PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

CR (FC) No. 118 OF 2019

THE STATE

V

PAUL PARAKA

Waigani: Berrigan J

22 September and 4 October 2023

CRIMINAL LAW– SENTENCE – S 383A(1)(a)(2)(d) of the Criminal Code – Five counts of the misappropriation of State monies between 2007 and 2011 in the sums of K30,300,000, K30,054,312.68, K14,480,672.28, K39,808,610 and K47,608,300, respectively, by senior lawyer – Most serious instances of the offence – Maximum penalty of 10 years of imprisonment imposed in each case – To be served cumulatively in part – No suspension warranted – Effective sentence of 20 years of imprisonment without hard labour imposed.

Cases Cited:
Wellington Belawa v The State 11988-1989] PNGLR 496
The State v Niso (No 2) (2005) N2930
The State v Tiensten (2014) N5563
The State v Daniel Mapiria
The State v Kendi (No. 2) (2007) N3131
State v Moko Essi Kam (2009) N6199
The State v Haru (2014) N5660
The State v Tiensten (2014) N5563
The State v Peni (No. 2) (2014) N5932
The State v Tokunia (2015) N6039
The State v Janet Oba (2016), unreported
The State v Solomon Junt Warur (2018) N7545
The State v Lohia (2019) N8042
The State v Ralewa (No. 2) (2022) N9803
State v Eremas Wartoto, unreported, 2017
Kaya & Kamen v The State (2020) SC 2026

Lawrence Simbe v The State [1994] PNGLR 38
State v Simanjon (2020) N8637
State v Naime (2005) N2873
State v Konny (2012) N4691
Regina v Peter Ivoro , 2LPNGLR 374

Ume v The State (2006) SC836
The State v James Paru (No 3) (2021) N9248
The State v Benedict Simanjon (2020) N863 7
State v Tony Kande, Henry Naio and Wilson Muka (2021) N9252
The State v James Paru (No 3) (2021) N9248
The State v Paul Paraka (Decision on Admission of Bank Records) (2022) N9568
Paul Paraka v Kaluwin (2019) N7975
The State v Paul Paraka (Decision on Presentation of Indictment) (2020) N8229
The State v Paul Paraka (Decision on Verdict) N10273
Goli Golu v The State [1979] PNGLR 653
Mase v The State 119911 PNGLR 88
Tremellan v The Queen f 19731 PNGLR 116
Public Prosecutor v Kerua [1985] PNGLR 85
The State v Paul Paraka (2021) N8807
The State v Paul Paraka (2021) N893 8
Thomas Waim v The State (1997) SC519
The State v Tardrew [1986] PNGLR 91.
State v Wilmot (2005) N2857
State v Niso (No 2) (2005) N2930
State v Kom (2009) N6199

Legislation and other materials cited:
Sections 11, 19, 383A(1)(a)(2)(d) of the Criminal Code

Counsel
Ms H. Roalakona for the State
Mr P. Paraka for himself

DECISION ON SENTENCE

4 October 2023

1. BERRIGAN J: The offender, Paul Paraka, was convicted following trial of five counts of misappropriating property belonging to the State between
2007 and 2011 in the amounts of K30,300,000, K30,054,312.68, K14,480,672.28,,K39,808,610 and K47,608,300, respectively, contrary to s.
383A(1)(a)(2)((d) of the Criminal Code: The State v Paul Paraka (Decision on
verdict) (2023) N10273.

2. The offender was the principal of the law firm, Paul Paraka Lawyers (PPL).
In October 2006 he obtained orders in National Court proceedings, OS 829 of
2006, staying the directive of the Chief Secretary to stop all payments to PPL,
and ordering the State to pay K6.5m to PPL. Those orders were stayed by the

Supreme Court on 22 November 2006 pending appeal by the State. On 29 December 2006 the offender obtained orders in National Court proceedings, OS 876 of 2006, staying the decisions of the Minister for Justice and the Attorney-General to terminate the briefing out of State matters to PPL, and to cease all payments to PPL, and the decisions of the National Executive Council and the Attorney-General to establish a departmental investigation into all brief-outs to private lawyers, including PPL, pending judicial review. On 2 March 2007 in the same proceedings the offender obtained an order for the payment of K6.44m to PPL. Those orders and the entire proceedings in OS 876 of 2006 were stayed by the Supreme Court on 12 March 2007 pending appeal by the State. The appeals remained on foot until July 2014.

3. In the meantime, commencing on 24 April 2007, every year for five years between 2007 and 2011 the offender procured a person or persons within the Department of Finance to dishonestly apply monies to his own use and the use of others in the sum of K30,300,000, K30,054,312.68, K14,480,672.28, K39,808,610 and K47,608,300, respectively. The monies were applied by way of a total of 65 cheques drawn in favour of a property investment company wholly owned and operated by the offender but not bearing his name or to the accounts of seven other law firms at various times, none of which had any entitlement to the monies, in a calculated and elaborate scheme designed to distance the monies from the offender and avoid detection. In the case of monies paid to the law firms, they retained at least K30,000 to K50,000 but sometimes as much as K400,000 before almost immediately paying on the proceeds of the cheques to PPL or PKP Nominees, the offender's law firm and wholly owned company, respectively.

