N8273

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS (JR) 834 OF 2015

BETWEEN**:**
TOM KORUA
Plaintiff

AND**:**
JACK KARIKO as Secretary, National Judicial Staff Services
First Defendant

AND**:**
POLI IFINA as Principal Legal Officer, National Judicial Staff Services
Second Defendant

AND**:**
NATIONAL JUDICIAL STAFF SERVICES APPEAL TRIBUNAL
Third Defendant

AND:
NATIONAL JUDICIAL STAFF SERVICES
Fourth Defendant

AND**:**
THE INDEPENDENT STATE OF PAPUA NEW GUINEA
Fifth Defendant

Goroka**:** Neill J
2016: 8, 15, 22 July; 1, 15, 23 August; 9 September

ADMINISTRATIVE LAW – "whistle-blower" officer who made complaints against a senior officer was then subject to disciplinary procedure – self-incrimination Constitution Section 37 - natural justice for person subject to disciplinary action to be able to cross-examine witness–reasonableness of punishment where person facilitated soliciting bribe but he was not a beneficiary of bribes nor had he personally anything to gain.

Facts

The Plaintiff was a Security Supervisor and with lower rank former security officers made complaints that the payroll officer was not doing his job in that he had not paid the former officers their retirement and overtime entitlements and

had taken bribes to do his job. There was no caution given to the Plaintiff that in making his statement he could be charged under Section 97B of the *Criminal Code Act* or under the *National Judicial Staff Services Act*. He was dismissed for soliciting money to *fast track* the former officers' entitlements from payroll officer.

The plaintiff felt a commitment to the former security, who he called "his men", none of whom were well educated, to help them. He denied taking any money for himself. The former officers gave a history of frustration when trying to contact or to obtain their entitlements from the payroll officer. They gave evidence the payroll officer accepted their bribes which they hoped would get him do his job to process their lawful entitlements. The payroll officer continues to be employed. He denied taking bribes. He was not made available for cross-examination by the plaintiff.

Held

1. When considering a disciplinary offence, it is a denial of natural justice by a statutory authority, to not give the officer who has been charged, the opportunity to cross-examine and test the evidence of the person who is the root cause of the charge.

2. Dismissal was excessively severe where the officer did not receive any benefit for the bribe offered but did so to assist his subordinates who were properly due salary and end-of-employment entitlements.

3. The person (*whistleblower*) who reports a person for accepting bribes should be informed of their right to not self-incriminate.

4. The disparity of punishment of the *whistleblower* compared to no punishment of the person who took bribes - reasonableness.

Cases Cited:
Papua New Guinea Cases

Kekedo v Burns Philp (PNG) Ltd [1988-9] PNGLR 122
Paul Asakusa v Andrew Kumbakor (2008) N3303
Kevi v The Teaching Service Commission (1997) N1555

Overseas Cases

Associated Provincial Picture Houses v Wednesbury Corp [1947] 2 All ER 680

Legislation

Constitution, SS 37, 59
National Judicial Services Act
National Court Rules, Order 16

Counsel

Ms V Move, for the Plaintiff
Mr P Ifina, for the First, Second, Third, Fourth Defendants &Judicial Council
Ms W Oa, for the Fifth Defendant

9th September, 2016

1. **NEILL J: BACKGROUND:** The Plaintiff was employed by the Fourth Defendant, the National Judicial Staff Services (**NJSS**) as a Security Supervisor at the National Court Goroka. He had been employed as a security since 2 January 2007.The *National Judicial Services Act* 1997 (**Act**) established the NJSS to provide support staff to the courts. The Act set up a procedure to deal with employment issues of NJSS staff. The First Defendant (**Secretary**) is the Head of the NJSS. It is the Secretary who considers complaints made against staff of their having committed a breach of the Act.

