

TRANSCRIPT OF PROCEEDINGS
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COMMISSION OF INQUIRY

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THE DEPARTMENT OF FINANCE

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI,

MONDAY, 6 JULY 2009 AT 10.05 AM
(Continued from Wednesday 10 June 2009)

THE CHAIRMAN: Yes?

MR KASSMAN: Chief Commissioner, we have five matters listed for this morning. Some of the matters we had to deal with administratively and we can run through them fairly quickly. The first matter, the matter of K K Kuni Building Constructions Ltd and John Kekeno -v- The Southern Highlands Provincial Government, the only person – this is a matter that has been dealt with – the final person of interest is the Honourable John Kekeno, who is a current Member of Parliament. Mt Kekeno did attend, appear this morning, along with his lawyer Mr Mali Nandi. Mr Kekeno wishes to have his statement reduced to writing and he has some parliamentary duties he needs to attend to also this morning and for the rest of this week. He has undertaken to provide the Commission with written response by tomorrow and it is at that stage that we will make the assessment whether it is necessary to call him. I did advise Mr Kekeno that it would also be his opportunity to give evidence in relation to this matter in view of the fact that fairly lengthy statements have been made by other persons of interest, John Ayako and Mr Bob Marley himself and he has made him aware of that. So let us move forward to the next two matters. We have a number of witnesses here, Mr Gomara will now proceed with the matter of Lynnette Malu & 48 others

THE CHAIRMAN: Yes, Mr Gomara?

MR GOMARA: Thank you Chief Commissioner, for the matter of Lynnette Malu we have two witnesses to call this morning. One is Mr Benny Malu and Mr David Keta. We will start off with Mr Malu. If Mr Malu could be called?

THE CHAIRMAN: Yes, very well. Sit down please Mr Malu.

MR BENNY BALEPA MALU, sworn:

XN: MR GORUA

Q: If you could state your full name for the record? THE CHAIRMAN: Just remain seated, if you would just give your evidence seated? That is right. A: Thank you Mr Commissioner and members. Q: Your full name please is? A: My name is Benjamin Malu. Q: Benjamin Malu? A: Benjamin Balepa

Malu, same person. Q: Yes?

MR GORUA: Thank you Mr Malu. Mr Malu, you certainly are aware of the reasons why you are appearing before the Commission and it is a matter involving a claim, certainly by Lynette Malu in respect of a police raid.

A: Yes, I am aware of that. Q: Mr Malu in regard to this police raid, documents show that you actually filed a claim under your name in the National Court, is that correct? A: Yes, that is right, 266 of 1991. Q: 266 of 1991? Sorry, Mr Malu you need to sit closer to the microphone.

A: Thank you. Q: That matter went to full trial and National Court awarded you about K35,000? A: That is right. Q: That is in respect of this police raid claim? A: That is right. Q: You filed proceedings as an individual? A: That is right. Q: This particular claim by Lynette Malu, documents show that they say --- A: Yes, she is my wife. Q: Lynette Malu is your wife? A: Yes. Q: She filed proceedings in respect of the same police raid, is that correct? A: That is right. Q: Are you also a plaintiff in the Lynette Malu --- A: Yes, I was a businessman and I was a plaintiff and it was not double claim. I was a businessman and I was not recognized and I know nothing about law and procedures of National Court Rules and whatever and the statement of claim. The Commission of Inquiry must know that I was represented by a practical lawyer, Kenneth Unda. He does not base at Kagua-Erave.

Q: Sorry, what is the name of that lawyer?

A: Kenneth Unda.

Q: Kenneth Unda?

A: Yes. He is not based at Kagua-Erave. Kenneth Unda through Martin and the lawyers.

Q: Sorry?

A: Martin and the lawyers.

Q: Martin and the lawyers?

A: I do not know, he is not around here.

Q: Sorry, these lawyers represented you in the proceedings which you individually filed or?

A: Not my individual file.

Q: That is the one that went through and you are saying that you were also a plaintiff in the Lynette

Malu proceedings? A: That is right, but I claim what I did not claim in there. Q: Sorry? A: The loss in business was not shown in the statement of claim properly according to the National Court rules. That was, Maurice Sheehan was handing over that case. I was only paid K35,000.

[10.10 a.m.] THE CHAIRMAN: You are saying that I handled that, judged this matter? Which one was this, Lynette Malu or your pro case?

A: No my claim. I know nothing about law and you told me to sit down three times and I did not sit down and you said, I can go behind the bars to think and recall. Q: Did I? A: To Bomana. I stood there and--- Q: What was the name of your claim again? A: This one? Q: Did I as a judge deal with you as Benjamin Malu? A: Yes, and Benny Balepa and Benjamin Malu is the same name in the brief way. That is my company

name for Southern Highlands --- Q: I remember a matter Benny Balepa, was that you? A: That is right, that is me. Q: That is the one you are talking about? A: Yes. I stood there three times and you told me to sit down. One time, you said, "sit down," when you announced the K35,000 but I did not sit down, I insisted and I stood there. If you can recall Number 3 court room.

Q: I do not remember, no.

A: You told me to sit down and I did not sit down.

Q: This was after the judgment was it?

A: Yes, after liability was admitted at Mendi on 11-13 April 1994 and you were trying to award me.

Q: I award you how much, K35,000?

A: K35,000.

Q: After that you stood up and I told you to sit down? A: Yes, you told me three times to sit down and I did not sit down and you said, "I will refer you to police and police can carry you over to Bomana cell."

Q: I see.

A: Because I was not satisfied with the ---

Q: I see, you were not satisfied with K35,000?

A: That is right, I was a businessman. My lawyers did not do it properly.

Q: So we are back to a situation where you are asking the questions that you then became a party to

your wife's proceedings?

A: That is right, because I was a businessman and I have revealed an action and properly appear. That is what the lawyer advised me, the statement of claim and my business losses.

Q: All right, Mr Malu we will continue on this. I do not see a conflict at this point. But carry on. MR

GORUA: Mr Malu, in regards to your claim you say that you are a businessman and actually the decision was published in respect of your matter, the matter which you filed and court actually took into account of what you claim as losses in respect of business? For instance loss of trade store, the court awarded you K25,000.

A: That is right. A: Yes, that one is not appear there. The K25,000 does not appear back here. I claimed what I did

not claim here and it is proved in the statement of claim and the State is going on with this thing for many years, this is reaching 20 years. Q: Mr Marley was the lawyer who represented you? A: Yes, he is registered that one. The previous one was registered by Martin Enda and Kenneth Unda. My business was not recognized in that one because they thought I had only a trade store and a couple of goods in there or something. But I was a businessman, I lost trucking business, I lost coffee buying, my I have got cheque books here. I have got previous records here, I will prove that I claim what I claim because actually I own those things.

Q: Then you joined Lynette Malu, your wife to institute this claim again? A: That is right as another claimant. Q: That is the second claim which you made? A: Yes, that is right. So that is what Mr

Nandi said, you can claim what you did not claim. I am a lawyer and I will put it out but those things that were verified was not mentioned here. I claimed for National Works contractor, a coffee buyer, processor. Q: So Mr Nandi told you, you can make a claim again? A: Yes. Q: Did you write a letter to advise him in that regard or? A: I have written a letter on 31 October 1996 and explained it. It did not hide that one.

Q: Do you have a copy which you can---? A: I think you saw me probably the other time with the other lawyer. Not you but the other guy who served me this letter.

Q: Certainly, Mr Mali will be of assistance, we will certainly call Mr Mali. So you joined your wife Lynette in these proceedings and then made, this time what you say you made a claim which --

-- A: Which I did not like. Those claims were for my business losses and I have got black and white and

Mr Mali is a lawyer by profession and he cannot risk his life, I cannot risk my life in this thing. This thing was going on for 20 years, disputing same thing because of allegations. Now we will prove what ---

THE CHAIRMAN: I am sorry, 20 years what?

A: 20 years now because of same thing that turned over from Court to Court, Criminal Court to Supreme Court, National Court, they are twisting me around all these years but I am always a winner because I tell the truth and I base on the truth. I never collect this K10,000 and K25,000 forno. I claim my losses. This was when was there I settled the writ.

THE CHAIRMAN: Can you just keep on track.

X10:15amZ MR GORU\$: Mr Malu, in this Lynette Malu's case, from the documents we have the matters actually did not go to, like in your case, did not go to full trial but the matter was settled out of court for K4.5 million.

Is that that correct?

A: That is right.

Q: Did you ever actually see the Solicitor General or the Lawyer at the Solicitor General?

A: We have been cross fighting this thing for 19 years. How can I go get it free there. They have gone to rewind this claim.

Q: My question is, did you ever personally meet with a lawyer from the Solicitor General's office or the Solicitor General himself in trying to settle the claim out of court? A: No they were cross fighting going on with professional people, professional consultants and accountants and lawyers. It was done professionally.

Q: Who was the lawyer representing you and Lynette Malu in this? Is it Mr Nouairi?

A: That time CCS Anvil and Mr Nouairi was acting under that law firm it was done by professional consultants and professional lawyers.

THE CHAIRMAN: By whom? Would you have the names of those people?

A: Yes, Jack Nouairi

Q: Pardon?

A: Jack Nouairi was a lawyer at that time.

Q: I see, and you say other accountants. Who were the accountants?

A: CCS Anvil.

Q: CCS?

A: Anvil, one of the companies but gone out of this place, Papua New Guinea, already gone. MR

GORUA: CCS Anvil?

A: Yes, he was working under there.

Q: So you never took part in say talking with the Solicitor General or the lawyer to settle claim? It was ---? A: They were funded and did the job in a professional way. They used to stop me there, so I never go there.

Q: You never actually met the Solicitor General or the lawyer? That is my question?

A: They just stopped me from there and only it was done.

Q: So it was Mr Nouairi and as you say CCS Anvil who were taking the lead role? And the figure K4.5

was ---

THE CHAIRMAN: K4.5 what, million?

MR GORUA: K4.5 million. Who came up with that figure?

A: They came with a - it was calculated properly and lawyers have done that.

Q: So you are saying lawyers calculated that figure?

A: Yes, so you want explained then I will bring the lawyer across here, he can come and explain. But

I do not know where he resides and I did not get him, I did not know, he is out somewhere.

Q: Mr Malu, in the statement of claim filed by Lynette Malu, Lynette Malu claimed about K900,000, that is in the statement of claim and the rules of the court say whatever you ask for in the summons what you are going to get. How did K4.5 million come about?

A: Yes, we have been waiting for a long time and State kept on denying and they gave five days defence and they kept on saying this and that and what do you think, can you tell me that if I was a businessman and somehow economics are lost.

Q: I understand that, but you as a client it is your job to tell your wife, look this is what I have lost and this is what earned and it is a lawyer's job or whoever is representing you to write it in the summons so it is there for the court to see and if you prove it and you get it. But what I am trying to say is, in the summons Lynette Malu asked for K900,000.

THE CHAIRMAN: That was for your losses as well.

MR GORUA: That is including your losses as well.

A: That is right, but I was businessman and I did not claim what I claimed in WS266 of 1995 and

I was not shown properly, was not appealed properly in statement and print and but my lawyer is there, Mr Manei and ---

Q: Mr Malu, there is the point that I am trying to make. I understand you are a businessman and the point I am trying is, you will tell your lawyer, look this is what I have lost and all this, and it is for your lawyer or whoever is representing you to put in the summons and the rules say that if you do not ask for whatever it is not in the summons, the court will not give you what you did not ask for. In this case, Lynette Malu, that is including you, you ask for K900,000 and it was settled for K4.5 million. So I am asking you how did the K4.5 come up about. Was that your instructions to the lawyer or did the lawyer come up with that figure?

[10:20 am] A: Lawyer came up with that figure because he came around with---

Q: Who is that lawyer, Mr Nouairi or?

A: Nouairi and Jerry Kamas or? THE CHAIRMAN: You did not tell him that you wanted K4.5 million?

A: No, I did not tell them, they calculated that in a professional way. I never asked for that.

Q: So you only lost K900,000, according to you, but you got K4.5 million?

A: Yes, because I was contracted in National Works.

Q: Pardon?

A: I was contracted in National Works. I was coffee buyer, processor, I was a businessman and I did not claim some of the things I lost.

Q: So you got money for things you did not claim?

A: Yes.

Q: I see.

A: And for other people.

Q: Alright, do we have the first writ in Mr Balepa or Mr Malu told us about that he went before the National Court and he raised that I dealt with? I would like to know who were the parties to that case. What is the name of the parties to---

MR GOMARA: The one which came before ---

THE CHAIRMAN: Yes, me.

MR GOMARA: That is the plaintiff being Benny Balepa himself?

THE CHAIRMAN: No, Benny Balepa, not Benny Balepa Malu.

MR GOMARA: No.

THE CHAIRMAN: And he appears in the second writ as?

MR GOMARA: It is Benny Balepa Malu. Benny Balepa, the second writ.

THE CHAIRMAN: Most times? MR GOMARA: Benny Balepa, yes.

THE CHAIRMAN: I see.

MR GOMARA: Mr Malu, from that K4.5 million, is it correct that K3.88 million was paid by the Finance?

A: Yes. Already gone, yes.

Q: How much did you get?

A: Me?

Q: Yes.

A: I am the owner of that court for years and my business closes, my economic loses here.

THE CHAIRMAN: How much of the 3.88 million did you receive Mr Balepa?

A: I want my lawyer to come and give me this thing and then we will discuss there, I have to call for Jerry Kama. Q: No, I am asking you now. You are being asked now, you must know the figure, you are

businessman, you will know the figure that you received. How much was it?

A: I will go through my black and white on---

Q: Would you like to answer the question? How much money of the K3.88 million did you receive?

A: Some of the money is gone to consultants, lawyers and---

Q: I asked you, how much did you receive?

A: Yes, I want my lawyer to come and tell you how much they got and they can bring black and

white
and show it.

Q: You are the businessman, Mr Balepa. Tell us how much you got?

A: I have to work it out, all my loses and everything and I will give it to you.

Q: Mr Balepa, you are here on oath.

A: That is right.

Q: Do you understand the question?

A: Yes, I understand.

Q: How much did you receive from your lawyer or from the Finance Department in paying out of the claim? A: Some monies they are held back at Finance and---

Q: Yes, how much did you receive? A: I have to work it out on my papers. I did not work out that one.

Q: You know how much you lost because you are a businessman and you said it was K900,000 and

you still cannot say to this day how much you received? A: I will write it down in black and white

and give it to you. Q: You can go down into the body of this hearing now, sit down, go through your papers and I will

call you back. A: Yes, thank you. Q: You work it out and come back and tell us. A: But not now.

[10:25 am] Q: No, now, I mean now. A: I did not prepare because you did not give me this

instruction. Q: Well you can - it is a situation Mr Balepa, I can see the situation developing that you are being contempt of this hearing if you do not answer. Because I am of the belief you know what

the answer is, you know what the amount is --- A: I am sorry but you see I am in chaos because of some money going there and here and I have not

done that. Q: You can tell us about how much was deducted afterwards but tell me how much you received? A: I got almost a million kina in my account. Q: You have got now? A: Yes, but it is gone,

some are already gone, gone to legal fees and certain things and I think 700

or 800. Q: Alright, you go and sit down in the hearing room. Go down to that table, take out a chair, sit

down, work out exactly what the figure, I will call you back and that will be within 10 minutes. A:

Not now because my lawyers --- Q: In 10 minutes time otherwise you are facing charges. A: Thank you.

THE CHAIRMAN: Yes, thank you. Very well, next please. Mr Gorua, you can go down and assist him. I do not want the man to leave at this stage without him informing us of what the answer

to that question is. MR KASSMAN: Chief, we call the next matter.

THE CHAIRMAN: Yes, please.

MR KASSMAN: In relation to that same matter, Lynette Malu, there is also Mr David Keta present and

also Mr Joseph Nanei. Maybe we could have that stood down and we will deal with the next matter

which can be dealt with fairly quickly. We will deal with the next matter, the third matter on the list

which is the matter of Morris Manum, Benjamin Manu & 44 Others -v- The Police and The State. We

have called or issued summons and letters for Mr Clement Kuburam and Mr Zacchary Gelu. Mr

Kuburam is present and we will deal with his evidence.

THE CHAIRMAN: Yes, please.

MR CLEMENT KUBURAM, Sworn:

XN: MR MALARA

MR KASSMAN: Chief Commissioner, this matter just by way of background it is a claim by

persons who, in respect of a police eviction exercise in a settlement in Madang, this occurred in

about 1998. A Court proceeding was commenced in WS 92 of 1999, the claim was settled by way of

a deed of release on 12 August 2002 and a certificate of judgment issued on 21 August 2002. Mr

Kuburam has been called to give evidence in respect of his role in the proceedings as a registered

valuer. Mr Malara will deal with the questions.

Q: Thank you Chief Commissioner. Thank you, Mr Kuburam for appearing. Just a few

questions based on the summons. THE CHAIRMAN: Before we have to identify him, would you give

us your full name please, Mr Kuburam? A: My name is Clement Kuburam. Q: Would you mind

spelling it please? A: Clement, C-L-E-M-E-N-T. Kuburam, K-U-B-U-R-A-M. THE CHAIRMAN:

Thank you. MR MALARA: Thank you. Mr Kuburam, do you understand why you are being summonsed before this hearing this morning? [10:30 am] A: I understand that, Sir. Q: Are you a registered valuer? A: I am a registered valuer, yes. Q: Where you are registered valuer at the time when you got involved in this?

A: I was. Q: Can you tell us a bit about your professional background as a valuer, your qualifications, your academic and your experience? A: I hold a Diploma in Valuation from the University of Technology in Lae. Post Graduate Diploma Evaluation from the University of Technology and Masters Degree in Business and Property from the University of South Australia. I was the former Valuer General. THE CHAIRMAN: Former Valuer General, yes. During what time was that Mr Kuburam? A: It was between 1984 and 1993. Q: Thank you. MR MALARA: Mr Kuburam, can you tell us how you got involved as to --- THE CHAIRMAN: In this claim for this Madang Police eviction? MR MALARA: That is right, and the instructions, who did you receive the

instructions from basically? A: I received instructions from the Law firm, Narokobi lawyers. Q: Narokobi lawyers. What were in the instructions? A: The instructions were to value how properties were destroyed by the Police Force in their eviction exercise in Madang. Q: Was that instructions given to you formally in writing or? A: It was formally, yes in writing. Q: So based on those instructions, how did you go about the course of your work to come up with

your assessment? A: I made a trip to Madang to physically inspect what was destroyed during the raid and took measurements of all properties destroyed in terms of buildings. The list of charges were provided by

the claimants who lost their properties, including trees and other plantings. THE CHAIRMAN: Did you say trees? A: Trees, yes, plantings. MR MALARA: Are you be able to confirm how many people were

involved in the claim as claimants. Was it an individual, a group of people? A: On the list I have here, I have 49 but according to your papers it appears to be 47. Q: Alright, we have based our record on the number of claimants per the records we have received and that is how we arrived at 47 but we can always confirm that and update our records. So you were approached by Narokobi lawyers, you took instructions, you flew over to Madang, you went and physically inspected the place and then you received some information from your claimants as to the details of the damages I suppose suffered and there were about 49 of them and you commenced your assessment. Do you have a copy of that assessment or that valuation report?

A: I do and it is here with me.

MR KASSMAN: You have got a full copy of the valuation with you?

A: I believe this only part of the original that I did, but it does contain the whole 49 that I did at that time.

Q: Is that what you have, are there two sets of it or just one set of it?

A One is a photocopy of the other original, yes.

MR KASSMAN: I guess, we could may be asked for that to be handed in and marked?

THE CHAIRMAN: So you actually have the thing, the copy for us?

A: That is right, Sir.

Q: Yes, thank you.

MR KASSMAN: Could we have that marked for the record, Kuburam 1?

[EXHIBIT TENDERED - KUBURAM 1 - COPY OF VALUATION REPORT]

[10:35 am] MR KASSMAN: Mr Kuburam, what I have passed back to you is a copy of an affidavit which is marked with your name as the deponent as been sworn on 19 November 2001. That is the document I have just handed to you now. If you could take a look at that and just confirm that is an affidavit sworn by yourself?

A: It is, sir.

Q: It is. It contains obviously some annexures or attachments to it which appear to be copies of the I guess the lists of property or chattels you say were damaged, et cetera, and then some photographs. Are these documents part of what you have now handed in as being your Valuation Report?

A: That is the detailed work of every property that was valued.

Q: So this document was not – was this document here that you have now provided to the Commission, it describes Valuation Report of Bilia Point settlement, Portion 511 Kranket, Madang, Volume 2. Was this full bundle, of this document here which I have now discovered, was this presented in the National Court proceedings?

A: I think it was but this is only Part 2 of the two volume report.

Q: Alright, and Part 1, Volume 1 should say?

A: Part 1, Sir I have difficulty in locating it. Q: I am just wondering whether what is contained in the affidavit now, if you could just quickly look at that, the attachments to it. Your affidavit is 16 pages and then attached to it are basically I think

an itemized list of each of the chattels lost or destroyed. Would this have formed part of this volume 2 or your report or volume 1 of your report? A: It would have formed part of the whole 1 and 2 volumes, yes. Q: So this is a summary? A: It is, yes. Q: What is in your affidavit, is that a summary of what you have got in volume 1 and volume 2? A: I would believe so, sir. Q: Sorry? A: I would think so.

[10:40 am] Q: Thank you. You may have addressed it in your report. Do you describe the basis, Mr Kuburam, of your valuations, your methodology, et cetera, how you came to your assessment, is that described in here? We have not read it so---

A: I think the report contains the approach that I used. Q: This report here? A: That is right. Q:

Alright. A: It was the cost approach that I used in the assessment of the structures, the cost approach. Q: Chief we have not had an opportunity to read this report. THE CHAIRMAN: Yes, I

understand. MR KASSMAN: We may just proceed with some questions but obviously if there are some specifics

we might address that in due course. So the method by which you conducted your inspections to ascertain the ownership of materials or to verify ownership et cetera and then to verify the values of the chattels whatever was being claimed as been lost, you describe that in your report?

A: That is right.

Q: Just as a general rule, sorry just generally speaking, you attended in Madang, the information that was provided to you was all provided by the claimants and their lawyer, Narokobi Lawyers? A:

No, a lot of the best information of structures, I physically went and inspected every property. They were presumed to be destroyed and took measurements of the sites where they were located.

Q: How did you satisfy yourselves that what was being claimed, what you viewed was being damaged was one and the same thing?

A: A lot of the material came from the claimants and the properties were destroyed two years earlier and I had no basis to dispute what was given to me. I accepted what was provided to me to be tendered in good faith.

Q: When did you attempt to conducting inspections? So you said two years later?

A: That is right.

Q: Two years after the actual loss? So the identification of what was destroyed, the remains of what was destroyed, in coming to that you relied on what the claimants told you?

A: What the claimants told me apart from my own inspection of the sites.

Q: Sure. Was there any – did you in the course of your inspections or at the time of your investigations, did you consult with the police or any officer of the State?

A: I did not consult the police, no.

Q: Would it be fair to say that – you did not consult with any officer of the State?

A: No.

Q: In my quick perusal of the list of items, there is some talk of just generally trade store

goods, some they say or the four bedroom house and just talking generally some were described as just kitchen utensils, one here describes a bakery which you go further to affirm by way of evidence in your affidavit as being what was lost. How did you satisfy yourself with there was actually a three bedroom house as opposed to a one bedroom house or that in fact there was a bakery in the settlement or that kitchen utensils or chattels were lost, bearing in mind that some of the amounts are fairly substantial, just reading through from page one, some one claims a total of K13,900, then the next page, some one claims K56,500 for loss of his house, loss of chattels and economic trees and the third person listed where he claims his house lost bakery, chattels, economic trees and an valuation he has just put K29,100. How did you conduct your assessments to ascertain that these values, firstly these properties, these chattels et cetera were in fact destroyed, that they were owned by that person claiming and that they amounted to such a figure? [12.15 pm] A: During inspection, there was nothing left of the properties, everything had gone by then and I accepted what was tendered to me to be tendered in good faith. That is basically how I approached the valuation of the properties in Madang. I had no suspicion to say that they were untrue.

Q: You had no grounds ---

A: I had no grounds to do that?

Q: Naturally, I am sure in your professional judgment you exercised some method to probe and satisfy that, that was an actual valuation. There was a three bedroom house, did you - your back up would be too check with Town Planning, to check with as to constructions or whatever improvements et cetera --- A: These were houses located outside of the Town Planning area. So Town Planning could not have

records of such improvements. Q: So what would you normally check to any third party source, any other source to verify what would have been claimed?

A: The only way to verify what was destroyed was to inspect the site and talk to the people who owned them at the time and take the descriptions of where the house may have been. That was the best I could do at the time.

Q: Were they produced to you photographs of --- A: That is right, they did produce some of the samples attached to their report at the back. Q: Did they do and actually produce a valuation?

A: No, they did not. They produced sketches of houses they owned.

Q: Sketches? A: Yes, photographs of some time. Q: Yes.

THE CHAIRMAN: This is a settlement, there would be no rules, regulations or anything at all, they are

just squatters

A: That is right

Q: And you took measurements, how did you decide whether a four bedroom house or a three bedroom house

A: I have no way of telling. I took the information which came from the people who lost their properties

Q: I see, right so essentially you have accepted of what they told you and put a valuation based on .

how did you establish the value

A: The value was based on costs, cost of the house that was destroyed

Q: And that was your information or their information

A: The cost was mine, the side of the house came from the owner who lost the house

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Q: And that was your information or their information

A: The cost was mine, the side of the house came from the owner who lost the house

Q: I see. You established what you considered a cost for a house of a settlement house at that time, of a four bedroom or three bedroom or --/

A: That is right0

Q: And a bakery, how did you pick up a bakery or change the valuation on that, what was the --/

A: The measurements came from the owner and I applied the unit costs0

MR KASSMAN: Basically, the claim was that he was running, operating a bakery and selling what?

A: The guy who owned the bakery said he owned one which was confirmed by those living in

thesame settlement. Q: How did you satisfy yourself that there was a bakery, was it just an oven that was there and that is

a bakery or? A: Sir, I had no way of justifying. Q: So how did you probe that claim in anyway? Did you ask, did you purchase bakery equipment, you

have some way ---

THE CHAIRMAN: What was the bakery, did you ascertain what was the bakery or did you

justdetermine it was a shop? A: I did ask them what it was and they confirmed it to be a bakery. Q:

Which is made up of what? A: I did not inquire into that, sir. Q: Thank you.

[10.50 am] MR KASSMAN: In most of the claims, you described economic trees. Really there is nodescription, was that just a general category of a particular claim for gardens that were destroyed etcetera or? When you say economic trees, what do you refer to?

A: Economic trees would embrace the whole garden, fruit, mangos, sago, this kind of that

wouldrepresent economic trees. THE CHAIRMAN: 49 trees, economic trees, how many trees? Does the settlement got a lot of trees? A: They had a lot of trees, yes.

Q: All right, move on. MR KASSMAN: The total value by just looking at your affidavit, it came to K1,721,120. Essentially,the population of that particular settlement, some 49 houses, would I be correct? Did you ascertainwhich of the claimants were employed in any form of employment or were they self employed or?

A: Some were employed, living in the town, others were self employed. Q: And how did you ascertain that? A: I spoke to every individual personally and they confirmed that with me. Q: Did you check on the accuracy of that information from the claimants? A: I did not see the need to do that at that time. Q: Why?

A: Because here I am dealing with property he lost, it did not have anything to do with hisemployment.

Q: In your professional judgment, checking the accuracy of information that is provided to you, wasnot necessary, you just make your assessment on what the claimant tells you? Essentially, that iswhat you are saying?

A: That is what I am saying, yes.

Q: So, there is no real judgment on your part?

A: They provided information to me. If the person was employed, he would have told me that and I did take note of that.

Q: So right throughout your inspections et cetera you did not speak with the police officers who werealleged to have gone in and destroyed them?

A: No.

Q: No, you did not?

A: I did not.

MR MALARA: Mr Kuburam, the policemen who actually got involved in the eviction were named in the writ of summons, filed by the plaintiffs or the claimants' lawyers. There is a person by the name

of Senior Constable Dimok Dage who was the policeman on site and his chief inspector

BenSimitum. They actually handed up giving – after the proceedings went through, they ended up givingstatements to assist with the office of the Solicitor General. I will just read one or two of the

comments they made in the statement. According to Mr Dimok's statements he was the Sergeant in charge and on page two of this document he said, "every member was security conscious and had been verbally detailed of this eviction exercise and that there was no force used of physical strength by the police." In other words every occupants – and the second line says, "every occupants were educated well in advance and they voluntarily moved their belongings on instructions." That is what was said by the Sergeant Mr Dage Dimok who is named in the summons and his police provincial commander at that time Mr Ben Simijun also said that in a separate statement he made that, "any suggestions of misconduct or use of force or removing of personal property is totally misleading. The complainants have formed stories to defame police and claims for compensation have no basis." With those statements what do you say?

THE CHAIRMAN: I do not see how he can be asked about this question. It is two years after the event, he was not the claimant. Did none of these people tell you that in fact they had removed all their equipment; all their assets?

[10:55 am] A: It was revealed to me that some were still occupying their houses when the police moved in and they even showed gun pallets on some of the people that were been chased out of the settlement area.

Q: I am only – you see questions about what happened two years after the event do not go to the claimants. MR KASSMAN: May be I will put it in another way. The evidence that has been – from the files of the Solicitor General that some of the settlers were informed and they in fact removed their belongings and they in fact dismantled their houses and parts of their houses or whatever so there was an exercise to do that. Where you advised of that?

A: I was advised that the police had moved while the people were still there, that was the advice that was given to me.

Q: The claimants' information provided to you was that the police came in, they were not warned and

their properties were destroyed? A: That is right, sir. Q: Commissioner, we have no further questions. THE CHAIRMAN: Obviously you valued 49 properties, call it 50 at K1,121,000, is that right? I am

giving very rough figures, I have just simply divided 50 into K1 million. That works out at about K20,000 per house. Is that the average price, the average value of a house in a settlement? A:

That would be Sir, yes. Q: And in any particular settlement here in Port Moresby as well? A: In Port Moresby now, the costs are quite different from what they were then. Q: They were cheaper or low?

A: They are a lot dearer now. Q: It is a part of just general knowledge I have heard prices of four or five thousand for a settlement house, is that not an average price; an average value?

A: In Port Moresby at Tete, that was affected by the same sort of thing, the cost there would be much higher than what they were in Madang. Q: You think they would higher than that? A: That is right. Q: Very well thank you.

MR KASSMAN: Sorry Chief, just the total amount, giving an attachment to Mr Kuburam's affidavit with K1,721,120. THE CHAIRMAN: K700,000? MR KASSMAN: K1,721,120, that is in the affidavit of Mr Kuburam. A: That is right. Q: Your affidavit Mr Kuburam. THE CHAIRMAN: Closer to K30,000 each. What 2002? MR KASSMAN: The affidavit sworn on 2001.

[11:00 am] THE CHAIRMAN: Alright, thank you very much.

MR KASSMAN: We have no further questions.

THE CHAIRMAN: Thank you very much Mr Kuburam you have been very informative. Thank you for attending, we appreciate it. If there is any other further questions which we need to ask we will give you due notice as much as we can about it. Thank you. Mr Gorua, is Mr Balepa able to assist us now?

MR GORUA: He seems to be still writing.

MR KASSMAN: We will go straight to your matter. We will deal with him now.

THE CHAIRMAN: Yes, Mr Balepa we will hear you now. Very well, are you able to tell me the answer now?

A: Yes, I can give you some but some I still want to go back and pick it out. Please give me time and let me go and get black and write and look through and put it down. Because everything is not in my mind you see. What I brought is my document to prove the claim and I did not think of that.

Q: Look we are not asking about your claim in the sense of what the details of it. I am trying to ask you what money you received in settlement, how much did you get?

A: Already paid or you mean everything?

Q: Yes, the moment the case was settled and the Finance Department paid out, how much did they pay to you? What was the figure?

A: That is right, 3 million 80 thousand something.

Q: That was paid to you personally?

A: No, it came through the lawyers and the consultants. Q: And the lawyers gave you?

A: I think they gave me almost 1.6.

Q: They gave you almost 1.6 million?

A: Yes.

Q: And what happened to the rest of it?

A: Some money still outstanding there.

MR GORUA: They gave you 1.6, how much Nouairi Lawyers --- A: It should have been 500,000 for Nouairi Lawyers themselves, more than 5. Q: 500,000? A: 500,000 I gave them that one and I gave him some money before, was my money so I do not

mention it. THE CHAIRMAN: You gave Nouairi Lawyers 500,000 of the 1.6 or --- A: Yes. Q: Of the 3.8? A: No, I think of 1.6. [11.10 am] MR KASSMAN: I think we need to be careful here in terms of what Mr Malu is pointing

out, that Nouairi Lawyers is a legal firm I know, that is run by the brother of Jack Gamoga Nouairi so

Mr Malu needs to be correct on who he is saying received the money. Mr Malu, the money that was paid by the Department of Finance, the K3.8 million or so, where did that money go to?

A: Previous payments were collected by CCS Anvil and Nouairi lawyers themselves.

Q: Sorry?

A: Previous cheques it came through their channel.

Q: So you say the funds went to CCS Anvil?

A: Yes.

Q: A-N-V-I-L that is the name of the consulting firm?

A: That is right.

Q: And you say it did go to Jack Nouairi?

A: Who?

Q: There is a difference, Jack Nouairi was a lawyer, I understand employed with CCS Anvil and there is

also a legal firm called Nouairi Lawyers which is run by Jack Nouairi's brother who is Bill Nouairi. So who was acting?

A: I think Nouairi Lawyers was acting under CCS Anvil or I do not know. That I do not know, they were doing themselves in their office.

Q: So they were both?

A: Yes, both working.

Q: Was your lawyer Bill Nouairi or Jack Nouairi?

A: Jack Nouairi, I think. Q: Jack Nouairi? A: Yes.

Q: So you had two law firms at the same time acting for you? A: No, I do not think that law firm - maybe Jack Nouairi does not have money and the guy employed him or I do not know?

Q: Now, you are saying the money went - the K3.8 million, it was paid to Nouairi Lawyers?

A: Only the first cheque, K1.6. That is what I am saying.

Q: There were a number of cheques?

A: Yes.

Q: And the 3.8 million over part payments went to both CCS Anvil and not Nouairi Lawyers?

A: Yes.

Q: Out of that you say you received about K1.6 million, where did you receive that money from?

From CCS Anvil or from Nouairi Lawyers? A: No, Nouairi Lawyers got it and gave it to me the first

time. Q: The first payment? A: Yes, because they got their cash already. Q: The first payment that was made by Department of Finance was made to Nouairi Lawyers? A: Yes. Q: How much was that?

A: Almost 1.6 million something; 1.480 or something, they got it. Q: Sorry? THE CHAIRMAN: We

have the figures paid out? Do we have the Finance Department figures? MR KASSMAN: Now, you say you received 1.6 million, that was paid to you? A: Yes. Q: To you, which you put through a bank

account? A: That is right. Q: Which bank?

A: BSPO

Q: BSP Waigani, orA

A: I think Waigani or Port Moresby0

Q: SorryA

A: Port Moresby I think0

Q: Which branch did you have your bank accountA

A: BSP, Port Moresby0

Q: BSP, Port MoresbyA

A: Yes0

Q: So, the 1.6 million went into that bankA

A: Yes0

Q: And that was for you alone or for you and the other plaintiffsA

A: No, some tax expenses, some people still outstanding, I have not paid them yet0

Q: Sorry, you need to be clear about this. The 1.6 million, was that your share of claim?

A: No, for paying other outstanding bills and other people and my share is not coming out yet, I am

still waiting. I have to pay bills 20 years, it cost me a lot of money, you see.

THE CHAIRMAN: You say that you have not paid these others yet their share of the K1.6 million?

A: I received only K800,000 but I have to work it out and I have to get something else too, that is

what I am saying0

Q: You have got to work it out, how much --/

A: The rest of it and at the same time a lot of bills still outstanding, like CCS Anvil got 1.4 but they

charged me 1.850 or something, and Nouairi lawyers and some money is not paid yet and like Joseph

Nanei, I have not paid him yet. There is a lot of confusion, lot of problem after problem, they are

giving me problem here and there. There are some allegations that ---

Q: Mr Malu, can you produce something in writing to confirm what amount you received. You say you received 1.6 million and you also produce to the Commission details of what you did with that 1.6 million? Are you able to do that?

A: Yes, I will be able to do that. I will do that, that is what I was asking.

Q: Can you do that and return to the Commission tomorrow?

A: No, I cannot do that because I have no computer, no nothing, it will take me a couple of days. Q:

You can write it, hand write it? A: Yes, handwriting is alright, it will take time but just give me two

days or something. [11.10 am] Q: Sorry? A: I have no car and give me some days. Q: That K1.6

million and you say you have no way of producing this information? A: Yes, that is right. How can I

put in everything here today. I thought I will bring my Works and

Supply receipts and evidence from the Department of Southern Highlands for 1980's, 85's and all

those things I have packed up here – now you put me in a different way and I did not bring these things. THE CHAIRMAN: When was this K1.6 million paid out, 2002? MR KASSMAN: They are in part payments, February of 2003 --- THE CHAIRMAN: A total of K3.8 million. MR KASSMAN: Up to September 2004, a total payout by Department of Finance, K3.8 million. THE CHAIRMAN: You have received K1.6 and you still have not paid your accounts yet, is that right? A: Yes, I paid some out and I still have got K800 yet.

Q: To pay? A: No, some outstanding I have paid. I have not mentioned, I am talking about that money which that is paid to me directly, you clear.

MR KASSMAN: Mr Malu, can you return on Wednesday at 9.30 a.m with that information? All the funds that you have received from either CCSAnvil or Nouairi Lawyers and all the payments that you have made from those. Any records that you might have to support those payments.

A: Yes, that will help me thanks. Q: Wednesday at 9.30 am. THE CHAIRMAN: Yes, thank you very much then. We will see you then on Wednesday 9.30 a.m,

thank you Mr Balepa. A: Thank you.

WITNESS WITHDREW

MR KASSMAN: In respect of the same matter, Mr Joseph Nanei and also Mr ---

[11:15 am] MR JOSEPH NANEI, Sworn: XN: MR GORUA: Q: Thank you Mr Nanei, could you state your full name name?

A: My name is Joseph Nanei. THE CHAIRMAN: Thank you Mr Nanei. A: N-A-N-E-I. MR KASSMAN:

You are a lawyer by profession? A: That is correct. MR GORUA: You have your own practice? A: That is correct under JD Nanei Company lawyers. Q: Mr Nanei, I think you are aware of the matter in which you have been called. Perhaps I will ask

you what you know about the claim, claim of Lynette Malu and that of --- A: Yes, I saw my name on the Paper and I am appearing voluntarily. THE CHAIRMAN: Thank you for that.

MR GORUA: Thank you Mr Nanei. Could you tell the Commission about what you know about the claim?