4. The monies constituted the principal form of deposits to the accounts of PPL and PKP Nominees during the period. Expenditure of the monies began soon after deposit in every case and the monies were dissipated.

5. It now remains to sentence him.
Sentencing Principles and Comparative Cases

6. In Wellington Belawa v The State [1988-1989] PNGLR 4% the Supreme Court identified a number of factors that should be taken into account on sentence
for an offence of misappropriation, including:

a) the amount taken;
b) the quality and degree of trust reposed in the offender;
c) the period over which the offence was perpetrated;
d) the impact of the offence on the public and public confidence;
e) the use to which the money was put;
f) the effect upon the victim;
g) whether any restitution has been made;
h) remorse;
i) the nature of the plea;
j) any prior record;
k) the effect on the offender; and
1) any matters of mitigation special to the accused such as ill health, young
or old age, being placed under great strain, or perhaps a long delay in
being brought to trial.

7. The Supreme Court further suggested that the following scale of sentences may provide a useful base, to be adjusted upwards or downwards
according to the factors identified above, such that where the amount
misappropriated is between:

a) K1 and K1000, a gaol term should rarely be imposed;
b) K 1000 and K10,000 a gaol term of up to two years is appropriate;
c) K 10,000 and K40,000, two to three years' imprisonment is appropriate;
and
d) K40,000 and K150,000, three to five years' imprisonment is
appropriate.

8. It is generally accepted that whilst the principles to be applied when
determining sentence remain relevant and applicable, the tariffs suggested in
Wellington Belawa are now outdated because of the seriousness and prevalence
of offences: see The State v Niso (No 2) (2005) N2930; The State v Tiensten (2014) N5563; and many others.

9. In 2013 Parliament recognised this by significantly increasing the maximum penalties applicable to 50 years of imprisonment for amounts greater than Kim and life imprisonment for amounts greater than KlOm. The offences in this case occurred prior to the 2013 amendments to penalty. Accordingly, the maximum penalty in each case is 10 years of imprisonment: s 11(2), Criminal Code applied.

State Submissions

10. The State submitted that each of the offences is unprecedented in size in the history of Papua New Guinea and warrants the maximum penalty.

11. In support of its submissions the State referred to the following cases noting that in each case involving the misappropriation of more than Klm a sentence of seven years imprisonment or more was imposed. For completeness, I have noted where sentence was suspended in whole or in part:

a) The State v Daniel Mapiria, unreported judgement, 7 September 2004, CR 1118/2000, Mogish J – the offender was the Chairman of the National Gaming Board and dishonestly signed 41 cheques payable as cash for the total sum of K3.188 million over a period of about 10 months. He was found guilty after trial and sentenced to 9 years' wholly suspended on conditions including the repayment of K lm;

b) The State v Kendi (No. 2) (2007) N3131, Lenalia J – the prisoner dishonestly obtained K4,298,037.33 from the State, with assistance of corrupt officers, from the Department of Finance & Treasury and the Department of Defence, in payment of a claim that the Defence Force present on Bougainville during the crisis had unlawfully used machinery and equipment belonging to his company between 1993 and 1997. Evidence proved that the prisoner's company never owned any machinery or equipment during the claim period. He was sentenced to 13 years of imprisonment, being 9 years' imprisonment for

misappropriation and 4 years for false pretence, to be served cumulatively;

c) The State v Moko Essi Kom (2009) N6199, David J – the offender pleaded guilty to misappropriating K3.78 million belonging to the State, over a period of 14 months, in concert with public officials and a banker by making a false claims to the Department of Finance and Treasury. The claims were paid by way of bank cheque which were paid to the credit of a bank account to which he had access in a false name. He was sentenced to 8 years' imprisonment;

d) The State v Haru (2014) N5660, Salika DCJ – the offender dishonestly sold land known as the Kone Tigers Oval for the sum of K2.6 million and applied the monies to his own use. He was convicted following trial sentenced to 8 years' imprisonment, 4 of which was to be suspended upon restitution;

e) The State v Tiensten (2014) N5563, Salika DCJ – the offender, a Member of Parliament and the Minister of National Planning and