2. The Secretary is required to adhere to the procedures for dealing with serious disciplinary offences. The Secretary did the following:

> 1. By notice dated 6 January 2015 the Plaintiff was suspended and a second notice charged the Plaintiff (under Section 14(h) of the Act):
>
> > *"On several occasions you solicited and received monies from former security officers from Goroka National Court namely Sawong Suman, SutoMosoka, Simon Kar and Billy Tarosa as payment to fast track their outstanding payment." (**charge**)*
>
> 2. The Plaintiff was served with the notice of charge on 9 January 2015 and he responded to the charge by letter dated 12 January 2015. The NJSS Legal Division date stamp shows receipt on10 February 2015.
>
> 3. Section 16(5) (a) to (e) of the Act empowers the Secretary to impose punishment after due consideration of the material. Of the range, Section 16(5)(a), (b) and (c) relate to monetary punishment by fine, or reduction in salary, or lowering the officer's classification with a consequential lower salary. In

addition to that punishment, Section 16(5)(d) provides for transfer of the offender to another location.

4. Section 16(5)(e) allows the Secretary to recommend dismissal to the Judicial Council (**Council**), established under Section 3A of the Act. Pursuant to Section 16(6) of the Act, by notice dated 4 March 2015 the Secretary informed the Plaintiff he has been referred to the Council for dismissal. The notice was served on 9 March 2015.

5. A notice of appeal was given by the Plaintiff to the National Judicial Staff Services Appeal Tribunal (**Tribunal**) and the appeal proceeded to hearing. On 13 November 2015 the Tribunal dismissed the appeal.

6. By letter dated 24 June 2016 the Secretary informed the Plaintiff that the Council had upheld the Tribunal's decision and confirmed the dismissal by the Secretary. That letter did not reach the Plaintiff until some 21 days later. The Plaintiff's salary ceased on 22 June 2016.

3. Section 19 of the Act provides for a three stage process for a "serious disciplinary offence". After the Secretary considers the complaint and makes a decision, then, an officer may appeal the Secretary's decision to the Tribunal. The Council is at the apex of the appeal process.

4. Pursuant to Section 19(2) the Tribunal may vary the Secretary's decision as the punishment imposed under Section 16(5)(a) to (d) and may recommend to the Council that the officer be dismissed. Section 19(3) provides that the Tribunal's decision is final except as to dismissal.

5. The Tribunal recommended to the Council that the Plaintiff be dismissed. The recommendation of the Secretary and the Tribunal was then considered by the Council under Sections 19(5) and 19(6) of the Act. The letter of dismissal (see paragraph 7) said (sic.):

> *"The Judicial Council had upheld the decision of the Appeals Tribunal which confirmed the decision of the Secretary to recommend you to Judicial Council for dismissal from NJSS."*

Background to the Act

6. Sir Buri Kidu was the first Papua New Guinean Chief Justice. He knew that there could be no independence for the Judiciary without financial independence. That is how the Act was conceived. Anyone who knows politics

knows that to pass legislation it requires both timing and the appropriate person to move the legislation. The timing and the person came about in 1987 when the second reading of the Bill (now the Act) was moved by the then Minister for Justice, Warren Dutton. He too was conscious for the need for judicial independence and said in the House:

> *"There are three arms of Government. They are the executive, the legislative and the judicial. The Constitution says that in principle these arms are to be kept separate."*

7. The important thing was to secure the financial independence of the judiciary. Later the Act's mechanism for staffing, the "detail" was drafted in recent years as the Administrative Orders (**Admin Orders**).

8. The Admin Orders allow the NJSS Secretary to deal with disciplinary matters by reading the complaint and the reply to the complaint and without giving an opportunity to the officer to test the allegations made. This is a common mechanism in the Public Service but it does beg the question of natural justice. The Admin Orders are subsidiary to the Act, however Section 16 of the Act does authorise the Secretary to charge and suspend an officer if he is of the opinion the charge has been sustained and the Secretary may recommend dismissal.

Facts

9. The Secretary acted on a complaint by the "former security officers" who were named in the charge and who were under the Plaintiff's supervision at the Goroka Court. A statement was also given by Jasis Unua, a fifth person who wanted to "fast track" his final payout. The statements of all five men are noted in the Secretary's decision recommending dismissal.