A: Yes, I think there were actually two different suits. The first one is WS266 of 1991, which was actually the writ of summons which was done by Anda Lawyers in which Mr Benny Balepa was the sole plaintiff arising of a police raid in his place, Southern Highlands.

Q: That is the matter of Benny Balepa in person? A: He himself, yes. Q: And did you have at any stage to take over from Anda Lawyers? A: That is correct, yes. I took over from Anda lawyers and --

– Q: And that matter actually went to full hearing? A: Yes, it went to full hearing in Mendi in Southern Highlands and a judgment was delivered in

favour of Benny Balepa. Q: What about K35,000? A: Yes, I have a copy of judgment here I can hand it up to the court if you wish.

Q: That is fine. I think it is a reported matter so – could you confirm that is Benny Balepa, plaintiff and that is the matter, it is an unreported N1374 of 1995? A: No it is WS 266 of 1991. Q: Yes, the reported one I am talking about, the judgment? A: Yes, there is a judgment on that one. Q:

And that this is numbered N1374? A: I am not sure about the judgment but I only have the order.

Q: Perhaps I will just show you this judgment, we will just confirm we are talking about the --- A: Yes, that is correct, yes this is the one. Q: And Mr Nanei, you then acted for Lynette Malu? A:

Lynette Malu, yes. She is the principal in that case, in the subsequent case, WS662 of 1995. That is a second case which I have earlier alluded to. Q: How did you come to meet Lynette. Is it through Mr Benny?

A: Lynette is a wife of Benny Balepa; she is the wife of Benny Balepa and she actually and others they actually instructed me to issue a writ because their claim were not, in the first writ of summons WS266 of 1991 and she personally instructed me to, she was in my office a number of times, told me that her properties were destroyed and they were not accounted for in the claim, in the first writ.

Q: And instructions were given to you by Lynette Malu? A: That is correct and Benny Balepa as well.

Q: And was Benny a plaintiff in the Lynette Malu proceedings? A: Yes, he is one of them. Q: And

that is from the same set of facts? A: It is the same circumstances but those are claims that they are not in the first writ. They never claimed them. What is in the second writ, Benny Balepa, never claimed them in the first writ and they are there. I have a problem with the writ of summons which they are in Paragraph 9, Paragraph 9 B, C and D, cost of IBD deposit, loss of income from National Works Construction--/

Q: So that is which statement of claims, which matter? A: This is the one from WS Number 662 of 1995. Q: Lynette Malu? A: Yes, and then loss of income from coffee purchase and sales. Those were the claims the plaintiff

Balepa himself claimed with the other 48 others in the second writ. Q: Sorry, you took over from Anda Lawyers, that is the Benny Balepa matter? A: That is correct, yes. Q: At what stage of the procedures did you take over? [11:20 am] A: I actually was, when I took over the matter I was the lawyer who went to trial in that case when acting for the plaintiff.

Q: Did you ever consider, say amend in the statement of a claim at that time to accommodate what you say those claims were not --- A: No, we never amended that writ to claim what was subsequently claimed so we just went forward

to the trial with what was in the original writ of summons. As you can see the economic loss, there were 11 plaintiffs, not Benny Balepa, they claimed K158,400 excluding Benny Balepa and also exemplary damage excluding Benny Balepa because he was already dealt with in the first one.

Q: But Benny Balepa, you mean you acted for Benny Balepa in a separate claim? A: Yes. Beg your

pardon? Q: In a proceeding which he instituted himself? A: The first one? Q: Yes. A: It was actually,

it was under Anda Lawyers. Q: And subsequently you took over? A: Yes. Q: Now you act for Lynette Malu and you include Benny as a plaintiff? A: That is correct, because he, as I said, he claimed damages for which did not appear in the first

writ, apart from all the others, the 49 of them and 48 plus 149 so there were others not only Benny Balepa.

Q: You say Lynette is Benny's wife and the proceedings which you conducted a trial, that is Benny's claim we are talking about, I am trying to distinguish what properties which Benny lost and properties which Lynette lost. You will appreciate that Benny and Lynette are husband and wife?

A: Yes.

Q: And if you like the properties are much more his properties, so the properties lost by Benny would be similar to that of - I mean they are same properties lost by Lynette, what do you say about that?

A: That is not correct. The law is clear. A woman is independent of the husband. She had her own properties, including chicken - she herself gave instructions and told me - she had chicken houses and chickens and other farming and her own properties apart from Benny Balepas.

Q: So Mr Nanei, I mean this is a police raid and you are saying if the house that they both lived in was burnt down--- A: Yes that is different, she herself was claiming for other matters not claimed in the writ, her own

properties and she was not the only claimant, there were 48 others.

Q: Mr Nanei, I am looking at the statement of claim which you drafted for Lynette Malu and it does not specifically plead as to what each plaintiff lost? A: The economic losses are there in paragraph 9E and there were 11 of them, 11 plaintiffs which

included those operating group, businesses, trade stores and business groups. Q: So you are

saying that all of those 40 plaintiffs have trade stores? A: No, 11 of them, paragraph 9E only says 11 of them were claiming economic losses, those who are

operating in groups and business and trade stores and their claim actually total K158, 400. Q: Mr Nanei, we have some documents on file which show that there were some various correspondence

exchanged between Mr Keta and that of your firm regarding this particular claim. Mr Keta was representing the other claim, that is Yakoa Papi and Others and you were representing Lynette Malu. Now some of the plaintiffs which you represented are the same plaintiffs also in the Yakoa Papi proceedings? A: I did not know that Mr David Keta had another proceeding including some other plaintiffs we had

and it happened that we filed a writ in 1995 and they themselves also filed another writ. And I believe that matter has been dealt with. There was an order to remove some of the ones who were in his writ and the other ones in this writ.

Q: So did that happen? A: I think that must have happened yes. Q: Where you still acting at that stage when that order was made? A: There was an order made, yes.

[11:25 am] Q: Sorry my question is were you still acting for the plaintiffs at that stage when that order was made? A: There was an order made, yes. Yes, I was still acting.

Q: 'Did you subsequently amend the list of plaintiffs' schedule. What actions did you take?

A: There was an order pending and before I could do anything Benny Balepa started. I mean he was not even coming and giving instructions to me so I actually was no longer acting in this matter. He sought other lawyers to help him and proceed with his case so and that is why the matter left my hands and in fact I have never been paid a toea on this case so.

THE CHAIRMAN: Benny Balepa, he was the one who gave you your instructions? A: Him and the Lynette Malu and the Others.

Q: They all gave them?

A: Yes.

Q: And you say Benny Balepa took the matter away from you?

A: That is correct.

Q: What about the others?

A: They actually got a judgment ---

MR GORUA: Not a judgment, the matter was settled out of court.

A: Yes. It was settled out of court but he was the one who was coming on behalf of the other plaintiffs because his wife had come a number of times but some other times it was Mrs Balepa or Mr Balepa and I asked him to pay some deposit, they never put any deposit in my Trust Account. So I was really at that stage, since I was not paid any money for this case and the times he went to Hagen he only bought my ticket and no monies were deposited into my account. So I really was reluctant to continue with his case and then he went and paid other lawyers.

Q: Mr Nanei, so when Benny withdrew instructions from your firm, at this stage you never amended the list it was still - say the Court order regarding the parties were not complied with at the stage when the instructions were removed. Is that correct?

A: Actually the orders were given in Mt Hagen as far as I know but I asked Mr Benny Balepa to put some deposit into my account, he did and then the others said they did not.

Q: Sorry my question is, at the stage when the instructions were withdrawn, the Court Order was not complied with, that is in respect of the parties that we are talking about. So when the file was removed from you you never amended the list, it was ---

A: At the time when the matter left my hands I do not think that but I spoke to Mr Keta about it and that there should be, the writ should be reconciled.

THE CHAIRMAN: Was the matter settled by then?

A: No, Your Honour no. It was not yet settled. It was settled after the whole matter left my firm and I have a copy of the deed of release here with me which I wanted to give to the Inquiry because what was settled is not what I drafted in the writ.

[11.30 pm] MR GORUA: Mr Nanei, in the statement of claim, your clients asked about K900 plus thousand kina?

A: Round about there. Yes, I think the total is round about there.

Q: You also wrote a letter to the Solicitor General offering out of court settlement for that amount asked for in the statement of claim?

A: I may have done it, I cannot really recall. I may have, I am not really sure but it is correct, it is about the claim is about 900 and as to the 4.5 million I am not aware of it. It is handled by other lawyers.

Q: You never?

A: No. I had no part in it. I have a copy of the deed of release here for 4.5, it is different what initially claimed for the plaintiffs, 49 of them, and I never benefited anything, I never got any money

of this 4.5 million as Mr Benny Balepa told this Inquiry that I am still to be paid.

Q: We have the copy of the deed of release on files. We certainly appreciated that.

THE CHAIRMAN: Anything else?

MR KASSMAN: Yes. Mr Nanei throughout the time you received the instructions up until instructions were withdrawn, who was the principal point for your instructions on behalf of the claimants?

A: It was really Lynette Malu and Benny Balepa himself and the Others. They used to come to my office they all gave me instructions, they all came.

Q: Did they sign anything to confirm that Lynette Malu and Benny Balepa was to be their representative to give information to you?

A: No, they did not sign any, I really cannot remember it may have been but I cannot recall but they were there the plaintiffs themselves and I can recall that some of them started to withdraw and they went to Keta so they withdrew their instructions from me.

MR GORUA: Mr Nanei, we will come back to the statement of claim. You talked about these 11 plaintiffs you say had tradestores. Is Mr Balepa also one of those 11 plaintiffs in this?

A: No, he is not one of them because he has already made a claim.

Q: And how about Lynette?

A: Lynette yes, well ---

Q: You mean they had separate tradestores?

A: No, she had chicken farming houses that were also burnt that was never claimed in the first writ.

Q: No, we are talking about tradestores here. You are saying 11 plaintiffs, that is future economic loss, we are talking about business, tradestores---

A: No, I do not think it is included there, Lynette Malu I do not think she had a store of her own but the 11 other plaintiffs - herself was mainly about farming houses.

MR KASSMAN: Mr Nanei, at the time when you drafted this writ, it is writ in WS 662 of 1995, did you ever take any steps to satisfy yourself as to the accuracy of the claims? Did you visit the site to ---

A: No, it is in Wabag so I did not but I relied on their instructions and I believe that really there was a police raid which destroyed a number of houses and their business.

Q: And everything you relied totally on what the claimants have told you? A: That is correct, yes. Q:

With regard to economic loss, did you have any documentation to support those types of claims or is it just what they told you? A: They have, I think they may have, they should have documents

but those are based on my instructions - they lost those the 11 of them out of the 48. Q: The identification of the items lost and the loss of economic loss et cetera, this is merely just a statement they produced to you and which enabled you, of which you relied on to draft the

statement of claim?

A: It might as well be yes. Q: Pardon? A: It is from instructions from them about those losses, 11 of them.

Q: Is it safe to say you did not check? A: I did not go to the site but I just --- Q: You did not check any other aspect of the claim to satisfy yourself as to its accuracy that it was a

genuine claim? It was not just fabricated? A: No, from instructions I was satisfied it was a genuine claim because --- Q: How did you satisfy yourself? A: I interviewed the claimants and they said that

the police raid actually destroyed everything at

Wabag. That is how I satisfied myself, from the plaintiffs' instructions and when the fire goes on nothing is left at the village, they were burnt, the whole area.

[11:35 pm] Q: Did you check with the police? A: No, I did not. MR GORUA: Mr Nanei, we will come back to the statement of claim, that is the statement of claim which you drafted for Lynette Malu, paragraph 9 and B, you asked, B is for loss of IBD deposit, that is K25,000? A: Yes, that is for Benny Balepa, he instructed me. Q: And C, loss of income from National Works contract, K141,000? A: That is also from Benny Balepa on his instructions. Q: And D, loss of income from coffee purchase and sale? A: That is also from Benny Balepa, those are the only ones from him. The others are not in there. THE CHAIRMAN: Loss of an IBD in a police raid? A: Yes, IBD deposit. Q: Where was that deposited? A: I got instructions, it was in a bank and all the documents got lost. MR KASSMAN: And that is a claim? A: Yes. THE CHAIRMAN: The bank? MR KASSMAN: You could not go back to the bank, just ask for the records. Is that a claim? A: That is one of the claims. Q: And what is the basis of that claim? What was lost, the certificate? A: All the document relating to that deposit. Q: But the money was in the bank, it was in an IBD, so how could police raid have resulted in the loss of the deposits? A: That was the instructions from Benny Balepa, may be you could ask him--- Q: Mr Nanei you formulated this claim which you filed in the National Court? A: Yes. Q: And you say as a result of the police raid, someone lost an IBD deposit. I am struggling to understand how that would be the case? A: I aggressively put it to Mr Benny Balepa and he said he never got the money so he said he agreed that he has the right to claim it, he never got the money back, K25,000, that was his instructions. He said he never received the money back. Q: From the bank? A: From the bank. Q: So why should the State be responsible for that? A: It got burnt, the documents relating to that one got burnt, that was my instructions. Q: He could just go back to the bank and ask for it? A: He said he never got the money back; he was not able to get the money back. Perhaps you might put it to him. Q: And you were satisfied with it? A: Yes, that is correct. Q: You were satisfied with that? A: Well I put it to him strongly and he said he is a claimant because he lost his money as a result of the raid of fire, burnt all documents in relation to this. THE CHAIRMAN: You checked with the bank? A: No your Honour. It was an instruction from Mr Benny Balepa. Q: You could have sued the Bank, could you not? A: It was on the basis that the police raid destroyed all the documents relating to that one and he instructed me that he ought to claim it from the State, for the refund of the K25,000 which was in IBD. [11.40 a.m.] Q: I see, we move on. MR KASSMAN: Whatever your client tells you just proceed to put in the writ, is that what you are saying? A: I actually put it through to him and there --- Q: No matter how strongly he would have worded his instructions to you, Mr Nanei that could never result in a claim against the State, the loss of an IBD? A: That is a matter for evidence. Q: Pardon? A: That is a matter for evidence. Q: That is your view? A: Whether he actually lost it or not, that is a matter for evidence. It is only a claim. Q: I think you are wrong. You are wrong in law. & clearly that is not the State's responsibility? THE CHAIRMAN: As an officer of the Court, is that the story you put before the Court? A: I was satisfied that the loss of money was as a result of the raid, and as a result of documents being destroyed. Q: And when you put that money in the bank in the first place, it is safe. It is an investment. Alright, carry on please. MR GORUA: Mr Nanei, following on from there, earlier on you said that this claim was not sought in the proceedings which you represented Mr Balepa in the one that was individually filed. I have a copy of the submission I believe you made in Court, it was filed on 8 December 1994. It is titled, "plaintiff's submission on assessment of damages". That is in the matter of Mr Balepa as plaintiff himself and you claimed under economic loss, loss of income from hire truck to National Works and I understand that is the same claim sought at paragraph C, 9C in the statement of claim of Lynette Malu and that is the same amount sought 141,000, and then (2) also in that submission, "income losses from coffee purchase and sales". You sought 180,000; (3) you sought loss of income

from tradestore 67,500; and then also (4) you claim interest bearing deposit forfeited by PNGBC and I believe that is the same IBD deposit that you are talking about here 25,000 and you will appreciate that the Court actually made a ruling and awarded your client 35,000. I am trying to work out how you were able to ask for the same claim in the Lynette Malu statement of claim which you drafted?

A: The law is very clear. You can only claim what is pleaded. Those are mere submissions they were not on the writ and the Court did not entertain them so that is why I put them on the second writ. They were mere submissions they were not on the writ. So they were by way of mere submissions they were not on the first writ that is why they are in the second writ. That answers the questions, your question. They were mere submissions.

THE CHAIRMAN: The first writ is in general terms and the submissions are in specific terms, right?

A: That is correct.

Q: And then they are repeated in the second writ?

A: The submissions are just mere submissions, they cannot be entertained and the Court never entertained those.

Q: Essentially what is being said to you Mr Nanei is that Mr Balepa made his claim, went through the trial and he made his claim, for all the things that he wanted and the Court came up with an Order for 35,000. He then goes and does exactly the same thing again through you and this time he eventually ends up with – he gets two cracks of the sweeties in other words and the second time around he gets a settlement for 3.8 million. Now as a lawyer is that the right thing? Is that right that he was able to do that?

A: Yes.

Q: He was able to do that. He gets an award in which he was supposed to claim for one particular matter, all the matters he is supposed to claim for. He does not get two cracks at the sweeties, he actually has to, make your claim, all you want, get judgment and that is it. You do not go back and say, "I forgot to ask the Court for something else." But even then he did not forget at all. He went and asked for the same things again. He got two awards in other words. Is that not what had happened?

[11:45 am] A: As far as I was concerned, the matters on the second writ were not on the first writ and that is how---

Q: Even though there had been submissions for them?

A: Those were mere submissions, they cannot really get anything from the first writ out of those because they were never claimed.

Q: They were submitted, they were part of the evidence for the claim? A: My position was that because they were not in the first writ, that is why they were included with the others in the second writ, that is how they appeared in the second writ.

Q: I see, alright.

MR GORUA: Mr Nanei, obviously you are aware of it that it was not in the statement of claim, yet you never elected to amend the pleading?

A: The pleading was never amended in the first writ.

Q: Yet you asked for it in the submission?

A: We did not amend the writ because Benny Balepa gave instructions that he was – in his first writ he did not claim all his losses that is why they appeared with the others. They were not only Benny Balepa's claims.

THE CHAIRMAN: But strictly as a matter of law you go to court once on the claim; you put all your claim, you do not come back a second time. You do not have the right to do that, do you?

A: For this claim you cannot but things unclaimed you can. Things that have not been added in the first writ, you can claim, you can still claim those. That was my position, they were not in the first writ so he had the right to claim them, they were not on the first writ. That was how I did it, I did not want to duplicate the claim because I was satisfied they were not on the first writ and the law is clear, what is not claimed you cannot do judgment for those, that was my position.

THE CHAIRMAN: Yes, thank you very much Mr Nanei. Thank you for appearing. We note

you appeared voluntarily, thank you.

WITNESS WITHDREW

THE CHAIRMAN: Yes, we are moving onto another matter.

MR KASSMAN: Yes we got another matter.

THE CHAIRMAN: Before we do, I see Mr Balepa is still here. Mr Balepa, we said we will see you again on Wednesday. Is that satisfactory? Very well.

MR BALEPA: I just want to hear this IBD. IBD was forfeited because (inaudible) got it and threw it on that car. The loan was outstanding, that is why it was thrown in the rubbish bin and I think I have the right to bring it---

THE CHAIRMAN: You can tell us about that on Wednesday. Thank you.

WITNESS WITHDREW

MR KASSMAN: Chief, we have another witness in relation to the same matter of Benny Balepa and Lynette Malu. It is Mr David Keta, a lawyer. We will come back to Mr Keta probably at 1:30 p.m. We just call very quickly matter No 5, the matter of John Tari Makabe and Department of Works and the State. We have two persons here to give evidence; one is for production and that is Mr Chris Kabauru.

[11:50 am] MR CHRIS KABAURU, Sworn:

XN: MR MALARA

THE CHAIRMAN: Yes, and your name is Mr Christopher?

A: My name is Chris Kabauru. K-A-B-A-U-R-U.

MR KASSMAN: Mr Kabauru, you are now the Valuer General?

A: That is correct.

Q: That is a position that you held since when?

A: Since 2007.

MR MALARA: Mr Kabauru, the claim as you understand is made by one John Tari Makabe. It was a claim in relation to damages, loss he suffered in respect to destruction to his personal properties and alleged loss of business income and assets as a result of that destruction and so he filed a claim against the Department of Works. This is in relation to the Poreporena Freeway road projects in Erima. We have summoned you to appear to produce records to confirm if the claimant per your records is a legitimate lease or title owner of that portion of land which he has used to make this claim. In doing so you have produced some documents this morning to us?

A: Yes, I believe I have produced documents this morning.

Q: Yes, under summons and we have got the documents on hand, we just like you to reconfirm what you have produced and give us your thoughts based on those records on this claim?

MR KASSMAN: Mr Kabauru, you have produced this bundle of documents. The first on the bundle is a letter that was signed by yourself, a two page letter, addressed to the Chief

Commissioner, Commission of Inquiry into the Department of Finance, dated 5 July 2009. The second is a letter from Salem Hosa, acting Valuer General dated 14 September 2004 addressed to the claimant John T Makabe. The third document is basically a claim by John Tari Makabe addressed to the Department dated 16 March 2000. Fourth document is I guess that is - is that a valuation? It is, "Subject; Unimproved Value Proposed". It is dated 6 June 1995 and Clement Kuburum, the Valuer General. That is the fourth document?

A: Yes, that is correct.

Q: Fifth document is a request for valuation of report or valuation or report. That is all that you had on the file of the Valuer General?

A: That is correct.

Q: Essentially, what you are saying in your letter to the Commission of 5 July 2009 is that the valuation you did that was, sorry conducted in 1995 was for the sum of K336,000?

A: That is correct. Q: As to the second claim for K4.5 million it had nothing to do with the office of the Valuer General? A: I think there is nothing; there is nothing on record. Q: Nothing? A: Yes. Q:

From your perusal of the file you say you are satisfied that the valuation that was conducted in

1995 for which the sum of K336,000 was arrived at, that is the valuation of the loss or the claim by John Tari Makabe? A: That is correct. [11:55 am] Q: You are aware that there was this subsequent claim for K4.5 million, are you aware of that or not? A: In fact since resuming this job as the Valuer General I have no idea of and in fact I am not quite aware of this also.

Q: I understand you obviously were not the Valuer General at that time in 1995 when the Valuation Report was done but from your perusal of the file I am sure before coming to this Commission, would you have any comment to make in relation to a subsequent claim for K4.5 million by the same claimant?

A: From my understanding I think this was done out of court and from my understanding also my officers are not aware of this K4.5 million. Like I said our valuations stand at K336,000. Q: You are satisfied there was a valuation of the claim?

A: Yes. Q: We have a copy of a letter Mr Kubarau, it is a letter of which you have not produced but it is a letter on the letterhead of the office of the Valuer General. I can hand this to you. It is a letter dated 4 August 2005 addressed to Peri Lawyers, signed off by acting Valuer General Saleng Hosa. And in there Mr Hosa says he has reviewed the figures and he has re-assessed the claim at K4.5 million as at 4 August 2005. Are you aware of this correspondence?

A: No. Q: So it is on? A: It is not in our file at the moment, yes. Q: So this is the first time you are receiving this letter? A: Yes, in fact that is the first time. Q: I wonder if it might be appropriate to allow you time to consider your file and may be speak with

Mr Hosa and may be return on Wednesday I guess so if you are able to – clearly this letter does conflict with what is on your file as you now say that you have perused? A: Because most of our assessments they are done within the file. If it not then, it is may be a question I need to ask why this information is not in the file.

[12:00 pm] Q: Mr, is it, sorry, I am assuming that it is a Mister, Saleng Hosa, is he still in the office of the Valuer General?

A: He has in fact resigned.

Q: When did he leave?

A: 2002 I believe.

Q: 2002?

A: Sorry 2004.

Q: The letter is actually dated 4 August 2005. Was Mr Hosa – are you able to tell whether Mr Hosa was in the office at that time? A: I think he was still on an acting capacity at that time. Q: In 2005?

A: Yes. Q: I thought you said he resigned in 2004? A: I thought 2004 but may be 2005, yes. Q: Can you confirm that when you return, I guess? A: Yes, I guess he is around but we just need to locate where he is. Q: Sure, but as far as your records are concerned, if you could may be return on

Wednesday at 9:30

to address I guess the existence or otherwise of this letter as far as your records are concerned and secondly, I guess the whereabouts of Mr Hosa, and in particular the period when he served in the office of Valuer General up until his resignation?

THE CHAIRMAN: Does your file say – you had calculation of valuation of 336 that would have been done on calculations, there would be calculations to make that?

A: That is correct.

Q: And that file, does the file show those calculations?

A: No.

Q: Do they keep records of the calculation?

A: We keep records. Q: And do you have records of that 336?

A: Like I said we just need to go through the other files in the office and just make sure that, yes we did. Q: And a re-evaluation up to K4.5 million would also be backed by calculations which you should

have records of? A: That is correct. Q: We would like to see those. MR KASSMAN: I guess Mr

Kuburam, on your return may be you could assist the Commission with an indication on the process by which a valuation is conducted – unimproved, with improvements, etcetera. THE CHAIRMAN: Many thanks indeed. All right, we will see you then, Wednesday. MR KASSMAN: Wednesday at 9:30, would that be convenient? A: Yes that is alright with me. THE CHAIRMAN: Thank you. A: That is all right, yes. MR KASSMAN: Thank you very much.

WITNESS WITHDREW

MR KASSMAN: We have Mr Michael Sirabis, he has been here this morning, if we could deal with him? THE CHAIRMAN: Yes, thank you.

[12:05 pm] MR MICHAEL SIRABIS, sworn

XN: MR KASSMAN

THE CHAIRMAN: Yes, thank you Mr Sirabis, you have been very patient.

A: Michael Sirabis is my name. S-I-R-A-B-I-S.

MR KASSMAN: Mr Sirabis, you are with the Department of Works?

A: I am as the Assistant Secretary.

Q: Is it Assistant Secretary--- A: For Survey and Lands.

Q: Survey and Lands Branch. Chief Commissioner, we did not mark the bundle that was produced before Mr Kuburam but if that can be marked Kuburam1 bundle?

THE CHAIRMAN: Kuburam1.

[EXHIBIT TENDERED – KUBURAM1 – BUNDLE OF DOCUMENTS]

MR KASSMAN: Mr Sirabis, you have produced in response to our request a bundle of documents and that is the bundle that is under cover of I guess what you described as a minute – it is not dated – which you have produced to us today. The three page minute, is that the minute that you have

produced today? We could just mark it as at today's date?

\$: Yes today's date will do. Those documents I think they are of some interest to the Commission from the file that we have.

Q: For the record we have your minute which we now date 6 July 2009. We have the second document, it is a National Capital District Building Authority demolition order dated 6 September 1996, addressed to John Tari. The next document is a letter, your file copy of a letter from yourself, Michael Sirabis, addressed to Henshi Engineering Pty Ltd dated 9 September 1996. The fourth document is a letter, this time from Sir Albert Kipalan, Minister for Lands addressed to Honourable Peter Yama, Minister for Transport and Works dated 24 October 1996. The fifth document is again a minute from Department of Transport and Works from yourself, Michael Sirabis, addressed to the acting Project Director, Hanuabada Bypass/Burns Peak dated 6 April 1999. Next document, this appears to be a claim by John Tari Makabe addressed to the Secretary Department of Works dated 16 March 2000. The next document, another letter from John Tari Makabe to Secretary Department of Works dated 3 April 2000. The next document is a minute, Department of Works and Transport. It appears to be just one page and it is dated 27 July 2002. The next document is another minute, also Department of Works and Transport by yourself, 6 August 2002. The next document is a letter from Mr Niggints, Secretary Department of Works and Transport addressed to John Tari, 6 August 2002. Next document is a minute again by yourself, dated 13 April 2004. The next document is a file copy, what appears to be a file copy of a letter from Francis Kuvi, acting Solicitor General to Thaddeus Kambanei. Secretary Department of Finance dated 15 June 2004, and the final document is a letter from yourself Michael Sirabis, addressed to Department of Justice and Attorney General, attention Francis Kuvi, dated 15 June 2004. Commissioners, this bundle, if we could have it marked as Sirabis1?

THE CHAIRMAN: Yes.

[EXHIBIT TENDERED – SIRABIS 1 – BUNDLE OF DOCUMENTS]

MR KASSMAN: Thank you. Sorry Mr Sirabis, there is one document that appears to be the first page and I wonder if the second page is missing, the minute of 27 July 2002?

A: Which document is it?

Q: It is the---

A: I have actually numbered them, what number is on the corner? Q: You have numbered them, at the top, number 8?

A: Right.

[12:10 pm] Q: Is that a single page minute or is there a second page?

A: It is the next page, it has my signature on, just one page, really two pages but I actually did not pick up the second page which has my name and my signature.

Q: Thank you that is fine.

MR MALARA: Mr Sirabis, can you tell us what you understand of this claim based on these records and what you know?

A: All right, this particular project was actually handled by the project office specially established to run the whole project and it was called Hanuabada Bypass Burns Peak project and all Land acquisition matters actually came under the umbrella of that particular project office. Only in 1996, 1994, 1995, 1996 when upon the completion of the project, those outstanding matters were referred to my branch, the Survey and Lands Branch to help resolve those issues. So it was actually two offices handling the same project; one during, one after. So when those unresolved plant issues were transferred to my office so that I can help resolve those issues. That particular claim that we are actually discussing now, the claimant, John Tari, had some properties there. I believe according to some documents which I have in the file and also in these documents, the arrangement was under a license, simply meaning temporary occupation of a certain area which is gazetted for roads and reserve land. When the license is issued to a certain person to occupy certain areas under their license condition, things that he has to put up is only temporary, temporary occupation. Once the State wishes to use that land, then that fellow has to move out voluntarily without claiming compensation. That is the normal law under the license arrangement. From the information that we have, my suspicion is this particular claimant was occupying a reserve land reserved for the roads and drainage. In this particular case the State do not have to pay any compensation under license arrangement. We may have to confirm this with Department of Lands and Physical Planning because it is their policy that governs this arrangement. The only person that Lands Department actually carry out a valuation upon request from Department of Works was Daniel Mapiria, I think his name. He was a leaseholder of some blocks within that area which valuation was done and he was paid.

MR KASSMAN: Daniel Mapiria.

A: For the claimant that we are referring to now, I have not seen any title, I have not seen any valuation as far as this claim is concerned. However, from the records and also from the letter we received from him that he actually claimed some K200,000 from the State. Under what arrangement, based on what documents, I have no idea. It was paid by the project office.

THE CHAIRMAN: Paid by the project office?

A: Project office, yes. That is as far as I know about this particular matter.

MR KASSMAN: Mr Sirabis, essentially all the evidence that I guess you could assist the Commission with is set out in your minute, I notice your three page minute, would that be the case?

A: Sorry? Q: All your evidence is there?

A: Everything is there.

Q: In there you speak of John Tari, which you have said I guess earlier is merely a licensee over a drainage and road easement. What are the circumstances that would lead to a grant of a license to occupy?

A: He may - it is just my assumption, my assumption could be wrong. He must have applied to Department of Lands and Physical Planning for a license to temporarily occupy that drainage and road reserve. I must admit, if he has done that, I have not seen any documents related to that.

[12:15 pm] Q: What would be the circumstances under which a license would be issued to anyone to occupy land that is reserved or marked as an easement for drainage and road?

A: I would say if the land is left vacant and there is no short term plan for that particular area and

noone is actually doing anything about this, getting bushy, they may grant somebody a license to temporarily occupy to develop it. When the need arises when the State needs its land back, then occupier moves off. That is my explanation, I could be wrong. Lands Department are the best people to talk to.

Q: But you are with the Department of Works?

A: I am with the Department of Works.

Q: And you would also be concerned with the retention of land particularly for easements to be left unoccupied, would that not be the case?

A: I would like to see that happen because to avoid unnecessary inconvenience when the State wishes to move into develop, then we have problems with people demanding compensation and if we have such facility, if there is a license arrangement, I would say it should be discouraged.

Q: From your records, I just quickly read through your statement, from your records, was your office ever – the Department of Works the office you hold, where you ever given notice of the intention by the Department of Lands to issue a license to occupy that particular area?

A: It is not for Department of Works to recommend or to request Department of Lands and Physical Planning to issue license to certain people. It is just like you applying for a title over the Land, individual, they can go straight to Lands Department and enquire about this and apply. It is not for Department of Works to tell them or dictate to them, just like a general application of a land title.

Q: So you mean whether it is Lands or Physical Planning or whoever, they can make a ruling or grant a license over any land that---

A: It is only Lands Department that has the power to do that, not Department of Works.

Q: I am not suggesting may be Works has that power but saying in terms of notification for comment for possible objection, is there a process in place that provides for that?

A: If there is, I have no knowledge of it. Q: So from your records your office was never advised of the fact that there was an application before the Land, was it? Either the Physical Planning or --- A: No, we were not advised. Only when construction moved into that area, then we came to know that such and such has actually happened, what is on the ground.

THE CHAIRMAN: There were easements for drainage and? A: Road and drainage reserve. Q: Easements. Does the Lands Department have the right to issue licenses over roads; license to occupy road or ---?

A: As long as the intention of a fellow applying for the license is to occupy the land only on temporary basis, I think. This information can be obtained from Lands Department. Q: There cannot be any road there at all, there cannot be a road in place. I mean there is no way they can issue a license for someone to occupy the middle of Poreporena Freeway now on a temporary basis, is it? A: It can be possible if – I do not know how he actually obtained a license in the first place. Q: That is what we are really trying to find out.

§: It was a long, long time during Minister Kipalan's time. He was the Lands Minister then.

Q: Was there a road there then? A: It was. It is been there all the time since. Q: We are talking about the same thing? I can imagine someone putting a building beside the road,

license to occupy land beside the road but not on the road surely? [12:20 pm] A: Definitely, if you think that way, whether it is right or wrong to issue the license for someone to occupy the drainage reserve, really it is not for me to say whether it is right or wrong. I think this Department has their regulations and policies governing this particular instrument but the person happened to be there when we put a construction there. Q: Do not the drainage easements in favour of the Works Department? A: That is NCDC in Port Moresby as far as I am concerned. Q: NCDC? A: Yes. They have to issue the demolishing order. Q: I still cannot see that the Lands Department having seen a land interest to the NCDC could then

in fact occupy--- A: This information is based on the letter from Mr Kuvi, Francis Kuvi to Secretary Kambanei. He claimed that John actually is operating under a license. Department of Works has not

seen a copy of that license or arrangement.

Q: The license referred to or copied.

A: Yes, actually you can just see from the correspondence that I came up with but I have not seen the copy of the license. Again, I could be wrong.

MR KASSMAN: As far as your records are concerned there is no title. You really cannot say whether there was a license or not?

A: From the records they claim there is a license, we have not seen one so there is no record. I cannot claim that he has a license, I cannot claim that he has a title either. We have not seen one.

Q: Mr Sirabas, at the time when you were involved obviously in examining this matter apart from what is produced here in terms of your exchange of correspondence with Mr Kuvi, were there any other meetings or attendance at the site to inspect the land that Mr John Tari was claiming?

A: Yes, actually there is a report there, eight pages. There was a temporary makeshift church building, a small ---

Q: So you attended?

THE CHAIRMAN: You went and saw the place yourself?

A: Yes, actually nobody, my office actually drafted - I had to draft this minute. We physically inspected the site and we were chased out, physically removed with the vehicle smashed.

Q: Why?

A: They did not want us to do the inspection and so anyway the instructions were temporary makeshift church building, fencing and also a fielding area for some excavation work there. So that was the infrastructure that was visible at that time.

MR KASSMAN: So you say you went in to inspect and you were chased away. Who did you attend with?

A: Max Palmer, the project director and also Jim Sloane, also an expatriate and myself. [12:25 pm]

Q: All from the Department of Works?

A: All from the Department of Works.

Q: Was there anyone from the Attorney General's Office, Solicitor General's present?

A: No, because the project really was supervised by Department of Works.

Q: Sure, but you had these letters, these letters claiming, making claims for loss or whatever. Did you ever you know on that occasion or any other occasion visit the site with a lawyer from the Attorney General's office or the Solicitor General's office?

A: No, we did not.

Q: We have no further questions.

THE CHAIRMAN: Thank you very much Mr Sirabas. Thank you for your attendance. We appreciate your time today particularly you have been very patient waiting to the end of the line. So thank you for that. If we have any further questions we may come back and try and arrange another time suitable to yourself. Alright, any other matters we can deal with before.

Thanks very much Mr Sirabas, you are free to go.

A: Thank you.

WITNESS WITHDREW

MR KASSMAN: We could adjourn to either 1.30 or maybe prefer 2 o'clock.

THE CHAIRMAN: We will try for 1.30.

MR KASSMAN: 1.30?

THE CHAIRMAN: Yes.

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TRANSCRIPT OF PROCEEDINGS Commission of Inquiry

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COMMISSION OF INQUIRY

INTO

THE DEPARTMENT OF FINANCE²⁰

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, TUESDAY 7 JULY 2009 AT 10. 15

AM(Continued from Monday 6 July 2009) 30

MR CHAIRMAN: Yes, thank you?

MR KASSMAN: Chief Commissioner, we have three matters listed for this morning in which we have on each of the three matters we have a number of persons that we have asked to come forward to assist the Commission with evidence and with our inquiries. We would like to call firstly the matter No 7, that is on the list for today, the matter of Network International Security Services and Jerry Singirok –v– The State. Essentially, Chief Commissioner, this is a matter that involved a claim in defamation arising out of some comments allegedly made by the former PNGDF Commander, Mr Jerry Singirok. Those are the, I guess the gist of the action as far as we are aware. The list we have noted three persons that the Commission requires assistance with evidence and they are Jerry Singirok, Zacchery Gelu and the Honourable Byron Chan. We have been advised that Mr Singirok is out of the country and he will be available on Thursday. As for Mr Zacchery Gelu, yesterday we received some communication from Mr Gelu advising that he was unwell and in addition to that he requested proper service of a summons so we are attending to that today. We do have Honourable Byron Chan here present today. He is present here with his lawyer, Mr Jerewai, and we have had a discussion and Mr Jerewai has asked for a day or couple of days to obtain information,

documentation from the court and from Mr Chan's former lawyers with a view to being of assistance

to this Commission. We have no issue with that, obviously subject to Commission time we both are of the view that Friday would be adequate.

THE CHAIRMAN: Friday?

MR KASSMAN: This Friday. If we could have it called at 9.30 am? 30

THE CHAIRMAN: Yes, I see you Mr Jerewai, is that satisfactory to yourself?

MR JEREWAI: Indeed, Chief Commissioner.

THE CHAIRMAN: Very well, thank you for appearing with such notice and by advertisement in the Paper. We are short of time now. Thank you for attending voluntarily, we will adjourn it till 9.30 am, 10th July.

40 MR JEREWAI: Thank you, Chief Commissioner.

MR KASSMAN: Thank you. If for the record we could also have this matter adjourned for the evidences from Mr Singirok and Mr Gelu at 9.30 am on Friday?

THE CHAIRMAN: Yes.

MR KASSMAN: The next matter we would like to call is matter No 6, the matter Jimendi Enterprises Ltd and Bakanovi Transport Limited. Chief Commissioner, we have here three persons, they are all named in our list, who are available before the Commission today. They are in the order as per our list; Mr Ben Pokanau, Mr Vari Fore and Mr Ambrose Vakinap. The three are here. For the record Mr George Minjihau has been advised, he has communicated through his office by email. We have received an email from Mr Minjihau advising that Mr Minjihau is unwell and he will advise us - here requested an extension to tomorrow that is Wednesday 8 July.

THE CHAIRMAN: Very well, until tomorrow.