Monitoring, was found guilty following trial of one count of dishonestly applying to the use of another, namely Travel Air, K10 million belonging to the State. He was sentenced to 9 years' imprisonment, 4 years of which was suspended upon restitution of K 1 Om to be made within 4 years;

f) The State v Peni (No. 2) (2014) N5932, Kawi AJ – the offender was found guilty following trial of dishonestly applying K2.4 million in public funds obtained for the purpose of a water project to his own use. He was sentenced to 8 years' imprisonment wholly suspended on condition of restitution within 5 years;

g) The State v Tokunia (2015) N6039, Salika DCJ – the offender was found guilty following trial of dishonestly applying K1.5 million obtained from the Department of National Planning and Monitoring for the rehabilitation of a plantation to his own use. He sentenced to 7 years' imprisonment;

h) The State v Janet Oba (2016), unreported, Salika DCJ – The prisoner, an Inspector of Police, uttered a forged court order directing BSP to

release the sum of K1.2 m to her company which she then misappropriated. She was sentenced to 5 years' imprisonment following trial;

i) The State v Solomon Junt Warur (2018) N7545, Berrigan J – the prisoner cooperated with authorities from a very early stage and pleaded guilty at the earliest opportunity to one count of misappropriating K811,969.53 belonging to the State. Over a period of more than 3 and half years the prisoner, a Communications Officer in the Information and Communication Technology (ICT) Section of Correctional Services (CS), issued 66 false orders and invoices on behalf of CS, payable to his own company, Mere-Tech, for which no goods and services were supplied. He was sentenced to 7 years' imprisonment;

j) The State v Lohia (2019) N8042, Berrigan J – the prisoner was employed by the ANZ Bank as an Asset Finance Officer. Over a period of 22 months between 27 May 2013 and 30 March 2015 the offender used his unique bank teller identification number on 194 occasions to falsely credit amounts to the bank's system, recording them either as refunds, reimbursements or lease payments in its "DFR Account – Asset Finance", or as "unposted items in suspense". On a few occasions the credits were posted to customer accounts held with the bank. The offender then transferred equivalent amounts to his own personal bank account or that of his associates, from which he accessed the monies, either directly, together with his associates, or via his associates' bank cards. In total the offender misappropriated K1,008,314.17, the bulk of which occurred prior to the amendments. He cooperated with

authorities from a very early stage and pleaded guilty at the first opportunity. He was sentenced to 8 years' imprisonment; and

k) The State v Ralewa (No. 2) (2022) N9803, Wawun-Kuvi AJ – the prisoner whilst an employee of Asian Pacific Brokers Limited, dishonestly applied the sum of K931, 800 to his own use through the means of the BSP Internet Banking Facility. The monies were from clients which were deposited into the trust account of the company from which he transferred out from the trust account and into his personal company account. He was sentenced to 7 years' imprisonment.

12. I also note the case of State v Eremas Wartoto, unreported, 2017, Manuhu J, in which the offender was the sole shareholder and director of a company awarded a government contract for almost lam to renovate a high school. He was convicted of misappropriating monies paid up front under the contract, K6,791,408.20, within five months and sentenced to 10 years of imprisonment.

13. The State also refers to Maya & Kamen v The State (2020) SC 2026, Batari, Mogish and Berrigan JJ in which the appellants, a landowner representative and his lawyer were convicted following trial of misappropriating K5 million belonging to the people of East Awin in Western Province. Their appeal against the sentence was dismissed and the sentence of 15 years of imprisonment in each case, 5 years of which is to be suspended upon restitution of K2.5 million, was affirmed. It must be noted, however, that the offending in that case occurred after the 2013 amendments.

14. The State submits in further aggravation that the fraud was perpetrated over a period of five years. It was not spur of the moment but a highly complex scheme demonstrating careful planning as seen from the number of years over which the offence was committed, involving the use of other law firms to receive the payments, under the pretext of court orders in OS 876 of 2006, in which the offender was a party, and the transfer of monies to the accused's law firm and company accounts. The offender did not hold a position of trust but was a senior practising lawyer and his conduct was unbecoming of a person who had taken an oath to uphold the laws of the country. The monies were public monies intended for the public benefit and were instead applied to the offender's own use including his family members. The effect on the victim has been the loss of K162m which could have been used for public hospitals, schools and roads. The offending

affected the integrity of the various government agencies involved in the payments. It created a negative impression against public lawyers. The government expended resources in the investigation of the payments and the

establishment of Task Force Sweep. The offender has failed to demonstrate any remorse.

15. The State tendered an affidavit of the former Solicitor-General, Neville Devete and referred to material contained in the Pre-Sentence and Means Assessment Reports from Chief Inspector Gitua. Both call for a severe penalty to be imposed having regard to the public interest.

16. Whilst emphasising the national interest, Mr Devete also states that he and his family had to resettle with his family due to intimidation and threats issued to his family as a result of the investigation into the offender's conduct. I have seen documentation during the trial which confirms that Mr Devete is currently living in Australia with his family under a protection visa. I am also unaware that Mr Devete is currently unable to return to the country. Whilst I accept that his situation has affected his career and impacted his financial and emotional well-being, as stated in his affidavit, the threats were issued by unidentified persons, responsibility for the threats is not a matter before this Court and those matters are not relevant to the determination of sentence.

17. The State further submits that whilst the offender's reputation as a lawyer and the operation of his law firm has been tainted this is the unfortunate consequence of his own action. Whilst he may argue that his law firm has done much good, it does not mitigate the fact that K1 62m of public funds was squandered by very deceitful means. There has been no restitution to date.

18. In mitigation the offender is a first-time offender. He is an

educated and
highly sophisticated senior lawyer. He has a medical condition.