10. In considering the evidence of the former security officers, they tell much the same story. Their separate statements are annexed to an affidavit by the Plaintiff (filed 11 August 2016, document 24). In summary, they say:

- ♣ Some were retiring from the NJSS service. Some due to health and others age and others due to restructure of positions; all had been employed for many years.
- ♣ It is not suggested that any of these men had much education or work experience other than as a security guard. They wanted to get their retirement entitlements and overtime pay.
- ♣ Allan Tukar, the paymaster at NJSS Waigani seemed to be the person whose job it was to pay them their entitlements.

11. To give some notion of their frustration in trying to contact Allan Tukar let alone obtain their entitlements, Jasis detailed his efforts (sic.):

> *"I made several attempts by travelling to Port Moresby NJSS head office to follow up.....I was told Mr Allen Tukar to follow up with him. Many times I went to his office when I in Port Moresby but he was not always in his office. After attempting follow-up for so many times I was forced to travel out of Port Moresby .... Again in September 2012 I travel to Port Moresby but there was no good attendance by Allan Tukar. From the way he was approaching me I understood and that he was expecting some money from me as usual before he could calculate and pay my entitlements. I gave him K500 cash all in 100 kina notes in front of the Waigani Court house under the rain tree. The transaction took place in the presence of Security Supervisor Mr. Tom Korua. When I handed the K500 cash he took it and put it in his short pocket...My retrenchment entitlement is still yet to be paid to me...."*

12. Suman Sawong's statement says that he was paid his retrenchment money but not paid for the overtime that he worked. He paid K150 and K200 to the Plaintiff to send to Allan Tukar and he states (sic.):

> *"Naomi Thomas request some money for processing and we contributed and sent a total of K250 on the advice of Tom Korua. The money was posted through Naomi's ANZ bank account." [He adds that in regard to the claim he was "still waiting".]*

13. Suto Mosoka says he was paid his entitlements on retirement but not his overtime. He says that money was paid to both Allan Tukar and to Naomi Thomas through the Plaintiff to get his claim processed.

14. Simon Kar was not paid his retrenchment benefits or overtime. He paid a "processing fee" of K750 through the Plaintiff to send to Allan Tukar.

15. The last of the former security officers is Billy Tarosa. He says:

> *"I followed up on so many times. While waiting for payment I sent some money to the paymaster account but nothing has happened. Firstly I sent K150 into Allen Tukar's BSP bank account. Recently in July 2014 I sent another K100 to Mrs. Naomi Thomas into her Bank Account."*

16. Four of the statements of the former security officers are dated 21 August 2014 and the statement of Billy Tarosa and the Plaintiff are dated 22 August 2014. There is nothing in the statements to suggest that they had been informed of their right to remain silent or the issue of self-incrimination or Section 37 of the *Constitution* or they could be referred to Police pursuant to Admin Orders 10.35 (say to be charged under Section 97B *Criminal Code Act*) or Part IV of the Admin Order for an offence regarding bribes to Allan Tukar. And, where an investigating authority is looking to prosecute a principal offender, an arrangement is sometimes made with a less culpable offender for indemnity or a lesser charge or lesser penalty, in order to secure the evidence of the less culpable offender in regard to prosecuting the principal offender.

17. The Plaintiff's statement is he did not take for himself any money of the former officers but he helped them, so they could get their money (sic.):

> *"As their supervisor I have been doing all these to assist my security officers with their overtime claims. If I don't do that how could I assist my security personnel. I was left with no choice by the paymaster as they were controlling the overtime claims and telling me to facilitate for their processing fee. I did that in good faith only to help my security men. I had no criminal intention."*

Grounds of appeal to the Tribunal

18. In summary, the grounds in the Plaintiff's notice of appeal to the Tribunal:

> ***A.*** *Notice of the Secretary's decision to recommend dismissal was received by the Plaintiff (sic.) "came after 35 working days from the time of my replyment to the said charge therefore my charges shall be considered null and void" as contrary Admin Orders 10.39 and10.40.*
>
> ***B.*** *The Plaintiff and the five former officers informed the Principal Legal Officer about misconduct of the payroll officers, Allan Tukar and Naomi Thomas in not processing the security entitlements. (Pursuant to Admin Orders 10.28, the Legal Officer is the person to whom the Secretary refers a complaint and who then prepares a charge.)Based on that information, some months later the Plaintiff was charged, though he thought his statement was concerning the payroll officer. The Plaintiff says that delay contravened Admin Orders 10.29.*
>
> ***C.*** *The Plaintiff was not given an opportunity to see the evidence provided in support of the charge.*

D. *The Plaintiff denies the statements of the security officers that he took money from them to process their claims.*

19. The Plaintiff says the Secretary did not comply with the time requirements of Order 10 of the Admin Orders. The Admin Orders, which fill an arch-lever file, have such detail, that a lawyer could navigate but it is doubtful that a security guard with only limited education could competently do so.

