering the discretion at common law are highly relevant. Whether or not different considerations might apply, or perhaps have greater significance, when considering the discretion under the *Constitution* will depend on the particular circumstances of any case. The Court may feel bound in some circumstances to exclude the evidence to give effect to the Constitutional protections: *Alex v Golu; The State v Popo; Evertius and Kundi*.

231. As demonstrated above the breaches of the *Constitution* in this case cannot be regarded as deliberate, reckless or gross.

232. What is clear from a review of *Alex v Golu; The State v Popo; Evertius and Kundi* is that they were all "very bad" breaches of the rights under the *Constitution*. In *Alex v Golu* there was not the "slightest evidence to suggest that reasonable grounds existed" to have enabled a court to issue a warrant of search, and there was no suggestion that a crime was being committed in the house at the time. In *Evertius and Kundi* the court was satisfied that despite the evidence of the police officers concerned, there was no search warrant at all. In *S v Popo* the evidence was excluded where there was no search warrant and no circumstances justifying the search without one. For the reasons outlined above this case is very different.

233. Whilst the protections under the Constitution must be respected as a matter of principle in general terms, it is relevant that the searches did not concern either Mr Paraka's premises or his property for the purposes of s 44 of the *Constitution*. The premises and property were those of the bank. Furthermore, for the most part the warrants were executed on bank accounts other than those of PPL or PKP Nominees Ltd for the purposes of s 49 of the *Constitution*.

234. In any event the breaches of the Constitutional rights in this case must be balanced against the public policy in favour of the admission of the evidence.

235. Whilst the authorities both at common law and under the *Constitution* make it clear that it is the public policy behind the requirements rather than the effect on a particular accused that is of paramount importance, it is also relevant to my consideration that Mr Paraka has failed to demonstrate any unfairness to him if the records were to be admitted.

236. In conclusion, having regard to all of the above matters, Mr Paraka has failed to satisfy me on the balance of probabilities that I should exclude the

records from the trial in exercise of my common law discretion. Furthermore, he has failed to satisfy me that it is either necessary or appropriate to exclude the records pursuant to s 57(3) of the *Constitution*.

237. Permitting the evidence to be adduced at the trial would not involve any incompatibility with the functions of the court, or damage the repute and integrity of the judicial process.

238. Finally, Mr Paraka has failed to demonstrate that the records should be excluded on the basis that their prejudicial effect outweighs their probative value. As above they are highly probative. The fact that they may implicate Mr Paraka in the offences alleged does not render the records unfairly prejudicial against him but does demonstrate the high evidential value of the records.

239. It is in the interests of justice that the bank records produced under the warrants executed on BSP Limited and ANZ Bank Ltd be admitted on the trial proper.

Orders accordingly

Public Prosecutor: *Lawyer for the State*
Paul Paraka*: In person*