19. The State submits that in view of the aggravating factors, the prevalence of
the offence and the need for both specific and general deterrence, the only
appropriate sentence is the maximum head sentence of 10 years of imprisonment
in each case.

20. Having regard to the totality principle, however, it submits that the
sentences should be served concurrently, such that it seeks an effective sentence
of 10 years of imprisonment.

Defence Submissions

21. The offender maintains as he has through various motions, on allocutus
and again on submissions that the verdict is wrong and that sentence cannot be
passed.

22. Alternatively, he submits that I reserve my decision on sentence and allow
the Supreme Court appeal to be heard and determined first, following which I
may pass sentence in the event his appeal is dismissed.

23. In the further alternative, he relies on Mapiria, supra to have the sentence
wholly suspended. He is the victim in this case. He has suffered heart problems
and could have lost his life as a result of this case. He went through a medical
procedure to have stents inserted last year and now requires further stents. His
doctor says that he is at risk of heart attack at any time.

24. Or finally, in the event that I impose a custodial sentence he asks that I
allow him one month to surrender himself to police during which he will make
an application to the Supreme Court for bail so that he can run his appeal.

Consideration

25. I reject the offender's submissions that sentence should not be passed. He is entitled to maintain that the verdict is wrong but for the reasons previously given the appropriate place for those contentions is before the Supreme Court.

26. I do not intend to postpone sentence nor reserve it pending the appeal against conviction. It is in the interest of justice and the effective administration of it that the matter is concluded before the National Court. The offender is at liberty to make an application for bail before an appropriate authority in accordance with the law.

27. S. 19 of the Criminal Code provides the Court with broad discretion on sentence. Whilst guidelines and comparative cases are relevant considerations, every sentence must be determined according to its own circumstances: Lawrence Simbe v The State [1994] PNGLR 38. Applying the principles outlined in Wellington Belawa, the following matters have been taken into account in determining an appropriate sentence.

28. I note the State's reference to Kaya's case. That case concerned the penalties following amendment which are significantly greater than those

applicable in this case. I make it very clear that I am sentencing according to the maximum penalty of 10 years of imprisonment in this case.

29. In general terms the greater the monies involved the more serious the offending. The quantum of each one of the offences is without precedent and on any objective view constitutes offending of the worst kind warranting the maximum penalty on this basis alone.

30. This applies also to Count 1 even allowing for the possibility that some monies were owed to the offender's law firm for the years prior to 2007. The evidence excluded any rational possibility that the offender acted in an honest

claim of right without intention to defraud with respect to any of the monies, and
further excluded any rational possibility that even as much as K13m was owed to
the accused by the State for legal fees outstanding prior to 2007, or that the
accused believed that such monies were owing to him: The State v State v Paul
Paraka (Decision on Verdict) N10273 at [390] to [392].

31. The aggravating features in this case, however, are multiple and glaring.

32. This was not a case involving a breach of trust. The offender was not
employed in the public service nor did he hold public office. Nevertheless, the
fact that he was a lawyer, and a very senior lawyer at that, is a highly significant
and greatly aggravating feature of the offending.

33. The monies were State monies intended for the payment of judgment debts
against the State. The offender was aware of that and grossly abused his
knowledge and experience not only as a lawyer but a lawyer who acted for the
State to commit the offences. Furthermore, as a lawyer it was his duty to uphold
and serve the law in accordance with his oath and his obligations under the
Lawyers Act and the Professional Conduct Rules. He abused that duty.
Moreover, as a result of his education and experience, he would have appreciated
better than most the gravity of his offending.

34. The Courts have repeatedly held that dishonesty offences by serving police
officers must receive more severe punishments: see the authorities discussed in
State v Simanjon (2020) N8637 at [56] to [58], including State v Naime (2005)
N2873 and State v Konny (2012) N4691, amongst others.

35. It is my view that the Court must also strongly condemn dishonesty
offences by lawyers. They bring the law and those who serve it into disrepute and
undermine the very confidence in our system of justice that is so essential to

maintaining the rule of law. In general terms, the more senior the lawyer, the more severe the punishment must be. By his own account, the offender was one of the most senior lawyers in the country at the time of the offences.

36. In addition, this was an elaborate scheme conducted via multiple transactions and the use of the offender's own property investment company and multiple law firms through which the payments were funnelled for each year of the five consecutive years that the offending took place, demonstrating careful planning and a calculated design to avoid detection and distance the offender from the monies. It is also relevant that some payments were made on the pretext of the court order obtained by the offender in the National Court in OS 876 of 2006 even as late as 2010 even though the Supreme Court had stayed those orders in March 2007, as the offender well knew.

37. Furthermore, the monies were applied for the offender's own use and benefit. He was the architect of the scheme and its ultimate beneficiary. Whilst a comparatively small portion of the monies were retained in the accounts of the law firms through which they were channelled, the vast bulk of the monies were delivered to the bank account of the offender's law firm and wholly owned company. It is a measure of the magnitude of the offending in this case that the amounts retained in the law firms accounts represent in total several millions of Kina but the bank records show not only that the bulk of the proceeds were transferred to bank accounts controlled by the offender but that overwhelmingly the monies constituted the principal form of deposits to the accounts of PPL and PKP Nominees in both size and number. It does appear that some payments were made to members of the offender's family. In any event, expenditure of the monies began soon after deposit in every case and the funds were dissipated.