20 MR KASSMAN: We have no issue with that. With regard to the fifth person, name Jimmy Kendi, as Commission is aware, Mr Kendi is serving time in Kerevat and steps are being made to enquire as to his availability to give evidence. But for the three that are here, we are happy to proceed essentially to have their evidence given previously to this Commission to have that evidence adopted by this Commission in respect of this matter. We will call Mr Ben Pokanau.

[10.20 am] MR BEN POKANAU, Sworn: 30 XN: MR MIROU

Q: Good morning Mr Ben Pokanau, thank you for coming. Your full name is Ben Pokanau? A: That is correct. Q: What is your current status with the Department of Finance?

40 A: Currently, I am unattached. Q: How long have you been working with the Public Service? A: I have been with the Department of Finance since February 1975. Q: Mr Pokanau, you are aware of your coming to this Commission this morning to assist us in

relation to the claim made by Jimendi Enterprises Limited? 10 A: Yes, I do. Q: Do you recall sometime in 2007 you made a statement to the Commission?

A: That is correct, sir. Q: Could I hand up the - we will show this document to - is that the statement that you prepared yourself?

20 A: Yes, that is correct. Q: When did you prepare this statement?

A: On 3 April 2007. Q: At that time you prepared this statement you were still in the employ of the Department of Finance?

A: At that time I was with the Commission of Inquiry. 30 Q: As a result of that statement, did you give evidence before the Commission? A: I did. Q: Was that on 4 April 2007? A: That is correct, sir.

40 Q: Your evidence was basically in relation to your recollection of the claim in relation to Jimendi Enterprises Limited?

A: That is correct. Q: Out of the evidence that you gave on 4 April 2007, is there any additional information that you would like to provide to the Commission this morning?

A: No, sir, I do not think so. I think all the evidence I have provided 10 earlier still stands. Q: You wish to adopt this as part of your evidence? A: If the Inquiry wishes to yes, I would like to adopt my evidence given earlier. Q: If the Commissioner pleases, the transcript in relation to the evidence

given by Mr Ben Pokanau is dated Wednesday 4 April 2007 at 11.42 am, from pages 249---

20 THE CHAIRMAN: Mr Pokanau, have you seen that transcript? A: I did sir, yes. Q: Yes, tender that, very well, that is accepted.

[10.25 am] Q: Page 249 to 344 contains the evidence given by Mr Pokanau on the 4th. Chief Commissioner, could we also have that statement also marked as evidence provided by Mr Pokanau today? 30

THE CHAIRMAN: If it is the transcript, you will refer to the transcript and Mr Pokanau has seen the transcript, it is already recorded was it not? MR KASSMAN: His written statement---

THE CHAIRMAN: His written statement? MR KASSMAN: He has a separate written statement, if that could

be just marked as an exhibit. 40 THE CHAIRMAN: Written statement, I see, very well. MR KASSMAN: Marked Pokanau 1. THE CHAIRMAN: Yes, thank you.

[EXHIBIT TENDERED – POKANAU 1 – WRITTEN STATEMENT BY MR POKANAU] 10 MR MIROU: Thank you Mr Pokanau. Unless the Commissioner has --- THE CHAIRMAN: I have no further questions, thank you. Thank you Mr Pokanau. MR POKANAU: Thank you sir.

WITNESS WITHDREW 20

MR KASSMAN: Who do you want to call next? MR MIROU: The next witness is Mr Vakinap. MR AMBROSE VAKINAP, Sworn: XN: MR MIROU 30 Q: Your full name is Ambrose Vakinap? A: That is correct. Q: You are currently working with the Department of Finance? A: That is correct. Q: What is your current occupation? 40

A: Currently, I am an unattached officer. THE CHAIRMAN: I am sorry, analysis officer? A:

Unattached. Q: Unattached officer. MR MIROU: You received a letter from the Commission last week?

10

A: Yes, I did.

Q: In relation to the matter involving Jimmy Kendi or Jimendi Enterprises Limited?

A: Correct.

Q: Mr Vakinap, you made a statement to the Commission of Inquiry in 2007?20

A: Yes, I did.

Q: That brief that you prepared, did you provide it to the Commissioner?

A: I did submit it to the Commissioner. Q: Could you look at this document and just tell the Commission what is in that particular brief?That brief is dated 26 March 2007.

A: Yes. 30

Q: It is a brief to the Chief Commissioner?

A: That is correct.

Q: It reads, “Statement of circumstances pertaining to my involvement with the fraudulent payment to Jimmy Kendi of Jimendi Enterprises.” That is the title of the brief? A: Yes. 40 Q: In that brief you highlight what you did with regard to that claim? A: The content reflects whether I did at the time when I was asked to assist, yes. Q: Is there any additional information that you wish to add on to this brief this morning? A: No, I feel I have exhausted what I have to say and this is my statement

10 and it will remain as it

is. Q: Chief Commissioner, we wish to tender that statement as part of the records? THE

CHAIRMAN: Vakinap 1.

[EXHIBIT TENDERED – VAKINAP 1 – STATEMENT BY MR VAKINAP DATED 26 MARCH 2007] 20 MR

MIROU: Mr Vakinap, is there any additional information that you wish to say this morning? A: Not at this point in time, no, I do not think I have any more to say. Q: Thank you Commissioner. MR

KASSMAN: You say not at this point in time. This really would be the final opportunity. 30 A: Really I am actually a little bit biased there but I am saying there is nothing more that I can say,

thank you. Q: Thank you. THE CHAIRMAN: Very well, thank you Mr Vakinap for coming voluntarily, thank you. MR KASSMAN: Thank you. 40

WITNESS WITHDREW

[10:30 am] MR VARI FORE, Sworn: XN: MR MIROU Q: Thank you. Your full name is Vari Fore? A: That is correct. 10 Q: What is your current occupation? A: Currently I am the Second Secretary to the Ministry of Labour and Industrial Relations, Your

Honour. Q: Prior to that have you served in various capacities in the Public Service? A: The latest I served between 1999 and 2000 was as acting Secretary, Department of Defence. 20 Q: Mr Fore, are you familiar with the claim in relation to Jimendi Enterprises? A: Yes, I am familiar with the claim.

Q: What is this claim about?

A: It is a claim that Jimendi Enterprises submitted to the Department of Defence in about 2000 or 1999–2000 and it also was subjected to a 30 National Court case which I attended in Rabaul and I believe the owner of Jimendi Enterprises was prosecuted and gaoled.

Q: Mr Fore, in December 1999 you were still the acting Secretary for Defence?

A: That is correct, I was acting Secretary for Defence.

Q: Mr Fore, I would like you to look at this document, it is a letter. That letter, was it a claim submitted to the Department of Defence by Mr Jimmy Kendi?

A: Yes, that letter came from Mr Jimmy Kendi.

Q: That claim was submitted by Mr Kendi to the Department of Defence at that time when you were the Secretary?

A: The letter was submitted to the Department of Defence. 10

Q: Following that there was a number of letters or follow ups made by Mr Kendi which I would like you to look at so that you can just confirm to the Commission if you have also sighted those letters?

[10:35 am] A: I really cannot recollect this because normally they would have been stamped with the office of the Secretary and so I cannot really confirm it if it did appear.

Q: Thank you Mr Fore. I want you to look at this requisition and the 20 general expense form.

A: Your Honour, with the requisition itself it has my signature. I signed the requisition for expenditure, however the general expenses form does not have my signature.

Q: That requisition form is dated?

A: I signed this as Approving Officer on 17 October. The other figure does not appear but I think it is 17 October 2000. 30

Q: You signed that but the general expense form has not been---?

A: Yes, I did sign the requisition for expenditure as Approving Officer.

Q: After that do you recall having anything to do with that particular form?

A: What I recall I signed this after getting advice from Solicitor General and also from Defence, I think the legal officer, that the claim Jim had submitted was in order. So in order to verify for payment I had to sign this and submit it to the Department of Finance for payment.

Q: When it was submitted to the Department of Finance, were you aware that the payments were made?

A: I was not aware because in early January 2001 I was replaced as Secretary for Defence so I was not aware payments were made.

Q: So you can confirm that that is the only requisition you signed at that time?

A: I can confirm that this is the only requisition I signed at that time.

MR KASSMAN: We need to have the documents marked Chief Commissioner. We will have them marked as a bundle as Vari Fore 1, as a bundle and we will have them now described for the record.

[EXHIBIT TENDERED - VARI FORE 1 - BUNDLE OF 20 DOCUMENTS]

MR MIROU: Chief Commissioner, the first document that in on that bundle is a letter dated 14 December 1999 by Jimendi Enterprises to the Secretary making a claim against the Department of Defence Force, it is a two page letter. The second letter is dated May 2 of 2000, also a letter from Jimendi Enterprises. It is a follow up from the claim that was made earlier on, signed by Mr Jim Kendi, the managing director. Attached to that is a calculation of claim by Jimendi Enterprises for the unlawful use of heavy equipment, outstanding of 3.7 million. The third is a letter from Jimendi Enterprises, 30 also a follow up on the outstanding claim to the Secretary, Department of Defence, which is undated and also as an attachment with the claim to the value of 4.2 million. The last two documents is that requisition for expenditure which is dated 17 October 2000 and general expense which is incomplete and unsigned. Those documents will comprise Vari Fore 1.

[10:40 am] Mr Fore, is any additional things you wish to raise this morning or?

A: No, I have nothing to add on, thank you.

40 THE CHAIRMAN: Thank you for appearing on such short notice Mr Fore and assisting us. Thank you very much.

WITNESS WITHDREW

THE CHAIRMAN: Any other matters? Do we have any other matters?

MR MIROU: Yes, we have another matter. If we could adjourn for a short break.

10 THE CHAIRMAN: Very well, I will stand down briefly.

SHORT ADJOURNMENT

[10:50 am] THE CHAIRMAN: Yes. Mr Keta, thank you for appearing. You have been very patient yesterday and we thank you for coming back this morning.

MR KETA: Thank you Chief Commissioner.

20

MR GORUA: Thank you Mr Keta. For the record could you ---

THE CHAIRMAN: I have said – yes, thank you. I am very pleased that he came back after we gave him such a delayed response yesterday. MR GORUA: If Mr Keta could be sworn?

THE CHAIRMAN: Yes please, Togi.

MR DAVID KETA, Sworn: 30

XN: MR GORUA

Q: Mr Keta, could you state your full name for the record please?

A: My name is Mr David Keta.

Q: You are a lawyer by profession?

A: That is correct. 40

Q: Mr Keta, you are obviously aware of the matters now before the Commission that require your attendance?

A: Yes, I am very aware of it.

Q: Thank you. Documents before the Commission reveal that you acted for several plaintiffs in regard to the same set of facts which gave rise to the proceedings instituted by one Mr Benny Balepain his personal capacity and a proceedings instituted by one Lynette Malu and Others 10 and the other set of proceedings which documents show that you initially acted for, that is the proceedings of Yakop Pape and Others. Could you tell the Commission what you know about the case?

A: Yes, alright. Actually I am from, half a kilometre away from the – I come from the same area where the raid occurred. My village is half a kilometre away. The raid occurred sometime in 1990 and by then I was working with the Solicitor General's office, about 1991 and 1992 I used to go up to Court circuits in Mendi and Hagen. I normally visited the villages. So I was well aware of this raid, it was a raid in fact. Benny 20 Belepa is about 15 kilometre away from where the raid occurred. His village is Kwalilombo village, it is about 15 kilometers away. He is married to my cousin sister who is Lynette Malu and through marriage he built a small trade store, his wife then teaching at the community school at Wafi that is about another three kilometers away from the raid.

THE CHAIRMAN: He built a trade store three kilometers away from the raid?

30

\$. No he built the trade store at his wife's village, that is \$pote village.

THE CHAIRMAN: Can you spell that please?

A: A-P-O-T-E, Apote village. There were two villages raided by the police, the Apote village and Odere village. Odere, O-D-E-R-E, Odere village.

MR KASSMAN: Sorry, spell that again?

40

A: O-D-E-R-E, Odere village.

Q: The other one Apote village?

A: Apote village. It is about two kilometers apart, those villages. In Apote village Benny Balepa had a small trade store. I think in that store he used to keep some tools and some coffee bags and a few cargo. In fact he was not really residing, living in that house but he had some boys living in there and that building the value was at that time was about probably K10,000 including the cargo inside. In fact that was actually burnt down by the police at Benny's trade store. So in \$pote village that is the only building it was burnt down as far as I know but at Odere village there were a number of properties destroyed, trade stores and coffee gardens and all these things were

destroyed and Benny pursued his own claim for the burning of his trade store and he probably succeeded Chief Commissioner before you in Mendi.

[10:55 am] He was awarded about K35,000. At the same time being married to my area he was instructed by those villagers who were affected to seek a lawyer's assistance to file their claim but Benny did not put these 20 people's claim together with his but he went ahead and claimed himself

so the people who actually suffered had to wait about four and a half years before their claim was even registered in the National Court, four and half years and the time limitation for a claim against the State is about six years so these people had to rush around looking for lawyers to do their claim. By then I left the State. I was working with Rei Vaea Lawyers so we started taking instructions to represent those people really affected. So I instituted legal proceedings in the National Court under WS 201 of 1995. Yakop Papi being the main plaintiff and 48 Others and those people are actually

from Odere village. I have 30 already disputed that only property destroyed was Benny's, not his wife's too, his wife did not have any property.

THE CHAIRMAN: Sorry?

A: His wife did not have any property so his wife probably never pursued – Lynette Malu.

MR KASSMAN: Sorry, you said Lynette Malu?

40

A: Lynette Malu, Balepa their names are changing, Benny uses a number of names.

Q: You are saying that for her none of her properties were destroyed?

A: None of them. She was actually a community school teacher so you know she was teaching out of her village.

Q: She?

10

A: She was teaching out of her village so she did not own any property.

Q: So you said she was teaching at a school where?

A: At the time of the raid she was teaching at Katloma, Katloma community school.

Q: You spell that please, K-A-T---

A: K-A-T-L-O-M-A, Katloma which is between Kagua and Erave. 20

Q: How far is that in terms of distance or walking time?

A: Distance about 15 to 16 kilometres.

Q: Away from Odere and Apote?

A: Yes, away from them. She was teaching there. While teaching there Benny somehow met her so they got married so Benny became our tambu in our custom. Then sometime 2000 she moved down to Wabag 30 community school. Lynette moved down to Wabag community school she was teaching there then. While teaching there Benny was also staying with her so they built that small trade store at Apote. That is the store that got burnt down and also in our custom, we are a paternal society. Once a woman gets married to a different tribe, away from us she has does not have that property rights to come back and claim the property rights so and even Lynette to say to represent 48 people under their names that is against our custom. Anyway, then I start this because time limitation was approaching so I was pity for these people who suffered the loss so I started the proceedings against the State 40 under WS 201. Then I already got the default judgment against the State because the State failed to file their Defence. After I obtained the default judgment the ---

[11:00 am] MR KASSMAN: I am sorry, Mr Keta that WS2 one of 19?

A: 95.

Q: 1995. That is Yakop Pape?

10 A: So I physically visited back in the village and assessed the damages done and then I categorised the damages done to each one of the plaintiffs and the amount I assessed the loss was about K600,000. Probably if you have a copy of the writ you will see that K600,000 was claimed for the 48 people I have said presented them. Because I come from there I know everybody by name if

anybodylost properties I would have included them. Villagers from Apote I would have included them. If Lynette Malu has lost any properties I would have included them in this writ but just because I wasonly concentrating on people who lost their properties. After I obtained the default 20 judgment ---

Q: Sorry, the assessment you did you visited, which village did youvisit?

A: I visited Apote and Odere.

Q: But the assessment of all damaged properties or whatever was of properties in which village?

30 A: Apote, Odere, sorry.

Q: Odere?

\$: \$pote, I said only one property was damaged, burnt down, that is %enny's, that is all, nothing else.

Q: Yes.

THE CHAIRMAN: Sorry, how many in Apote, only one building burnt down no other properties wasdamaged?

A: No other properties.

Q: They only damaged property was in Odere village?

A: Odere village, yes. Q: Yes? 10 A: After I entered default judgment I think entered default judgment on 31 July 1995 and JB Nanei

and %enny %alepa started complaining against me, saying, "look this is my people's claim we were supposed to issue the writ, we have been given instructions, why you are interfering with these people's claim." Then I said, "no, you have been sitting there for four and a half years, you did not do nothing and the time limitation is approaching. This people instructed me to file their writ so I did. So I warned them. I wrote a letter on 23 September 1996 to JB Nanei lawyers---

20 MR GORUA: Sorry, you have a copy? A: I have a copy. Q: I think we have a copy but I will check against our - so what is thematter dated? A: Dated 23 September 1996.30 Q: And that is addressed to? A:

JB Nanei lawyers. Q: That is the letter under the letterhead of Rei Vaea lawyers? A: Yes, I was working with Rei Vaea lawyers then but I signed that letter. Q: And has about four pages, is that correct? 40 A: Sorry? Q: Four pages? A: Yes, four pages. [11.05 am]Q: Commissioner, we have a copy on the file. Perhaps we would like to firstly tenderthis document through Mr Keta. If it could be marked---

10 A: In my letter I expressed the concern about---

Q: We will just mark the document Keta 1.

[EXHIBIT TENDERED - KETA 1 - LETTER DATED 23 SEPTEMBER 1996 BY MR KETA TO JB NANEILAWYERS]

A: They have been threatening me, they were referring me to Law 20 Society---

Q: Sorry, you said they were threatening you? A: Yes, I expressed that concern in my first letter. They referred me to the Law Society just because

they say I was interfering with their claim. Then I said, "no, I am not interfering with their claim. I am representing my people and I stand by it." I expressed that. The second place I pointed outclearly that there is a duplication in our claim. Alright and I explained that in my second page.

30

MR KASSMAN: Duplication?

A: Yes.

Q: Of what?

A: Because I have already filed the writ. After I filed the writ, they filed another writ after I alreadyentered into default judgment against the State. So some of the names which was included in WS201 of 1995 40

were also included in WS 622 of 1995. You see, that is under Lynnette Malu's claim.

MR GORUA: Sorry, Mr Keta, some of the plaintiffs in the proceedings which you filed are the sameones which were included in the Lynnette Malu file?

A: Yes.

Q: It is WS 662? 10

A: 662. They filed those proceedings on 4 August 1995 but then I had already obtained default judgment. Then I told J B Nanei and Benny Balepa, "I have already set proceedings, judgment was in favour of these clients." I said, "withdraw that WS 662 of 1995." I told them and in fact I expressed that concern in my letter but they insisted they wanted to go ahead so instead of J B Nanei responding to my letter and Mr Benny Balepa start responding to my letter in his letter dated 1 October 1996. That is the response I got from Benny Balepa.

20 Q: Perhaps Mr Keta, we mark this letter Keta 2. It is a letter by Mr Benny Malu to David Keta of Rei Vaea Lawyers, letter dated 31 October 1996 and consists of three pages.

A: Yes.

[EXHIBIT TENDERED - KETA 2 - LETTER BY MR BENNY MALU TO DAVID KETA OF REI VAEA LAWYERS DATED 31 OCTOBER 1996] 30

Q: Benny's letter is in response to my letter of 23 September. He said no, he said he cannot withdraw

the case, he will continue. The claim is made by his wife so it is pretty hard to convince him to withdraw the other proceedings.

Q: Mr Keta, in your first letter, this is letter marked Keta No 1, the first letter which you tendered in, that letter you also copied to several other persons including the Solicitor General---

40 A: Yes.

Q: And you raised serious issues concerning this case?

A: That is correct.

Q: You also made reference obviously to the claim by which Mr Balepa instituted personally? A:

That is right. 10 Q: Did you receive any response from the Solicitor General? A: No response, I did not get any response. Q: At that time are you able to recall who was the Solicitor General? [11.05

am] A: Francis Damem, I may be wrong but Francis Damem was the Solicitor General then.

Q: And maybe in respect of the claims which you were pursuing, the Yakop Pape proceedings, who was the lawyer on record acting for the State? A: I think Mr Pokia. Yes, Mr Pokia, I do not know his Christian name, he is from Goroka, he works

with Mirupasi Lawyers now. Mr Pokia, P-O-K-I-A. I have a number of correspondence with him too so I recall that he was the lawyer acting for---

Q: So you never received any response---

30 A: Morris Pokia. Q: Morris Pokia? A: Morris or Murus or, I am confused.

Q: Yes Mr Keta? A: Then he insisted he wanted to go ahead and I insisted I wanted to go ahead so I entered default judgment, my case was transferred to Hagen for proper assessment---

Q: Sorry, Mr Keta you said that instead of Mr Nanei responding, it is Mr Mr Malu who is responding, at any stage did you ever contact Mr Nanei or if you like make an appointment to talk with him and resolve this for instance?

A: Yes, I did attempt to sit with him, talk with him, I did. 10 Q: What was the outcome? A: I do not know, Mr Nanei probably was receiving his facts from his client Benny so they insisted they wanted to continue with their own case and they wanted me to continue with my case. So there was no - we could not compromise and I insisted I continue because I thought that was best for my people and those were the people who actually suffered not Benny Balepa or Lynnete Malu. So then my case was after the default judgment was entered because there was assessment 20 and witnesses were supposed to be called so the matter was transferred to Mt Hagen and Paulus Dowa Lawyers were doing assessment. After assessment late Hinchcliffe J awarded Yakop Pape about 600,000.

Q: Sorry Paulus Dowa or Paulus Kunai Lawyers? A: Paulus Kunai Lawyers, yes, awarded K600,000. This is a claim roughly which I claimed in the statement of claim.

30 Q: Mr Keta, Paulus Kunai Lawyers, did you cease to act at that stage or you instructed them to -

--
A: I did not file any documents ceasing to act, I transferred because Benny was threatening me too

in Mt Hagen. You see that is the problem I had because his case was involved, my case was involved, they are the same parties involved so sometimes there were clashes in Mt Hagen District Court. So that is out of here I do not want to attend myself in Hagen so I transferred the matter to Kunai Lawyers for assessment only. 40

MR KASSMAN: And they were acting as your agent?

A: Yes, something like that.

Q: Or were they acting directly for the plaintiffs in WS 301 of 1995?

A: What I told them was, alright this is for assessment, instructed my clients that Kunai Lawyers will do it for you.

10 Q: Was Kunai Lawyers acting as their agent for Rei Vaea Lawyers which is where you were working?

[11:00 am] A: When Kunai lawyers engaged ---- I was doing my own, I ceased to act, work with Rei Vaea lawyers may be 1996, 97.

MR KASSMAN: So Kunai lawyers took instructions directly from the plaintiffs, Yakop Pape and others, is that right?

A: Yes. What I, mark you, is Benny Balepa appears to be a front man, he used Lynette Malu as a front to make a claim which is not true and I tried to warn him that this is a fraud, it is fraud against the State but he did not want to listen to me instead he wanted to attack me and all that so I let it go. This K4.5 million, Mr Commissioner, I do not think this is based on actual loss in my debits, it is a figure based in Moresby, drawn out from the blue and that is how it came but envisaging himself to confine me.

MR GORUA: Mr Keta, certainly the documents we have on file indicated you wrote several letters to the Solicitor General and relevant authorities 30 pointing out---

A: Yes, I did write to the---

Q: Again, in one of the letters you wrote to the Solicitor General, it is a letter dated 3 August 1998 which is addressed to the Solicitor General again raising same issues and in that letter if I can just quote at the back you stated when the motion you recommended that a motion be filed through to dismiss the proceedings filed by Lynette Malu because it was a duplication and all those and you stated that, "when the motion is 40 filed I am willing to assist you and I will file all affidavits to that effect." You also stated that despite writing several letters, did the Solicitor General ever come back to you?

A: Nothing, if they did, I should have records in my file. I see the records I did not make any response, I only write to Auditor General warning them this is a duplication I did write to Registry of National Court warning them that they should not enter two default judgments in the same claim; it is a duplication. I warned them too, then my warning letters were never adhered to. 10

Q: Did you ever personally attend and say talk with the Solicitor or the lawyer for the State? A: Not personally but I think my letters being aware of it so.

Q: The matter which, the proceedings in which you insisted was obviously - went for full trial and judgment was entered.

A: Yes. 20

Q: And the Supreme court stated the one that Lynette Malu was to be settled out of court by way of deed of release for K4.5 million?

A: Yes, that really surprised me because it appears at some stage in the newspaper this guy was claiming K4.5 million, and well he did not have a business worth K4.5 million in my village so how did he come about this K4.5 million? So all along you see I warned them this is a fraud. The Commission can note that, thank you.

30

[11:20 am] Q: Mr Keta, our records show that from the 4.5 million about K3.8 million had been paid out, that is the matter of Lynette Malu. Lynette Malu filed an affidavit. This time she files it under the Firm of Nandi and Company Lawyers. It is an affidavit sworn and filed on 26 April 2005

in the Mount Hagen National Court. In this affidavit she mentions about how some of the monies were redistributed and in this affidavit she states that some of the persons who got paid she says were non-plaintiffs. Non-plaintiffs were paid as they come from the same villages and lists them down, church groups K2,200, church land K600, Maria Agaka K1600, Pastor Mandi K200, Komba Akela K200, Terry Apaio 40K2000, Emanogo Apoio K1000, Ramia Repa Epo K200, Wapi Andaiyo K200, Apai Anare K200, Rati Nakisi K400, road maintenance K1200, escort security 2000, transport and accommodation K20,000, Rumape Yawe K2000, Justin Meli K2500, Mandia Yawe K200, Tony Pagu K1500, Nugula Pangu K200, Robert Poyasi K200, Mando Apaiyo K3000, Rowo Apoio K200, Lapi Apoio K200, Repo Nosi K400, Yapi Lorea K200, Ero Rorea K200 and Imanai Alisi K200. Are you able to confirm with these people?

A: Most of them by name I can recall, I can figure, I know their villages 10 down in my area but as I said why should they benefit of those monies if their properties were not lost. Those people were my people so I would have listed their names in my writ and make a claim against the State. I excluded them because they lost nothing but if Lynnette Malu had put some people for the money then the money comes from a fraud claim. They lost nothing.

MR KASSMAN: Mr Keta, just generally speaking, you say you attended yourself and spoke with various claimants, people in the village. You are actually a resident here in Port Moresby? 20

A: Sorry?

Q: You are a resident here in Port Moresby?

A: I am.

Q: You say you travelled up. How did you – you commenced your action you say four and a half years after?

30 A: Yes.

Q: How did you have verification of the actual destruction and ownership of houses? How did you –

\$: I have said that when I was working with the Solicitor General's office I used to travel to Mendi, Tari, Hagen to attend to court cases and then I visited my village and at that time you could actually see the destruction done in those areas. So, before I took up instructions I was well aware of the destruction done in the village. I was there always travelling.

Q: You travelled regularly there?

A: Yes.

Q: So you were satisfied from just your discussion?

A: Yes. 10

Q: Did you get sort of some statements from the Police or from like a village peace officer, village councillor, village magistrate?

A: Yes, we sit down and talk, in fact get the particulars from the people, sit down in the village and maybe two or three days discuss.

Q: So your discussions were done in the presence of people of authority?

A: Yes. 20

Q: From your attendance there, was the same process adopted by any other claimants or were there lawyers before they formulated their claims; the other two claims?

A: I do not know whether Mr J B Nanei attended the village itself, that is between Benny and himself to make arrangements to visit or whether Jack Nouairi attended to make assessment and interview the claimants, that I am not aware. I will not say anything on that.

30 Q: Did you speak with the Police in any matter? Did you yourself speak with the Police?

A: I actually know the policemen who did the – they are based in Kagua, so I know.

Q: So did they contribute to any discussion about the duplication of claims or did they do anything about it?

[11:25 am] A: With the police we never made aware of this duplication claims. We were aware there was a duplication but the duplication issue was between me, Benny and J B Nanei lawyers and several

like Solicitor General's Office, Registrar, I mean this people are aware this is a duplication.

Q: Sure.

MR GORUA: Mr Keta, you may have been in the hearing yesterday, I put a question to Mr Nanei yesterday, stating that Benny and Lynette are 10 married and some of the properties that Benny claimed were destroyed in most of the claim were with matrimonial properties and so there would not be much difference and Lynette's claim would obviously be as you put it would be a duplication. Mr Nanei said that was not correct, Lynette obviously had other properties that were destroyed. What would you say about it?

A: She was a teacher, public servant. If she had started any business like poultry or whatever business I mean there is a conflict in this. Should be teaching instead of business. So I do not know what property she 20 had. As far as I know she did not have any property. If she had any property

Benny Balepa should have taken up the loss in his first claim. So why did he miss out his wife's claim

and he went himself and there is no reason. So I doubt that she had any property.

Q: Mr Keta, you are a lawyer by profession. Another question that we put to Mr Nanei was that he said that some of the claims which he pursued in the proceedings Balepa Benny, where not sought in the pleadings, in the statement of claim and as a result he instituted separate proceedings to claim for what that was not asked for in the earlier proceedings. You 30 have any comments to ---

A: It is a normal use of practise. If you want something from the court you plead; you do not plead, you get nothing. So why come back and do it, miss out something and come for the second bite after some years.

THE CHAIRMAN: Yes. You make your claim once---

A: That is right.

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MR KASSMAN: Sorry, in the proceeding you commenced where you say it went to assessment of damages before Justice Hinchliffe, the award was around K640,000?

A: That is my guess.

Q: No, I am saying the award of the court?

A: Yes, but that is what my clients told me but the proper records will be from the Kunai lawyers.

10

Q: Sure.

A: Because I have obtained that they got two lots of payments in Finance so that just amounted to K600 something thousand so I am pretty aware that around that figure.

Q: It is on the copy, we have a copy of the certificate of judgment approximately K640,000. The deed of release signed in the Lynette Malu action was K4.5 million, you are aware of that? 20

A: Yes.

Q: And in the claim by Benny Balepa that also went on assessment of damages, it was K35,000, from very I guess extreme discrepancies, assessments. And you say, but you would maintain that for the assessment done on the claim that you initiated for your Yakop Pape, of K640,000 that was the only truthful claim. Is that what you would be saying?

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A: Yes, I am saying that I maintain that those claims are categorised, that assessment was done on them a particular claim I have done on the individual plaintiffs.

Q: Sorry, and I am just comparing that with the Lynette Malu deed of release that was signed for K4.5 million, just as an ordinary person you would say that is highly outrageous, would you say that?

A: I have already maintained that that is - I mean I have never seen a business loss with that much money. 40

Q: What is the population of Odere village? What would be the population be? A: About 400. Q:

400? [11.30 am] A: Yes, because some of the people were not included in the writ because they did not

lose anything so. 10 Q: Maybe another appropriate question would be how many houses would there be in the village? A: I see. Each individual would own a house. Q: Yes. How many houses would there be, 30 houses 50 houses?

A: About 50, 60 houses – families living, three, four families living together. 20 Q: Are they all semi permanent or permanent or traditional built? A: Some people who start business they have semi permanent buildings.

Q: Yes, roughly how many?

A: About say about fifteen. Q: Fifteen semi permanent? 30 A: Yes. Q: Is it hooked up with electricity and water or? A: No, the electrification does not go there so. Q: No, neither water?

A: Yes. 40

Q: So no services whatsoever, no utilities? A: No. Q: Electricity, water, telephone, nothing, sewerage? A: No. Q: Is there any business or major food crop plantation or economic 10 activity? A: Coffee is the main one. Q: Coffee. A: Coffee is the main one, yes.

Q: From my perusal of the document there is no claim for, even in fact for actual substantiate you know I guess a coffee entity in coffee either as a 20 buyer or a seller or sorry a buyer, producer of coffee, coffee beans in terms of a market, commercially driven sort of set up?

A: Yes, each individual grow their own plot of coffee trees.

Q: Sure.

A: So when the opportunity arises the coffee buyers come they go to the main road and start selling it.

30

Q: Sure, alright.

A: Yes.

MR KASSMAN: No further questions.

THE CHAIRMAN: Thank you very much Mr Keta for your giving evidence and for coming a second time to do so.

MR KETA: Thank you. 40

THE CHAIRMAN: Thank you very much. I stand adjourned.

WITNESS WITHDREW

MR KASSMAN: Chief, just one for the record. In one of the matters that was listed today, the Matter No 8, Network Constructions Ltd and Fred Punangi and the State, just for the record we did receive communication 10 from Mr Steven Raphael who is asked to assist the Commission with evidence in his capacity as the former Secretary at that time of the Department of Defence. Mr Steven Raphael has communicated with us by way of a letter dated 3 July 2009. Mr Steven Raphael is now the provincial administrator, West New Britain Provincial Administration. He has provided information in this letter which we believe is adequate for purposes of our inquiries and if we could have that marked as a Steven Raphael 1. That is in respect of the Matter No 8 on our list, Network Constructions Ltd and Fred Punangi and the State.

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THE CHAIRMAN: Yes, thank you.

[EXHIBIT TENDERED – STEVEN RAPHAEL 1 – LETTER FROM MR STEVEN RAPHAEL TO COI DATED 3 JULY 2009]

MR KASSMAN: Other than that we have no further matters for today and if, sorry, we do have matters for 1.30 p.m.

THE CHAIRMAN: 1.30 pm. Thank you.

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LUNCHEON ADJOURNMENT

[2.00 pm] THE CHAIRMAN: Mr Mirou? MR MIROU: Yes, thank you Chief Commissioner. This afternoon we have Matter No 10, that is Manoburn Earthmoving Limited –v– The State. Mr

Commissioner, that matter will be officially adjourned to next week Tuesday. 40

THE CHAIRMAN: Yes.

MR MIROU: Matter No 9 ---

THE CHAIRMAN: Is there a reason for that?

MR MIROU: It is a matter that Mr Kerenga Kua rang in relation to this matter which does affect a member of Parliament who is actually in mourning so this matter we have had the matter stood down. 10

THE CHAIRMAN: I see, yes, alright.

MR MIROU: The Matter No 9 Chief Commissioner, is a matter that – present this afternoon is Mr Kambanei who has responded to our letter requesting assistance in relation to the claim made in response to the – Mr Thaddeus Kambanei and myself have had discussions prior to this hearing and Mr Kambanei wishes to make some statement in relation to it.

THE CHAIRMAN: Which matter are we talking about? 20

MR MIROU: Kareana Estates, Matter No 9. THE CHAIRMAN: Yes, Mr Kambanei. Thank you for coming Mr Kambanei.

MR KAMBANEI: Thank you Chief Commissioner. The matter for Kareana Estates I have had preliminary discussions to suggest that if I may make these submissions at least in written because basically the questionnaires actually put to me are questions that are pretty the same in my 30 response in the other matters as well and so I thought it would be appropriate for me to make this submission just to advise, to assist the Commission of Inquiry in relation to what transpired out of those payments.

THE CHAIRMAN: That would be very useful, thank you very much. Very well. How long do you think, have you discussed how long that will take? We are very conscious Mr Kambanei of our short term.

MR KAMBANEI: I should have it delivered to the Commission of Inquiry by end of the week. 40

THE CHAIRMAN: Very well, to Friday. Thank you for attending.

MR MIROU: Yes. Also in attendance is Mr John Kumura who has also responded to our letter requesting assistance and likewise my friend Mr Kumura has the same application. If he may ---

THE CHAIRMAN: Is this in the same matter, is it?

MR MIROU: Yes. He has produced some documents to me yesterday 10 which very much describes in detail what Mr Kumura did during his time as the acting Solicitor General in relation to this claim.

THE CHAIRMAN: Yes, is Mr Kumura here. Are you asking him for information regarding the same-- --?

MR MIROU: In relation to the settlement of the claim.

THE CHAIRMAN: Of Kareana A

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MR MIROU: Yes.

THE CHAIRMAN: Yes, and Friday Mr Kumura?

MR KUMURA: Chief Commissioner, I have been called to assist if possible and I delivered some documents to my friend. I can give evidence here or otherwise I can simply submit a written statement later during the week.

THE CHAIRMAN: Very well, it is certainly up to yourself. Have you 30 examined the documents yet? Are we ready for---

MR MIROU: Yes, I have examined the documents. If Mr Kumura wishes I think we can hear Mr Kumura.

THE CHAIRMAN: That would be fine. Would you like to, you are here now. Yes, thank you. Swear him.

40 MR JOHN KUMURA, Sworn: XN: MR MIROU [2:05 pm] Q: Thank you Mr Kumura. Your full name is John Kumura? A: Yes. Q: How long have you practiced as a lawyer? 10 A: Since 1991. Q: During that

period have you worked at various places?

\$: Yes, I started with 'efence 'epartment 1991 to 1993 and I moved to the Solicitor General's office in 1994 and I have been there since, up until 2007 when I left.

Q: Mr Kumura, you were given a letter in relation to a claim that was made by Nelson Wahune who isthe principal of Kareana Estates 20 Propriety Limited? A: Yes. Q: Are you aware that this matter had come before you whilst you were working with the Solicitor General's Office?

A: Yes, during my time as lawyer there and also at times when I was acting Solicitor General I did come across the file on that claim. I cannot clearly recall the details but I understand it was a claim arising 30 out of the crisis in Bougainville and the plaintiff basically claimed for loss of business I believe. It was a claim I recall specifically because I did direct at that time as acting Solicitor General, I directed one of the senior lawyers there, Jimmy Bokomi to further defence the claim which he did file. The defence was I understand, basically the claim was statute barred under the Fraud and Limitations Act. I also recall a certain Thomas Mane.

THE CHAIRMAN: Sorry?

A: A person by the name of Thomas Mane who approached me on this matter requesting if we could settle the matter. I basically said no because of the defensibility of the file which is solely a defence in law any way. At that time my view was that the claim basically we could have dismissed it and that is as far as I can recall because after that what transpired after that I cannot recall but I only know that the claim was settled, that is all.

[2:10 pm] Q: Do I understand you mean that the time you were talking about this claim that came to you, past you, you were the acting Solicitor 10 General?

A: I was acting Solicitor General on a number of occasions and the file was there for some time. As acting Solicitor General of course I had carriage of all files in that office so I knew what was going on but those times when I was simply a lawyer there, I cannot say much about a file. But at the material time when the file came across me when I was acting Solicitor General I directed that defence be filed and there was a defence filed by one of our lawyers there, Jimmy Bokomi. At that in my view the claim was - we could have defended 20 it, that the defensibility file was solid.

MR MIROU: Section 5 notice was also given?

A: The details, I am not pretty sure.

Q: I think from the actual writ section 5 notice was given for this particular claim with Mr %okomi's brief to you. \$t any stage after Mr %okomi's involvement as the officer in charge of this particular claim, at any time did he consult you and then did you consult the Attorney 30 General on the claim?

A: I do not recall consulting the Attorney General on the matter. All I do recall is that I did discuss the matter with the action officer Jimmy Bokomi. I gave him the instructions to file a defence which he did and I also recall that Jimmy Bokomi basically reported to me that the file went missing for sometime and I think today that file has been missing from that office, Solicitor General's Office.

Q: Mr Kumura, the actual writ was filed by Peter Pena and Associates on 2 June 2003, and acting on your instructions, Mr Bokomi filed a notice of intention to defend sometime on 2 July 2003. Was that within the time you filed that notice?

A: The dates I am not too sure but---

Q: If I may hand over, there is a writ and a defence.