In regard to A

20. Admin Orders 10.39 and Admin Orders 10.40 apply. The Orders require the formal notification of the Secretary's decision is to be provided to the officer within 21 working days otherwise: "the charge against the officer shall be deemed null and void." The affidavit of the Principal Legal Officer annexes copies of the documents: the notice of charge was served on the Plaintiff on 9 January 2015; the date stamp of the "Legal Division" (NJSS) notes the Plaintiff's response to the charge was received on 10 February 2015; the Plaintiff was served the notice of dismissal on 9 March 2015.

21. The number of working days from 10 February to 9 March 2015 is 20, including these two days.

22. When the Plaintiff claims the notice was received outside the 21 days he is calculating the timeframe from the date of his response not the date received by the Second Defendant. In his Amended Statement (document 22) the Plaintiff says: "responded to the charge on the 12th day of January 2015 sent to the First and Second Defendants on the same date through EMS at the Post Office in Goroka". But there is no evidence when it was delivered by EMS to either of these defendants. As there is no proof of service, the only clear date of receipt that the Court can rely on the date stamp of 10 February 2015 and which was within 21 days. This ground of the appeal must fail accordingly.

In regard to B

23. The Plaintiff and the five former officers informed the Principal Legal Officer about misconduct of the payroll officers, Allan Tukar and Naomi Thomas in not processing the security entitlements. The officers' statements were made on 21 and 22 August 2014.The Plaintiff was charged on 6 January 2015.

24. The Plaintiff says that delay contravened Admin Orders 10.29. This Order relates to minor offences. His charge was a "Serious Offence" but Admin Orders 10.34 says the same procedure applies. While it is obvious that some 4 months 2 weeks elapsed from the date of the statements to the date of the charge, Admin Orders 10.33 states the precondition for instituting the dismissal

procedure is:

> *"Where a serious offence has been committed, a Manager shall consider the seriousness and the nature of the offence and shall refer the matter to the Secretary in writing."*

25. There is no evidence of a reference by "a Manager" to the Secretary. It cannot be known if the process of the Admin Orders 10.33 was followed. Without knowing about this referral it is not possible to know if the timeframe of 10 days in Admin Orders 10.29 was followed. Albeit for reasons other than in the ground of appeal, there was breach of process.

In regard to C

26. This is the substantive ground. The Plaintiff says that he did not have the statements of the former security officers or Allan Tukar when he drafted his reply to the charge. He implies that as a consequence he was denied natural justice.

In regard to D

27. On review the Court does not look at the evidence as such, but looks at the process. Regardless, the Plaintiff's statements have inconsistencies. The former officers made statements which vary from the Plaintiff's. The Tribunal's finding of soliciting will not be the subject of the review.

Tribunal's decision

28. In regard to penalty, the Tribunal noted (at paragraph 8) the Plaintiff's statement "that he never benefited from the money he solicited" and

> "Allan Tukar, the other officer who was charged for the same offence is still working. The Criminal Clerk in the Goroka National Court, Namely Roselyn Mamano was charged for misappropriation of K2, 000 bail money, was found guilty and fined and she is still in her substantive position. He submitted that his case falls well below these two categories of cases therefore a lesser penalty such as caution or reprimand or fine shall be considered."

29. At paragraph 14 the Tribunal notes in regard to Allan Tukar:

> *"Mr. Allan Tukar, who is charged with the same charge, in his response to the Secretary dated 23 October 2014, has denied communicating with the former named security officers from Goroka National Court, nor requested Mr. Tom Korua to solicit*

monies from them to fast track payments of their outstanding claims. The Appellant admitted soliciting or receiving monies from the former security officers. Receiving or accepting money may not necessarily mean that the Appellant benefitted from it. However, a denial by Mr. Allan Tukar does draw an impression that the Appellant had benefited from the monies he solicited."