38. None of the monies have been recovered and none will be restituted. I make it clear that whilst restitution would normally constitute a

factor in
mitigation the contrary is not a factor in aggravation.

39. As above, the value of the monies in this case are on any objective view
exceptional. But much more was at stake here than money. There can be no doubt
that the impact on the victim has been enormous, albeit difficult to measure. The
monies belonged to the Independent State of Papua New Guinea and therefore its
people. In the immediate sense the monies were intended to meet the cost of

judgement debts against the State but the loss of every Kina represents the loss of
scarce public resources that could not be delivered in goods and services to the
people of Papua New Guinea. They are the real victims albeit that they are not
here to share their stories.

40. How does one measure, beyond the Kina figure, the true cost to the
individual and the country of the classroom that was never built, the school books
that were never read, the teacher that never taught, or what of the aid post or the
hospital that lacked equipment or medicine or staff for its patients, or the cost of
the impassable or dangerous road for the ordinary traveller, not to mention the
community patrols never conducted or the crimes never investigated by police
who lacked manpower, fuel or vehicles. The loss of State monies is not some
abstract concept. It has real and enduring social and economic impacts even if it
is difficult to quantify them.

41. The offence not only impacted the public but also public confidence. I
accept the statement of the former Solicitor-General that the offences reflected
poorly on his Office and the State lawyers it employed. Moreover, the offences
were conducted in concert with a person or persons inside the Department of
Finance, the peak department responsible for administering government monies.
At a time when government resources are limited and the prevalence of

corruption is of increasing concern to the community, the exposure of such a gross abuse of such large amounts of State monies over such an extended period of time must have had a serious effect on public confidence in the system of government administration as a whole.

42. It must also be recognised that offences of such scale against public funds have the potential to tarnish Papua New Guinea's standing at the international level and deter foreign investors with potentially far-reaching consequences for the development of the country.

43. It is also a regrettable fact that offences of this type are prevalent. Whilst an exceptional case, it does demonstrate that the methods used to conduct such crimes are becoming increasingly sophisticated and the losses increasingly large.

44. There are no extenuating circumstances associated with the commission of the offences themselves which would diminish the culpability of the offender: see Regina v Peter Ivor° [1971-721 PNGLR 374; Ume v The State (2006) SC836.

45. There are few matters in mitigation. It is the offender's first offence. The offender is also of prior good character.

46. The offender is 54 years of age. He is from Kumu Village in Mul Baiyer District, Western Highlands Province, He is the eldest of five children. His parents died some time ago. He has three wives and 14 children, all of whom it is reported in the pre-sentence report are adults and live with him at his home in Port Moresby, together with a grandchild.

47. The offender is well educated. He completed high school in Mt Hagen and Port Moresby. He obtained a Bachelor of Laws with Honours from the University of Papua New Guinea, a Masters of Laws from the University of California and

commenced a PhD with Oxford University in 1992 from which he later withdrew.

48. The offender was a tutor at the University of Papua New Guinea before establishing his own law firm which operated for more than twenty years until his arrest in 2013.

49. The offender was the principal of PPL. According to the pre-sentence report the firm was one of the largest in the country, employing more than 1500 lawyers and administrative staff, operating nationwide, at a cost of more than half a million Kina every month. The offender mentored and financially supported many lawyers so that they could start their own law firms, including lawyers like Adam Ninkama, Paul Otis, Martin Kombri, Nicholas Tame and others, who now employ Papua New Guineans and pay taxes to the government. He also sponsored several administrative staff and others to study law. He initiated and funded community projects in the law and justice sector.

50. The offender is also a leader of his tribe, his Local Level Government, and the Mul-Baiyer electorate. He leads conflict negotiations and mediations and has used his own money to bring peace and support the payment of compensation. He brokered peace in one of the biggest land mediations following fierce tribal warfare that destroyed many lives and properties in the Lumusa sub-district.

51. The impact of the offence on the offender has been and will continue to be grave. He was the principal of PPL, one of the biggest in the country, operating nationwide, together with other companies like PKP Nominees. According to, the pre-sentence report all of this has been lost. The offender continues to operate as a one-man firm but no longer employs other lawyers. At thee beginning .of this

year and last he attempted to revive the law firm by offering assistance to remandees at Bomana but due to the logistical and other costs involved he has

temporarily stalled his plans. He intends to take it up again if he is given a non-
custodial sentence. He has lost all real and financial assets other than each of his
properties in Port Moresby and in the village. It is also the unfortunate
consequence of his offending that those of his children who were studying
overseas have had to return to the country. He relies on his children for financial
support.