A: Yes. 10

THE CHAIRMAN: Was there a defence action filed or just a notice of intention to defend?

MR MIROU: A notice of intention together with defence. [2.15 pm] A: Yes, the signature is mine. So yes, I confirm these documents were filed by---

Q: Commissioner. if the writ of summons was filed on the--- 20

A: The writ of summons was filed on 2 June 2003.

Q: And the defence?

A: The notice of intention to defend on 2 July 2003 and the defence on 7 July 2003. Q: Let me show you a letter. If the witness can be shown this letter, that is dated 3 July 2003. Have you seen that letter before? 30

A: Yes, I have sighted that letter, I have seen a copy within the office.

Q: That letter was written by Mr Francis Damem to the then Secretary, Mr Thaddeus Kambanei?

A: That is correct.

Q: As a result of that letter a reply was made by Mr Wahune stating that, that letter constituted a deed of settlement? 40

A: Is that so? [2.20 pm] Q: That is the reply from Mr Wahune.

A: This letter dated 8 July 2003 from Kareana Real Estate to Francis Damem, I have never sighted that letter, this is the first time. Q: As a result of that letter the actual claim was eventually processed through the Finance

Department and actually paid. 10 A: You mean that there was no deed of release? Q: That is basically that --- A: Or advice? Q: Would that be a normal practice? A: No, this is very unusual. 20

Q: That is an unusual practice for a letter to be written as a deed of release? A: Most unusual I agree. Q: At anytime during that period, did you follow up on the actual claim or were you advised by the

Attorney General that he had written a letter in that regard? A: No, all that I became aware of was that something came up during the - I do not know when precisely but I heard that it was settled, that the claim was settled and I did not know what actually transpired so I asked to see the file from Jimmy Bokomi and Bokomi said, no, he cannot produce the file because the file has gone missing. So, I asked Bokomi to confirm. He did a memo to me confirming that the file has gone missing and I asked him what he has does with it. He confirmed that he filed a defence and that the file has gone missing and he does not know what has happened to the matter. That is about it, until I sighted correspondence relating to the settlement in terms of the letter from Damem to Kambanei. I heard later that it was settled.

Q: Pretty serious, in fact it involves about an amount of K4 million whereas in fact K2 million was actually paid out, another K2 million was stopped as a result of the Ombudsman inquiry.

[2.30 pm] If I may ask for the documents and for them to be tendered in respect of --- 10

THE CHAIRMAN: Very well. It would be Mr J Kumura 1, tendered and exhibited.

MR MIROU: John Kumura 1, yes. All those documents will constitute ---

[EXHIBIT TENDERED - JOHN KUMURA 1 - BUNDLE OF DOCUMENTS]

MR MIROU: Mr Kumura, was there anything else that you were aware of 20 with regard to this particular claim that you may provide to the Commission?

A: There were copies of certain documents that I had dropped off yesterday that ---

Q: That is in relation to Mr Manei's ---

A: Yes, the data. 30 Q: Coming back to Mr Manei during that time did he consult you?

A: All I recall was he came and saw me with a detailed copy of the contract, I mean what you call a submission.

THE CHAIRMAN: A submission?

A: A submission for settlement and I refused to deal with him and that is about it, he went away and then --- 40

Q: Mr Manei's a lawyer, is he?

A: He is a lawyer. I do not know whether he is practising or not but ---

Q: You will also note that in Mr Manei's submission was referred to in the Attorney General's letter. If you look at the Attorney General's letter he makes reference to that document, that submission

made by Mr Manei. The letter by the Attorney General makes reference to that particular document. 10 A: Yes.

THE CHAIRMAN: I am sorry, I have not seen the documents but the date did not seem right but was the defence filed out of time? MR MIROU: Mr Kumura if you look at the writ of summons and the defence, was it filed within time, on the dates, on the actual notice of intention to defend and the defence?

A: The writ of summons was filed on 2 June 2003. The notice to defend 20 was filed on 2 July 2003 and the defence was filed on 7 July 2003.

Q: That would still be---

THE CHAIRMAN: Well within time.

A: Well within time.

MR MIROU: Well within time, yes, the 90 days period?

30 A: The defence was specifically – that claim was statute barred arising out of a claim from Bougainville that occurred back in 1989.

Q: If you look at the letter from the Attorney General, he specifically said that the notice and the defence was filed out of time.

X2.25 pm Z \$: Yes, the letter from the Attorney General says that State's defence may have been filed

out of time which is not true. 40

Q: If those bundle of documents referred to in Mr Manei's submission be handed up. & Chief Commissioner, that is the document that I obtained a copy from Mr Kumura and that is the submission by Mr Manei in which the Attorney General relies on when he wrote that letter to the Secretary for Finance to clear the claim for payment. If that document can be also included in the records?

THE CHAIRMAN: Yes, all right. MR MIROU: Yes, if those documents, the submissions can also be marked? 10 THE CHAIRMAN: Is that part and parcel of the documents supplied? MR MIROU: Yes.

THE CHAIRMAN: Just the one bundle? MR MIROU: That is the bundle--- THE CHAIRMAN: One bundle, very well. It should remain in the same 20 bundle. All right, thank

you, anything else? MR MIROU: Anything else that you wish to raise with regard to this claim? A: I think that is about it, yes. THE CHAIRMAN: All right, thank you then. Thank you for coming. MR

MIROU: We have Mr Damem and if I may call Mr ---

30 THE CHAIRMAN: Yes, thank you Mr Kumura.

THE WITNESS WITHDREW

40 MR FRANCIS DAMEM, Recalled:

XN: MR MIROU

THE CHAIRMAN: Yes, Mr Damem, thank you for coming.

MR MIROU: Mr Damem---

THE CHAIRMAN: Are you familiar with this matter? Is this in respect of 10 the same matter or?

MR MIROU: This is in respect to the Kareana matter.

THE CHAIRMAN: Are you familiar with this matter of Kareana Estates settlement?

A: Yes, Chief Commissioner, sorry for being late but ---

Q: No, you have not been late. 20

A: I turned up this morning in the mistaken belief that I was required in the morning and briefly indicated to Counsel that I will maintain my position as I communicated to the Commission in April last year, that I do not wish to say anything because this particular case implicated me unfairly and political leaders referred me to all relevant authorities, law enforcing agencies including the Ombudsman Commission without asking for an explanation so I decided from day one when I fronted up at the Ombudsman Commission with my Counsel Mr Greg Sheppard to maintain silence and to institute appropriate proceedings at the end of 30 the day when I have my day in court.

[2.30 pm] This case really ruined my future in the Public Service and my political ambitions also in the last elections. Chief Commissioner, in the first letter to the Commission, I basically raised

the issue of right to silence under the Constitution and because the matter was pending in the National Court and the fact that I in my interview with the Police after the Ombudsman Commission interview, I also maintained silence there during the record of interview and that fact I communicated to the Commission through my letter I think on 12 April last year. Although I 40 tried to retrieve the copies - that is one of the reasons as I am late - from my file. I indicated then that whilst the matter was pending I still maintain silence under the Constitution, right to silence and that the Commission of Inquiry was a quasi judicial tribunal and as such was inferior to a court of law before which I was facing those criminal charges.

MR MIROU: Mr Damem---

A: Sorry, if I could just finish off and then Counsel you can ask me. And 10 the Commission replied, I just do not have the letter, sorry. The Commission replied to me - replied to the letter of the 12th April and indicated that it was merely operating within the Terms of its Reference set by the

Prime Minister under the Commission of Inquiry Act. On that issue I responded in my second letter. I think it was dated either the 18th or something. I believe the Commission should have both letters.

The Commission's record should have both letters. In the second letter, I indicated then that whilst I appreciate the fact that the Commission was operating within the terms of its Terms of Reference, the Terms of Reference, however were only terms of reference and not 20 law. Therefore the Constitutional rights enshrining the Constitution as well as other legal rights would prevail over the

Commission's Terms of Reference set by the Prime Minister under the Commission of Inquiry Act, and I left the matter there and that is where it is.

[2.35 pm] My matter has proceeded further in the National Court. The charges I was facing, the first charge of misappropriation of K2 million which is just an outrageous and malicious prosecution was dismissed at the District Court, committal hearing by the magistrate in 2007. The two remaining charges of official corruption and abuse of process somehow 30 were not dismissed to my surprise, were not dismissed at the District Court after numerous adjournments by the presiding magistrate. So they were listed for the Call-over at the National Court and after some six months or so the Public

Prosecutor's team of lawyers studied my file and concluded that there was no merits whatsoever in the cases; in the charges. If they were technically defective and also there was no evidence in relation to the official corruption charge and eventually despite my preference for the Public Prosecutor to present an indictment in the National Court and to offer no evidence which was the preferred option, they decided to nolle prosequi the case and so the 40 matter, Chief Commissioner is not over, it is just a nolle prosequi, technically it is not finished. If they had presented an indictment and offered no evidence it would be tantamount to an acquittal and therefore I would be free to discuss matters before the Commission of Inquiry. However, because of the fact that they nollied the case, the matter is very much still alive, technically, it is just deferred to await further evidence which might emerge through the Commission of Inquiry or something else or through police investigations. So, Chief Commissioner, my position is that I will remain silent and I will not disclose or talk to anybody further about this matter. Thank you. 10

THE CHAIRMAN: Thank you, you say there was two letters; the second letter do we have that second letter?

MR MIROU: I have not sighted the second letter, that was the only letter that was on our files.

THE CHAIRMAN: You do not have the copy of that second letter?

A: I have it in there somewhere, I tried to locate it. I will bring it to you 20 in due course. That is one of reasons why I am late. I have got it in a briefcase somewhere but it is amongst so many papers.

Q: The only court action that you have been involved though regarding this has been in the criminal courts, there has not been any civil action. You have not taken out any---

A: Yes, I have instructed Mr Shepherd and we are in the process of doing that.

Q: You have not in fact as yet filed any action restraining---

A: Yes.

Q: All right, you have anything else Mr Mirou? MR MIROU: I will probably have this matter adjourned and have discussions with Mr ---

THE CHAIRMAN: I consider the position again Mr Damem. I tend to the view that the Commission can in fact has the power to compel questions. I do not regard the nolle prosequi as leaving the matters on foot. However, we will consider your position. It is to the making in all seriousness so we will give it due consideration. We will adjourn this matter until say - would Friday morning be suitable to you?

A: Yes, your Honour.

Q: 9.30 sharp, Friday morning. 10

A: Thank you, Chief Commissioner.

WITNESS WITHDREW

THE CHAIRMAN: Anything else?

MR MIROU: There was a number of matters that I wish to confirm. We 20 have received some documents from Mr Peter Pena who was initially engaged by Mr Wahune and those documents were submitted to us. I think his only engagement was for a period, from 12 May 2003, the actual writ of summons up to 6 October 2003. They confirmed that they had never been involved in any settlement whatsoever. They have not received anything so Mr Peter Pena has discharged that obligation under our request for assistance. Mr Thomas Manei rang this morning from Madang and has made a written submission in relation to this Kareana claim and I have a copy of his fax copy here which was faxed in this morning.

30 THE CHAIRMAN: Yes, which we tendered that?

A: Yes, if this can be tendered in as well.

Q: All right then, it is Kareana/Manei 1.

[EXHIBIT TENDERED - KAREANA/MANEI 1 - FAX COPY OF WRITTEN SUBMISSION IN RELATION TO KAREANA CLAIM BY MR THOMAS MANEI] 40

[2.40 pm] MR MIROU: The documents in relation to Peter Pena is a number of documents in this bundle of documents.

THE CHAIRMAN: Yes, we will need to identify them please.

MR MIROU: The first one is a letter dated 2 July to Mr Stephen Kassman.

THE CHAIRMAN: Date? 2 July of this year? 10

MR MIROU: Yes, 2009. In reference to the letter that we wrote requesting his assistance. The second document is also another letter dated 3 July 2009 to Counsel Assisting and the documents that he attaches are the actual writ of summons. An affidavit from Mr Peter Pena dated 19 June 2003, a reply to the defence, a defence filed by John Kumura dated 7 June 2003. The writ of summons that was filed on 2 June 2003. If those can be documented as Peter Pena 1?

THE CHAIRMAN: Yes, very well Peter Pena 1. 20

[EXHIBIT TENDERED - PETER PENA 1 - BUNDLE OF DOCUMENTS]

THE CHAIRMAN: Anything else?

MR MIROU: We were to call Evelyn Coleman.

THE CHAIRMAN: Yes? 30

MR MIROU: She came in this morning but she - I left her with the transcript. She gave evidence on 12 April 2007 and she has confirmed in writing that she wishes the Commission to accept what she said on 12 April 2007. The transcript that she refers to is transcript dated Thursday 12 April 2007, pages 338 to 351. Evelyn is an officer at the Department of Finance. Also we have Mr Numbasa, he is also coming and he has also confirmed that the Commission will accept his evidence that he provided in relation to the Kareana Estate claim. He gave evidence on Thursday 12 April 2007 and his evidence is at pages 319 to page 330. 40

THE CHAIRMAN: Yes, thank you.

MR MIROU: If that can be accepted? We have also received a letter from Mr Wahune, who is presently based in Lae. He wrote by fax to the Commission on 6 July 2009, that is in relation to a notice that was published in the National Newspaper. He advised that he was unable to appear as he has been arrested and charged in November of 2006 in Lae in relation to the same matter and bail conditions restrict him to travel. We have responded by saying that we will not push the matter with him as currently there is a 10 bail condition and the matter is fixed as a trial for August 2009. That is in relation to Mr Wahune who is the principal of the Kareana Real Estates Limited.

[2:50 pm] Chief Commissioner, we have Mr Bokomi but if we should have a short break and I will just have a discussion with him.

THE CHAIRMAN: Very well we will stand down for five minutes.

20 SHORT ADJOURNMENT

[3:07 pm] THE CHAIRMAN: Yes Mr Mirou, where are we?

MR MIROU: Yes, this is Mr Jimmy Bokomi, he is a lawyer with Rageau Manua and Kikira Lawyers.

MR JIMMY BOKOMI, Sworn: 30

XN: MR MIROU

THE CHAIRMAN: Thank you. MR MIROU: Thank you Mr Bokomi. Your name is Jimmy Bokomi?

A: That is correct. My surname is spelt B-O-K-O-M-I.

THE CHAIRMAN: Thank you. Is it Jimmy or James? 40

A: Jimmy.

Q: Jimmy thank you.

A: As in Jimmy Carter.

MR MIROU: Mr Bokomi, can you just tell us briefly your years of services as a lawyer?

10 A: Basically, let me just start off with my Public Service career. Prior to joining the Attorney General's I was with Foreign Affairs as a Senior Foreign Service Officer and I undertook law studies whilst in the employ of Department of Foreign Affairs and graduated in 2000. Thereafter I commenced postgraduate legal training at LTI and got admitted to the PNG Bar in November of that year and about six months thereafter I left Foreign Affairs in July to join Ombudsman Commission. That time His Honour presently Mr Justice Cannings was then the Legal Counsel to the Ombudsman Commission. I worked under him for about two months before joining the office of the Solicitor General on 10 September 2001. I was with the office of the Solicitor General from 10 September 2001 up to about 5 August 2006 when I left to join the private sector. I was employed by Stevens Lawyers for about six months and then left the employ of Stevens Lawyers to take up my current employment with Rageau Manua and Kikira Lawyers on 5 February 2007 and I have been since then until with Rageau Manua and Kikira Lawyers.

Q: Thank you Mr Bokomi. During your time with the Department of Justice in the office of the Solicitor General, you undertook matters on behalf of the State in particular claims against the State?

A: That is correct.

Q: One matter that came to your attention was the claim made by Kareana Estates?

A: That is correct.

Q: Can you tell the Commission what you took when the claim was filed by Kareana Estate, the steps you took?

A: Basically when the claim was filed I was assigned as the action officer to act for and on behalf of the State in respect of that claim. To the best of my knowledge, I am going by the summons then, the plaintiff company, Kareana Estate Pty Limited was then claiming damages for loss of property etcetera resulting from destructions caused by Defence Force or something. But one thing striking about that claim was that later when we went back to check the records, the claim was 10 by way of the writ of summons was filed on 2 June 2003 and served on us on 3 June. However, the notice as required by section 5 of the Claims By and Against the State Act, based on the case management system that is installed at the office of the Solicitor General, these are electronic records, the section 5 notice was given on 6 June 2003.

THE CHAIRMAN: That is after filing of the writ?

[3:15 pm] A: That is correct. There is some irregularity there. The file on the matter as I can clearly recall was created and allocated to me on 17 June 2003. We filed a notice of intention to defend on 2 July 2003, and if we go by the rules, we are 30 days from 3 June 2003, that is basically on the 30th day we filed the notice of intention to defend and that is clearly within the rules of Court, Order 7 of the National Court rules. When I went through the claim I realised that the claim at the outset may be statute barred by virtue of Section 16(1) of the Frauds and Limitations Act 1988. And appreciating also the fact that if we were to wait for instructions to come from Defence Force it will take time for such instructions to come back and because we had, in my considered legal opinion, we had a defence on merits in that there is a legal defence 30 under Section 16(1) of the Frauds and Limitations Act. I proceeded to file – prepare for Mr Kumura's signature – a defence, raising the legal defence that I have alluded to against the claim and that defence was filed on 7 July 2003 and that is clearly within the 90 day time limit required for State to file its defence. There is nothing wrong with the defence as it is. If the matter were to reopen that defence would still stand. Now unbeknown to us at the time, at the Solicitor General's office there were undercurrents pointing towards a negotiated settlement of this particular matter. I cannot recall at any point in time then as to whether or not I was consulted as the Action officer to provide my brief et cetera if there was a need to consider an out of court settlement of this matter. Neither was there, I believe, any consultation with the office of the Solicitor General from the office of the Attorney General and this I believe is a fundamental point.

X3:20 pmZ The Solicitor General by section 7 of the Attorney General's Act 1989 is the chief advocate in matters that go to Court for or against the State and, with due respect to the Attorney General then, certain consultative process should have been invoked so that all lawyers including myself who is the action officer should have sat down, talked about this matter and see our way forward as to whether we should settle or whether we should allow the defence to stand as it is and we bring in affidavits, I mean we bring in evidence to prepare the case for trial and we run the trial on the matter considering that the amount involved was quite onerous and that is a lot of money. You are talking about five million plus in terms of people's money if you are going to convert this proceedings and pay out as such. However, it was only after the matter had been settled, perhaps money had been paid out that it was brought to our attention that the settlement took place without considering the legal defence that we had filed in Court which was still valid, it was never struck out, one application by the first plaintiff as required by the rules et cetera to pave way for any settlement negotiations to take place. Even then one thing peculiar about this claim is that there is no evidence. I do not have the benefit of the Court file but to the best of my recollection we have not filed any evidence I think. Defence is merely an allegation, a set of allegations in defence against the pleadings, a set of allegations contained in the statement of claim by the plaintiff. We cannot proceed to settle only on the basis of those two documents and besides there was a legal defence. All I am basically saying is this particular claim was not duly attended to in terms of its assessment et cetera prior to settlement by whoever persons that were then in authority both from Finance Department and from the Department of Attorney General, particularly in the office of the Attorney General.

MR MIROU: Mr Bokomi, what steps did you undertake when you had discussions with Mr Kumura over the defence that you had filed.

§: We filed a defence and then later when it was brought to I think Mr Kumura's attention that the matter had been settled, he asked me to quickly go back and do a memo briefing him of the status of the matter. I did a memo to him. I said, "Look we have this, there is a submission by a Mr Thomas Mane" – which at that time was a private legal consultant acting on behalf of the plaintiffs – "but it is not for us to comment on because there is no evidence." You exchange submissions and counter submissions based on evidence and those evidence are supposed to be contained in the affidavit materials. In this case there is an absence of such, outright absence of such.

Q: During those times did you hold any discussions with Mr Mane in the presence of Mr

Kumuraon the submissions?

A: No. I noted that there was a copy basically placed in my in tray but as to the matter being negotiated on the basis of Mr Mane's submissions, no. The Solicitor General's office for the record did not have any involvement insofar as the settlement of this particular claim was concerned. We run the matter where we saw fit in Court without our knowledge as I opened my statement I said, "unbeknown to us this matter was settled when the matter was still current and in Court." The defence was still valid, it is a valid defence. I would still hold that 20 to date if you reopen the file the defence would still be a valid defence, it is a section 16 defence. We do not need facts to support that on the face of the record. If a claim is determined to be more than six years old then we run the defence whilst awaiting factual information to come in because we still have that opportunity under the rules to seek leave to amend the defence, to beef it up with any factual defence that we receive by way of instructions.

Q: Mr Bokomi, you said something about the file gone missing. When did it go missing, from your office or? 30

A: The file went missing.

Q: That is the physical file?

[3:25 pm] A: Yes, the physical file. The physical file went missing probably sometime before Mr Kumura alerted me to do the memo. Because I can recall when he advised me I was looking for the file all over the place within my office as well. I actually did a minute on 1 October 2004 to all the legal officers and support staff as to whether or not they have sighted the file held at the office in respect of the matter and that file was referenced SG698/03.

Q: Mr Bokomi, as a result of that where you ceased of that matter because of the file being going missing. Not ceased because of the missing file but from your knowledge is that why your involvement in this particular claim ---

A: (inaudible)?

10

Q: Yes.

A: Basically not necessarily. I think the matter was still marked out and recorded under my name even up to the time I left the office of the Solicitor General's in 2006. But in terms of practically having any further dealing with this matter or on this matter from the stand point of filing documents in court, when the matter was settled and even without the file you cannot do much. If the matter has been settled, it is settled. And all we knew was that certain substantial payments were paid.

20

THE CHAIRMAN: Alright, thank you, is there any things else further?

MR MIROU: Did you undertake any enquiries with the Court registry to obtain copies of the court files?

A: Yes, but when we went back and checked the Court file there was nothing really, there was the writ of summons and our notice of intention to defend and defence.

Q: That is all? 30

A: There were not any other affidavit materials so it is just surprising that this submission came about for out of court settlement for a particular sum and then they quickly proceeded to settle. And I do note, with due respect, there is a letter - this is the first time I am sighting it. It is a ---

Q: Is that the letter written by the Attorney General?

A: That is correct letter dated 3 July 2003. 40

Q: But Mr Bokomi, that is as far as you were concerned, when the file went missing your responsibility towards that particular file was ---

[3:30 pm] A: Yes, in terms of working effectively on the file, how can you work on the file when the file has gone missing, if I am answering the question correctly.

Q: Is there any other additional matters that you wish to highlight insofar as your actual

involvement with this particular file? 10

A: Yes, I think I need to I refer to the first page of the letter of 3 July 2003 by the then Attorney General, Francis Damem to Mr Thaddeus Kambanei then Secretary for Finance. The Attorney General in his letter expressly claims that, at paragraph 4 of his letter at page 1, line 3 of that paragraph he says, "the State failed to raise any other defence", apart from saying that he does not know, about the existence of the plaintiff's company and such, that this was however nullified. In the Mane limited submission where IPA documents were attached proved to the contrary. I also note that the State's defence may have been filed 20 out of time. Now this clearly is an erroneous advice.

THE CHAIRMAN: Yes you explained that it was within time defence was filed.

A: It was filed in within time and before the expiry of basically 90 days it was I think if we received we were served the document on 3 June then on 3 July, that is 30 days and on 7 July that is additional four days, we filed within 34 days. That is well and truly clearly within time.

30

Q: Yes, I understand what you have said. You have said that there was opportunity, you filed the defence on what you had which was the obvious time bar and that you still had the opportunity once the instructions came from the Defence Department to amend, if necessary amend the defence. Did you sight any documents coming back from the Defence Department?

A: No, I did not sight anything. Even up to the time I left.

THE CHAIRMAN: I see, alright. 40

A: The other striking thing about this claim is that there is this letter dated 8 July 2003 which response is from the principal of the plaintiff company, Mr Nelson Wahune, who basically accepts the offer made by Mr Damem. In his letter to Mr Kambanei dated 3 July which was copied to Mr Wahune, Wahune says towards the end of that letter dated 8th July he says, "the State can treat this letter as a deed of settlement". That is clearly wrong. From practice, at the office of the Solicitor General, where a claim is to be settled, it must be settled on the evidence that is presented by both parties and without prejudice, submissions are made and exchanged; offer and counter offer are made on a without prejudice basis. Once that is reduced down to an agreeable sum by both parties, then they settle on that sum by way of a deed of release if the matter had not gone to Court. If the matter had gone to Court, then in the event if we signed a deed of release, then that deed of release must be promulgated and converted into a consent order to be endorsed by the Court. That never happened in this instance.

Q: Alright, I appreciate your comments on that. Yes, those documents are being examined by the Commission and we will take those into account.

A: Thank you Chief Commissioner. I have no further---

THE CHAIRMAN: Thank you very much. You have been very informative and we thank you for your attendance today.

WITNESS WITHDEY

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MR MIROU: Yes, Chief Commissioner formally that concludes our proceedings today.

THE CHAIRMAN: Very well. Thanks very much, I will stand adjourned.

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AT 3:35 PM THE COMMISSION OF INQUIRY ADJOURNED TO WEDNESDAY 8 JULY 2009 AT 9:30 AM.

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COMMISSION OF INQUIRY
INTO
THE DEPARTMENT OF FINANCE
Mr Maurice Sheehan Chairman & Chief Commissioner
AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI,
WEDNESDAY 8 JULY 2009 AT 10:10 A.M
(Continued from Tuesday 7 July 2009)

[10:10 am] THE CHAIRMAN: Yes.

MR KASSMAN: Chief Commissioner, we have a total of five matters to deal with this morning
Firstly, we would like to call the matter No 14, Alex Maiwen and 59 Others -v- Civil Aviation and
The
State. In respect of that matter witnesses we have sent a summons to Mr Zacchary Gelu, we have

received a medical certificate a doctor's medical certificate saying that he is unwell and as such we will advise him of the rescheduling to give evidence not only in respect of this matter but other matters. We have Mr Davis Stevens here. He is appearing on a receipt of Summons 468 dated 32 June 2009. Mr Stevens is here, he has indicated his intention to request a day, at least a day to put together a written response. We have no issue with that but Mr Stevens could maybe state his position for the record

THE CHAIRMAN: Mr Stevens please.

MR STEVENS: Chairman, thank you, I confirm that I am in a position to tender all the relevant

documents that are required. The statement is necessary basically because in terms of chronology it places the involvement of my Firm in respect to the deed of settlement or the deed of release which I see is dated 9 December 2004. It is a brief statement that will say that obviously these proceedings currently continues in Court. Secondly, the parties have proceeded under the pretext that there was no settlement of paying of the subject of the proceedings. I will also put before this Commission material that confirms that the CAA Board of Directors have not in any way authorized any settlement. So I reiterate that the documents are available, there are many but the statement, just pertinent statement, and relevant documents I think will suffice so I crave the indulgence of the Commission just for another few hours, perhaps an extension to tomorrow would be sufficient for me.

THE CHAIRMAN: It sounds satisfactory then. Yes, please do. Yes that will be satisfactory Mr Stevens we will see you tomorrow then.

MR KASSMAN: 9.30.

THE CHAIRMAN: 9.30.

MR STEVENS: Thank you, Sir.

[10:15am] MR KASSMAN: The next matter Chief Commissioner we could deal with is Matter No 15, the matter of Sir Pato Kakaraya -v - The Police and the State. Mr Dan Kakaraya is at the Bar table and also Sir Pato is also present here. For the record Mr Tusais was handling the matter. The last occasion Mr Tusais was present at the time of the examination of Sir Pato. I understand the writ of summons, the only matter outstanding from the evidence of Sir Pato was production of the writ of summons WS 34 of 1993. Perhaps Mr Kakaraya could maybe advise formally the Court of the production of this writ.

MR KAKARAYA: Thank you Chairman. We have had great difficulty obtaining the file, the matter was a Mt Hagen matter, at the National Court, and it has taken a while and finally we have located the file and it has been archived and it has been transferred to the Port Moresby National Court Waigani and I have had the opportunity to collect the writ this morning and I have just handed a copy to the Commission. From the last hearing, the witness Sir Pato himself was examined in chief and we would like to re-examine him and make written submissions now that we have served the writ of summons to arrive at a justification on the basis of the settlement. So we seek an adjournment so that it gives us an opportunity to review the file and to make a written submission for the Commission.

THE CHAIRMAN: Yes, very well.

MR KASSMAN: I am just wondering may be with our limited time the appropriate course may be for Mr Kakaraya to have I guess a written statement or written submission in response, if there is the need for examination as such then we proceed to that otherwise at this stage---

THE CHAIRMAN: On the basis it is not necessarily, it is not a trial we are talking about Mr Kakaraya. If that would be satisfactory the Commission must be give the opportunity to be heard and to be heard in the way he wants to be heard on this matter. We are on a short time, if a written submission would be sufficient, that would be in other words setting out his position in regard to the matter. That would be sufficient for the Commission but if you wish to go to the actual hearing

yes, we will accommodate you on that as well.

MR KAKARAYA: Certainly. If that is the case your honour we would seek an adjournment and give a return date with which we can present and I can make the submissions. THE CHAIRMAN: Very well.

MR KAKARAYA: And if there is a need be I would also just to assist the Court to re-examine Sir Patoso that the facts – but it will be accommodated in the submission anyway.

THE CHAIRMAN: Alright, well as you are aware we are running short of time and we have to write reports.

MR KASSMAN: Could I suggest maybe a written submission by 1 o'clock tomorrow and we reserve time Friday at 1.30 if there is need for examination?

THE CHAIRMAN: Suitable?

MR KAKARAYA: Chairman 1 o'clock tomorrow would be an inadequate time due to the fact that I need to compute the claim and the figure and I need to seek expert advice on that. THE

CHAIRMAN: 9.30 on Thursday. Tomorrow is Thursday, Friday. We are running very short of time.

MR KAKARAYA: Friday would be – I can try and squeeze something in.

THE CHAIRMAN: Friday morning 9.30 or if possible we will reserve time in the afternoon although that may not happen.

MR KASSMAN: Friday 9.30 for the submission and 1.30 for examination if need be.

MR KAKARAYA: Yes.

MR KASSMAN: Thank you.

THE CHAIRMAN: Satisfactory?

MR KAKARAYA: Thank you.

THE CHAIRMAN: Thank you. MR KASSMAN: Chief Commissioner, we will call the Matter No 11, Kamali Brothers –v– The Police and the State. We have Mr Jack Nalawaku present here.

[10:20 am] MR KASSMAN: Chief Commissioner, we call the matter Number 11, Kamali Brothers and the Police and the State. We have Mr Jack Nalawaku

present here. THE CHAIRMAN: Swear him in please.

MR JACK NALAWAKU, Sworn: XN: MR KASSMAN Q: For the record, your full name is Jack Nalawaku?

A: Correct.

Q: That is good, and you are a lawyer?

A: Correct.

Q: Yes, what year were you admitted to practice?

A: In 1991.

Q: Mr Nalawaku, you are a lawyer currently with Paul Paraka lawyers?

A: No, currently I am not a lawyer with Paul Paraka lawyers, I do not have a practicing certificate currently.

Q: You are not a practising lawyer? A: No. Q: You are here as a witness to give evidence basically with respect to the handling of this matter in

your capacity as a lawyer at the relevant time in the Firm of Paul Paraka lawyers and at that time for the defence in the matter, that is the Police and the State. Is that correct?

A: That is correct.

Q: I understand you have some documents you wish to assist the Commission with. What documents are those?

A: Yes, correct. I do have the writ of summons and the court order relating to that proceedings, WS1754 of 2000.

Q: So, you have the writ?

A: Correct.

Q: And you---?

A: I also have the copy of the order in relation to that particular proceeding.

Q: That is a final order is it?

A: Yes.

Q: You have copies of those, we could have those tendered?

A: Yes.

THE CHAIRMAN: Nalawaku 1?

MR KASSMAN: Thank you. That will be in respect of the writ, Nalawaku 1 and the order Nalawaku

[EXHIBIT TENDERED - NALAWAKU 1 - WRIT OF SUMMONS RELATING TO WS1754 OF 2000]

[EXHIBIT TENDERED - NALAWAKU 2 - COURT ORDER RELATING TO WS1754 OF 2000]

MR KASSMAN: Mr Nalawaku, in the summons number 469 dated 30 June 2009, the Commission asked for your assistance obviously to produce to the Commission the brief that was issued by the Attorney General.

A: Sorry, what was the WS number again?

Q: In respect of the proceedings, yes, WS 1754 of 2000, the matter of Kamali Brothers Limited -v- The State.

A: I do not have the brief from the Attorney General with me in respect of attending to this matter. I was an employed lawyer at that time, file basically was allocated to me by my employer and I simply worked on that file.

Q: So just clarify once again, you are no longer with Paul Paraka lawyers?

A: No, I left. Initially the file was allocated to me beginning 2003. I worked on the file for ---

Q: That was when you were with Paul Paraka lawyers?

A: Correct.

Q: Yes.

A: I worked on the file for three months, about two to three months and then I left the Firm. So the full trial was conducted by another lawyer and the order was obtained when I was no longer with the Firm. So, any other things that transpired I have no idea.

Q: Sorry, we understand from the records that obviously you were involved as lawyer. What stage did you cease to act, what stage of the proceedings did you cease to act? Can you recall?

[10:25 am] A: Initially when the file was allocated to me, beginning 2003, I filed a notice of motion seeking two orders; one to dismiss the proceedings for want of prosecution, and secondly and alternatively, in the event the first order is not corrected, then the matter be set down for hearing without the defendants present concerning to the matter being set down for trial and I did not run that motion, by then I left the Firm so the file was allocated to a different lawyer.

Q: From your recollection, the brief to Paul Paraka Lawyers, was that by way of a specific instruction from the Attorney General?

A: I did not see the copy of the instruction on the file so I cannot tell you whether it was in a form of a letter or any other document. Q: At the time of receipt of instructions, are you aware of the lawyer with the office of the Solicitor General or the Attorney General that had I guess carriage of the matter as far as those respective officers are concerned?

A: No I have no idea. Q: So did you communicate with any lawyer at the Solicitor General's or the Attorney General's office? A: The communication with the Solicitor General, at that time I am aware the State had their own

lawyer, we were acting for the Police Department. Q: And who was appearing for the State? A: From the records that I was perusing through I noted Jimmy Bokomi's name on the documents or submissions filed on behalf of the State. Q: He was with the Solicitor General's office? A: Correct. Q: So Paraka Lawyers were acting for the Police? A: Yes. Q: Was this for the policemen or for the Police Commissioner or who? A: Well obviously it should have been the first defendant, who is Joseph Kupo, Deputy Commissioner

of Police and John Wakon, Police Commissioner, second defendant. [10:30 am] Q: Where did those instructions come from, did they come from the Police Force itself to act? A: Sir in relation to issue of instructions as I have said, I was an employed lawyer, so files

allocated to

me, I worked on the file based on my principal's instruction to attend to the matters. Q: So you have no idea? A: If you were to ask me for instruction then definitely I would not have, I will not answer you. Q: So what was provided to you, just the writ? A: Writ of summons plus the other court documents, yes. Q: Did they come with a covering letter from someone or how did they end up in the office of Paul

Paraka Lawyers? A: Proceedings was filed in 2000, file given to me in 2003, so you would know that along the waysome other lawyers may have dealt with the matter which I have no idea but as the file came to mytable I did what I was required to do after going through the documents, that is see what actions have taken place in the file, what was required to be done and as I have stated once the plaintiffs filed the proceedings, they did not take any step prosecute the matter expeditiously, therefore I filed a motion seeking to dismiss for want of prosecution, failing which the matter be set down

for trial and the matter can proceed to trial. THE CHAIRMAN: You had already filed a defence? A: I cannot recall whether there was a defence on the file, it was in 2003 and this is 2009 so I do not actually – sure whether there was a defence on the file or not.

MR KASSMAN: You have provided copies of court documents, did you obtain that from the courthouse? A: Yes, I obtained that from Paul Paraka Lawyers yesterday. The summons were also left with Paul

Paraka Lawyers and somehow I managed to get hold of the summons otherwise I would not have been before the Commission today. Q: So you are unable to assist the Commission with information as to who issued instructions to Paul Paraka Lawyers to act for the first defendant, Joseph Kupo Deputy Commission and second defendant, the Police Department, the Commissioner Police Department I should say?

A: No. Q: You have no idea? A: No. Q: At the time when you had to file, you are saying there was no correspondence from anyone to indicate who was giving instructions to Paul Paraka Lawyers?

A: No. As I have said the issue of instructions I would not have any idea, that is something that the principal of such can; that is something that the principal of the Firm can clarify. Q: Sure. A: Because the files go to the principal, allocate to lawyers in the Firm to work on the file. Q: Did you, in your attendances to this matter on behalf of the first and second defendants, did you issue reports to your client? A: As I have said I handled the file briefly for about two, three months and then I left the Firm. Q: In that time did you issue a report to your client? A: I am not aware of having issued a brief to the client for that short period of time that I was having carriage of the matter. Q: Did you issue a fee note for the work that you did while you were at Paul Paraka Lawyers? [10:35 am] A: No, I did not issue a fee note. If there was any fee issued – what happens is lawyers basically fill out the time sheets and then it is given into the accounts. We have a computerised billing system so everyday the lawyers do the work on their individual sheet, billing sheet and in the afternoon we give the file to the accounts who then enter it into the computer system so whatever bill printed out and issued, I will not have any idea.

Q: Was there any bills on file? A: At that time I got the file? Q: Any memorandum of fees or whatever it might be called? A: At that time I worked on the file, there was none. Q: Is it normal for a copy of the memorandum of fees to be put on the file that you had in your possession? A: Sir, if you are asking me to express my own opinion then---? Q: No, I am just asking you to assist the Commission with evidence from your recollection of events that occurred at the time when you were lawyer responsible for this file in the firm of Paul Paraka Lawyers?

A: At that point in time I was dealing with this particular file, there was no bill in the file. Q: The question I asked is, is that normal that there is no – I suppose if there was to be a fee note issued in respect of that file to the client, is it normal for that fee note to be placed on the file for that particular matter?

A: I would not know.

Q: So what is the practice then?

A: The practice in the Firm at that time is as I have said, when lawyers are allocated a file, they enter the time that they attend to that file into the timesheet, the timesheet is then given to the accounts for billing purposes, then it goes into the computerised system of billing. So that is how it happens.

Any issues relating to billing, I have no idea.

THE CHAIRMAN: The file never records that you even filled out timesheets, is that what you are saying? Is that right? A: The files that I was working on, the bills were not printed out after the days work and then placed on the file.

Q: The file itself, does not record that you had filled out a timesheet for it?

A: Sorry?

Q: This file has got the documents regarding to the matter, does that include copies of the timesheets that are applied to it? A: Obviously normal cases timesheets should be placed on the file including the bills. Q: The record of instructions would they be normally put on the file? A: Not in this particular one that I--- Q: No, I am not - normally I would have expect that a file relating to a particular matter would have

all the relevant documents on that file, starting off with instructions. In the ordinary course, is that the way the system worked or is there some other system of recording instructions which did not get put on the file, some other course which did not record the fees charged, so that anybody looking at the file would have to go off and look at other documents or other files?