30. In regard to penalty, at paragraph 20, the Tribunal states:

"Since the Appellant in his appeal did not challenge the severity of the sentence or claims innocence as grounds of his appeal, I do not think it is appropriate for this Tribunal to annul or vary the decision of Secretary."

31. This last finding of the Tribunal is not correct. Section 19(2) of the Act gives the Tribunal power to vary the decision. And, the letter of the Secretary dated 4 March 2015 to the Plaintiff says his decision is on penalty: "Therefore the following penalty is imposed upon you…":

32. Pursuant to that notice the Plaintiff lodged his appeal. In the above cited paragraph 8 of the Tribunal's decision the Plaintiff obviously addresses the Tribunal on penalty. In the above cited paragraph 14 the Plaintiff raises matters in regard to innocence and mitigation of penalty.

33. The principle of reasonableness as developed in *Associated Provincial Picture Houses v Wednesbury Corp.* [1947] 2 All ER 680 (**Wednesbury**)is often cited in our jurisdiction, for example in *Magiri v PNG Forest Authority* (2009) N3670. In *Wednesbury* a municipal authority exercising powers to restrict children going to the appellant's cinema. Lord Greene M.R. discussed reasonableness in the context of the authority exercising discretion given to it by the relevant legislation, in essence (p. 685 C), "a conclusion so unreasonable that no reasonable authority could ever have come to it".

34. In applying the *Wednesbury* principle to the findings made by the Tribunal it is clear that the Tribunal was unreasonably swayed by the seriousness of the charge compared to the more serious matter of Allan Tukar taking bribes. The Tribunal did not reasonably consider the aims of the Act in regard to soliciting bribes under Section 14(h) of the Act. Section 14(h) looks to stop NJSS staff soliciting bribes and to stop the NJSS staff accepting bribes. In looking only at the situation of the Plaintiff the Tribunal ignored the situation with Allan Tukar and that was unreasonable within the *Wednesbury* meaning.

Order 16 and relevant cases on a review

35. To consider the legal framework of a Judicial Review, Order 16 Rule

13(1) of the Rules lists possible grounds for a review. The relevant grounds in that list for this Review are:

- ♣ Breach of procedure
- ♣ Taking into account irrelevant considerations
- ♣ Failing to take into account relevant considerations
- ♣ Error of law on the face of the record
- ♣ Reasonableness

36. In deciding this Review the Court is mindful of the following cases in regard to Order 16, particularly on the issues of:

- ♣ The "decision-making process not the decision"
- ♣ "breach of natural justice"
- ♣ Reasonableness

37. In *Kekedo v Burns Philp (PNG)Ltd* [1988-9] PNGLR 122 the Supreme Court said in summary of several aspects relevant to this Appeal:

- ♣ The Judicial Review jurisdiction of the National Court is discretionary.

- ♣ The purpose of Judicial Review is not to examine the reasoning of the subordinate authority with a view to substitute the Court's opinion. Judicial Review is concerned with the decision-making process not the decision.

- ♣ The circumstances under which Judicial Review may be available are where the decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached, or abused its powers.

- ♣ Even in cases where no appeal lies against an order or a decision, Judicial Review would nevertheless still be available to challenge the validity or reasonableness of the order or decision

Pleadings

38. The Plaintiff filed an Originating Summons on 11 December 2015 which sought an order to quash the dismissal by the Secretary. Notice of Motion filed the same day sought Review of the Tribunal's appeal decision.

39. On 8 July 2016 the Plaintiff was granted Leave to Review the Tribunal decision and the dismissal by the Secretary and the matter was adjourned to 22 August 2016. At that time the Plaintiff and the Court were not aware of the Secretary's letter dated 24 June 2016 informing that the Council had confirmed the dismissal.