52. Samuel Ketan, the principal of Ketan Lawyers, is from a neighbouring
village and says that he used to hear of how the offender used his own money to
make peace within and between tribes, including giving K100,000 and 30 pigs to
bring peace to two warring tribes. He has witnessed him give assistance to
struggling village people, grade 12 students, and free legal aid to those less
fortunate, as well as sponsor at least one student to study law. The offender is
human and has made a mistake. "Let's all move on" and let this be a stepping-
stone for the future. If the Court wants to get a real glimpse of the offender's
philanthropic activities allow Probation Services to travel the length and breadth
of the country to speak to all the people the offender has touched in one way or
another. Sending him to prison will not help. He asks the Court to place him on
suspended sentence and use his skills for restitution.

53. A former public servant, who wished to remain anonymous, said that when
he was the head of an agency some decades ago the offender through his law firm
did a lot of good work for the State by defending it for a reduced price. He asked
the Court to have mercy on the offender.

54. Another former public servant, who also wished to remain anonymous,
said that during his tenure as the head of an organisation he engaged the
offender's law firm to defend the State, saving it a lot of money as the State had
only inexperienced lawyers. As a human we all make mistakes and the offender
did his now and hopefully will not do so in the future. He asked the Court to have

mercy on him.

55. The offender is supported by his wife and family. His wife of 32 years says that he is a loving and kind husband who is the foundation of the family, upon whom everyone depends, with some children still attending primary, secondary and tertiary education. She reiterated that the offender has shown leadership to his tribe, district and province, bringing peace and services to the community. As a lawyer he has trained many lawyers who have become employers themselves.

The case has had a detrimental effect on the offender's health and she is worried that any further stress could trigger his heart condition.

56. The offender maintains that there is no evidence in the case against him and that the verdict is wrong. It is not clear if he maintains his innocence. Of course, he is entitled to maintain his innocence and that I have erred but the effect of that is that he expresses no remorse and is not therefore entitled to any mitigation in that regard.

57. There is some mitigation in the offender's age and medical condition. The offender is not, however, of particularly advanced age. Furthermore, it is to some extent his age and certainly his experience that enabled him to commit the offences. I appreciate that the proceedings have been stressful but I do not consider that he has been placed under any strain significantly greater than other accused persons. Whilst the offender has had ample opportunity to make alternative arrangements he has until very recently insisted on representing himself at every stage of the criminal proceedings. Allowance has been made in this regard throughout the trial and at the sentencing stage, and the fact that his medical condition may have been exacerbated by his decision to represent himself has been a matter within his control.

58. As for his health, according to the latest report from the

offender's his
doctor, from Dr Wesong Boko, Intervention Cardiologist, Deputy Chief Physician, Port Moresby General Hospital, dated 7 September 2023 the offender
suffers from Coronary Artery Disease. The report confirms that the offender was
treated last year with the insertion of a stent or stents. An angiogram conducted
on 7 September 2023 revealed that the offender has developed a severe 95%
blockage in the existing stent and a similar severe 80 – 90% blockage of the left
circumference artery. There is also a borderline lesion in the proximal descending
artery, at 40–50%, and some evidence of minor lesion, 20–30%, of the right
coronary artery. The offender suffers from double vessel disease. In the
circumstances the offender is a high risk patient who is at risk of severe heart
attack and is advised to immediately cease all stress, change his life style to more
traditional living in the village and undergo percutaneous coronary intervention
with the insertion of a further three stents. It is intended to conduct the procedure
in several weeks time following which it appears he is expected to resume duties.
I also take note that the report states that the offender has kidney disease albeit
no further details are provided.

59. Whilst I appreciate that his condition has been exacerbated by the stress
associated with this case, fundamentally the cardiovascular disease the offender

suffers from is one associated in part with lifestyle and behaviours associated with
diet and exercise. It is the type of condition that professionals, lawyers, business
people and others who live primarily sedentary lifestyles sometimes suffer from.
It is the type of disease sometimes suffered by those who have the education,
experience and opportunity to commit the types of offences committed here. In
the circumstances the offender's medical condition must be balanced against the
totality of the circumstances in the case and the nature and gravity of the
offending.

60. The offences occurred between 2007 and 2011 but a lapse of time between the commission of an offence and the imposition of sentence is not a mitigating factor of itself: The State v James Paru (No 3) (2021) N9248 adopting In R v Law; Ex parte A-G [1996] 2 Qd R 63. Whether delay is a relevant consideration will depend on the circumstances. Where there has been a failure on the part of authorities or the judicial process to bring an offender to justice within a reasonable time that may constitute a factor in mitigation, particularly where an offender has cooperated with authorities from an early stage. Consideration should also be given to the conduct of the offender him or herself and their role in the delay. Delay may also be relevant where the offender has made demonstrable progress towards his or her rehabilitation during the period of delay. As in any case delay must be balanced against all the other factors for consideration, including the nature and seriousness of the offence: The State v Benedict Simanjon (2020) N8637 at [40]; State v Tony Kande, Henry Naio and Wilson Muka (2021) N9252 at [58]; The State v James Paru (No 3) (2021) N9248.