A: In this particular case as I have said, there were no bills in it and there was no letter of instruction on that file.

MR KASSMAN: Mr Nalawaku, is it correct that you also were a senior associate in the Firm? A: Not at that time. Q: So when were you? A: It is 2005.

[10:40 am] Q: I thought you said you served three months and then left?

A: I rejoined the Firm in May 2005.

Q: You rejoined in May 2005?

A: Sorry, 2004.

Q: 2004. You say you are no longer with Paul Paraka lawyers?

A: No, I left in February last year 2008.

Q: You left February 2008, so you are no long with Paul Paraka lawyers?

A: No, I am no longer with the Firm, I left in February 2004.

Q: Sure, you were Senior Associate?

A: Yes.

Q: When were you made Senior Associate?

A: When I joined the Firm.

Q: In May 2004?

A: Yes.

Q: As a general ---

A: Sorry, I cannot recall either it is 2004 or 2005, yes, one of those.

Q: Yes, so you would have served for at least four years as Senior Associate?

A: Yes.

Q: Yes. So you have no idea as to how - you say all you know is you lawyers fill out time sheets and then submit them in and fee notes are issued. To whom they are issued?

A: I have no idea.

Q: You as a lawyer you have no idea? A: I have no idea. Q: And what amount on each particular matter the lawyers have no idea?

A: No.

Q: The lawyers having carriage of the file obviously have no input into the formulation of the

feenote that is issued to the client?

A: Obviously, if I see that none of those come into the file then the lawyer would not know what fees have been charged on that particular file.

Q: Is it the practice that all the lawyers does is, does the letters, drafts some correspondence, drafts court documents, has them filed, maybe appears in court, talks to the client, takes instructions etcetera but with regard to reporting to a client and issuing of a fee note to the client, the lawyers have no input whatsoever?

A: Reporting to clients, we do. Correspondent clients in relation to the status of how the matter is progressing, whether it has come to a conclusion or at what stage the proceedings is on.

Q: You just prepare the draft of the report but the final report is sent out by the principal?

A: No, the final report in relation to that particular matter is sent out by the lawyer himself who taking carriage of the matter.

Q: So did you say you had carriage of the matter and you never issued one report to your client?

A: At that time about two or three months that I was in charge of that file I cannot recall actually giving out a brief to the client of the status of the matter.

Q: So you had carriage of this file as a lawyer for a period of three months, took it to an application to dismiss for want of prosecution or to set down for hearing and throughout this time you did not know who your client was?

A: I knew that the matter was a police matter in relation to a contract that was given to the plaintiffs and the clients terminated the contract, therefore the plaintiffs being aggrieved by the actions of the---

Q: And who is your client? A: The Police. Q: The Police? A: Yes. Q: Was that by way of a brief issued from the Attorney General? A: That is what I understood from reading the file and the documents in the file because when the plaintiffs filed the proceedings they also included a copy of a contract in relation to the claim that was arising from. Q: There was nothing on file to confirm that Paul Paraka lawyers was

instructed by the Attorney General? A: In respect of the instructions as I have maintained earlier on, I would have no idea on that. Q: I have no further questions. THE CHAIRMAN: Mr Nalawaku, when was this settlement made? The deed of settlement, the payment out?

[10:45 am] MR KASSMAN: The deed of release on 10 February 2003 for the sum of K6.6 million.

THE CHAIRMAN: When was it, in February you left in 2000? A: 2003. Q: When was that did you leave the Firm? A: Sir, with respect to any deed of release I definitely have no idea. Q: I appreciate that, when did you say you left the Firm? A: About, not February but March, April or sometime there I left the Firm. Q: Where you aware that the matter had been settled? A: I have no idea definitely. I am not aware of any deed of release having been signed, all I did at that time, file allocated to me, I had a look at the file, I noted that the matter has been filed in 2000, no progress has been made, any negotiation outside of that for deed of settlement, I had no idea. Some immediate action was basically to file a motion seeking to dismiss the proceedings for want of prosecution, failing which I sought alternative orders for the matter to go for full trial. After I left the matter went full trial and the proceedings went to trial.

Q: The matter went to full trial?

A: It went to trial and I have a court order here that I submitted which says that the plaintiffs claim was dismissed. Q: What date is that? A: Plaintiffs claim was dismissed on 30 October 2003, further order from the court was that plaintiffs

repay the defendants K20,000 paid as down payment. So that is the order which I was not with the Firm but another lawyer who took carriage of the matter took the matter to trial and that was the order made by the court. So anything to do with deed of release I will definitely have no idea. Q: Do I take it then that by the time that you had it you set out to have the matter dismissed, filed the proceedings and notwithstanding that without your knowledge the deed of release was signed by the parties and you were not advised of it?

A: That apparently appears to have been the case but I am not aware of the deed of release. That is something I just heard today.

Q: I see.

MR KASSMAN: Chief Commissioner, we certainly were not aware that the proceedings were dismissed so Mr Nalawaku production of this document definitely sets a different I guess train of inquiry for us on this. We obviously are not prepared for this. It might be appropriate that we would be given the opportunity to peruse the court file.

THE CHAIRMAN: Very well.

MR KASSMAN: Also Mr Philip Ame, who we understand is now on record as acting for the plaintiff, Kamali Brothers. He did attend this morning. He is in court, he has asked to return at 1:30 pm so we might---

THE CHAIRMAN: So we will resume the matter at 1:30 pm then.

MR KASSMAN: Yes, but with respect to Mr Nalawaku I guess we could maybe ask if he would be available tomorrow afternoon.

THE CHAIRMAN: Very well.

A: Fine.

MR KASSMAN: Thank you.

THE CHAIRMAN: Very well, tomorrow afternoon 1:30. Thank you Mr Nalawaku.

MR KASSMAN: Thank you Mr Nalawaku.

WITNESS WITHDREW

MR KASSMAN: We might now Chief Commissioner deal with the matter No 12. In relation to matter No 11, Chief Commissioner, we have no other persons here other than Mr Philip Ame at 1:30.

[10:50 am] Matter No 12, Mr James Loko -v- Department of Personnel Management and IRC and the State, Mr Loko is present here. Chief Commissioner, Mr Loko appears on Summons 445 dated 12 June 2009. The summons in the schedule we advised Mr Loko the examination of this matter in essence it would be a claim for loss of income, essentially, a claim in respect of damages for the cessation of his contract of employment. We, from our enquiries a claim for K134,000 was made. From the records obtained a deed of release was signed between Mr Loko and the then Solicitor General Mr Zacchary Gelu for a payout sum of K700,000. The Commission has asked Mr Loko to attend to produce documents and to give evidence where necessary in relation to documents and we have asked Mr Loko for production of the actual deed of release, copies of details of any payout received from the Department of Personnel Management and a copy his contract that he has in his possession and I understand he may be able to assist the Commission with these documents. If we could have Mr Loko firstly sworn in?

MR JAMES SMITH LOKO, Sworn:

XN: MR KASSMAN Q: Your full name for the record is James Smith Loko? A: That is correct. Q: Mr Loko, I make reference to the summons and the request for documentation, do you have the documentation available for production? A: Mr Chairman, I have here with me some documents.

There are some that are duplication of these documents here but I will read them out anyway. I have - not in any particular order, but I have a

writ of summons, WS 1726 of 2001. Q: Sorry, 1726? A: 1726 of 2001 dated 28 day of November

2001. Q: 20, is it? A: 28, 2-8. Q: 28 November. 2000 and?

[10:55 am] A: 2001. Then I have an affidavit which names me as the deponent and it is

also WS 1726. Then I have an order--- Q: When was that affidavit filed? A: 28 November again.

Q: 28 November 2001? A: Yes. Then I have an order, the order converts an originating summons into a writ of summons which is the writ of summons WS 1726. Then I have a notice of motion---

Q: Sorry, the date of the order?

A: Date of the order is 22 November 2001. Then I have a notice of motion dated 26 October

2007 which is OS 654 of 2001. Q: Hang on, you have a notice of motion 26 October 2001 or 2007?

A: Then I have a notice of intention to defend from the State. Q: Mr Loko, just moving back to the

notice of motion, is that dated 26 October? A: 26 October 2001.

Q: 2001.

A: As I said the documents are in no particular order so I am trying to go through them as I see it because I am not familiar with the documents themselves. Then there is a notice of intention to defend WS1726 by the State and that is dated 13 December 2001.

Q: Who was that filed by? Was that filed by the Solicitor General, the notice of intention to defend?

A: It was filed by the Solicitor General, John S Kawi. Then I have an order OS654, an order to convert the originating summons into a writ of summons.

Q: That is fine. You say it is OS 654 of?

A: 654 of 2001.

Q: Sorry the order is dated?

[11:00 am] A: 26 October 2001. Then I have another OS 654, a statement supporting an application for judicial review pursuant to order 16 Rule dated 26 October 2001. On that same date, 654, there is a notice of an application for review to the Secretary and Attorney General. This other document is a copy of that notice of an application. Then OS 654 of 2001, a notice of discontinuance of proceedings.

Q: That is dated?

A: That is dated - well filed on 28 day of November 2001. There is another notice of intention to defend by the State. Then I have an OS 654, this is a statement of claim dated 27 November 2001. This other document is a copy of that document I mentioned. Then there are some documents here that had some notations on it so I am assuming that there were changes being made to those documents. These are documents that were provided to me by the Counsel. Unfortunately, Counsel could not be here to attend this session because he is currently in session in court. I am hoping that he will be here shortly. I have another document here WS 1726 of 2001, notice of motion. This is a notice of motion asking for the court to compel the acting Attorney General to perform the necessary administrative requirements and should I read all the other contents?

Q: No.

A: It is just to explain.

Q: What date was that filed?

A: 13 September 2006.

Q: 2006.

A: An affidavit supporting notice of motion WS1726, dated 13 September 2006. There is another document, that is a copy of an order converting the OS into WS. There is another copy of the notice of discontinuation proceedings in respect to OS654. Another copy of a notice of intention to defend by the Solicitor General, John S Kawi. Another copy of the notice of an application for review to the Secretary and Attorney General which is the OS 654, again OS 654 statement supporting an application for judicial review, pursuant to Court 16 Rule. OS 654 originating summons dated 23 October 2001, then there is another notice of motion again, affidavit supporting notice of motion, this is WS 1726 of 2001 dated 13 September 2006. Then more changes to another document, notations to make corrections to the document. Then under OS 654 statement of claim dated 27 November 2001, then there are some other documents here in respect to a letter that was sent to Sir Michael Somare regarding the case that was unresolved and that was dated Thursday 4 August 2005.

[11:05 am] A year before then, 8 June 2004, a letter was also sent to the Prime Minister regarding the case at hand. Then there is also the document in respect to the deed of release dated 4 February 2003. Then there was a letter that I sent to Honourable Mark Maipakai who was the Minister for Justice and Attorney General at that time explaining the circumstances of the case, providing a brief to the Minister. Then there is another letter that was sent by my Counsel to Mr Robert Igara as Chief Secretary on 29 October 2001. Then there are three letters from the Department of Justice and Attorney General; one submitting the State's notice of intention to defend, one in relation to John S Kawi as the Solicitor General advising that he was prepared to

settle the claim, that it is dated 17 September 2001, and one to my Counsel, Bill Nouairi in respect to his attendance in court on 20 September 2006, and a letter from the Internal Revenue Commission, Human Resource Branch seeking advice from the State Solicitor's Office on the determination of the legal reassigns for the revocation of my appointment. These are the documents that I can tender. I know that my Counsel also had some documents that should have been tendered but those are still in his possession which relates to the break up of the payments. Also the contract that I was on, which is not the contract that is being objected to now because when the termination was undertaken and the revocation was made by Cabinet, I had not signed the actual contract although the appointments were made five months prior to my termination.

Q: Sorry, Mr Loko I may have lost track. Your contract of employment, is that among the documents that you are tendering now or?

A: No, it is not. I was hoping that the Counsel would be here to provide that document. I did see it yesterday when I went to see my Counsel.

Q: But just for the record, your contract of employment is dated, do you recall the date?

A: I cannot---

Q: Not immediately, alright.

A: That contract was in relation to the period from 1995 up to 1998. The termination is only in relation to that period from 1998 when I expressed an interest to the State that I wanted to renew my appointment.

Q: I guess, Chief Commissioner, we obviously have not had an opportunity to peruse that material. I must say that our attempts to obtain these documents from the court house has been unsuccessful so we are certainly grateful for Mr Loko in producing these documents and we will obviously need time to peruse that material. I guess essentially Mr Loko, this is the major aspect of our or one crucial aspect of our investigation into this matter stems from the fact that from the records we have obtained, it appears you accepted a termination benefit amounting to some K134,000 in September 1999. Has that as an issue being addressed in Court or is that a matter that is still---

[11:10 am] A: No, it has not. When Cabinet made this decision there were a number of decisions that it made, amongst which one was that I would be redeployed to another part of the public service to continue on with the term of the contract until it terminated and I do not know what would have happened after that. But at the same time it also instructed that I could also continue on with the IRC in an executive role but not as the head of the organization. It also instructed DPM ---

Q: This is NEC?

A: This is an NEC decision. It instructed DPM to also look at the manner in which I was appointed in the first place and to look at some fair arrangement that would be suitable for either myself or the State. When the instructions came through and I got the copy of the NEC decision I approached DPM who did not make any response to my request to consider whether I should be paid out the balance of my contract. What they did was what they normally do when they terminate the person they pay him out four months notice and those amounts that amounted to a K134,700 were in respect to the four month's notice, in respect to money in lieu of leave, money in lieu of furlough and those amounts which are just normal sort of termination that---

Q: That is set out in some letter or some ---?

A: Yes, it is.

THE CHAIRMAN: That is the standard terms of contract?

A: Yes.

Q: Standard terms of contract for public servants?

A: Yes. But the standard terms of contracts were supposed to - some of the terms of employment for instance where that the Head of State would by notice in writing advise me that my contract will be terminated - and you will see that in the terms and conditions of my contract - but that did not eventuate. Cabinet went ahead and made a decision but before it made its decision, the

Minister for Finance and Internal Revenue matters decided to issue me a letter saying that my appointment was revoked and then followed that up a few days with a NEC decision that confirmed that termination and that is the reason why I am disputing the legality of the revocation of my appointment. The payment that you mentioned in the summons K134,000 only related to the four month's notice in question and not---

Q: So that was the payment that was made. Was that made under cover of some letter or?

A: There was no letter, I just received a cheque.

Q: That was received from IRC or Department of Finance or?

A: From the IRC.

Q: From the IRC?

A: Yes, from the IRC.

Q: So that was, you are saying that from your understanding, that was a payment for four months in lieu of notice?

A: Yes. Q: And other entitlements? A: Other entitlements.

[11:15 am] Q: As per your contract? A: As per my contract. Q: That not the balance of your ---? A:

That was not the balance of my contract and that is the reason why I --- THE CHAIRMAN: But is it not the standard terms of contracts and the payment out of the entitlements, that is the provisions under the Public Service Management Act, the standard terms of conditions of contracts of all public servants on contract, that is the manner of settlement - agreed settlement upon a termination?

A: Yes, upon a termination. THE CHAIRMAN: That is right. A: But in my case it is my appointment that was revoked and that for the balance of the tenure of my next contract would be served in another part of the public service or in an executive role in the IRC and because the Cabinet is the employer so to speak, I assumed that the employer had therefore instructed DPM to either redeploy me to another part of the public service or say that I should continue on an executive role in the IRC or as is normal practice with most NEC decisions, if they did not agree with it, they should have gone back to the NEC and say, we do not agree with the decision, you should change the decision.

THE CHAIRMAN: I see. MR KASSMAN: For the record and so the K134,000 was issued by way of a cheque to you and that

has not been returned or disputed or anything? A: It has not been returned or disputed but --- Q: You accepted that payment? A: I accepted the payment. I am not disputing that payment. What I am disputing is the balance of

my contract as well as the wrongful dismissal; the claims for wrongful dismissal. Q: Was the State's view of the defence of your claim was that you had accepted the termination payments under the terms of the contract of employment that is for all public service. In other words the K137,000 was all the entitlements payments paid out in lieu of notice which terminated the contract. Is that not the case? You accepted the fact that of ---- A: I accepted the fact that I received --- Q: That you were terminated? A: No, because Cabinet did not terminate me. They said you will continue on to serve out the term of your contract.

Q: I see, alright. A: But DPM in its wisdom decided that that should be a termination in itself because they did not go back to Cabinet to change Cabinet's decision. Q: I see. So your view of it is that you were terminated, you accepted the normal payments for termination but because of the NEC rule is for you to be redeployed or in other matters or

alternatives, that did not happen so you proceeded to --- A: Well Mr Commissioner I was also trying to question the manner in which I was removed. Q: I see, yes, alright. MR KASSMAN: Mr Loko, the deed of release, you are aware of that document, it is a deed of release dated 4 February 2003 between yourself James Smith Loko -v- The State. It appears to have been signed by yourself and for the State by Mr Gelu, Solicitor General. This being on 4 February 2003. You have that document with you? We have a copy with us.

A: Yes, in this pile of documents here. Q: That was a settlement for a sum of K700,000. It certainly refers to your revocation of your engagement with the IRC on 19 April 1999? A: Yes. Q: Firstly, this is a document you signed with Mr Gelu? A: That is correct. Q: This is in respect of your employment I guess with the IRC, your revocation of your employment as Commissioner with IRC?

[11.20 am] A: The amount that I negotiated with the State Solicitor was in respect to --- Q: Solicitor General? A: Solicitor General, sorry, was in respect to the balance of my contract as well as claims for

damages. Q: And you say those--- A: The balance of my contract I used that as the benchmark which I calculated to be about K300,000. Q: Your claim for damages et cetera was articulated in the proceedings WS 1726 of 2001. Is that the

one and same claim you are talking about? A: Yes. Q: So this deed is to settle that proceeding? A: No, there were some, because I have to provide a quantum of claims which included damages whether they were general damages or exemplary damages.

Q: Basically the writ was an action that you commenced for you say as being the balance of your contract that was actually revoked by the NEC? A: Yes. MR NOUARI: Mr Chairman, at this juncture may I seek intervention leave from the Commission to

make my appearance known. I am the legal counsel for Mr Loko. THE CHAIRMAN: Mr? MR NOUARI: Name is Nouairi, Bill Nouari from Nouari Lawyers. THE CHAIRMAN: I see. MR NOUARI: Mr Loko is my client. I have been asked to attend this proceedings. THE CHAIRMAN: Yes, you are welcome.

Thank you. MR KASSMAN: Thank you. Mr Loko, just the deed. We have not obviously had an opportunity to

peruse the writ and just your giving evidence - what is claimed in your writ is the damages for you say as being the balance of your contract entitlements and that is the actual contract that was revoked by the NEC which you referred to earlier on?

A: Yes, the balance of my contract plus damages.

Q: Plus damages, alright. The amount agreed was K700,000. Have there been any payments made in respect of this deed? A: No. Q: No payments made. That appears to be consistent with our records that we have obtained. Our

records indicate, for Mr Loko's benefit, the paperwork was prepared, forms were prepared for, I guess, by the Department of Finance for payment but that was not put on hold obviously on instructions or intervention by the Department of Personnel Management. Chief Commissioner, without having perused this material we are really not in a position to proceed any further but in essence really our enquiries in my view have been addressed to a large extent by the answers provided by Mr Loko. The only outstanding thing would be a copy of his contract which he mentioned earlier and maybe with his lawyer---?

THE CHAIRMAN: Mr Nouairi, Mr Loko has already told us that you are holding copies of his contract and details of any payments? MR NOUARI: Yes, Mr Chairman I do have a copy of that but I was not informed that that will be required this morning but I do give an undertaking that a copy of that should be disclosed to the Counsel.

THE CHAIRMAN: Very well. We will adjourn this matter over to tomorrow morning or something? MR KASSMAN: If we could, yes.

THE CHAIRMAN: Yes, Mr Loko, we will alright adjourn this matter to tomorrow morning at 9.30 just to have the opportunity to go through documents ourselves, Mr Nouairi perhaps to produce the documents that he has and we can see how we go forward from that point. Thank you very much for your attendance.

MR KASSMAN: Chief Commissioner, if we could have the bundle of documents marked as Loko 1?

[11:25 am] THE CHAIRMAN: Yes.

[EXHIBIT TENDERED - LOKO 1 - BUNDLE OF DOCUMENTS_

THE CHAIRMAN: Very well, thank you.

MR KASSMAN: Thank you.

THE CHAIRMAN: If you produce those documents that will be fine. You will be assisting us by producing documents which we have been unable to locate at court

MR KASSMAN: I guess we should also note that we have an representative from the Department of Personnel Management here

THE CHAIRMAN: I see.

MR KURINGI: Chairman, it is Mr Kuringi from Department of Personnel Management.

THE CHAIRMAN: Thank you Mr Kuringi, do you have a---

MR KURINGI: I am standing in for the person who has been summoned, Mr John Kali, the acting

Secretary for DPM, who is currently overseas in Brisbane for an interview of an applicant for our PSWDR program.

THE CHAIRMAN: Is there anything that you can add to us at this stage? MR KURINGI: In relation to the present summons person, Mr Loko, I have a contract document that was entered between the State for the period 1995 to 1998 which is the only available document I have in possession for the time being which we would like to provide to the Commission. In terms of the other documents which Counsel was referring to, I would not have a copy of that so I am only here to produce what I have available here and provided to me to present to the ---

THE CHAIRMAN: I suggest that you both confer on this beforehand. Mr Nouairi you are going to be producing documents tomorrow morning by 9:30, perhaps you can confer with Mr Kuringi and see whether they are duplication of anything, and produce such documents that are relevant to this matter tomorrow morning

MR KURINGI: Yes Mr Chairman. THE CHAIRMAN: Suitable? MR NOUAIRI: Yes. THE CHAIRMAN: Thank you very much. MR KASSMAN: Thank you. In respect of this matter --- THE CHAIRMAN: Thank you Mr Loko and thank you for coming forward with all that documentation. A: I seek to be excused.

THE CHAIRMAN: Yes certainly, thank you. MR KASSMAN: Thank you.

WITNESS WITHDREW MR KASSMAN: The final matter Chief Commission is the matter No 13, the matter of Soiat Williams -

v- Department of Personnel Management and the State. I understand Mr Williams is present here too. MR WILLIAMS: I am also here to give documents that are available in our possession to the Chairman. THE CHAIRMAN: Thank you. You have got a lot of extra files with you. Thank you.

[11:30 am] THE CHAIRMAN: Thank you, very well. MR KASSMAN: Chief Commissioner, Mr Williams is appearing on summons No 487 dated 6 July 2009 essentially to produce documentation and assist the Commission with evidence generally. If we could may be have Mr Williams sworn in?

MR SOIAT WILLIAMS, Sworn: XN: MR KASSMAN Q: For the record your full name is Soiat Williams? A: Yes. Q: That is Soiat spelt S-O-I-A-T? A: That is correct. Q: Thank you. Mr Williams, do you hold a current occupation? A: Basically I am self employed so I do not have any position within the Government. Q: Mr Williams, just very briefly the matter I guess of enquiry for this Commission concerns matters

that arose from your serving as Secretary of the Department of Personnel Management which we understand - from which position you were suspended, we also understand and I say understand because as we put out in our summons we have been unable to access the court files on these proceedings. We understand a court proceeding OS 689 of 2000 was filed by you in the National Court with respect to a claim for wrongful dismissal from your position as Secretary of the Department of Personnel Management. The records also indicate, the limited records we have indicate that while the court proceedings were pending, a deed of release was signed in your favour. A deed of release as you say was signed by yourself and Mr Zacchery Gelu as Solicitor General, out of which a settlement in your favour of a sum of K500,000 was effected. The summons was issued requesting your assistance to produce documents to the Commission in particular your

contract of employment, firstly your employment as Secretary of the Department of Personnel Management, then secondly any correspondence exchanged between yourself, the Department of Personnel and the Department of Finance, particularly with regard to your claim. Do you have any records to assist the Commission?

A: Basically, I do consent that we have actually entered into a deed of settlement in an attempt to resolve the termination of my employment as Secretary of the Department and based on that deed of release we settled for K500,000. However,---

Q: That is just for the record, that is a deed of release dated 19 February 2003?

A: No, I am making reference to that deed of release, yes with Zacchery Gelu.

Q: That is right, 19 February 2003.

A: Yes. Unfortunately because of the situation within the Department where there was questions interms of the authority of whether Mr Gelu could enter into such agreement and it was basically between his superior the Attorney General and – so basically based on instruction from the Attorney General that deed of release was not implemented by the Department of Finance. So that is a payment that I have not received out of that deed of release.

Q: Mr Gelu signed the deed in his capacity as Solicitor General and who was the Attorney General at that time?

A: Francis Damem.

Q: And Mr Damem objected to---

[11:35 am] A: I think basically I think they have – there was that issue of I think it was by public notice that a deed of release that was entered by Zacchary Gelu was subject to validation or by the Attorney General so that was the issue in contention so basically there was instruction from his office to the Department of Finance not to honour any deed of release.

Q: So and as such the deed has not been cleared by the Attorney General for payment by the Department of Finance?

A: That is the situation.

Q: Sure. You have not received no payment?

A: I have not received any payment out of the deed of release.

Q: We understand you have some documents that you may be able to assist the Commission?

A: Yes, basically in light of that situation where there was no settlement coming out from the State and basically I was contesting the legality of the termination of my contract of employment but more so also the period, remaining period of my contract of employment, that was an issue of contention that I wanted to seek redress so I decided to engage my lawyers to file an application through the Courts and I have got Court decisions in respect to my case including the Supreme Court ruling.

Q: Just quickly. Sorry, the contention you raise as being as to the legality of the revocation of your appointment?

A: My appointment.

Q: Yes, revocation. And secondly, obviously recovery of the balance of the term of your contract?

A: Yes.

Q: And you say you have some documents?

A: Yes, I will tender to this proceedings the National Court ruling and also the Supreme Court ruling on my case.

Q: You have extra copies or just one set? Chief Commissioner, just for the record there are three documents Mr Soiat Williams is producing to the Commission. First document is a contract of employment for the Secretary, Department of Personnel Management, Mr Soiat Williams and that date is unclear. It appears to be 28 July 2000, yes, it is dated I should say it is dated 28 July 2000. That is the first document. If we could have that as marked as Soiat Williams 1?

THE CHAIRMAN: Yes.

[EXHIBIT TENDERED – SOIAT WILLIAMS 1 – CONTRACT OF EMPLOYMENT FOR THE SECRETARY, DPM, MR SOAIT WILLIAMS DATED 28 JULY 2000]

MR KASSMAN: The second document is an order of the National Court Waigani in respect of proceedings OS 235 of 2003. Just quickly for the record, the orders are that, "default judgment is entered against the defendants for failing to file a defence and damages to be assessed".
Second order, costs and ---

THE CHAIRMAN: That was a writ, was it?

[11:40 am] MR KASSMAN: It is an OS. It is an originating summons or I should say it is headed, "OS 235 of 2003." It is made as being ordered on 8 October 2003 and entered on 9 October 2003. The lawyer on the records for Mr Williams, Kemaken Lawyers. That could be marked Soiat Williams 2.

[EXHIBIT TENDERED - SOIAT WILLIAMS 2 - NATIONAL COURT ORDER RE OS 235 OF 2003]

MR KASSMAN: The third document is a Court order issued out of the Supreme Court, Waigani, SCA125 of 2003. In that proceedings Mr Soiat Williams is the respondent. The Court Orders are that, "the appeal is dismissed and the appellants pay the respondents costs of the appeal". The order is made as being dated 7 December 2005 and the lawyer on record is Mr Norbert Kubak & Co. We understand he is the lawyer for Mr Williams. That could be marked Soiat Williams 3.

[EXHIBIT TENDERED - SOIAT WILLIAMS 3 - SUPREME COURT ORDER SCA125 OF 2003]

MR KASSMAN: Chief Commissioner, we will obviously need to access these records once again, the Court records I should say because the production of these documents now sets a particular chain of

inquiry for us. But I guess just for the record, Mr Williams, the Commission has some record that indicate that there was a payout on your Contract. Can you assist the Commission with some--

A: Clause 10 of the Contract of Employment makes provisions for termination in the interest of the State might also allow that in the event that the contract is terminated ---

Q: You are saying Clause 10 of the Contract of Employment?

A: That is right.

Q: That is the standard ---

A: That is the standard conditions that is applicable to all the departmental heads that in the event that a contract is terminated, they would be entitled for 18 months as notice plus associated with the Contract.

THE CHAIRMAN: Eighteen months serving in lieu of notice?

A: That is correct. That payment in fact was made to me for covering that period. I think if you look at my contract in fact I was only six months into a four-year contract as Secretary for Personnel Management. My calculations shows that - you probably talk about another 11 months outstanding of my contract which was the remaining portion that I am contesting and that was the issue also as

part of the Court proceedings.

Q: I see. So you received the 18 months salary in lieu of notice of termination, is that right?

A: Yes.

Q: And how much - is that amount to ---

A: That amounts to K407,000 but if you look at that figure I worked it out that K153,000 out of that amount was like money in lieu of furlough which is standard entitlements for all public servants so in real net terms, in real net terms for the period of 18 months you should be talking about the figure of K254,000. But the other amount of K153,000 was to cover the money in lieu of leave, money in lieu of furlough, those are just straight forward entitlements of which I was entitled if I was going to leave the public service anyway they were to pay me and it amounted to about approximately 153,000 or so.

MR KASSMAN: Mr Williams, just perusing the documents, is this the record effecting the receipt of the sum of 403,000?

A: Yes, that is correct.

Q: In full and final settlement of your entitlements?

A: Yes, that is correct.

Q: That is correct.

A: That is correct.

Q: Chief, if that be marked Soiat Williams 4. [EXHIBIT TENDERED – SOIAT WILLIAMS 4 – COPY OF FULL AND FINAL PAYMENT OF ENTITLEMENTS] Mr Williams, obviously we need some time to peruse the material that has come forward. I am interested to note your reference of Clause 10 which talks of termination in the interest of the State. You served as the Secretary, Department of Personnel Management. What do you understand as being the circumstances by which the interests of the State are served by termination under Clause 10?

A: I mean, it is in fact a difficult proposition that you are putting to me in terms of what is the interest of the State. I think that needs to be qualified.

Q: Sure.

A: Yes. So---

Q: Just from your if your experience ---

[11.45 am] A: My experience would indicate that if things are not being done in the sake of public interest, you know in the interest of the State where meaning that safeguarding, you know, public interest, I think that may be a kind of perception that you make and if so - and even in fact in using the term, "interest of the State", that is a prerogative of Cabinet.

THE CHAIRMAN: Prerogative of Cabinet?

A: That is correct.

Q: These are the standard terms of contract for Departmental Heads, is that correct? A: Yes. Q: Those contracts provide that there are two methods whereby the contract of service can end. You can be terminated for cause because you are incompetent, you are ill or whatever and if there is termination for cause, the contract provides that you must go through disciplinary proceedings?

A: That is correct.

Q: Right. But there is also the termination, "in the interest of the State", which is a non disciplinary matter at all, it is simply the State has the authority to challenge its mind on the contract and "in the interest of the State", the State can say, "we no longer wish to have you there in that position, we are going to appoint someone else. Is that correct?

A: That is correct.

Q: Yes, and the DPM is in fact the interpreter of the standard terms and conditions of these contracts. Is that correct?

A: That is correct. Q: And as well as that, when there is a termination for cause, there is also provision if the cause is established and there is dismissal for the payment out on such entitlements as are due. Is that correct? A: That is correct.

Q: And interest of the State, the provision is the contract may be terminated "in the interest of the State", and then such case the damages or the entitlements are specifically set out so much in lieu of notice, so much as you have noticed.

A: Yes.

Q: So that if in fact there is a termination "in the interest of the State", by agreement the figures are already established, what the pay outs will be and there is no balance contract left at all I would suggest. But you have considered that even under those terms you will apply for and having accepted termination under "interest of the State" and been paid out K470,000, your consideration was that you should also as well be paid out for the balance of the contract anyway. Is that your position?

A: Counsel, I think that is not the perception that I hold. My reason being that if termination is going to be undertaken, you cannot use it for the sake of applying it as and particularly using the provision of public interest must be used, that is "in the interest of the State" but for other purposes.

Q: So you were not terminated under the - your claim is based on the fact that you were not terminated "in the interest of the State"?

A: I think there was. I mean the interest of the State was used at the latter part of my contract in terms of existing me from the Public Service. ---- was the protocols of termination was not done properly. That is the reason why I contested the legality of my contract.

Q: I see, alright.

MR KASSMAN: In the legality of your termination?

A: Termination, yes.

Q: So you say that you contested the legality of your termination on the basis of the processes by which your termination was effected?

A: Yes.

THE CHAIRMAN: But you still accept and you negotiated K500,000 over and above K400,000 that you already received?

A: I think the deed of release---

Q: No, I am simply saying, trying to follow the process. But the K500,000 was for the balance of the term so that even though you contested the validity of your termination "in the interest of the State", you accepted the payments under the contract which were payable under those clauses. Is that correct?

[11:50 am] A: I think the issue of the deed of release is secondary in the sense that even of the fact that it was part initial part of that, it was never executed in accordance with the terms of the deed of release. So in other words, the way I perceive it is that the deed of release is of no value or insignificant in terms of the steps that I took after that because of the fact it was not recognisable or enforceable by authorities that were parties to the deed of release.

Q: Did the National Court decision uphold the claim or deed of release? MR KASSMAN: The National Court order - basically this is a record produced by Mr Williams. Default judgment is entered against the defendants for failing to file a defence and damages to be assessed. That is dated 8 October 2003, the deed of release in fact entered into on 19 February 2003 so certainly well before the order of the Court. Mr Williams, was the existence of this deed of release brought to the attention of the court prior to this order of 8 October 2003?

A: I think that is an issue that should have been brought before the Court but in order the fact that was a default judgment, no substantive issues were discussed. But I think the Supreme Court ruling actually touched base on some of these issues in this ruling so I think it is important for these proceedings to have access to the court deliberations

Q: For the record, was the appeal dismissed for want of prosecution or was an appeal argued? Sorry if you do not follow, do not worry about it. From your understanding - I understand the court order obtained by Mr Kubak on your behalf, was that the appeal is dismissed. Was there a full hearing of the appeal or did Mr Kubak make application to dismiss the appeal because the State---?

A: No, it was a full hearing. Q: Full hearing? A: Full hearing. Q: We need to peruse the material on that? THE CHAIRMAN: Rather than ask questions now we can see that at this stage. MR KASSMAN: Chief Commissioner, we would like with Mr Loko we need to peruse this material, if this could be adjourned. Mr Williams giving evidence be adjourned to Friday at 9:30, hopefully we should have at least a date. THE CHAIRMAN: Would that be suitable to you to?

A: That is fine. Q: Alright, Mr Williams, that would be fine, we will adjourn the matter to Thursday. Is that suitable to you Mr Kuringi?

MR KURINGI: That is also the same with the other case of James Loko. MR KASSMAN: I wonder if Mr Kuringi has some documents to assist the Commission? THE CHAIRMAN: Do you have documents?

MR KURINGI: Yes, I have got a set of documents to give to the Commission. THE CHAIRMAN: If you could produce those documents in a bundle, they can be perused and we will accept it? Thank you for your attendance. WITNESS WITHDREW

MR KASSMAN: We have one more matter. We have Mr Kamali. That is actually the first matter, we did not know that Mr Kamali was here until about an hour ago.

[11:55 am] THE CHAIRMAN: Yes Mr Kamali, sit down please. Did Mr Ame give any indication he will come this afternoon or something?

MR KASSMAN: He will come in at 1:30. I do not know if he is – sorry, we have not had an opportunity to speak with Mr Kamali, Andrew Kamali is his name. May be we can get him sworn in to just deal with this fairly quickly?

THE CHAIRMAN: Very well. Mr Kamali would you stand and take the oath please?

MR ANDREW KAMALI, Sworn: XN: MR KASSMAN Q: Is your full name Andrew Kamali? A: Yes, my name is Andrew Kamali. Q: You are not known as any other name? A: No. Q: No? A: No. I am the Managing Director of Kamali Brothers. Q: Alright, I was going to come to that. And Kamali Brothers Limited is a company which you are the

– are you the only director or are there other directors? A: I am the only director. Q: So that is really your company as such? A: Yes. Q: What does your company do, Kamali Brothers Limited? A:

Actually Kamali Brothers do, we do up roads, we do bridges, we do building construction. Q: So it is like civil works? A: We do airport, civil works, yes. Q: Mr Kamali, are you an engineer? A: I am an engineer, yes. Q: You are an engineer? A: Yes. Q: You are a graduate of? A: Diploma. Q: Sorry? A:

Diploma. I got Lae Technical College Diploma. Q: Diploma? A: Diploma, yes. Q: Diploma from the University of Technology? A: Yes, actually not finished but I graduated from Lae Technical College.

Q: Lae Technical College? A: Yes, civil yes. Q: Mr Kamali, you have been summoned to give evidence, this is on summons on No 451 dated 30

June 2001. Have you perused that summons; have you read the summons? The documents, did you read this document?

A: No.

Q: You have not read it?

A: I have not read it.

Q: You have received it?

A: My lawyer received it, yes.

Q: Your lawyer is?

A: Philip Ame.

Q: Philip Ame?

A: Yes. Q: Mr Ame did attend and advise that he was in court and would come here at 1:30 pm. Is there anything you wish to say or do you wish to wait until 1:30 pm?

A: Yes, I have to say something. Q: You do not wish to wait until your lawyer is here? A: No, I have to say something here. Q: Sure. A: In fact this contract was tendered, public tender and I applied for the tender and it was Police

Department tender. It is a public tender and we all applied for and I bid for the project and I was told

that I won the project so I went to Central Supply and Tenders Board and I signed the contract with the chairman Mr Hewago, that time Mr Hewago was a deputy chairman.

Q: So you say you got a contract from the Central Supply and Tenders Board?

A: Central Supply and Tenders Board, yes. We bid for the tender, it is a public tender that was advertised by the Police Department. This project was funded by---

Q: What was the project for?

A: The project is for the fencing project, spike fencing project.

Q: Yes. This was the fencing of the Gordons Police?

A: Gordons and Bomana Training College.

Q: Gordons Police Barracks and the Bomana Police College? They were one tender or two separate tenders? A: They were one tender. Q: For both jobs? A: For both, yes. So I bid for the project and then I won the project and I signed the document with

Central Supply and Tenders Board deputy chairman Mr Hewago, that was time was Mr

Hewago, deputy. Q: Sorry, the deputy chairman CSTB is Mr? A: Hewago. Q: Hewago? A: Yes. Q: He has another name? A: I do not know the other name. Q: You do not know? A: Yes and then---

Q: Mr Hewago?

A: Yes, and the last man to sign the contract was George Minjihau that time was the chairman. He

is the State Solicitor so he issued the document. So the next day I went and carried out the project with my own money and I got my labour and my boys to – I mobilise the machinery and my employers to go and do the project and we did the project for almost four and a half months digging holes and we prepared the preparation for the project because we have to put the spike fencing in and I went and purchase the materials at Atlas Steel down in Kone and we were doing the project that time when John Wakon went finish.