40. On 15 July 2016, the matter was brought back to Court to vacate the adjourned date and for the parties to be informed of the confirmation. The matter was adjourned to 22 July 2016 to allow for Mr Ifina to travel to Goroka.

41. On 22 July 2016 the Principal Legal Officer announced that he represented the First, Second, Third, Fourth Defendants and the Council. With all the parties' consent, the Court granted leave to amend the application for review to include in the current proceedings the determinations at all three levels of the disciplinary process, namely the Secretary's decision, Tribunal's decision and the Council's confirmation.

42. The State argued that the pleadings are not sufficiently detailed. In *Paul Asakusa v Andrew Kumbakor* (2008) N3303 [Injia DCJ] made clear that:

> *The grounds must contain reference to some established grounds recognized by law as proper grounds upon which judicial review relief is available and the statutory provision or common law duty alleged to have been breached.*

43. Not stating the grounds has to be distinguished from a situation where the contentious pleadings are merely ill-expressed. The Plaintiff is an example of the need to obtain legal advice from the outset of a matter.

44. His reply to the charge is clumsy. The Originating Summons was filed by him but apparently with help from a "ghost writer" and later he obtained legal aid (Appearance, document 11, filed 16 May 2016). But he does state grounds with reference to sections of the Act and Admin Order time frames, albeit as noted in **A** and **D** some of the grounds are misconceived.

45. He says that he did not have a fair hearing before the Tribunal as he did not have the opportunity to cross-examine the former security nor, most importantly, Allan Tukar. In this situation the Court should not shut out a person for "ill-expressed" pleadings.

Charge

46. In addition to the ground in the notice of appeal summarised in **C** above,

another but undated response by the Plaintiff is an annexure to his affidavit filed 17 May 2016 (document 13), where he states: "I was not given a chance of viewing the evidence of the charge…"

47. The Plaintiff was not given the opportunity to test by cross-examining the former security officers on their statements dated August 2014, or the opportunity to cross-examine Allan Tukar. There is no statement from Allan Tukar in evidence but the Tribunal notes his bare denial (para14).

48. Anyone can make a false accusation which may seem credible. But unless the person accused has the opportunity to confront his accuser and test the accusation by cross-examination, justice is not done. The process of the Secretary's dismissal and the Tribunal's appeal decision and the Council's confirmation are respectively based on this denial of justice.

49. In *Kevi v The Teaching Service Commission* (1997) N1555 the Court looked at this issue. There the matter of breach of natural justice was raised because the plaintiff was not provided with "an opportunity to cross-examine any witness who provided evidence in support of the charge". In regard to that ground, the Court held that "one of the rules of natural justice is that a person has a right to be heard before a decision adversely affecting him is taken." The Court referred to Section 59 of the *Constitution* and *Ridge v Baldwin* [1963] 2 All ER 66 and quashed the decision of the Commission.

Punishment

50. With sentencing, there is a need to recognise some degree of parity with the punishment handed down to accomplices unless the other sentences are plainly beyond the sentencing range. Courts try to avoid unjustifiable disparity when passing sentence on co-accused while taking into account the differing circumstances of each accused to achieve justice.

51. There is no evidence of what punishment the "former security officers" received. After all, it was they who were claiming their entitlements and benefited from the assistance of the Plaintiff to "fast track" the payments.
The process of comparing punishment of offenders in the same enterprise was not done or at least there is no evidence before the Tribunal that the process was carried out. The disparity of their treatment compared with the Plaintiff's dismissal shows that his dismissal was excessively severe.

52. It is in regard to the treatment of Allan Tukar compared with the Plaintiff's dismissal that excessive severity is most obvious. On the evidence, for example of Jasis, Allan Tukar did not do his job in processing Jasis' entitlements and then took a bribe to do his job. It was Allan Tukar who brought about the situation, which Jasis noted in his statement, to get his money he had to pay a bribe to Allan Tukar. However Allan Tukar is still employed as payroll

officer.

53. In contrast to his situation the Plaintiff did not get any cash benefit but only facilitated "his men" i.e. those under his command, accessing the payroll officer. A bribe to an officer is an offence under the Act and sadly the Plaintiff and former officers did not contact the Secretary directly at the outset instead of thinking the matter could be resolved by bribes.