61. There has been no unreasonable delay in this case. The offender brought various challenges at each stage of the proceedings from the time search warrants were first obtained, at the committal stage, and prior to presentation of the indictment: see The State v Paul Paraka (Decision on Admission of Bank Records) (2022) N9568 at [29]; Paul Paraka v Kaluwin (2019) N7975; The State v Paul Paraka (Decision on Presentation of Indictment) (2020) N8229; and The State v Paul Paraka (Decision on Verdict) N10273 at [6] and the various decisions referred to therein. The proceedings before the National Court were vigorously challenges on multiple fronts and whilst some delay was occasioned by the pandemic and the offender's health, several applications by him for lengthier adjournments were refused both during the trial and these sentence proceedings, most recently on the day of submissions.

62. In summary, in determining the sentence to be imposed on each of the offences contained in the indictment I have taken into account the offender's age, personal circumstances and medical conditions. I have also taken into account

his lack of previous conviction, his prior good character, his contribution to the delivery of legal services for more than twenty years through one of the largest law firms in the country, his mentorship and support to numerous lawyers, together with his contribution as a leader, to the community and through charitable works. These are factors in his favour but they carry limited weight given the nature of the offending and are far outweighed by the aggravating factors in this case, in particular the quantum of the monies involved, the role played by the offender in procuring the offences, the elaborate nature of the scheme, the application of funds to his own use and the extent to which he benefitted from the crimes, his knowledge and experience as a lawyer, and the impact on the public and public confidence. Such offences are prevalent and the offending in this case calls for specific and general deterrence.

63. In short, this was a case of enormous magnitude, despicable greed and incalculable loss to the people of Papua New Guinea. Each of the offences clearly constitutes misappropriation of the worst kind and I have no hesitation imposing the maximum penalty for each of the offences established in Counts 1 to 5 of the indictment: Goli Golu v The State [1979] PNGLR 653 applied.

64. The question remains whether and to what extent the sentences should be served cumulatively or concurrently.

65. I remind myself of the approach to be taken when deciding whether sentences should be made concurrent or cumulative and the principle of totality, Mase v The State [1991] PNGLR 88 at 92:

"It is clearly laid down by this Court in the cases referred to

that there are three
stages to go through in coming to a total sentence. The first step is to consider
the appropriate sentence for each offence charged and then consideration be
given as to whether they should be concurrent sentences or cumulative sentences.
Where the decision is made to make two or more sentences cumulative, the
sentencer is then required to look at the total sentence and see if it is just and
appropriate. If it is not, he must vary one or more of the sentences to get a just
total. This principle must be observed because a straightforward addition of
sentences usually leads to a total sentence that is excessive in the whole of the
circumstances."
66. There is no "all-embracing" rule as to when sentences for two or more
convictions should be made concurrent: Tremellan v The Queen f 1973] PNGLR
116. Generally, sentences should be made concurrent where a congeries of
offences is committed in the prosecution of a single purpose or the offences arise
out of the same or closely related facts: Tremellan v The Queen [1973] PNGLR

116. Where the offences are different in character, or in relation to different
victims, the sentences should normally be cumulative: Public Prosecutor v
Kerua j 1985] PNGLR 85.

67. The State initially proceeded with an indictment containing a single count
of misappropriation for K162m. The indictment was amended, however, following one of the offender's applications: The State v Paul Paraka (2021)
N8807 at [255] to [274] and The State v Paul Paraka (2021) N8938 at [20] to
[22] and [34] to [43]. Applications have consequences and the fact is that the
offender has been convicted of five counts of misappropriation each of which are
extremely serious.

68. The principle of totality requires a judge who is sentencing an offender for
a number of offences to ensure that the total or aggregate sentence of the

appropriate sentences for each offence is just and appropriate for the totality of
the criminality involved.

69. It is the case that the offences were committed in the prosecution of a single
purpose and arise out of closely related facts. The victim is the same and the
offences are of the same character. But this is no ordinary case.

70. As above, the magnitude of each of the offences is without precedent. In
addition, whilst the methodology was the same, the number of transactions
involved and the firms through which the monies were channelled varied to some
extent each year, escalating to K39.8m and K47.6m in 2010 and 2011, respectively.

71. In 2007 for instance monies were applied by way of thirteen cheques
payable at various times to Sam Bonner Lawyers, Harvey Nii Lawyers, Sino &
Company Lawyer, Yapao Lawyers, Korowi Lawyers and PKP Nominees. In
2008 monies were applied by a further 15 cheques paid to the accounts of Sino &
Company Lawyers, Jack Kilipi Lawyers for the first time, Korowi Lawyers, and
PKP Nominees. In 2009 a further six cheques were paid via the accounts of Sino
& Co Lawyers, Jack Kilipi Lawyers and PKP Nominees. In 2010 twelve cheques
applied via Sino & Company Lawyers, Harvey Nii Lawyers, Jack Kilipi Lawyers,
Korowi Lawyers, Kipoi Lawyers for the first time, and PKP Nominees. Finally,
in 2011 a further 19 cheques were applied via Sino & Company Lawyers, Jack
Kilipi Lawyers and PKP Nominees.