[12:00 pm] Q: Finished as Police Commissioner?

A: No, when John Wakon was Police Commissioner at that time, yes sorry. When I was doing the project and the money had to come from Canberra.

Q: From where?

A: From Canberra, it was a joint venture project with the police and Australian government. So while I was doing the project John Wakon wrote to me and said that you have to wait, in June when the funding is available you will receive your 20 per cent but just keep on working so I kept on working and I got the off letter of him, the letter is with my lawyer Philip Ame. While I was doing that I went to the Police Department and I asked for mobilisation because I was working with my own money.

Q: Sorry you asked for?

A: Mobilisation, my contract.

Q: Your cost for your mobilisation?

A: Yes because I told them that I am spending my own money to do this project so when are you guys going to pay me my mobilisation.

THE CHAIRMAN: They provided for under the contract?

A: Yes provided under the contract's clause. It is written under the – the contract document is with my lawyer Philip Ame and Ben Lomai Lawyers. When I went and asked them, there was one Australian guy Peter Jackson who was with Ausaid so I said no I have not got the money to – my money ran out so I have not got money to pay the employees so can you guys help me because providing that the money is still in Canberra but you guys can deduct it out of my contract and they said, no we will help you with K20,000 just to pay the wages to keep the boys going so I accepted the K20,000. And then while I was working that time they said the money is here now, they wrote to me and the money is here, John Wakon said the money is here so we will pay you, so I said fair enough and I went to the Police Department and they said the money is in Australian High Commission. So we went and took the money, we went and took the AUS\$5 million, we went took the money and we put it in the GPO trust account.

Q: GPO?

A: Trust account in Waigani South Pacific Bank. My lawyers got the details of the account number and all that. But then that time John Wakon was terminated so he is gone finish so Joseph Kupo took over. So I was still working but then Joseph Kupo dispute the contract. He said he the contract is supposed to be Wanigela and then he took Police, seven, eight police cars and came and stopped the project at Gordons Police Barracks and they came and chase us out and then he said this project is fault. No, I said this is not fault, I spend my own money doing this project and I legally won the tender from the tenders board and the contract is sealed by the State of Papua New Guinea so what is wrong with that and he said no. He got (inaudible) and few other top guys. Because I said the money is with the trustee so you guys have to pay me, when I said that the police commissioner, Joseph Kupo said no you have to get five, seven police cars, send it down to Gordons Police Barracks and then sort the project and then arrested me and I went and seek for legal advice.

[12:05 pm] I went to Philip Ame to defend the case and I went to the State Solicitor which was George Minjihau at that time. He was the legal counsel for the State so he wrote about seven or eight pages of letter to the Police Commissioner Joseph Kupo saying that since that you terminate the contract but you are not allowed to terminate the contract because your discretionary fund is K100,000 below and this contract is supposed to be terminated by the State of Papua New Guinea or the Central Supply and Tenders Board when you do not perform or you do not do the project. So

I was doing the project, I spent my own money. He wrote eight letters to the Police Department, if this guy win the court from the National Court or any other and then he said – he wrote this letter, if this letter, it is eight pages and he said you guys have to be charged if he wins the court you guys have to be charged on malicious prosecution. But when I won the court on 1754 but then they said you do not have to take this matter further more because it is going to cost a lot of money on the court order he says, that was on 1754. They tendered the Paraka Lawyers and Police Department because they want to make some money so they increasingly appearing and my contract is not terminated and I am still claiming the interest. I still got interest for that project because my contract was wrongfully terminated by this people. Even they took me to court but they did not even touch the contract, they only touch the K6.6 million that was offered to me by Zacchery Gelu because when I won the case from Bill Noki dismissed the case and I went and wrote to Zacchery Gelu saying that I got interest, I want you guys to pay me, so he offer me K4.6 million and I include some damages in there which is another K2 million so I accept the K4.6 million and that is when it went up to K6.6 million and he wrote that deed of release.

[12:10 pm] But I did not receive the money until now I am still claiming even what is his name went to the court, Philip Ame went to the court and he went for this case in the National Court, I went and got the advise from – I went and see Maurice Sheehan, he is sitting up there. And he wrote a note to Philip Ame as a bush lawyer and just come and see me but Philip Ame did not turn up to see and I went and seek for another lawyer which is Ben Lomai. And we went and repeat the whole case and we won the court and then now we have to charge Philip Ame for not presenting the case properly.

Q: Philip Ame is not lawyer now?

A: Philip Ame is not my lawyer now.

Q: Who is lawyer?

A: My lawyer is Ben Lomai Attorney.

Q: So have you?

A: But the first lawyer was Philip Ame.

Q: You have received any money from Police Department or Finance Department? A: Finance Department, yes I was repaid K1.1 million because I put the claim through because I spend my own money to do the project and my company went broke, I nearly went broke so now I doing another project for K7.7 million in Lae, a new airport.

Q: You received K1.1 million, the value of the contract was K1.1 million to complete the job. That was the original contract?

A: That was original. Q: The original contract to build the picket fence around Gordons Police Barracks and Bomana Police College was K1,100,000, is that right or K1,011,500 so that was contract to erect the two fences?

A: Two fences yes, one for K400,000 one for K600,000.

Q: And on November 2002, you received K91,000?

A: No.

Q: You did not receive that?

A: I did not receive that.

Q: 25 October 2007, did you receive K1,100,000?

A: Yes.

Q: That is from Department of Finance?

A: Department of Finance and Treasury. I put the claim through because-----

Q: Have you received any money from anywhere else?

THE CHAIRMAN: You got the money from the Finance Department?

A: Yes.

Q: You had asked them for it?

A: I put a claim because I said I have lost my business and my business is going broke so I need this

money so I went and claimed through Finance Department and I got the money. Q: You went directly to the Finance Department not the Solicitor General's office? A: Not Solicitor General's office, no. MR KASSMAN: Did you advise the Police Department of this or Police Commissioner? A: Police Commissioner, no. Q: No, you went direct to Department of Finance? A: Yes, because when I ask Police Department, they take me to court and they stop the payments and all that because I said this contract was wrongfully terminated and I still have to claim some money, the principal money. The principal money was claimed and the contract money and the contract interest, I am still charging commercial charges and I still have not received it yet because I am still working.

Q: Did you advise the Solicitor General that you had received the K1.1 million? A: No. Q: No? A: Yes, sorry it is. It is been advised, I think the payment copies the claims were advised. Q: Did you complete the job? A: No, I did not complete job because they wrongfully terminated my contract. Q: So what percentage of the job did you do? A: Roughly about almost 45 per cent of the project.

[12:15 pm] Q: That is the job at Gordons? A: Gordons and Bomana, we dug the holes, I mobilise holes and preparation for the post to go down and we were doing that for Gordons, we dig up the holes and then we were ---- for the spikes to go down and we went to Atlas Steel and then we went and put the spikes, the actual post with the cement and then it is about almost 20 post we put it in and they got the seven police cars they came and stopped the project. Q: 20 post were put down? A: Yes. Q: That is the distance of how long? A: From here to almost down the fence. Q: Say 50 metre? A: Yes 50 metres. Q: 50 metres of picket fence and that is all that was done? A: That is all yes. Q: That is all that was done up in Gordons? A: Yes, and we were doing court cases after day after day. Q: What was done on the work, I am just referring to - what was done at Bomana?

A: Bomana we just prepare. Q: Just dug the holes? A: Just dug the holes and it was a very big area, Bomana Training was very big area up the mountains right down and it was a very hard rock and took us about four months to dig it. Q: Just digging manually? THE CHAIRMAN: Just done all the holes or just some of them? A: All the holes, everything is done. And we have dug the holes in Gordons, done it for putting the spikes in and then they got seven eight police cars to come and stop the project and chase us out. MR KASSMAN: Say you have already got - so for digging the holes for whatever distance and just putting 20 posts up of that picket fence?

A: About 40 of them, we were putting 40.

Q: Alright 40 then which is about 50 metres?

A: Yes.

Q: You have already got K1.1 million, and here you signed a deed of release for K6.6 million?

A: That is---

Q: The contract is only worth K1 million?

A: The contract is worth K1 million. We have not received any money that time, we have not received

any money but we were doing the court battle. THE CHAIRMAN: About what, about the contract? A: About the contract yes. It is about the contract we were doing. MR KASSMAN: But you were paid out already? A: Not yet paid out. Q: No, you got K1.1 million, that is your contract? A: Yes, but what I mean to say is we have not received any money that time, we were doing court battle. I received the money in year 2007. In year 2000 I was doing court case one after the other and then I went and hire lawyers and then I even went to Maurice Sheehan, I took the K6.6 million and Greg Sheppard he was that time but then you know he wrote a note to Philip Ame saying that you have to come and get my advice but Philip Ame did not turn up so I went and hire lawyer now it

is Ben Lomai, Attorney.

Q: Who did you go and see at Department of Finance for settlement of the K1.1 million?

A: I put the claim through the Secretary of Finance. Q: Who was that? A: Secretary for Treasury. Q:

And who was that? A: Simon Tosali. Q: He is the Secretary for Treasury? A: Yes. Q: And they paid you in 2007? A: They paid me in 2007 because I was waiting so long and I took court battle one after the other

because I won the case when Ben Lomai when we revealed the case. Even though the State did nothonour the letters that they wrote to Police Department, George Minjihau wrote a letter a letter toPolice Department and these certain officers are supposed to be prosecuted and they just throw thatpaper [12.20 pm] into the rubbish bin and they did not even, you know, do anything. So, a year towards2007 I claimed the money; the principal money and then at the same time I claimed this year Iclaimed the interest money.

Q: But you never completed the job? A: I never completed the job because they terminated the contract. Q: But you got the full amount for the --- A: And I spent the money, I spent the money, yes, my money; my own money. Q: But you got the full amount that is what I am saying. A: I have not received - just the contract money, yes. Just the contract money was issued, yes. Q: See, that is all the State agreed to pay you if you completed your job. A: Yes. THE CHAIRMAN: You see if you got the full payment finally in 2007 after all these long terms of court battles, but why do you want the 6.64 now, what is that for? A: That time was when I wrote to Zachary Gelu when he was the State.s Solicitor General and he said Iwrote it to him and I said I want some form of answer from you and I want you to offer me somemoney and because he has wrongfully terminated, my contract. So he wrote to me and said, look, I am offering you this amount of money, can you accept it? Yes, I accept the offer. I accept the offerand I said, alright another 2 million will be my damages. Q: For what, for breach of contract? A: For breach of contract and wrongfully termination of my contract.

Q: I see. So they settled for a deed of release? A: Yes, deed of release --- Q: Deed of settlement for 6.6, that was in 2003? A: Yes. Q: You have been paid 1.1 million, is that part of that 6.6 you were owed or --- A: No. Q: It is not? A: No, it is not. Because the 6.6 million, when they sent it through to the Finance and this Police Department went and stopped the claim.

Q: I see. But I am just trying to understand what you are doing. So you are being paid out in full onthe contract but the 6.6 now, you are still pursuing that you regard that as damages? A: Damages, yes. Q: I see. A: Because the contract was wrongfully terminated. Q: I see. Anything else? MR KASSMAN: No, nothing further. Mr Kamali, do you have any documents to back your claim up which you can produce to the Commission now which explains what you have been saying? A: Yes, sorry, Counsel. I just flew in from Lae so all my documents are with the lawyer, Philip Ameand Ben Lomai Attorney. Maybe, I can give it to you anytime. Q: Can you have them produced tomorrow, 1.30? A: Yes. THE CHAIRMAN: Very well, thank you very much for coming Mr and we will see you tomorrow. Yes,

thank you. Stand adjourned. WITNESS WITHDREW LUNCHEON ADJOURNMENT

[2.00 p.m.] THE CHAIRMAN: I apologise first for the late start. I regret, I was in town and got caught in traffic which is not much of an excuse but that is what happened. Very well? MR KASSMAN: We have about five matters to deal with today and a number of witnesses. Firstly, justfor to adjourn the appearance in relation to Mr Peter Maiden, matter No 17. We are informed by MrKen Pato of Post PNG, he is a lawyer with POST PNG that Mr Maiden is overseas he returns and will be available to give evidence next week. So could we have that rescheduled to Tuesday at 1.30 pm? THE CHAIRMAN: That is the 14th? MR KASSMAN: Yes, 14th? THE CHAIRMAN: Yes, thank you. MR KASSMAN: If we could deal firstly with the matter No 18, the matter of Coecon Ltd -v- National Forest Authority and the State. We have Mr Brian Andrew, he is present here, if we could deal withthat straight away. THE CHAIRMAN: Mr Andrew? MR ANDREW: Do I come forward - around? THE CHAIRMAN: Yes, please, to give evidence or to present documents? MR KASSMAN: To give evidence. THE CHAIRMAN: Yes, alright. Would you please be sworn and then give evidence sitting. MR BRIAN ANDREW, sworn: XN: MR GERORO Q: Chief Commissioner, maybe for the record, I will not take part in this because in respective of his

evidence, you have my involvement in the matter previously so basically my involvement is on brief from the State on this matter, thank you. MR GERORO: Thank you, Chief Commissioner, Mr Brian Andrew appears on summons No 484 that is dated 3 July 2009. Just please state your full name for the record Mr Andrew?

A: Peter Brian Andrew.

Q: Could you also state your current occupation?

A: I am a lawyer with Young and Williams Lawyers, Port Moresby.

Q: You are currently admitted to this jurisdiction?

A: Admitted?

Q: Admitted to this jurisdiction?

A: Yes.

Q: When were you admitted?

A: In this jurisdiction? Q: Yes? A: In March 1971. Q: Particularly in relation to the summons that we compel you to give evidence upon, that is the

matter involving Coecon Limited, basically, are you aware of this particular matter?

A: No. I have read quickly this documentation if I might refer to it Mr Commissioner. There is a statement here that says that, "John Kawi despises your involvement" – that is myself – "as a lawyer for Coecon." I did not have the conduct of that file, I think Mr Sheppard

had the conduct of it. If I had any involvement in the file, I do not now recall. This was I think in

2000–2001. Q: You basically confirm that you have no knowledge of this matter involving Coecon Limited either

as a lawyer on the record or as having carriage of it at all on the plaintiff? A: As I said that at this

time I do not recall anything about that file. Q: You have had the benefit of the perusal of the

transcript that was provided with the summons? A: Yes, it says here that I entered into settlement negotiations directly with the then Attorney

General, Francis Damem. I have no recollection of that at all nor could I.

Q: So you basically deny the evidence that Mr Kawi has given previously to this Commission that you were involved in anyway? A: I deny that I entered into negotiations directly with the Attorney

General nor did I discuss the

matter with him at all. Q: So you were not involved at all in this matter? A: If I was involved in the

matter and I do not recall now, it was not my matter. Q: That is right. You mentioned Mr Greg

Sheppard had carriage of the matter? A: Yes, I think he did, and I think there is a reference here somewhere that Mr Sheppard he had

Southern Counsel involved in the matter. Q: Perhaps Mr Kawi was mistaken in his identity of

yourself? A: I do not know. Q: So, Chief Commissioner that was basically in relation to --- THE

CHAIRMAN: Under those circumstances then is there any other questions Mr Geroro? MR GERORO:

There is no other questions, if he has no knowledge of the matter then we cannot--- THE

CHAIRMAN: Thank you for coming then Mr Andrew, we will leave it at that. MR ANDREW: Thank you

Chief Commissioner. THE WITNESS WITHDREW MR GERORO: Thank you Chief Commissioner, there is another witness Mr Francis Damem involved in

this particular matter, Coecon Limited No 18. I am not aware of whether or not we have served

the summons on Mr Damem as yet. THE CHAIRMAN: Mr Damem was here yesterday and we

adjourned for a ruling on his application to

not give evidence in respect of certain matters and maybe on the same thing. Is that for tomorrow

morning, Mr Maniawa? Tomorrow, I think is or Friday. He is not present anyway. MR GERORO:

Perhaps we can stand this matter over to tomorrow whenever he is scheduled to come in and inform him accordingly.

THE CHAIRMAN: Tomorrow 9.30. MR GERORO: Tomorrow 9.30. THE CHAIRMAN: Yes, very well.

[2.05 pm] MR GERORO: Chief Commissioner, that is all in relation to this matter Coecon

Limited. The next matter which I wish to mention is matter No 16 on the list. It is the matter of Edward Appa and Others –v– The Department of Lands in which we have requested Mr John Poro to

appear.

THE CHAIRMAN: Mr? MR GERORO: Mr John Poro. THE CHAIRMAN: Yes. MR GERORO: I am not sure if he is actually present this afternoon. THE CHAIRMAN: Mr Poro is not here? He was issued a summons to be here? MR GERORO: He has been previously issued a summons Chief Commissioner. THE CHAIRMAN: Mr Poro apparently appeared this morning. MR GERORO: I will just re-list him again for – he was actually listed for 1.30, I am not sure why he came this morning. MR KASSMAN: Sorry chief there is no appearance by him. THE CHAIRMAN: Mr Maniawa tells me that he was here this morning, but he obviously left. MR KASSMAN: We will make inquiries and maybe have that re-listed or you want to make some inquiries now? MR GERORO: So, when can we list him then? MR KASSMAN: Maybe we will check to see whether he is available or on his way? THE CHAIRMAN: Yes, very well.

MR KASSMAN: We will proceed now? Maybe we should proceed with the second matter. We have Mr Sam Kemaken here and we would like to deal with matter No 17, Joel Aundambui & 23 Others –v– Post PNG.

THE CHAIRMAN: Very well, yes? Yes, thank you for coming Mr Kemaken.

MR SAM KEMAKEN, Sworn: XN: MR KASSMAN Q: For the record your full name is Sam Kemaken? A: Sam Joseph Kemaken. Q: Mr Kemaken you are the principal in the firm of Kemaken Lawyers? A: That is correct, yes. Q: Mr Kemaken, just for the record you were admitted to practice in just roughly what year? A: 27 November 1980. Q: 1980. You have been served with a summons to assist the Commission with evidence that is summons No 486 dated 3 July 2009. Mr Kemaken, firstly do you have any documents that you are able to assist the Commission on? [2.10 pm] A: Chief Commissioner, I disclosed all the documents I had to with the Counsel Assisting, including my affidavits in court.

MR GERORO: Yes, thanks Mr Kemaken. From the material that we perused that you provided, we did not seem to have your client's notice of intention to make a claim against the State pursuant to section 5. You confirm that no such notice was given?

A: Yes, I have searched the file. There was no such notice given by my friend who initiated the proceedings. Q: We also draw your attention to NEC Decision No 172 of 2008, Special Meeting No 29 of 2008. Can you explain as to how you came to obtain a copy of that decision?

A: The decision came to my possession when I was given instruction on the morning of 20 October 2008. I am not able to assist as to how this document was procured but it was given to me by my clients in the morning when I sought my instructions.

THE CHAIRMAN: It was handed to you by the claimants? A: Yes, Chief Commissioner. Q: Mr Kemaken, if I could show you a copy of the NEC Decision No 172 of 2008. Is this the copy that you refer to? A: Yes, Mr Commissioner. Q: So you said you obtained it on 28 October 2008, who did you receive that copy of that decision

from? Who provided you a copy of that decision? A: The claimant himself. THE CHAIRMAN: Mr, who is he? A: Joel Aundambui. MR GERORO: When you received a copy of that decision did you conduct inquiries as to the veracity of that particular document? A: At that point in time, no. I was still receiving and I was instructed to follow up with the NEC

decision and the next day I wrote a letter dated 21 October to the Minister for Communication, referring and attaching this copy of the same NEC Decision. Q: Basically in the decision, the NEC effectively approved which was instituted by your clients in the sum of K52 million to be paid in full by Post PNG Limited. You stated that no section 5 notice was given by previous lawyers. We also note that the State was not actually named as a party. Did that arouse any suspicion to you when you actually received a copy of that NEC Decision?

A: As a matter of fact I was very reluctant to act on this matter. You will note from my affidavit that I had to do my own investigation after I received this and it was on 11 March this year that I filed a notice to change the lawyers in Madang, National Court Registry where the proceedings were instituted.

Q: So there was a notice of change of lawyers to act for the plaintiff? A: Yes. Q: You had issued this letter prior to you actually becoming lawyer on the record for the plaintiffs? A: Upon receiving my instructions there was already a letter engaging my services. It is also attached to my affidavit, Annexure A.

Q: After receiving the decision, what did you do with the decision? You said you then wrote to the Minister and what was the outcome of that? A: Actually, after writing that letter I never had any meetings with either the minister or his staff. I

did not personally follow it up. I left it as that when I started conducting my own inquiries.

[2.15 p.m.] Q: Did your client Mr Aundambui instruct you as to how he came about obtaining a copy of that NEC decision? A: No. Q: Did you inquire with him about that? A: Yes.

Q: You say that he did not respond or what was his response?

A: He handed me a letter which is also attached to my affidavit which is written to Minister Arthur Somare sometime last year if I may have a look at my affidavit. That was the letter that he explained that may have been the original of that NEC Decision.

MR KASSMAN: Mr Geroro, just stepped out to grab these other documents.

MR GERORO: Sorry. Chief Commissioner if I missed, Mr Kemaken has been referring to a letter which he has provided to the Commission if I can just show that and perhaps tender it in support of the evidence he is giving this afternoon. It is a letter dated 1 July 2009 from Kemaken Lawyers to the Chief Commissioner. Can you just confirm that, that is the letter you refer to Mr Kemaken? Mr Kemaken, the reason why I am asking you about that particular NEC Decision as I have showed you is basically because from evidence received from the Attorney General, Dr Allan Marat, and the former Secretary to the National Executive Council, Mrs Winnie Kiap, they have given evidence that the NEC Decision is a forgery. Mrs Winnie Kiap who is a signatory to that particular document has confirmed that is not her signature and has stated and has given evidence that it is a poor forgery of her signature. Do you have any comments in relation to that evidence given by Dr Marat and Mrs Winnie Kiap?

A: No, Mr Commissioner, I am not in a position to make any comments because I was not a privy to the NEC Decision. It was only given to me upon the day I received instructions. Although, I must express that I was surprised that simple village people have possession of a document that was a NEC Decision, when it was handed over to me, it sort of caused me a bit of reluctance to accept as the document does look genuine for them to possess, probably would I have known there was something that would have caused a bit of suspicion on my mind.

Q: So with the benefit of that evidence are you going to pursue the claims basically based on the NEC Decision?

A: As a matter of fact I was in court this morning on very this case and I have on foot a notice of motion which has been adjourned to be heard on Tuesday for summary disposal. I have attached the copies of that relevant documents also in my letter to the Commission, the notice of motion and the supporting affidavits.

Q: Mr Kemaken, you said that the summary disposal, that is the matter in which you act for the plaintiff?

A: Yes.

Q: So, when is that listed again?

A: For Tuesday, 9.30.

MR KASSMAN: In your motion you are asking for a judgment?

A: Yes.

[2:20 pm] Q: And in support of that you rely on the NEC decision?

A: No, you were quite there that there is no records in the NEC decision and as a matter of fact I am not even relying on it.

Q: Mr Kemaken, you mentioned on receipt of the instructions in October 2008 the production of that NEC decision you said there are some concern, yet you then conducted your own investigation as to the authenticity of the NEC and you subsequently then formally filed a notice to act in

the proceeding. What was the result of your enquiries as to the authenticity of this NEC decision?

A: My investigation revealed that there was no source that could tell me where this NEC decision originated from or who was the one that produced to my clients.

THE CHAIRMAN: That is not the question, what was your findings, was it valid or invalid?

A: My findings really was that I thought this NEC decision was a fake or if you want to use the word use forgery because I could not get the person who actually supplied that document to my clients.

Q: Who – you have to identify the person?

A: No I was not.

Q: So how did you come to have possession of that document?

A: I was given a name but that is the person that he has a name but not the identity; Mathew Kero was the person.

Q: Sorry, Mathew?

A: Kero, K-E-R-O.

Q: Mathew Kero is someone known to your client or to yourself or?

A: Yes.

Q: He is known to you?

A: Yes.

Q: What does Mr Kero do? Is he with an office or with?

A: He works in Port Moresby, as a matter of fact if you read my affidavit he was the person who was giving instructions to deliver the first letter of engagement to me which because I do not know him and he does not know me, but he was the same person who actually disclosed or gave a copy of the NEC decision to my clients.

Q: Mr Kero, is he resident here in Port Moresby?

A: Yes, I believe so.

Q: Is he working with a particular government department or a?

A: Yes, I believe he works for--- Q: Which company? A: Sorry? Q: Which company or department?

A: Fisheries Minister. Q: You mean he works in the office of the Minister for Fisheries or? A: That is my information. I do not know whether he actually is working for the Minister's office. Q: So your client tells you, your client Mr Joel Aundambui had informed you that he was provided a copy of that NEC decision by Mr Mathew Kero? A: Yes. Q: Mr Kemaken, we did not name your client to appear. Is your client resident here in Port Moresby? A: Yes. Q: He is resident in Port Moresby. A: No he is here only on trial that I mean he is not a resident he is only here for the purpose of the hearing in the National Court. Q: That is next week? A: Yes. Q: Would he be available to come in to assist the Commission? A: Yes.

[2:25 pm] Q: If we could list that for Friday at 9.30 and if you could convey that to Mr

Aundambun. What about Mr Mathew Kero, you able to make contact with him? A: No. Q: No? A:

Quite frankly I think he is avoiding me. Q: As a result of what has transpired? A: Yes. Q: Do you know of any action taken by any State authority, police or the Fraud Squad to deal with what clearly is a fraudulent production of a fairly significant document of the State? A: Mr Commissioner, I am now aware but I am in possession of a letter that was sent to the Commissioner of Police requesting investigation. The letter was given to me by the Law Society

Statutory Committee on a complaint it was raised.

Q: So that is a referral of whom?

A: Of myself.

Q: Yourself. That is to the Law Society?

A: The Law Society. I also went before the Statutory Committee on this matter.

Q: Sure. You say the proceeding that you are involved in as lawyer for Mr Joel Aundambui, that is now set for summary judgment next Tuesday?

A: Yes.

THE CHAIRMAN: Is it defended?

A: Sorry?

Q: Is it a defended matter?

A: Yes, it is defended.

Q: So has the statement of claim being amended or something?

A: No.

Q: I see. The statement of claim never relied on this document?

A: No, Chief Commissioner, by the time the decision NEC came about the existence the pleadings had already closed.

[12:30 pm] MR KASSMAN: We have no further question. Chief, we do have a copy of the writ of summons but we have no further questions. THE CHAIRMAN: Thank you Mr Kemaken for your evidence. We will take note.

WITNESS WITHDREY

MR KASSMAN: Thank you. Chief we might first deal with the matter that was listed for this morning,

the matter of Kamali Brothers. Mr Philip Ame is actually here to give evidence in relation to this matter.

THE CHAIRMAN: Yes, have you got your file?

MR KASSMAN: I am just waiting for---

THE CHAIRMAN: Mr Ame, you can come forward.

MR KASSMAN: Yes, come forward.

MR PHILIP CLARENCE AME, Sworn: XN: MR KASSMAN Q: Mr Ame, thank you for coming. For the record your full name is Philip Ame? A: Yes Philip Clarence Ame. Q: Philip? A: Clarence. Q: Clarence, thank you. Chief, the files on this matter are with one of our investigators. He is presently not in the building, I wonder if this could be stood down temporarily, I do apologise to Mr Ame. THE CHAIRMAN: You have some documents have you?

A: Yes. MR KASSMAN: Maybe you could have those produced? Sorry Mr Ame. Mr Ame, you have some documents that you might be able to assist us with?

A: Yes. Q: What are those documents? A: I understand the summonses for WS 1754 of 2000 but I also have two matters that are inter-

related. One is an appeal to the National Court from the District Committal proceedings and the other is OS which is part and parcel of the same proceedings. Q: Just so we know where we heading here. Mr Ame, we heard evidence earlier today from Mr Andrew Kamali, generally the matter that associate a contract which went through the Central Supply Tenders Board for the construction of fencing at the Gordons Police Barracks and the Goldie Police Barracks.

A: Bomana. Q: Bomana Police Barracks. A: Yes. Q: He commenced some work. He says he performed up to maybe 45 per cent of the job. In the course of him doing the job he was then told that his contract had been terminated. He says he then commenced an action in respect of the balance of the contract, that he also made reference to the fact that he was charged by the police and I wonder if that might be the action you were referring to in terms of an appeal?

A: That is right, yes. THE CHAIRMAN: Do I understand that it started off with an OS but it was converted to a writ?

A: The OS 627 of 2000 was, Chief Commissioner, to seek court orders to have the 20 per cent down payment paid to him; 20 per cent of the contract down payment to pay to him. Under the contract he was entitled to a 20 per cent down payment, more or less mobilisation funds. So the OS 627 of 2000 was really for that purpose. That was withdrawn on 15 November 2000, we sought leave to have that withdrawn. He was charged I think in 2003 for forgery.

Q: Forgery?

A: I think it is forgery, yes or false pretence or something, to that effect. I defended him on that.

MR KASSMAN: False pretence in relation to?

A: Yes false pretence in relation to the claim probably in the contract. So I defended and the police appealed and that was appeal No 136 of 2004, then I filed the motion and that was dismissed so that is really the two other inter-related matters. But for the summons 1754 of 2000, Chief Commissioner, we went for a full trial. Paraka Lawyers was acting for Mr Kupo and probably the State was grieved that the - I cannot recall at this stage but Judge Gavara Nanu had that matter dismissed after full trial on 31 October 2003 with costs to the defendants.

[2.35 pm] I proposed an appeal for him - I have a draft appeal which I think we did not file, which I can make available later. But Mr Kamali never came back to me and in fact I have not seen him for the last, sorry, since 2003, and I just met him this morning. For the records I have also filed bill of costs to be taxed for my fees that were not paid for the three matters and I have not been able to serve the documents on him, the duly sealed bill of costs because I understand he is a big businessman in Lae. That is basically what I - he could have, just about the appeal, the draft I appealed from the decision of 31 October. I do not know whether he filed an appeal but I did draft, I do recall and I have a draft copy of the appeal that I did for him to appeal to the Supreme Court on the dismissal.

MR KASSMAN: I guess, Mr Ame you were sort of just confirming that the dismissal of his claim in the National Court ---

A: That is correct.

Q: That was his claim for damages so the dismissal occurred. Were you - during the time when you were acting, were you aware that Mr Kamali had actually made contact with Department of Finance to settle his claim to pay his claim. In fact, he did receive K1.1 million payment from the Department of Finance. Were you ever made aware of that?

A: It is news to me now, Chief Commissioner. I have no knowledge that he had got this money. I do not know from what sources.

Q: Were you also aware that Mr Kamali had signed a deed of release with Mr Gelu for payment of K6.6 million?

A: No, not at all. Unless, Chief Commissioner, he may have filed an appeal in this matter and may have dealt with the matter, that I would not know. I mean that is since 2000 so he may have. I think he may have appealed and he may have sent a deed of release but insofar as WS 1754/2000 is concerned, I filed the proceedings and I prosecuted the proceedings in there before Judge Gavara-Nanu. I know it was dismissed.

Q: Chief Commissioner, we have no further questions for Mr Ame. THE CHAIRMAN: Thanks very much, Mr Ame. Thank you for appearing.

THE WITNESS WITHDREW MR KASSMAN: Chief Commissioner, we might deal firstly with the matter number 20, matter of Hunstein Range Holdings Ltd. We have here Mr Jackson Yagi is present, Mr Kanawi Pouru from BPNG

Forest Authority is also here and we have someone standing in for Dr Wari Iamo who were the persons that were listed. THE CHAIRMAN: Swear him in now. Would you just remain standing. We will get you right on your feet, swear you before you give evidence.

MR KASSMAN: If we could have Mr Pouru sworn in. [2.45 pm] MR KANAWI POURU, Sworn:

XN: MR KASSMAN

Q: For the record, your full name is Kanawi Pouru.

A: Yes, Kanawi Pouru.

Q: Thank you. Mr Pouru, you are with the PNG Forest Authority.

A: That is correct. I am the managing director of the PNG Forest Authority.

Q: Thank you. Mr Pouru, you have been with the Forest Authority for how long?

A: I am now in this position since 13 March 2007.

Q: That is as managing director?

A: That is correct.

Q: But you certainly joined before then - sorry, you said March ---

A: 13 March 2007.

Q: As the MD?

A: Yes.

Q: But you joined prior to that?

A: Yes, I am a career forester and I joined the Forest service then back in 1975.

Q: Mr Pouru, essentially, the background to this particular matter, as we understand it, is the claim brought by Hunstein Range Holdings Limited seeking costs which they say they incurred in the course of the preparation of the Forest Management Agreement and Hunstein Range Holdings Limited claimed the costs of K930,100. The records we have show that the Forest Management Agreement was entered into on 20 December 1996. You are aware of this matter, the background to this matter?

A: Yes, I am aware of some of the background to this FMA, yes.

XN: MR VELE

Q: Mr Pouru, can you just briefly confirm your knowledge of the matter in regard to this claim for the Hunstein Range Holdings Limited, just briefly. A: The answer to that is that in my capacity, no, I am not aware of that claim or the basis for that claim.

Q: Can you clarify for the Commission as to --/

A: Yes, in terms of the claim as alluded to the costs of establishing a Forest Management Agreement,

from our records, the costs or any costs relating to the acquisition of that FMA was carried out by the

Forest Authority and all costs relating to that was met by the Forest Service. Q: Mr Pouru, are you aware of the fact that whilst the Forest Management Agreement was still in existence, the Department of Environment and Conservation, East Sepik Provincial Government and World Wide Fund had entered into an MOU declaring this, the land in concern, to be a wildlife management area whilst the Forest Management Agreement was still in place?

A: Yes, we are aware of that. After the Forest Management Agreement had already been entered into between the landowners and the Forest Authority on behalf the State in 1996 and months later in 1997 the Wildlife Management Agreement was entered into and, of course, that created some confusion between the agencies in terms of the future development of the forest management area.

THE CHAIRMAN: Can I - I am just not really understanding it. Forest Authority enters into an agreement with the landowners under a Forest Management Agreement under the Forestry Act?

A: Correct. Q: For the purposes of forestry and timber logging, is that correct?

A: That is correct. Q: But instead of that happening, instead of it going ahead, the State then entered in to another agreement unbeknown to the Forest Authority or the landowners to declare it a wildlife sanctuary?

A: That is correct. Q: Or did the landowners agree to that? A: I presume the landowners would agree to that. But it is - I do not have information to confirm

that. But as a matter of process, the landowners should be informed about that. [2:50 pm] MR VELE: Mr Pouru, having said that, was the Forest Management Agreement advertised or from your knowledge was the Forest Management Agreement advertised for development?

A: As a matter of process, once the Forest Management Agreement has been entered into with the respective incorporated landowners, then the process for allocation which is prescribed under the Forestry Act then follows. At that time I recall that the Forest Board was then in the process of allocating the Forest Management Agreement or Forest Management area and concerns were raised by the Department of Environment that because the proposed project area is within the Sepik

RiverBasin, there are concerns about environment and the ecology of the area, so it should be advisable to the Board that prior to it being allocated and environmental impact assessment should be carried out. The Board agreed to that and provided funding of K40,000 to enable the Department of Environment to carry out the environmental impact assessment study. That study was undertaken and the report on that study was given to the National Forest Board and the Board having considered that decided that it is high in terms of environmental impact risk and therefore it did not proceed with that intention of it in terms of allocating that for a timber harvesting operation. So up till now the FMA has not yet been allocated to any timber permit holder.

MR KASSMAN: In respect of the same area?

A: Correct, it is still unallocated.

Q: In terms of the work towards identification of I guess any landowners, you have records that indicate the land owning entity, the NILG or whatever form of grouping of the landowners?

A: Yes.

Q: What records or what entity or what grouping of people does the Forest Authority recognise?

A: The process as prescribed in the Forestry Act is that we identify land owning groups by incorporated land groups under the Incorporation Land Group Act and that process is undertaken by the Forest Authority and in this case, in this particular project Forest Authority, undertook the incorporation of land group by basically visiting the project area and carrying out a genealogy survey to identify all the different landowning groups.

Q: This is Forest Authority officers?

A: Correct and then those are documented in accordance with the Land Group Incorporation Act and these documents are then filed with the Land Group Incorporation Certification officer with the Lands Department who then check and if the documentations are in order, then they issue a certificate of incorporation for each land group and the certificates that are issued are then used by the Forest Authority to know who are the owners and that then becomes the basis of drawing up the Forest Management Agreement between the Forest Authority and the respective landowner groups.

MR VELE: Chief Commissioner, for the record Mr Pouru responded to our summons No 213 on 12 January 2009 and produced a batch of documents which PNG Forest Authority has in which we have in our position right now.

THE CHAIRMAN: Is that the Forest Authority File?

MR VELE: Yes.

MR KASSMAN: Mr Pouru, you have produced to us this bound set of documents, this would be the entire fund of the PNG Forest Authority in relation to this particular area? A: Yes, the files are the information we have provided of course in relation to the summons that were given to us. The record of the incorporated land groups and the document that we have entered into is attached or it is provided in that information as annexed titled, „Forest Management Agreement April/Salome. and that list all the different landowner groups that have agreed and entered into the agreement.

Q: Chief if that could be marked as Pouru 1, the bundle. THE CHAIRMAN: Yes. [EXHIBIT TENDERED – POURU 1 – BUNDLE OF DOCUMENTS – FOREST MANAGEMENT AGREEMENT

APRIL/SALOME] [2.55 pm] MR KASSMAN: As per the document which is titled “Minute”, PNG Forest Authority

Minute dated 17 January 1997. The name in there of the entity is “April/Salome Resource Development Corporation Pty Ltd? Is that the entity? I mean is it recognised?

A: That is one of the faction landowning companies that the landowners formulated. There were

three faction landowner companies0

THE CHAIRMAN: I am trying to understand this. The Forest Management Agreement in 1996 was entered into by the Forestry Department with a 129 landowner group. Is that right?

A: Correct0

Q: Now three of those did not want to be the actual representative of all the groups, is that right?

A: Correct.

Q: And they formed their own April-Salome Resource Development group?

A: The April-Saloma Timber area covers, in terms of ethnic groupings, five areas and this is the

reason they sort of try to form different faction landowning companies.

Q: Does that cover a large area or a small area?

A: Yes, it is a large area, gross area of more than 500,000 hectares.

Q: It covers what – up to what sort of percentage of the overall group land in the area?

A: That is half a 500,000 hectares. I do not have the actual break up for each, but that constitutes

five different ethnic major areas and those five areas decides to form three separate landowning

companies.

Q: That 500 hectare, is that the percentage of the whole area? And the 129 landowner groups that they control, they were the landowners for what, half, two thirds, one --/

A: They will control more than 80 percent of the area.

Q: 80 percent, yes, I see. And there has been no concession that they are the leading landowner of anybody? Has it been established who is the representative of all of them or?