Findings

54. There is no copy of the details of the Council's decision only the short statement in the Secretary's letter to the Plaintiff dated 24 June 2016.The Council had to consider the material given to the Tribunal and the Tribunal's written decision. The appeal process being built upon this necessarily means that if the Tribunal's decision is flawed then the Council's decision is similarly flawed.

Breach of procedure

55. There is no evidence of referral by a Manager to the Secretary (Admin Orders 10.33). And, the matter was tainted when it came to the Secretary as the Plaintiff was not informed of his right, as guaranteed by Section 37 of the *Constitution* to remain silent (no self-incrimination) or that he could be referred under Admin Orders 10.35 to Police and charged (say Section 97B *Criminal Code Act*) or charged under the Admin Orders Part IV for an offence regarding bribes to Allan Tukar. This procedure to warn a person is fundamental in our system of justice and does not need to be restated in the Act. This breach of procedure flaws the entire process in this case.

Taking into account irrelevant considerations
Failing to take into account relevant considerations

56. The Secretary and the Tribunal noted the statements of the five former security officers and the Plaintiff made on 21 and 22 August 2014 but in considering the charge then ignored the fact that the person who took the bribes was Allan Tukar. The only statement from Allan Tukar is paraphrased in the Tribunal's decision (paragraph 14) as a bare denial.

Error of law on the face of the record

57. The Tribunal erred in law in finding (its decision paragraph 20 decision) that it was not "appropriate for this Tribunal to annul or vary the decision of Secretary" when the Act, Section 19(2), gives the Tribunal that power.

Breach of natural justice

58. The Plaintiff was not given an opportunity to see the evidence provided in support of the charge until after he had made his reply to the charge. He says that he did not have a fair hearing before the Tribunal as he was not given the opportunity to cross-examine Allan Tukar nor the former security. As a result he was denied natural justice.

59. The process is flawed as the Plaintiff was not given the opportunity to confront the persons who made statements to the Secretary and test their accusations. He was denied natural justice in that regard and the decision to dismiss him from his employment was based on untested allegations as the Plaintiff could not cross-examine the person who was the root cause of the matter, namely the payroll officer, Allan Tukar.

Reasonableness

60. In looking only at the situation of the Plaintiff the Tribunal ignored the situation with Allan Tukar and that was unreasonable within the *Wednesbury* meaning.

Damages

61. The Plaintiff pleads distress arising from the charge and dismissal. That claim is not particularised and is not considered further.

62. If the Plaintiff be reinstated to his position at the time of the charge then he gets all the emoluments of his position and he sustains no loss.

63. The Court is concerned with the decision making process. It would be inappropriate to suggest what might be a penalty to impose on the Plaintiff pursuant to Section 16 of the Act.

Costs

64. The Plaintiff has been represented by legal aid and it seems has received legal assistance from unidentified persons. Costs have been incurred by the Defendants and some of the grounds of the appeal to the Tribunal have no merit. In the circumstances each party shall pay their own costs.

The Court orders:

1. The recommendation, made 4 March 2015 by the Secretary National Judicial Staff Services to the Judicial Council, to dismiss the Plaintiff from his employment by the said Staff Services, is quashed.

2. The decision made on 4 March 2015 by the Secretary, National Judicial Staff Services as to punishment of the Plaintiff is quashed.

3. The decision given on 13 November 2015 by the National Judicial Staff Services Appeal Tribunal is quashed.

4. The confirmation of the Secretary's recommendation for dismissal made on 24 June 2016 by the Judicial Council is quashed.

5. The Plaintiff is forthwith reinstated to his position in the National Judicial Staff Services as at 6 January 2015 and at the salary for that position together with all entitlements related to the position then and which have subsequently accrued with increments.

6. Each party to pay their own costs.

7. Time abridged to date of settlement of this order which is forthwith.

Ordered accordingly

Public Solicitor Goroka office: *Lawyer for Plaintiff*
P. Ifina, Principal Legal Officer, NJSS: *Lawyer for First to Fourth Defendants and the Judicial Council*
Solicitor General Goroka office: *Lawyer for the Fifth Defendant*