72. When this is taken with the period over which each of the offences was
conducted it is my view that cumulation is warranted, particularly when regard is
had to comparative cases. Such cases show that for amounts above K lm
sentences of between 7 and 9 years are usually imposed. What then is an
appropriate sentence for a man who misappropriates K162m over a

period of five
years?

73. On the face of it the sentences might properly be made cumulative, totalling
50 years of imprisonment.

74. Having regard to the principles of totality, however, in particular the
offender's age and medical conditions, together with the State's submission as to
penalty, and the fact that the indictment was amended at my direction albeit
following an application by the offender, I intend to impose an effective sentence
of 20 years of imprisonment without hard labour.

75. No time has been spent in custody to date.

76. For the reasons outlined above, I do not consider the effective sentence to
be a "quantum leap": Thomas Waim v The State (1997) SC519 applied.

77. The offender and his supporters plead for his sentence to be suspended.
Probation Services supports partial suspension.

78. In The State v Tardrew [1986] PNGLR 91 the Supreme Court set out three
broad, but not exhaustive, categories in which it may be appropriate to suspend a
sentence, namely: where it will promote the general deterrence or rehabilitation
of the offender; where it will promote the repayment or restitution of stolen
money or goods; or where imprisonment would cause an excessive degree of
suffering to the particular offender, for example because of bad physical or mental
health.

79. The offender refuses to acknowledge guilt and expresses no remorse.
Accordingly, I am not satisfied that suspension would promote either his
deterrence or rehabilitation.

80. Suspension will not promote restitution. In addition, great care must be

exercised when suspending a sentence in a case like this. The wealthy must not avoid prison where others would not: State v Wilmot, supra. Furthermore, there are other means by which the State might recover misappropriated funds, for instance through the Proceeds of Crime Act, 2005.

81. Finally, I am not satisfied that the offender will suffer excessively in prison.

82. Whilst I appreciate that the sentence imposed will cause great hardship to the offender's family, it is well established that except in very extreme circumstances, it is not ordinarily a relevant consideration on sentence.

83. Reliance is placed on Mapiria, supra. It is important to recognise the particular circumstances of that case which led to suspension. The Court found that the offender was likely to suffer severe complications associated with three diseases which would become immediately life-threatening in prison and which would result in an excessive degree of suffering together with other factors including his reduced culpability including that he lacked sophistication, did not personally benefit, and had indicated a willingness to make restitution of K lm in suspending the sentence: the decision was not available but see the summary in the schedule to Kaya.

84. It is also important to note, however, that the sentence was appealed by the Public Prosecutor, that the offender died before the appeal could be heard, and that the case has been distinguished on many occasions: see for instance in The State v Wilmot (2005) N2857 per Sevua J; The State v Niso (No 2) (2005) N2930 per Gavara-Nanu J, and State v Kom (2009) N6199 per David J, amongst others.

85. It is also relevant that Correctional Services is obligated to ensure that the offender continue to receive the medical treatment required. Whilst treatment in custody might not be ideal, there is no reason to believe that incarceration would deprive the offender of ongoing treatment from his current doctor at

Port Moresby
General Hospital, including the stent procedures planned, from a visiting overseas
physician.

86. In the circumstances the offender's medical condition must be balanced
against the totality of the circumstances in this case and the nature and gravity of
the offending. The offender's medical condition has already been taken into
account in determining the head sentence.

87. Finally, suspension would not be in the interests of the community. The
work of the offender as a leader and his contribution to the community and to
legal services and the promotion of young lawyers and those less fortunate, whilst
commendable, must be balanced against the seriousness of the offences in this
case.

88. Fraud is not a victimless crime. It has very real and often enduring
consequences for those who lose the benefit of the funds. Where State monies
are involved it impacts the entire community, particularly those most vulnerable.

89. Only service of the sentence in custody will ensure that the offender is
adequately punished for his conduct, that the Court appropriately denounces such
offences, and that the offender and others are deterred from committing similar
offences in the future.

90. I make the following orders.

Orders

(1) On the offence of misappropriation in Count 1 of the indictment the
offender is sentenced to 10 ten years of imprisonment without hard labour.
(2)On the offence of misappropriation in Count 2 of the indictment the
offender is sentenced to 10 ten years of imprisonment without hard labour.
(3) On the offence of misappropriation in Count 3 of the

indictment the
offender is sentenced to 10 ten years of imprisonment without hard labour.

(4) On the offence of misappropriation in Count 4 of the indictment the
offender is sentenced to 10 ten years of imprisonment without hard labour.

(5)On the offence of misappropriation in Count 5 of the indictment the
offender is sentenced to 10 ten years of imprisonment without hard labour.

(6) Having regard to the principles of totality the offender shall serve an
effective sentence of 20 years of imprisonment without hard labour.

(7)The offender's bail monies and any sureties lodged by the offender's
guarantors shall be refunded.

Sentenced accordingly.

Public Prosecutor: Lawyer for the State
The Offender: In person