A: Yes, in the submission that we gave you, we have given you the official Forest Management Agreement and in there you will find the landowning groups, the 129 that we referred to, all signed up and they are in. This is the official documentation that we now have for the project area. In each of the landowning group, it is not easy or it is difficult to try to define the boundaries of each landowning group. So the landowning groups actually know within their own setting the different groupings and therefore, in this area, they identified that there are five major areas, and within each area, they identified the ILGs and they enabled them to register for the land that they own.

Q: The Land and the Forest Management Agreement deals with all 129 groups, does it or?

A: That is correct.

Q: And nobody who does not want to or has not dealt with any one or two or three groups as representatives?

A: That is right. If there has to be a representative company or a body, then that has to be – the chairmen in the case of the incorporated land groups, the chairman of each ILG, they have to be either shareholders or principals of the landowner company.

Q: That has not arrived as yet?

A: In this situation, no.

[3:05 pm] MR KASSMAN: Mr Pouru, you made reference to the – I just quickly looked at the copy that we have of the Forest Management Agreement. I can just see from pages 87 onwards, that is where the land groups were supposed to have signed, pages 87 to 97, there is no signatures on the agreement here. I wondered there is an error here or?

A: Yes, in the course of the land investigation that we carry out, we record and identify and record all the landowning groups within the area. At the time of execution it does occur that a particular land group would probably change his mind and they do not wish to sign so in this case this particular ILGs did not wish to sign and so their wishes are of course respected and as part of the documentation it remains unsigned and the overall decision of course is weighed against the majority of the landowners that have signed up but in the normal course of operation the land that these people own would be identified and excised from any physical development when it comes to operation and that is because they have not signed up, they have not agreed and therefore their land will not be part of the project. So this is quite common in many of the FMAs

that we go through. When it comes to the time for signing, some land groups will decide that they will not sign but later on they do come back again and say we can sign. So under the circumstances we prepare what we call a supplementary agreement and then they can sign and they are admitted as part of the project.

Q: Maybe as I mentioned earlier, the claim that is basically the subject of this Inquiry now is won by Hunstein Range Holdings Limited claiming costs of K930,100 as being the costs incurred in preparation of the Forest Management Agreement. Where Hunstein Range engaged in some way by the Forest Authority, I mean Hunstein Range Holdings Limited. Would that entity be engaged by the PNG Forest Authority in any way to perform any service or inquiry or of whatever nature towards preparation of the Forest Management Agreement?

A: Not that I am aware of, not that our record show except that they exist like in any many forest development areas, landowners organize themselves and they try to position themselves, particularly when the project comes to an operational stage but at this stage in terms of preparation in acquiring a resource, these are the responsibilities of the Forest Service and we undertake these activities. We do not contract it out because of the risk that we want to make sure that the incorporation of land groups are done properly and we feel that that is best done by us and not by Contractor so we do not contract this to any parties. In this case, no, we did not enter into any contract with Hunstein Range for the purpose of acquiring April/Salome.

Q: Chief Commissioner, we have no further questions for Mr Pouru.

THE CHAIRMAN: Mr Pouru, you have been very helpful. Thank you for your attendance and for the documentation you have given. Thank you.

A: Thank you.

WITNESS WITHDREW

THE CHAIRMAN: Mr Kassman, we have some other matters as well do we not?

MR KASSMAN: Yes, we got just one more matter but in relation to this particular matter of Hunstein Range, we have just two more witnesses.

THE CHAIRMAN: Yes, so the other matters, the appointment that we have been talking about---

MR KASSMAN: Yes.

THE CHAIRMAN: We can perhaps, Togi please, could you swear this gentleman in.

MR KASSMAN: It should not be too long Chief.

THE CHAIRMAN: I am just thinking we should perhaps advise that the others that their appointment to be adjourned to an hour, half an hour?

MR KASSMAN: Yes.

THE CHAIRMAN: Half an hour?

MR KASSMAN: Yes.

THE CHAIRMAN: Alright, swear him in please.

[3:10 pm] MR JACKSON YAGI, Sworn: XN: MR KASSMAN THE CHAIRMAN: Yes? MR MAIPSON: Mr Commissioner, for the purpose of this interview I am representing Hunstein Range but for the purpose of giving evidence, Mr Chairman, he would give evidence. For the record Andrew Maipson is my name. THE CHAIRMAN: Yes, fine Mr Maipson, thank you.

MR KARI: Commissioner, Mr Kari. I appear for Hunstein Range in another matter which the Judge referred that proceedings by way of an order.

THE CHAIRMAN: Yes?

MR KARI: I appear in response to that.

THE CHAIRMAN: Very well.

MR KARI: We have two more matters. Maipson deals with other proceedings on behalf of Hunstein Ranges and I handle another regarding a cheque payment that was made. THE CHAIRMAN: I see, are we are party to these or familiar with these matters? MR VELE: No. MR KASSMAN: That is all

news to us. MR KARI: I think that is something that is still pending. Mr Yagi will just give evidence in respect to

what the Commission has requested to assist in its Inquiry. I think we will just observe what he

willreply to. THE CHAIRMAN: Mr Kari, what your information is it relevant to our enquiries at this stage?

MR KARI: Not at this stage. THE CHAIRMAN: I am asking these proceedings that you are talking about, are they relevant to thismatter?

MR KARI: Mr Commissioner, His Honour Mr Judge Kandakasi referred one matter that involvedHunstein Ranges to the Inquiry. I also wrote to the Inquiry enclosing the orders and I am here withthat.

THE CHAIRMAN: Following up on that?

MR KARI: Yes.

THE CHAIRMAN: Well, perhaps first of all we will deal with this gentleman and get this moving and take it from then onwards. MR KASSMAN: For the record, your full name is Jackson Yagi? A: Yes, correct, Sir. Q: You are the Chairman of Hunstein Range Holdings Ltd? A: Exactly. Q: Thank you.

MR KASSMAN: Mr Yagi, you would have heard that from the evidence given by Mr Pouru that theForest Authority in their functions they took part in the preparation of the Forest ManagementAgreement as per their functions and a number of clans signed up or landowner groups signed up.What landowner group do you represent or do you represent a number of landowner groups?

A: Actually from the very beginning like we register – there were about three different landownercompanies that were actually registered with IPA for the purpose of working along with the Forestry,with the---

Q: Three different landowner companies? A: Yes. Like I would not have much idea on four other two different landowner companies except for

Hunstein Range Holdings Limited. That was the company I actually incorporated this company backin 1995 as a legitimate representative from the resource area to head the landowner company.

Q: The shareholders of Hunstein Range, are they a number of landowner groups or who are the shareholders?

A: The shareholders especially would be 129 ILGs. These are the entities being registered with the Lands Department in which the certificate were issued. Q: So they are the shareholders? A: Exactly.

Q: The ILGs are the shareholders? THE CHAIRMAN: They were from the very outset there was a 129 landowner groups incorporated under Hunstein Range?

[3.15 pm] A: These were the party to the agreement, Forest Management Agreement, actuallysigned. MR KASSMAN: So you are the chairman of one of the ILGs also? A: Definitely. Q:

Which ILG are you a chairman of? A: Amasel clan. Q: Sorry? A: Amasel clan. Q: How do you spell that, Ama ---? A: A-M-A-S-E-L clan. I think it is recorded 79 from the list as you go through the whole lot of those

ILGs. Q: On page 79, is it? A: No, it will be numbered 79. You got to go 1,2,3 and then 79.

Q: Do you know what page it is? There are a lot of them. Anyway, maybe, a lawyer would let usknow, what page exactly. Mr Yagi, we understand the claim that has been pursued were the claim fora sum of K930,000 which was claimed, the claim based on work or services performed in thepreparation of the Forest Management Agreement.

A: Yes, it was ---

Q: You are aware of that?

A: Yes. We actually had to, like work just alongside not like what Mr Kanawi has said because I thinkthey got no proper, like a document in place where the documents may specify that the ForestAuthority could go out and contract maybe consultant to do the work along that line. But in this particular case, it was like on the longer notes, we had to prepare ourself to accept the concept ofthe development in terms of logging to take place. So what had happened was we had to travel allthe way from Sepik into Port Moresby and most of my directors are still here for the purpose of thisCommission of Inquiry and we actually appear also on today.s paper. This is it. Like during thosestages where we have to get ourself prepare to work alongside with the – to complement the

or what the Forest Authorities were doing and we were actually got connected to some investors who were going to come into the country. In fact they were registered with IPA and we were in the process of implementing our Forest Management Plans when the other like NEC decision came into place; declaration of the wildlife management agreement. So that complicates, sabotaged the whole process. In fact, there was no consultation at all and we were like, we did not know what was happening. We had to voluntarily go around collecting information until we went down to the very root of it to find out that there was already another activities that took place without having to have some form of consultation with the parties to the Forest Management Agreement. There was no consultation at all. So as a result when we actually discovered that the WLMA took place over the existing demarcated zone for the FMA, then we had to you know, like, put the State on notice to say that alright we have worked along together and something else happened and there was a lack of consultation and that is it.

Q: So your claim is one of for the costs of working in preparation for the Forest Management Agreement?

A: Yes. You see, it is all like, the entire board of directors, you know, we have been continuously travelling into Port Moresby from the village. And not only that we were accommodated in the hotel accommodation for about period of two years, and I had to travel overseas only to look for the partners to develop the forest, to come in as contractors for the agreed period.

THE CHAIRMAN: So this 930,000 is largely travel expenses for directors ---

A: The cost, the entire cost for the two years, travel, accommodation, you know, everything put together, and then you know travelling overseas and like we were on salary, these are our partners were actually funding. So in fact it could have exceeded a million kina or something.

Q: Who was funding this?

[3:20 pm] A: The Raw Timber company from Taiwan.

Q: The landowners groups you already had a partner? A: Yes, well they were actually registered as a participant with IPA, they had the bank accounts opened up and just about that time I was in Taiwan just about the time we were going to bring in the machineries to actually develop, to implement the FMA agreement contract and something else happened. I mean the WMA declaration of all arrangement never came into play.

Q: So by Forest Management Agreement the State Forest Service becomes the manager of and if the party that is going to do the development or appoint the contractors, is that right? A: Not necessarily because there were no like strict or let us say specific regulation in place. We were also given the opportunity to select an investor and then we can---

Q: When the Forest Management was executed, was this partner, was he party to that agreement too? A: No, they were not. Q: Did they know of it, did the Forestry aware of their position? A:

Forestry were not aware except that they did apply to be a participant; they did apply for 5(b)

Forest Industry participant. Q: Were they made an participant? A: It was in the process when all agreement was sabotaged by another conservation program. Q: Was there an agreement between

Hunstein Range and this other company? A: There was MOU. Q: Was there legal documents for that?

A: Over the period of time it took so long, I did not know something else will happen so I have lost it

because it did not --- Q: There were no copies available of that agreement? A: No, except that I

have the IPA registration certificates for the same purpose they show. Q: Hunstein Range has in fact expanded some K930,000 of their partner's money in travel and

accommodation?

A: Yes that was an undertaking, had the project gone smoothly and kicked off the ground, it was like a loan and that loan still remains outstanding so we had to pass it on. Q: I see. Hunstein Range

in itself has not expanded no money at all and it was simply this partner firm that supplied the money for the transport and the travel?

A: Yes, there was some money also spent like as a clan we come together, put money together to expedite the process. Q: Would you have records of that? A: In PNG we do not keep records you see because right from the remote villages into Port Moresby, this thing may not click because you cannot see the future. Q: But you are the businessman, you have got K500,000 airfare in forestry management. Businessmen keep records.

A: Maybe today yes, I can keep records; those days I had no knowledge about the fees I could not put

up. Q: Do you have records from this partner company which spells out exactly how much you owe them?

A: I said just over a million kina. They have done a lot, spent a lot of money, we have travelled together, like hire of choppers over their project area--- Q: But that is money expanded by them, not by Hunstein Range?

A: All for the same goal and purpose. Q: I see. I am just trying to see who owes the money you see; who owes the money? Or who has lost the money? You are claiming - you are essentially seem to be claiming K930,000 for this partner who has not been made a party to the---

A: It is like a liability being shifted because we were partners. Q: I see, alright. [3.25 pm] MR

KASSMAN: Mr Yagi, records from the Department of Finance indicate that between 4 April 2005 and 8 August 2005, some four part payments have been made in respect of this claim totalling K430,100. Are you aware of that? A: Yes, I am. I am shortly going to be - I have prepared some documents to leave with you to go

through. In fact, these claims have actually been supported by some State lawyers. There are some correspondence in here. Maybe, you would like to have time to go through. I have compiled everything here for the benefit of this interview.

Q: Sorry, Mr Yagi, just in terms of the payments. The payments you have received them or have your

lawyers received these payments, K430,100. A: Actually, the payment went through the lawyer's trust and most of the money were actually used to repay the gratitude that we owe. Like, it is the same thing I am talking about. Over a period of time, in a very normal PNG society, we have extended family, they come to support the program which is, I think, it is a matter of fact.

Q: Alright, so the amount you say, you have received? A: Through the lawyers trust. Q: Through your lawyer's --- A: And then lawyer had to pay, I mean, not directly to our landowner company.

Q: Which lawyers were these?

A: Started off with Norbert Kubak and Company Lawyers. At that time he was like associate with Kemaken Lawyers, at that time. Q: Sorry, was it Norbert Kubak and Co Lawyers and associate?

A: He was an associate with Sam Kemaken Lawyers. THE CHAIRMAN: So, it was actually Mr Kemaken Lawyers who were acting and Mr Kubak did the

work. A: No, after they separated we had to continue with Norbert Kubak. MR KASSMAN: But the payments were received by which Firm? A: Kubak's trust account. Q: Norbert Kubak. A: Yes. Q: That is all the 430,000. A: Exactly, the whole lot. Q: Paid into their trust account. A: Yes. THE

CHAIRMAN: Does that mean there is a balance of K500,000 still outstanding, is it not? A: Yes, the balance. MR KASSMAN: I think we should --- A: That is where Mr Kari came in and mentioned something. Because one of the cheque which was

paid would not be released because of the like Office of the Solicitor General had advised that until and unless such a time when the Commission of Inquiry gives a clearance, then that is where you can have - that cheque would be released. And what had happened was that the cheque went stale because the date had caught up with the payment itself. It actually was about a period of 12 months.

Q: This is another cheque of over --/

A: Yes 0

Q: Not the 430,000, this is another --/

A: That is part of it, not the 430,000, it is small to 430, yes, not 430. So in fact, prior to thi

appearance we have been here couple of times and at least there was one letter we received from this office to the Solicitor General indicating that the Commission of Inquiry is to ascertain the process, the legitimacy of the claimant, but it did not have any power over the release of the cheque on the

other hand. THE CHAIRMAN: That is right, we certainly do not. MR KASSMAN: It is a matter for the Solicitor General. MR MAIPSON: With respect to the money, that is the K430,000, in fact 50,000 has been used,

380,000 is still pending. It is with the Solicitor General's Office, the cheque is still there. THE CHAIRMAN: 437 has not been paid out to Norbert Kubak? A: 380. MR MAIPSON: 380,000 cheque is still with the Office of the Solicitor General. It is the case that is

now before the court in which Mr Kari now appears to get the cheque out. THE CHAIRMAN: I am sorry, I am not, I am not --- MR MAIPSON: A cheque totalling 430,000 from the Finance Department has been made of which

50,000 has been used. But 380,000 is still pending, the cheque is still with --- THE CHAIRMAN: How did it get into court? Is it in court? MR MAIPSON: Yes. A: That is where I think Mr Kari would --

-- MR KARI: Your Honour, if I could help the Inquiry. On 1 April, the cheque of 100,000 was paid, on 15 June 2005, 230, was paid, on 4 August 2005, 50,000 was paid. On 4 November 2005, 50,000 was paid, on 30 April 2008, 380,000 was paid which is still being --- THE CHAIRMAN: The total of that is ---?

A: K430,100. Q: All those payments you have made it you have told me about, all those payments, they amount to how much, 900?

MR KARI: No.

THE CHAIRMAN: 400?

MR KARI: Yes, 400, balance of 500 remains to be paid.

THE CHAIRMAN: I see and where is that money paid to? Where is it?

MR KARI: Those monies were paid into Kubak Lawyers trust account which he is referring to. The 380,000 is kept by the Solicitor General's Office pending the outcome of this Inquiry. That is when we took the matter to court and we learnt that the cheque was still being held and has gone stale.

[3.35 pm] Q: I am sorry, I am still not clear. Mr Kubak has received how much? K437,000 less

K380, is that right? A: Chief Commissioner, Mr Kubak has actually received K430,100. Q: So where does this K380 --- A: That left a balance of K500,000 and from the K500,000, K380,000 cheque was raised and was

picked up by the --- Q: Solicitor General's Office and they have not released it? A: They have not released the cheque because of the matter before the Commission of Inquiry. Q: I see. A: So, because the time was against us. So we pressured a number of occasions into the

Commissioner's office and in the process of doing that the cheque went stale. Q: I see. MR

KASSMAN: Mr Yagi, did you sign a deed of release in relation to your claim? A: I remember, signing a deed of release. Q: How many deeds did you sign? A: About two. The first one went missing and they could not locate it so we were asked to sign

another one for the same amount. Q: I will just show you the two that we have. They are the same, they are basically all the same. One

is dated 25 October 2004 and the second one dated 28 February 2005. I would like you to look at them. They are really for the same thing, is that correct? A: Exactly for the same thing. Q: And

that is your signature that appears there? A: My signature. Q: And the other one? A: Yes, both of

them. Q: Who is the witness to your signature? A: First one was Norbert Kubak. Q: And the second one? A: The second one was one of my directors. Q: And his name is?

A: Micah. Q: Micah Samberi? A: Samben, S-A-M-B-E-N. Q: Thank you. But you are only seeking to enforce one of those deeds? A: It is the same deed. What had happened was one was misplaced because the Finance required --- Q: Misplaced by who? A: The office of the Solicitor General, I do

not know somehow after we signed, Finance could not

locate, that is why we were asked to come back and sign another one. Q: Second one? A: Second

one. Q: With a new date? A: Exactly. That is where the payment started--- Q: Both are signed by Mr Gelu? A: Kuvi. Q: Francis Kuvi? A: Yes, Kuvi. Q: When they were signed, when both were signed, where did you sign these deeds of release? A: At the office of the SG. Q: Solicitor General, did you sign that in the presence of Mr Kuvi? A: Yes. Q: That is both deeds? A: Yes both. Q: And apart from Mr Kuvi, was there anyone else present? A: It would have been his secretary. It would have been a Manus lady or? Q: The signature that appears to witness Mr Kuvi.s signature, do you recognise that signature or do

you recall who signed it as witness to Mr Kuvi.s signature. A: I remember the face of the woman. Q: But it was an officer in the office of the Solicitor General? A: Yes. Q: So what you are now seeking to enforce payment on is only just one of these deeds of release, is that right? [3.40 pm] A: Sorry?

Q: You are in court now seeking to recover the balance, I guess on this deed of release, which deed is it?

A: We were not aware of the proceedings.

A: Let me ask you a question. Because I have got two lawyers sitting down here, one is representing

another case while - so which one are you referring to?

MR KARI: Can the counsel clarify his question because ---

MR KASSMAN: Maybe ---

MR KARI: Is he saying that Jackson is double dipping and claiming on two of the deed of releases or

what are you trying to establish?

MR KASSMAN: I am just asking him the question. I think I am entitled to ask the question.

THE CHAIRMAN: Yes, just hold a minute please, Mr Kassman. The question is quite legitimate. What

are you pursuing?

MR KASSMAN: If you are able to clarify it maybe you should clarify it rather than asking me the question?

THE CHAIRMAN: The question is, put the question again to him.

MR KASSMAN: Mr Yagi, there were two deeds of release that you have now confirmed that you

signed. But you say, you have explained why you signed, where the second one was signed. You say it was signed because the first one was misplaced, maybe misplaced by yourself, misplaced by your lawyers, misplaced by even the solicitor general. So a second one has been signed. My question that I am putting to you is you are now in court seeking recovery of the balance on one of these deeds, which deeds are you seeking to enforce?

A: That will be the deed on file with the Finance. It is not - both of them are not on file, it would be one of them. Q: Alright, that is it, one is dated 25 October 2004. A: It would be the one for 28th.

MR KARI: Obviously, the latest date. MR KASSMAN: You cannot coach your witness please. Mr Yagi, I do not want to be seen to be confusing. There are two deeds, one is dated 25 October 2004 and one is dated 28 February 2005. Which deed are you seeking to enforce?

A: Both of them are for the same amount. And one of them would be on record with the Finance and that would be the one sent from the office of the Solicitor General because this one normally it does not operate out of procedures, out of system. It is systematic so - obviously, because I was asked to go back to the office of the Solicitor General because the one that we had actually signed at the first place the Finance could not locate it so Finance would have to write to the office of the Solicitor General to - before any payment could be made, there must be a deed of release. So obviously, the one that effected the payment, it would be the one.

THE CHAIRMAN: It is the second one? MR KASSMAN: It the second one, is it? A: Yes, it would be the second one. Q: Thank you. I have no further questions. If my friends might want to ask a question.

THE CHAIRMAN: Yes, before you go --- A: Commissioner, if I can circulate some of the information that I have provided for the benefit of this

Q: Yes, you can certainly put that in and put that in as Mr Jackson Yagi's bundle. Before you do, Mr Counsel is finished with his questions. MR KASSMAN: Chief, could we have them marked at the -- THE CHAIRMAN: Yes, Yagi 1, Hunstein Range/Yagi-1.

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MR KASSMAN: Thank you. THE CHAIRMAN: You have been paid out 437 and that you have told us that was applied and paid

out to creditors, right? How much of that was paid to your partner company? Has any of it been paid out to him? A: No, it would be nothing. Q: Nothing has been paid to them at all, all right. And the balance of 500, is that going to go to your

partners? A: To be honest, you know, because the costs is still accelerating. Q: Costs is still there. A: You know whilst staying in here, of pursuing this matter, we are still incurring costs. Whatever that were actually at that time, the amount were actually sort of got out with the - it is not enough to

cover for the costs. Q: So the claim that you actually made was based on the fact that your partner had paid for travel and accommodation. That is what the claim is. A: Exactly.

Q: But you have actually received half of that money, 437 of it and you have not paid it back to them at all. Is that correct? A: I have not but we have an understanding. I could always --- Q: So they are not asking for the money back?

[3:45 pm] A: I could always give something back. That is if they ask me but at the first place years back I was surely under pressure to find money and --- Q: But essentially the balance of the money is not going to go to that partner either, it is going to go to your own people for their current expenses, is that what you are saying? A: There are a lot of expenses. Q: I see, alright. Do

you have any, Counsel Mr Keta, Mr Kari, have you got any questions or cross examination or suggestions or submissions? MR KARI: Your Honour, Chief Commissioner, I keep on saying your honour. THE CHAIRMAN: Do not worry.

XXN: MR KARI

Q: Jackson, before the partners came in who funded your trips from the village to Wewak, Wewak to Moresby? THE CHAIRMAN: Yes, question again? MR KARI: Before the partners --- THE CHAIRMAN: Would you like to name it, what partner? MR KARI: Before the Raw Timbers came into the picture, who funded your trips from the village to

Wewak and Wewak and to here? A: They were here at the same time so they started funding operations right from the start. Q: Were there some local people who also funded you in that, Papua New Guineans I mean? A: After they left the locals took over and they are still finding how to--- THE CHAIRMAN: You got accounts for all these? You have got accounts for them? A: Yes. Q: You said you did not have any business records, you do not keep any accounts? A: No, we got accounts and also we got records.

Q: It has been common throughout Papua New Guinea in forest areas for prospective loggers wanting to get in on the business to talk to the landowners and fund them, it is an investment to see if they can get the job, right? And is this any different from this partner that you took on? They had hopes of being the logger and ended up that they did not get that at all.

A: I think the project would have been successful had there not been a Wildlife Management Declaration. That was 11 months after, the signing of the FMA. That actually immobilized the entire process, the program, the anticipated program. So in this particular circumstances, it is the State agencies that actually you know confuse, there was lack of coordination. So as a result the participants of the contract, Forest Management Agreement, was informative about the chances and the programs that were introduced thereafter.

Q: It still remains the same that in fact the claim that you made for 930 was to pay the partner who had expanded that amount of money towards giving yourself ready for the Management of the

Forest Agreement. Is that correct – travel and expenses?

A: Mr Commissioner, that would be a fact but today I have taken out another order which the National Court actually granted which was in favour of my landowner company for the entire contract agreement so it has gone up to some 60 million.

Q: 60 million?

A: Yes.

Q: That is still in Court, is it?

A: Yes. That is why I have decided to provide this information, it is all there.

Q: Alright, thank you. I have no further questions. Have you any further questions?

MR KARI: Mr Commissioner, our purpose I think here is basically confined to the balance of the money whether it has come clearly before the Finance Department for it to be paid to Mr Yagi and I believe it has come through the right process for it to be paid and whilst the cheque has been pending at the Solicitor General's Department, our clients still incur all those costs and those are part of the costs in which the initial claim has been made to the Finance Department basically for the breach of the FMA. So we want to know if that was the reason for the Solicitor General to for the matter to be referred to the Commission of Inquiry for it to be cleared of the misunderstanding?

THE CHAIRMAN: That was not certainly. The Commission of Inquiry has absolutely no authority whatsoever to clear anything for payment. We are making our own enquiries in respect of the Terms of Reference that we have for this Commission of Inquiry and we are looking at it from that point of view and we eventually report to the Prime Minister. So the Commission will have absolutely no, has no authority or jurisdiction at all to make any pronouncement regarding whether a deed it should be cleared or paid off by us at all.

MR KARI: Thank you. I have served directions and orders by the National Court which is my as I had said I am here. One of the directions was that the plaintiff is to provide evidence disclosing good reasons for the excluding of this claim in the Commission of Inquiry into the Finance Department affairs. Until such has been provided the Court will not proceed with this matter for trial.

THE CHAIRMAN: Who are you representing? MR KARI: Hunstein Ranges. I am here on the basis of those orders. THE CHAIRMAN: The plaintiff will not pursue any claim in Court? MR KARI: Claim in Court, the continuation of the matter in Court – for the balance. THE CHAIRMAN: I see. Alright we will take a note of it but even the court cannot give us authority to

clear a cheque. MR KARI: I do not have a spare copy. I served the Commission with---

THE CHAIRMAN: Alright, we will certainly take note of it. MR KARI: With that also I will ask if the Commission is in receipt of affidavit material that was filed in Court which enclosed deeds of releases, opinions from lawyers, Solicitor General's office, State Solicitor's office, the acting Attorney General then, back and forth correspondence which were where and I in Court but have been provided to this Commission.

MR KASSMAN: I am not sure what angle my friend is coming from. Maybe you could just communicate with us in writing. THE CHAIRMAN: What was the order you said, do you mean was there a order in Court? This Order simply says that the Hunstein Range Holdings Limited is to produce evidence to the Court disclosing good reasons for excluding this claim from the Commission of Inquiry. It is not an Order directed to the Commission of Inquiry.

MR KARI: No. These Orders came about because the Solicitor General office made representation that because the matter is before the Inquiry they cannot release the cheque. THE CHAIRMAN: I see. So and what are you asking for the Commission of Inquiry to do?

[3.50 p.m.] MR KARI: Whether the payment for costs that is received and which is subject to the deeds of releases signed which was agreed to, whether those payments are a subject of the Inquiry here?

THE CHAIRMAN: Yes, well they are yes.

MR KARI: The cost of 930,000, where deeds are being signed and part payments are being made, we are seeking the balance in court. THE CHAIRMAN: Yes? MR KARI: I again say this, the Solicitor

General has made representation that because this matter is before the Inquiry they cannot release the balance. THE CHAIRMAN: That is their view. MR KARI: That was what was presented in court so we are here and I have provided documentation. What I want is clarification from the Inquiry whether the costs that were the subject of this is before the Inquiry or is not? Is it covered by the Terms of Reference of the Inquiry or is it not? THE CHAIRMAN: The payments have been made, yes. The 433,000 is a subject to this Inquiry, yes, because it is a claim under the Terms of Reference for us to look at all claims during a particular period. It falls within the period so we are looking at how it came about, how it was paid, what was it for and again because it has got a deed of release, that also is assigned - we are looking at deeds of release, how they came about and how they were signed and with what authority, all those sorts of things, yes, we are. All right, any other matters? MR KASSMAN: The only other matter that was listed - I think we are completed with this particular matter, maybe we could excuse them. THE CHAIRMAN: You have some other matter? What do you wish to make--- MR KARI: I have no further matter I just came for this matter. THE CHAIRMAN: Is there anything else you wish to add before--- MR KARI: No. We just came for this matter. THE CHAIRMAN: Thank you. MR KASSMAN: Mr Yagi now. MR YAGI: Commissioner, with these documents I did not include a deed of release because I did not have one so but there is something mentioned about the deed of release in these particular documents but obviously you have a copy already. MR KASSMAN: If Mr Yagi can be excused? THE CHAIRMAN: Yes, thank you for coming here, thank you.

WITNESS WITHDREW

MR KASSMAN: The only matter outstanding is there that was on the list. it is on the list Chief Commissioner it is No 19, Sosoro Hewago.s claim to the Department of Finance but there is no appearance by Mr Sosoro Hewago. As to Mr Neville Devette we were advised by the office of Solicitor General that Mr Devette is overseas and unavailable. So I guess we might communicate and re-list this in respect of that matter.

THE CHAIRMAN: Very well, we stand adjourned. We will see you tomorrow.

AT 4.00 PM THE COMMISSION OF INQUIRY ADJOURNED UNTIL THURSDAY, 9 JULY 2009 AT 9.30 AM.

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COMMISSION OF INQUIRY
 INTO

THE DEPARTMENT OF FINANCE Mr Maurice Sheehan Chairman & Chief Commissioner
 AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANITHURSDAY 09 JULY 2009 AT 10:25 am
 (Continued from Wednesday 08 July 2009)THE CHAIRMAN: Yes?
 MR KASSMAN: Chief Commissioner, substantively we have three separate matters to be dealt
 withthis morning on the list. As per the list they are matters listed No 21, matter of Isaac Lupari,
 No 22the matter of Umba Y Gabriel or his claims I should say and No 23 the matter of Toka
 EnterprisesLimited, Dr Puka Temu, Pepi Kimas and the State. We certainly do have a number of
 lawyers andpersons present here who have been listed to give evidence. In all three matters if I
 could saystraight away, of the three matters No 22 and No 23, we will have two preliminary
 applications as tojurisdiction of the Commission. If we could firstly deal with the first matter,
 matter No 21, the matterof Isaac Lupari. I should say for the record, well firstly in relation to the
 matter of Isaac Lupari, wehad listed and had been in correspondence with lawyers concerning the
 attendance to give evidenceby Mr Paul Paraka and Mr Billy Bonner. I should say at this stage for the
 record that at 4:55 pmyesterday lawyers for Mr Lupari, namely N Tame Lawyers, that is Nicholas
 Tame served on theCommission an application for leave for judicial review of certain decisions of
 the Commission madeon 6 April 2009. Apart from the application for leave, that is in proceedings
 OS354 of 2009 filed 8July 2009, the plaintiff Mr Lupari seeks interim injunction or restraining

orders to restrain the Commission from examining further inquiring into this particular matter. Mr Tame contacted me by telephone this morning enquiring as to the Commission's attitude. I have been unable to contact him, I understand he may be in the court precincts but for the record a lawyer from the Commission will be attending at the National Court to represent the Commission. We, in any event, have this matter listed, it has been listed by publication in the Paper and both Mr Paraka and Mr Billy Bonner are well aware of the Commission having adjourned a number of occasions to suit their convenience, particularly in view of certain health issues they have highlighted previously, so it should be no surprise to them. I understand that Mr Othas is present here from the Firm of Paraka Lawyers and may wish to make some statement as to the status of his instructions.

THE CHAIRMAN: Yes, who do you appear for Mr?

MR OTHAS: Morning Chief Commissioner, I am appearing for Mr Paraka as well as Mr Bonner. Mr Paraka is not in here but Mr Bonner I understand is in right now. Mr Commissioner, I think our Firm has written to the Commission two letters; our first one was dated 3 July 2009 and a follow up of that was on the 8th. We raised some issues and those issues were responded to by---

THE CHAIRMAN: You talking about we, who is we?

MR OTHAS: The Firm. THE CHAIRMAN: The Firm. You are acting for the Firm as well, are you? MR

OTHAS: We acting for Mr Paraka and Mr Billy Bonner. THE CHAIRMAN: Paraka Lawyers are acting, are you acting for Paraka Lawyers who are acting for Mr

Paraka and Mr Bonner? MR OTHAS: That is right, as an individual. [10:29 am] THE CHAIRMAN: All right. MR OTHAS: The Commission responded to our queries by a letter dated 8 July 2009 which reached us today at 8:55 a.m this morning. Mr Paraka has indicated in the earlier two letters, I understand

the copies are in file, certain issues and the issues that were raised by the Commission, Mr Paraka indicated to and respond to them both in relation to his statement--- THE CHAIRMAN: I am sorry, you are going around in circles, I am afraid you are all over - I do not understand what you are saying. Would you like to be more specific. I do not understand, you are talking about letters that are sort of this and those refer to this and that and there has been - can you be more specific about what this is about?

MR OTHAS: In the earlier letter of July 3rd, there were certain issues raised by Mr Paraka--- THE CHAIRMAN: Such as? MR OTHAS: Such as the - Mr Commissioner, if I may hand up a copy of the letter so that I will take

you through. THE CHAIRMAN: Yes? MR OTHAS: Yes, this is in relation to the jurisdiction of the Inquiry and the issues in relation to the extension of this Inquiry. That is on the letter of 3 July 2009 and 8 July is only a follow up and also in the 8 July letter Mr Paraka has indicated that--- THE CHAIRMAN: He is unable to attend the Inquiry today because of recovering from hoarseness of voice.

MR OTHAS: That is right. That is the reason why he attended previous schedule he attended to his doctors overseas and he underwent operation on his throat so his review is due for tomorrow.

THE CHAIRMAN: Pardon? For tomorrow, that is today? MR OTHAS: That is right. But to both of those letters, the Commission has responded on its letter 8 July which I have referred to, I only have one copy.

THE CHAIRMAN: I see yes.

MR OTHAS: Chief Commissioner, you will note that the Commission has raised certain issues in its letter faxed to us today, that is for both matters involving Mr Isaac Lupari and Umba Y Gabriel.

THE CHAIRMAN: Yes about?

MR OTHAS: My instructions are that Mr Paraka will respond to those issues raised by the Commission in writing by or before the end of next week.

THE CHAIRMAN: I am sorry?

MR OTHAS: By or before end of next week.

[10:35 am] THE CHAIRMAN: Who is going to reply? What is going to happen by the end of

nextweek?

MR OTHAS: In response to the issues raised in the letter sent by the Commission, "by or before nextweek in writing."

THE CHAIRMAN: Yes. Let us get this quickly. We are talking in – it seems and you are coming across to me at cross purposes, alluding to things. I am looking at your letter of the 3 July, "we refer to Messrs Paul Paraka and Billy Bonner dated the 26 June. Mr Lupari personally appeared to make his statements, produce documents relating to his claims, Mr Garo appeared and gave statements relating to his involvement and while Billy Bonner has yet to make an appearance. The Inquiry has inquired into all four claims of breach of Mr Lupari's contract employment as Secretary of the Department of Finance, Defence, Personnel Management, Transport as well as payments made to him relating to other engagements. Of these only one has been settled by the Department of Finance by a payment of K1 million. It is only this claim that comes within the jurisdiction of the Inquiry. Otherwise, if the million is a portion between all four claims, then none of the claims satisfies the minimum jurisdiction of K300,000." This is the letter you are talking about?

MR OTHAS: That is the letter.

THE CHAIRMAN: "Each of the deeds of settlements pertaining to the claims expressively bars any question of validity or otherwise of the settlements. The enquiries made by the Inquiry raised the issues of solicitor/client privilege in confidentiality on settlement negotiations. Please provide you earliest details of other questions you require Mr Paraka to address." Just on that matter. What is the purpose of those – those submissions have already been made and ruled on that there is no client privilege, that the wording of the deeds of settlement do not say what they said in this letter. They do not preclude any Inquiry whatsoever. They only preclude any action by the plaintiff, in that case Mr Lupari from further claiming on in respect of those matters. There has been a ruling of that already before this tribunal.

MR OTHAS: Mr Chief Commissioner, yes, I understand that, there has been one responded to by the Counsel Assisting in the letter I have referred to are faxed to us today for those queries raised but in the same letter they have raised certain other issues involving the two cases which Mr Paraka's prior instructions are that will respond to them in writing in relation to ---

THE CHAIRMAN: He will respond to them, is that why you are here today?

MR OTHAS: That is right, so he will respond to ---

THE CHAIRMAN: Why did you not say that in the first place? I am looking through this letter first. But in relation to Umba Y Gabriel's claim, this matter is no longer in the jurisdiction of the enquiry because Mr Umba Y Gabriel has paid all the money back. Is that alright? –

MR OTHAS: That is right, that is according to Mr Kipoi last time.

THE CHAIRMAN: So there was a claim for K1.6 million, it was paid out, we have heard evidence regarding that in Mt Hagen. So the money was being seen as silent and now you say it has been paid back?

MR OTHAS: That is according to Mr Kipoi who appeared last time.

THE CHAIRMAN: Yes, I see alright, so if it has been paid back there is no claim, is that what the idea is?

MR OTHAS: That is right, so this ---

THE CHAIRMAN: But the Terms and Reference include all many other things such as the involvement of the State offices, how it came to be, how the money from the Finance Department, how the money came to be paid, how was it paid back, which way it went. Many of these things I cannot see that would be an exclusion of it. Same as this extension of the Inquiry you wish to challenge. "We consider the extension to the Inquiry to 31 July presumably." Is that the one?

MR OTHAS: That is right.

THE CHAIRMAN: "And no power to extend the Commission of Inquiry", I see. Alright, very well. And you say Mr Paraka wishes to make now a response to our letter which sets out – would you like to tell me about Mr Kassman what this is about?

MR KASSMAN: Yes, well essentially in response to the letter from Paul Paraka lawyers of 3 July,

were reiterated the fact principally two issues; firstly, our communications with Mr Paraka or request for his attendance to assist the Commission were by letter to Mr Paraka as a lawyer in the jurisdiction, secondly, we have certainly received, the Commission has received evidence on quite a number of issues and in particular from his lawyer Mr Guguna Garo, who gave evidence before the Commission.

[10:39 am] There were issues that arose out of that which we felt it was necessary for Mr Paraka to respond to and a couple of other matters. The Commission is in fact giving Mr Paraka the opportunity to be heard on what clearly can be certain findings that are open to the Commission to be made that could well be seen to be adverse to Mr Paraka's interest. That is the first issue that were raised in our letter of 8 July which we faxed across to Mr Paraka this morning. In addition to that we have asked for Mr Billy Bonner to be present to give evidence today. In respect of Mr Billy Bonner, he has been served with the summons and he has appeared previously, the proceedings were adjourned following interim application by Mr Lupari via Mr Nicholas Tame. Following that Mr Billy Bonner was unwell and asked for further time and the matter has been re-listed for today to hear his evidence.

THE CHAIRMAN: Mr Paraka, you will accept that he has not been summonsed, he has been invited to appear. He does not want to appear, is that correct or he will respond in writing in terms of our advice, so you are strictly under compulsion to appear because he is not summonsed. However, the Commission wishes to give him the opportunity to be heard, and if he failed to appear or if he does not want to be heard, then the conclusion that the Commission will draw, come to such conclusions as the fax we have before us bear. Is that accepted?

MR OTHAS: Chief Commissioner, as I have indicated to those issues raised in today's letter, Mr Paraka said he will respond to them in writing those issues raised but in relation to the facts and the matters relating to Mr Lupari, I think some part of the evidence has already been given by Mr Garo and then the relevant issues raised by the Commission--- THE CHAIRMAN: Is that relevant to Mr Paraka's position? You are saying that we have already got evidence from Mr Garo so we do not need to hear him on that?

MR OTHAS: Sorry Commissioner?

THE CHAIRMAN: What is this in reference to Mr Garo, he has given evidence, yes?

MR OTHAS: Yes, in relation to his case Mr Garo has already given evidence but on his part he will respond to the letter that has been sent to him today in writing sometime by or before end of next week. These issues, that is in relation to both cases Mr Isaac Lupari's matter---

THE CHAIRMAN: And he is unable to be here today?

MR OTHAS: And also Mr Umba Y Gabriel's matter and those issues raised in Commission's letter dated yesterday will be responded to by writing. Also Mr Chief Commissioner, you will note that in the matter involving Mr Lupari, there were certain explanation Mr Paraka was asked which is in relation to the involvement of Mr Bonner in that particular case, I think it is page three of the letter and the extent of his involvement, Mr Bonner's involvement in the matter and his explanation, everything will also be covered in the written explanation.

THE CHAIRMAN: Sorry, that is Mr Paraka's.

MR OTHAS: Yes.

THE CHAIRMAN: He wishes to do that, that is fine, all right.

MR OTHAS: That will be given next week.

THE CHAIRMAN: He is going to give a statement writing about that, well Mr Bonner is here, he can give evidence for himself, is that correct? Is that right?

MR KASSMAN: Yes.

THE CHAIRMAN: Very well, if Mr Bonner is here we will hear from him.

MR OTHAS: Mr Chief Commissioner, would it be proper if Mr Paraka has to give his explanation for allowing Mr Bonner to involve in this case and then Mr Bonner to give oral evidence or evidence in which manner he is asked to give? The order in which we prefer is Mr Paraka has to give his explanation in writing and give explanation to the Commission---

THE CHAIRMAN: If Mr Paraka was here, he was coming to give evidence, yes that would probably be not unreasonable but he is not here and he does not wish to come here, he wishes to put his reply in writing, which we will accept that. But Mr Bonner is here and he can give evidence and we require him to give evidence. Alright? Has anybody got---

MR OTHAS: Commissioner, can I make this one as a formal but oral application and the Commission rule on it. Our application that Mr Paraka's evidence in writing in relation to the involvement of Mr Billy Bonner be given first and basically---

THE CHAIRMAN: If Mr Paraka is going to ask Commission of Inquiry, I will give you in writing an explanation in writing of what I want to say by next week, if Friday, and after that sometime we hear Mr Bonner, the Commission of Inquiry has got till 31 July to make its report. We have not got that sort of luxury and that sort of time. Mr Bonner is here, and he is required to be here, he is under summons, he speaks for himself, we will hear from him. Your application is refused.

MR KASSMAN: Thank you Chief, in relation to the response from Mr Paraka, if we could have that by close of business Tuesday next week?

THE CHAIRMAN: Yes suitable?

[10:44 am] MR OTHAS: Mr Chief Commissioner, I think that would be impracticable because he is leaving for tomorrow, review of his throat tomorrow, scheduled at 10.30 in Brisbane and the issues raised are quite substantially he has to give them in writing so by Thursday or Friday would be appropriate.

THE CHAIRMAN: It has been a very long and winding - we have had a long correspondence with Mr Paraka over all the term of Commission of Inquiry about various matters and there is no reason at all. We will make it Wednesday by close of business Wednesday. Thank you. Very well, we will call Mr Bonner. Togi, swear him in.

MR BILLY BONNER, Sworn:

XN: MR TUSAIS

THE CHAIRMAN: Yes? Is your name Billy Bonner or is it William Bonner? A: That is correct, Billy Bonner. Q: Full name? A: Yes. THE CHAIRMAN: Thank you. MR TUSAIS: Are you employed by the Firm of Paul Paraka Lawyers? A: That is correct. Q: What is your position? A: File Manager. Q: File manager. How long have you been working for Paul Paraka Lawyers? A: I think since 1997 until now. Q: What did you start off as in 1997? A: Filing clerk. I am sorry, I withdraw - legal assistant. Q: When did you become Filing manager? A: 2001. Q: Your qualifications, you do not hold a law degree as of today's date? A: That is correct. Q: The Commission would like to ask you specifically about a case of Issac Lupari, four claims that he made against the State. In the course of our investigations a letter was - yes, we came across a letter that was

signed by you and it is a letter that is said to be a quantum submission made to the Solicitor General's office. I would like to show Mr Bonner a copy of this letter. It is dated 28 February 2003. Do you recognize this document?

A: Yes I do. [10:48 am] Q: Is that your signature at page 4?

A: That is correct.

Q: There are actually two-page 4s to this letter, is it not there Mr Bonner?

A: I am sorry?

Q: The document you have there are two different page 4s that, above of those last pages of your letter? A: I see. I think the second one is a draft, not the first one. The first one will be somebody tried to

cross it out here, somebody circled it here. That is the correct one, the second one is a draft, Mr TUSAIS. Q: Chief Commissioner, could we have this document marked as perhaps Lupari/Bonner? It was

previously marked as MFI Lupari/Bonner 1 when it was put to Mr Garo in his evidence on --- THE CHAIRMAN: It becomes an exhibit under those terms, yes. MR TUSAIS: Yes, it is Exhibit

Lupari/Bonner 1. THE CHAIRMAN: Yes. A: Chief Commissioner, I am referring to this letter, sorry this page to me. Q: Yes, which is you are saying, which is the --- A: I am saying the last one is the draft. Q: The last one is the draft? A: Yes, if I can recall. MR TUSAIS: Did you write this letter? A: Yes, I did. Q: In what capacity did you write this letter? A: As a File Manager. Q: What? A: As a file manager of Paul Paraka Lawyers. Q: What exactly are your duties as a file manager? A: I manage files. I also draft documents under the supervision of Mr Paraka.s senior lawyers, and I do not always hold myself as a lawyer but I work under Paul Paraka.

Q: Yes, you say you do not hold yourself out as a lawyer but this is basically the letter, the contents of the letter is basically stuffed that lawyers do, is that not true? You know you have written a--- A: Is there a hard and fast rule about writing a letter or is it a law that lawyers have to write letters? THE CHAIRMAN: He is asking, you just answer the question. It is not a matter of asking the questions back. A: I am answering the question. THE CHAIRMAN: Do not answer a question by asking a question. You answer the question. A: Point taken. MR TUSAIS: Did you have carriage of this matter of Issac Lupari in WS 88, 89, 90 and 91 of 2003? Did you do work on this file?

A: No. The file was passed to me briefly and then well I was trying to do a quantum submission andthat is as far as my involvement is. Q: So doing quantum submissions is one of your duty statement as a file manager with Paraka Lawyers? A: Upon instructions because it is set on the discretion of the principal. Q: In 2003 did you have any qualifications as a lawyer? A: I think Chief Commissioner I decline to answer that question. Q: What is that? A: What was the question again? I think it is about my personal status at that time. Q: In 2003 you did you have any legal training: did you have any legal training in 2003? A: I was a student, UPNG Law Student. Q: What year were you in, what year at law school? A: 2000 - 2003 years. Q: Yes, but were you doing first year law or second year law or preliminary year? A: Third year. THE CHAIRMAN: I am sorry, you told us you were file manager in 2001? [10:54 am] A: Yes. Q: You were at University in 2003? A: That is right. Q: I see, at the same time? A: At the same time, yes. Q: Did your finish the law qualification? A: Yes, I did this year, sorry, last year. Q: You have being admitted? A: No yet. MR TUSAIS: Yes, in 2003 when you wrote this letter, how many lawyers were there in Paraka lawyers? A: I think you should ask that question--- Q: No, how many lawyers were there, you were in that Firm? A: No, I am not sure. Q: How many lawyers, they are more than 20 or 30? A: May be I was in my own little office too so I would not know. Q: What I want to ask you is was there a shortage of lawyers so they asked you, the file manager to write this important letter seeking millions of kina from the State? A: I would not say anything, I mean I have no idea. Q: Just personally, in your own person, when you wrote this letter, where you comfortable orconfident that you know you had the capacity in yourself to write a letter asking for this that much money from the State, K3 million it is not peanuts? A: I think Chief Commissioner, I will exercise my right to remain---. THE CHAIRMAN: You have got a right to remain actually.

A: I think I do. Q: Under the Commission of Inquiry.s Act, you are here to tell the truth, the whole truth, there isnothing else but the truth. But there is no opportunity for you to (inaudible) that is got to be the Commissions of Inquiry are about. A: Then I would decline to answer. Q: Pardon? A: I decline to answer. Q: Very well you decline to answer, that is your answer. Yes? MR KASSMAN: We will may be remind him. He has not been advised that it is an offence under the Section 10 of the Commissions of Inquiry Act - but to remind and Mr Billy Bonner that it is an offenceunder the Commissions of Inquiry Act now the Section 10 for a person appearing as a witness torefuse to answer any questions that are relevant to the Inquiry and that are put to him by theCommission.

A: Thank you, Mr Counsel. Q: May be I would urge Mr Bonner to maybe answer as best as you can? THE CHAIRMAN: Yes, you are here --- A: Mr Tusais, sorry can you repeat the question please. MR

TUSAIS: Yes, if I can recall correctly what I asked is that when you drafted this letter in yourself, inside yourself were you, did you feel confident or comfortable if I can use the term that you had the capacity to write or draft such a letter seeking basically seeking millions of kina from the State, K3.7 million that is a very large sum of money. What I am asking you is as a person with no legal qualifications, did you feel that you had that capacity to write a letter of this importance?

A: To be honest I can recall I have been six years back so I would not be sure of my feelings at that time whether I was comfortable or not. [10:59 am] Q: All right, with the letter you said you attached triplicate draft copies of deed of settlement for the four separate proceedings, who drafted those deeds of settlement? A: I cannot recall. Q: Did you draft them yourself?

A: Obviously, I cannot recall. Q: All right, so when did you receive this file or instructions from your principal if you think it is Mr Paraka to draft quantum submissions?

A: Mr Tusais, you would appreciate that it is a bit long time back, probably I cannot really recall exactly when the file was given, probably early 2003 sorry, I am not really sure. Q: All right, do you recall how long you worked on this or did it take you half a day, one day or several days?

A: Probably may be a week or something, like I said I cannot really recall the events in between.

Q: Did you consult any lawyer in the firm about what you are working on or you just drafted it and sent it off to Solicitor Generals?

A: Mr Tusais I think this letter was sighted by my principal before it went, I cannot really recall, like I said it is about six years back.

Q: It was after you wrote it?

A: Yes.

Q: What about as you are going through, did you discuss this with any lawyer just to be sure that you are on the right track?

A: I did discuss this with Mr Paraka once when the file was given to me, yes.

[11:04 am] Q: All right since you authored or drafted or wrote this letter and sent it off, do you know what happened as a result of you sending this letter off, what happened in this case?

A: Mr Tusais, I cannot tell you that because I would not know what happened. I just did what I was advised to do, just look at the file and then like I said, I just discussed it once with Mr Paraka and then I was instructed to do the letter and I sent it and that is it.

Q: Do you know if this matter was settled as you asked for in this letter?

A: Yes, probably, I heard of it, yes.

Q: When did you hear of this?

A: Mr Chief Commissioner, may I make a preliminary application, I would like to seek instructions from my principal people before coming here again. Because I did not sit with him whole of – the last I was sick so I did not discuss these things before coming here so.

THE CHAIRMAN: But you know – well the point is you have been asked---A: Mr Chief Commissioner, my reason is that some of the answers might implicate Mr Paraka. But I must let him know before I come here and then give evidence.

Q: No there is nothing about implicating anybody at all. We are not here in the business of charging anybody. You are not on trial, nobody is on trial, we are trying to establish facts. And you are in position of facts within your knowledge we want to ask you about them. It does not matter what Mr Paraka's position is at all. He can look after himself or he can tell us what his facts are when he chooses to do so as he is apparently going to do so in writing.

A: I understand that Chief Commissioner, the reason is that---

Q: Yes let us get it very clear. Nothing you say, there is no legal consequences can come out of what is said in this Commission of Inquiry today. That is what the Commissions of Inquiry's Act says, no legal proceedings, no criminal proceedings, nothing at all can come out of the evidence, section

13, correct? MR KASSMAN: Yes, section 13 of the Commissions of Inquiry Act. THE CHAIRMAN: Yes, please read it out? MR KASSMAN: Section 13, Commission of Inquiry Act titled, „Statements by witness not admissible in

evidence against him., and it reads; "A statement or disclosure made by a witness in answer to a question put to him by a Commission or by a Commissioner is not, except in proceedings for an offence against the Act, admissible in evidence against him in any civil or criminal proceedings." THE CHAIRMAN: Absolute, all right. So you have no fear on that score. A: Mr Tusais? MR TUSAIS: Mr Bonner yes, look, what I am asking is basically this should be in your personal knowledge, I am just curious.

A: I have a very short memory so I cannot really recall if you can point in the right directions then I may be able to assist. Q: All right, you sent this letter off at the end of February, there is 28 days in February, I think that was still the case in 2003. When did you first know that this matter was settled? How soon after you sent off the letter, did you know? A: I am not really sure. Q: Is it soon after or long time afterwards?

A: Like I said I am not really sure. Q: Well in fact it was – the deed of settlement was signed about three days after your letter arrived or your letter was dated. The deed of settlement was signed on 3 March 2003. I am telling you, that is the date on the deed of settlement, did you know that it was signed on that date? A: Like I said I cannot recall.

Q: Where you present when this deed of settlement was signed? A: Yes I believe so. Q: At the office of the Solicitor Generals?

[11:08 am] A: I think yes that is correct. Q: With Mr Gelu? A: Yes. Q: Who else was present? A: Mr Lupari. Q: Was there any other person? A: There was one but I cannot recall the name. Q: Was there anyone else from Paraka Lawyers? A: I cannot recall. Q: Who signed as witness for Mr Lupari, was that yourself? A: Yes I did. Q: Quite apart from this deed, have you witnessed other deeds of settlement on behalf of Paraka

Lawyers? A: I do not think that is the issue here. Q: No I am asking you, have you witnessed for example the deed in relation to Umba Y Gabriel? A: I cannot recall. Q: Excuse me a moment. Would you have a look at this? That is the deed of release signed in the matter of Umba Y Gabriel and several others –v– the State. Would you look at the signature on the top left hand side that says witness signing on behalf of Paraka Lawyers as Attorneys for Umba Y Gabriel. Is that your signature?

A: Excuse me Mr Tusais. Q: That is the signature as witness, it is located at the top part of that page? A: Mr Chief Commissioner, this is in relation to another separate matter. THE CHAIRMAN: Yes. A: And we are dealing with Isaac Lupari's matter. They are showing me a deed of Umba Y Gabriel. THE CHAIRMAN: Yes. You have been asked is that your signature on that document? A: Yes, I think so. MR TUSAIS: Whose signature is on the other side next to yours? A: Mr Paraka. Q: Alright, thank you. A: Mr Chief Commissioner, can I object to this? This is a separate proceeding altogether. I do not

want to go into another matter altogether, this is Isaac Lupari's matter. I was summonsed to appear to answer questions relating to Isaac Lupari and I also submit that those questions and answers be stricken off.

THE CHAIRMAN: In the correspondence that you have from Paraka Lawyers talks about all these matters and he says that they are acting for you as well and that you are to give evidence. It seems to me whether the fact you have been given particular notice of it by Paraka Lawyers yourself or directly to yourself. We are simply asking questions about this and unless you can show us how you are embarrassed or unable to answer questions, then I cannot see why you should not answer questions. Is there some reason that you cannot answer these questions about Mr Umba Y Gabriel's case?

MR OTHAS: Mr Chief Commissioner, I have got an application to make here with respect.

THE CHAIRMAN: Just hold on please. Mr Bonner, what is your reason?

A: I was summonsed to appear in Isaac Lupari's case, that is why I am objecting to this. I will not answer questions relating to other proceedings.

Q: Have you got no knowledge of these other proceedings? Is that what you are saying?

[11:14 am] A: That is exactly what I am saying, I am not saying that I have no knowledge but I am saying I am appearing for Isaac Lupari's matters and I want you to rule on that.

Q: Very well. If you are in difficulty with this Isaac Lupari matter, we will stand you down and you can have a look at these matters and you will be recalled to give answers to them, these questions, all right?

MR OTHAS: Mr Chief Commissioner, I have got one short application to make in relation to this Umba Y Gabriel.

THE CHAIRMAN: Just hold on a minute. On whose behalf are you making this? Are you under instructions? You are acting for the Firm?

MR OTHAS: That is right, I have indicated my appearance this morning, I acted for Mr Paraka as well as Mr Bonner, that is what I said on record. Insofar as Umba Y Gabriel is concerned, these were matters the Firm of Paraka has been involved. That is according to their letters sent to us. Appropriately Mr Paraka is the principal of the Firm and I have indicated that he will not respond to those matters and I do not think Mr Bonner is the appropriate person to respond to the settlement of the matters why he has not been involved or and also my earlier application which was refused was because in the order Mr Paraka has to give his side of the story in writing and then Mr Bonner to come in. We just refused but insofar as Mr Umba Y Gabriel's matter is concerned, this then goes into the involvement of the law firm of Paraka Lawyers in handling this case, so it is more appropriate that Mr Paraka gives his side of the story.

THE CHAIRMAN: It is not a particular secret of your Firm, it is not a matter at all. It is a matter of this Commission of Inquiry asking persons who are involved in matters, what their knowledge of those matters are. Mr Bonner is here, he can give those evidence. Mr Kassman, what was the summons to Mr Bonner? Does it conclude - is it specific to be referred only to one matter and nothing else or is it generally?

MR KASSMAN: The summons was issued certainly only in relation to give evidence in relation to the matter of Mr Isaac Lupari. The question merely is to identify and to confirm as to whether the signature that appears on that document is the signature of Mr Bonner and he is the most appropriate person that we should ask unless they can identify someone else who can say---

THE CHAIRMAN: He has identified that. Is there any other further matter we need to request on that issue?

MR KASSMAN: No further questions.

THE CHAIRMAN: Very well, yes, fine.

A: Mr Chief Commissioner, I would like to make - I beg to differ. This is a separate proceeding as indicated to you earlier.

Q: No, it is not a separate proceedings at all. It is part and parcel of the Commission's Inquiry.

A: But I was summonsed ---

Q: As far as you are concerned you were summonsed just on one, you have been asked to identify your signature on a document. You have done so. We do not need - and because you are concerned about your reluctance of being summonsed on that particular matter, we will defer the matter until you are fully able to inform yourself on it. But as far as the Commission's Counsel is saying, the only question we needed to was a matter of your personal knowledge and interest whether in fact you signed that document. Yes, you did, fine.

A: No, Chief, I also apply that my particular answer be stricken off as well from the record relating to Umba Y Gabriel.

MR KASSMAN: Chief Commissioner, I think it might be appropriate that Mr Bonner take legal advice. He has a lawyer who appears to be acting for him. These are fairly serious issues that he is now entering into to suggest that an answer be withdrawn or struck off, is no small matter. I would maybe urge Mr Bonner to speak with Mr Othas and they could maybe return if they do have an application to make.

THE CHAIRMAN: Very well.

MR KASSMAN: We have no further questions for Mr Bonner.

THE CHAIRMAN: We have no further questions for you, Mr Bonner. You may stand down if you wish to take advice as Counsel suggests and we are talking in terms of the sections of the Act of the Commissions of Inquiry Act that we referred to earlier and also those provisions regarding contempt of the Commission as well. Be very cautious.

[11.18 am] MR OTHAS: Mr Chief Commissioner, as you will appreciate, what Mr Bonner is referring to for the record the questions in relation to Gabriel Umba Y.s case that he had answered.

THE CHAIRMAN: Very well.

MR OTHAS: I do not think he is referring to the questions and answers relevant to Isaac Lupari.

THE CHAIRMAN: Mr Othas, talk to him and see what you are talking about.

THE CHAIRMAN: Stand down, Mr Bonner. We have heard the evidence that was required of you and if there is anything you wish to add to it we will hear from you after you have consulted with your Counsel. All right, stand down, thank you.

MR KASSMAN: Thank you Mr Bonner. MR BONNER: Thank you Chief Commissioner.

WITNESS WITHDREW

MR KASSMAN: Chief Commissioner, we will now deal with the matter of Umba Y Gabriel. As I indicated earlier Mr Sino wishes to make an application which goes to jurisdiction.

THE CHAIRMAN: Yes?

MR SINO: Thank you Mr Chief Commissioner. My name is Mr Sino and I practice in Mount Hagen as a private lawyer. THE CHAIRMAN: Sino, is that? MR SINO: First name Kumoro, K-U-M-O-R-O. THE CHAIRMAN: Kumoro Sino, you are in practice on your own, are you? MR SINO: Yes. THE CHAIRMAN: All right, in Hagen, thank you. Yes? MR SINO: And I appear in this proceedings on behalf of Umba Y Gabriel. For the purpose of this morning's session, Mr Commissioner, I have an application on foot and the application was filed yesterday.

THE CHAIRMAN: Do you have written instructions? You have written instructions?

MR SINO: I have verbal instructions from Umba Y Gabriel.

THE CHAIRMAN: And who is he? MR SINO: During the last session of the Commission of Inquiry which went up to Mount Hagen, I think on 20 May 2009---

THE CHAIRMAN: Mr Umba Y Gabriel appeared. Are you saying he appeared ---?

MR SINO: Yes, he did come.

THE CHAIRMAN: He appeared and gave evidence before the Commission?

MR TUSAIS: Umba never did.

MR SINO: Sorry Mr Commissioner, I would not be too sure on that but he came to me---

THE CHAIRMAN: I am very sure that he did not.

MR SINO: He came after the proceedings were concluded in Mount Hagen. THE CHAIRMAN: Well, that is pretty. He came to where the Commission of Inquiry was holding its hearings after they had finished and left?

MR SINO: Yes. The Commission of Inquiry was conducted but the inquiry into Umba Y Gabriel matter and the other related proceedings, Gabriel Yer, that part was concluded. Mr Commissioner, the application if I may proceed to make the application. The application seeks to refrain ---

THE CHAIRMAN: Just hold on a minute, before you do, I would like to sort of clarify the situation. You said he appeared in Mount Hagen?

MR SINO: Yes.

THE CHAIRMAN: Did you make any contact with the Commission of Inquiry?

MR SINO: I would not be sure about that. What I know is that he appeared after the - he came to Mount Hagen ---

THE CHAIRMAN: No, just wait. It is just like saying the Commission of Inquiry was in Mount Hagen one week and I went there the next week and we did not talk. Is that what you are saying?

MR SINO: No that is not. What I am saying is that the Inquiry was in progress but the Inquiry into this specific matter was concluded and it was well past, it was on a Thursday if I recall and that

wason the last week.

THE CHAIRMAN: Mr Kassman, can you assist me at all whether we had any contact with Mr Umba Y?

[11.25 am] MR KASSMAN: As far as I recall we did not have any contact from Mr Umba Y Gabriel. I understand there were communications from Mr Sino. By that time it was Thursday the day we dealt with land acquisition related matters. We certainly did not deal with the matter of Umba Y Gabriel and we certainly did not receive evidence in any form from a Mr Umba Y Gabriel.

THE CHAIRMAN: I am just trying, now is there some significance in the fact that Mr Umba Y Gabriel turned up and then talked to us or did not at the Inquiry?

MR SINO: No, I do not think he had the chance to appear at the Inquiry.

THE CHAIRMAN: So it is not a situation where he had turned up and was not given an opportunity to be heard?

MR SINO: What has happened in this and the other related proceedings if I may say there is a dispute between the lawyers faction. It is a substantive National Court proceedings relate to a police raid claim and there is dissatisfaction and the various members of the tribes are separated into various factions and I believe the condition was not right and it was not conducive for him to come openly to the Commission of Inquiry at the time because there were a lot of people and most of those people were people who had their own agendas and that those were the people who came in to assist the Commission.

THE CHAIRMAN: I see, right.

MR SINO: Thank you Mr Chief Commissioner, the application if I may take you through was filed yesterday on 8 July and the application for the purpose of the application we will be relying on the statement by Harvey Nii. THE CHAIRMAN: By Harvey Nii?

MR SINO: Harvey Nii, who is the former lawyer for Umba Y Gabriel and that statement was also filed with the application. The statement is dated 29 May 2009 and a statement by one Josephine Dinialso dated 29 May 2009 and the statement by one Mario Cueva dated 29 May 2009 and a statement by Gabriel Yer and I think that is a sworn affidavit dated 31 May 2009.

THE CHAIRMAN: Is Mr Gabriel Yer, is that Umba Y Gabriel Yer.

MR SINO: Mr Chief Commissioner, Gabriel Yer is a different individual.

THE CHAIRMAN: I see.

MR SINO: And Umba Y Gabriel is a different individual according to my instructions.

THE CHAIRMAN: I see. Yes thank you. According to your instructions, yes. Yes, please.

MR SINO: The facts are not very much in the issue or it is very straight forward. Essentially, the facts from all those affidavits is that there are two separate proceedings; one is WS 1231 of 2002, Gabriel Yer -v- the State and Others. That was filed in 2002 and according to the affidavit or sworn statement from Mr Gabriel Yer who is the plaintiff in that matter, that matter is not concluded and it is pending before the courts.

[11:29 am] The matter that is now before this Inquiry is WS23 of 2003, that is Umba Y Gabriel and others -v- the State and others. The essential facts are that in 2003 - I do not have the benefit or I did not sight the writ of summons but I am glad to believe there should be no issue that the writ was filed in 2003 and a deed was signed on 18 May 2003. Following the signing of the deed there was a settlement for K1,667,925 which comprises of the principal sum claimed and the interest, the interest component Mr Chief Commissioner for the record is about K18,795.56.

THE CHAIRMAN: It was paid out?

MR SINO: Yes. On 16 July 2004 the matter was settled by a cheque raised to Harvey Nii Lawyers who are the lawyers who had carriage of the matter on behalf of Umba Y Gabriel. What happened Mr Chief Commissioner if you refer to the statement by Harvey Nii Lawyers and also the affidavit by Gabriel Yer, who is also the Secretary for Finance, that on 19 February 2008 the money was reimbursed and paid back to the State. The reason for that is deposed to in the statement by Harvey Nii Lawyers basically that there was a lot of dissatisfaction and complaints with the plaintiff from various members of his tribe and alleged debtors and there was a likelihood of trouble brewing up back in the village so that money was retained and it was never paid out and what the

lawyers have done was to return the money and advise the principal plaintiff and the other plaintiffs to pursue themselves with the State and following the reimbursement of the money that was paid out, the State acknowledged that and issued a receipt on 20 February 2008 and that is confirmed by the statement by Josephine Dini and Mario Cueva. Mr Chief Commissioner, essentially the substance of the application this morning is that since the money was returned in full to the State, and that is acknowledged by the State by the Terms of Reference of the Commission of Inquiry, the Commission of Inquiry is required to inquire into payments in excess of K300,000. What my application this morning is that the money was returned, there is nothing to inquire into.

[11:34 am] To continue on would serve no end because there was no payment. Mr Chief Commissioner, just to highlight, in passing out I would like to make this statement that the terms of reference for the Commission of Inquiry, I think came out on 12 May 2008 and the reimbursement was done on 19 February 2008, that is about three months before the Commission was established. So the whole conduct of reimbursement, there can be no malicious intent or anything of that sort can be inferred from the conduct of the lawyers. What we are saying is that the money is returned so it does not---

THE CHAIRMAN: You are saying the money was paid out by the State under the deed of settlement into Mr Nii Lawyers' trust account. He hung onto the money for X years ---

MR SINO: Yes.

THE CHAIRMAN: And then repaid it from his trust account?

MR SINO: Yes. So there is no payment.

THE CHAIRMAN: Is that what the statement, that is what the ---

MR SINO: Yes, it was repaid so there is no payment.

THE CHAIRMAN: At the Commission of Inquiry hearings in Mount Hagen, we have already taken evidence by various persons that they were present and saw the money in cash in the possession of Mr Gabriel Yer and that it was to be returned to the village and they were going to distribute it so that does not square with your instructions that the money remained in a trust account for some five years doing nothing.

MR SINO: Mr Chief Commissioner, I did not hear that evidence being given in Mount Hagen but if that may be the case I have no instructions on that aspect so I cannot assist the Commission.

THE CHAIRMAN: I recall it very well because the witnesses were very adamant. Mr Kassman, have you got any comments on this?

MR KASSMAN: Yes certainly. Mr Tusais will respond. I understand you are completed with your application?

MR SINO: Mr Chief Commissioner, that is in essence the application before the Commission this morning. Thank you.

THE CHAIRMAN: Very well.

MR TUSAIS: Chief Commissioner, basically Mr Sino is asking the Commission of Inquiry to restrain itself and not to hear anything further on this matter because he says the cheque was returned therefore there was no payment. Chief Commissioner, I am not sure what that means, it sounds like a slight of hand to me, it is a conjuring trick. A payment was made, after a claim was duly put through, all the processes involved including filing a writ of summons in the National Court, and as you alluded the Commission has heard evidence that payment was made. Just because five years later a cheque is made returnable to the Department of Justice does not in itself take this matter out of the Terms of Reference of the Commission of Inquiry. The money was paid, that is the first fact that the application to that does not dispel or does not take away, money was paid as a result of a claim made against the State. Also the second point is that the money was in full control and possession of the plaintiffs since 2004, it is almost five years. We can make assumptions that it was not lying idle or stuffed away under the suitcase or mattress in a house. Chief Commissioner, basically what I am saying is that this application lacks foundation and the Commission does not have to do what it is asked of it.

MR KASSMAN: Just two additional points I wish to make in addition to Mr Tusais has pointed

out. The Commission notes, well what I note with concern that officers of the State have seen fit to swear statements in support of this application.

[11.38 am] They essentially say exactly what may be what Mr Nii has said and also what Mr Yer has said. But in my view this being a Commission of Inquiry into the Department of Finance, the swearing and the signing or the offer of a statement by an officer of the State and in this instance officers of the Department of Finance, that is both Josephine Dini, acting Financial Controller and Mr Mario Cueva, a consultant, Cash Management Section, both of Department of Finance, I raise this as a point of concern for the Commission, officers of the State should be assisting the Commission rather than assisting to restrain the Commission. The evidence in itself is already been put forward by the statement of Mr Yer and the statement of Mr Nii. So their evidence does not change anything as such but I find it intriguing that officers of the State of the Department of Finance have acted in this manner. The question that is raised by their submission of their statements are what interest do they serve in this application to restrain this Commission of Inquiry into examining the conduct of officers of the Department of Finance? What interest do those officers of the State serve? That is the first point I wish to make. The second point I guess in reiterating what Mr Tusais has said, what the application suggests is a fairly narrow reading of the Terms of Reference. It is very incorrect examination that the Commission is empowered to conduct, extends to the conduct of the officers of the State, also the officers of the Department of Finance, in this instance Office of the Solicitor General and the Attorney General and possibly the Courts. The Terms of Reference also extend to the conduct of lawyers in the pursuit of claims against the State. In Terms of the Reference they are fairly clear, they encompass fairly wide ranging aspects that relate to claims against the State. I have nothing further to add.

THE CHAIRMAN: Is Mr Gabriel Yer, a claimant under Umba Y Gabriel as well?

MR SINO: Mr Chief Commissioner, Mr Gabriel Yer is not a claimant in Umba Y Gabriel matter. That is a different matter. The names Umba Gabriel and Yer are common names in Chimbu.

THE CHAIRMAN: I see. Who gave the instructions to repay the money?

MR SINO: The money was repaid by Harvey Nii Lawyers acting on instructions from Umba Y Gabriel.

THE CHAIRMAN: Umba Y Gabriel, I see.

[11.40 am] MR SINO: Yes, which is a distinct and different claim.

THE CHAIRMAN: Alright, I just want to make sure of that point.

MR KASSMAN: Chief, I should may be add, it is a very fairly relevant question that you have asked. On the basis of evidence and material that has come before this Commission, that is the very issue that needs to be resolved. Is Umba Y Gabriel another person other than Gabriel Yer, the Secretary for Finance? That is in my submission a fairly live issue that remains unresolved. In evidence given in Mt Hagen it was fairly clear from the witnesses that came forward that as to the monies that were cashed from the payment, the settlement that Mr Sino refers to, the monies were in payment of the claim by Mr Gabriel Yer but there was also evidence to suggest that there was a lot of – it remains an issue as to whether Gabriel Yer is the one and the same person as Umba Y Gabriel. That is I guess on the evidence that is the extent to which I believe we can raise this issue. It remains unsolved. It remained unsolved on the last occasion when two separate lawyers turned up before the Commission indicating they had instructions, one to act for Umba Y Gabriel and another to act for Gabriel Yer and when it was put to the lawyers in question as to the source of instructions to confirm the identity of Umba Y Gabriel, the lawyers in question did not provide a definite answer to that.

For my friend Mr Sino to now suggest that it is not an issue, in my view is not correct until it is resolved once and for all.

THE CHAIRMAN: Very well.

MR SINO: Mr Chief Commissioner, I would like to respond to the response. Firstly, on the officers of the State producing statements for the purpose of this application, my submissions would be that those statements are fairly short statements, it is only one or two paragraphs and what they are doing is that they are merely producing the records that they have and that should not be

construed otherwise. It is for the purpose of confirming the records with the Finance Department and that I submit is an assistance---

THE CHAIRMAN: The point Mr Kassman is making is that the officers – is it not somewhat strange that they did not volunteer the evidence to the Commission of Inquiry itself when they were fully aware of the matter that this was a matter for investigation?

MR SINO: Perhaps they were not asked.

THE CHAIRMAN: Perhaps they were, perhaps they were Mr Sino.

MR SINO: On the issue of the jurisdiction and the issues surrounding the payment and there reimbursement of the money, it is my submission that it is very important to note that there is a monetary clearly placed on it, otherwise the Commission would enquire into anything. That will just not be right. The sum of money is 300,000 and above and because the money was reimbursed there is no payments. So the Commission's jurisdiction stands. Thank you.

THE CHAIRMAN: The application to not pursue this matter any further because the money has been repaid does not resonate as a reason for Commission of Inquiry to stop its inquiries. The Commission of Inquiry's Terms of Reference requires to look into all claims made against the State in excess of amounts and it has defined a figure of, amounting to 300,000 but that includes all matters which are relevant to its Inquiry within the period. The Terms of reference just do not look and say, "look at all the claims of a particular figure", it also requires the Commission to look into the conduct of officers of the State and how the matter was handled, how the settlement was made, how payouts were made, what the consequences were and where the money went even and who has profited by these matters. All these are in the Terms of Reference. So that in this particular case looking to a claim being made, court action taken, deeds of settlement, payout of 1.6 million, evidence that it was cashed, and now has been repaid does not in fact preclude the Inquiry from looking at them. The repayment of the money does not have any effect on the jurisdiction of the Commission of Inquiry to pursue its investigations into this matter and it will not continue. Your application is declined.

MR SINO: Thank you.

MR KASSMAN: Thank you Chief Commissioner, there is just only one witness to give evidence in this matter and that is Mr Goiye Gileng. He should be maybe about 10 to 15 minutes.

THE CHAIRMAN: Yes, very well. MR KASSMAN: We would like to proceed. THE CHAIRMAN: Yes, very well. Do you wish to remain or Mr Gileng. MR GILENG: I have no instructions apart from the application. THE CHAIRMAN: Thank you Mr Gileng. Swear him please.

MR GOIYE GILENG, Sworn: XN: MR TUSAIS

[11:47 am] Q: Your name is Mr Goiye Gileng? A: That is correct counsel. Q: Are you a senior associate with Posman Kua Aisi Lawyers? A: No, just an employed lawyer. Q: Employed lawyer? A: I was a senior associate at Blake Dawson then. Q: My mistake. A: That is all right. Q: Just as background, would you tell the Commission about your legal experience. When were you admitted from LTI? A: Thank you Mr Tusais. I graduated from the Law School in 1995. 1996 I was admitted to the Legal Training Institute, I graduated in November, I think 26 or 27 thereabouts in 1996. Since then in January 1997 I was employed by Blake Dawson Waldron Lawyers. In 2001 Chief Commissioner, I was seconded to our Perth office Western Australia. I was involved in the Allan Bond liquidation proceedings for one year, then I came back to Port Moresby in 2002 and resumed employment with Blake Dawson Waldron until 2005 I believe I was promoted to a senior associate position. I was there

until 2007 March I left Blake Dawson and I am now with Posman Kua Aisi Lawyers as an employed lawyer, Mr Tusais. Q: Thank you. A: So in my legal practice, I am primarily involved in civil litigation. As you know in Papua New

Guinea, there is no speciality so I just do hands on any commercial litigation matters, the banking and finance employment related matters, common law based injuries; MVIT claims, personal injuries and all hosts of and also landowner stuff involving mining companies.

Q: Thank you Mr Gileng. When you were with Blake Dawson Waldron, this is perhaps in 2001,

did you file a writ on behalf of Joseph Witne Baundo and 197 others? A: Mr Tusais, so far as I remember, the original writ was filed by the plaintiffs themselves and then after the proceedings were filed and then when it came to at the stage where application for default judgment was going to be made for the State's failure to file a defence, then that is when they sought instructions, sought representation on their behalf from Blake Dawson and that is when I became involved.

Q: So you were basically counsel for the plaintiffs in WS 805 of 2001?

A: That is correct.

Q: Joseph Witne Baundo?

A: And I am still today.

Q: Thank you.

A: So let me just at this juncture, for the purpose of record, Mr Chief Commissioner, what evidence that I will give so far as this Commission is concerned because I am presently acting in this matter WS No 805 2001, which relate to the same proceedings that were settled, which is the subject of the Commission of Inquiry. I as a lawyer, I have a duty to my clients in respect of WS No 805 of 2001 to prosecute their claim without fear and favour and also without prejudicing the interest insofar as these proceedings is pending before the National Court. So what I will do to assist the Commission of Inquiry, I as a lawyer have an obligation also to the Commission of Inquiry to find the truth to all these issues surrounding the establishment of the Commission of Inquiry. So I will confine myself without perjurying the interest of my client, because their interest is well and alive in WS 805 of 2001. So I will confine myself to the issues of conflict that I raised in the proceedings with Paraka Lawyers and all that so just for the purpose of record Mr Chief Commissioner.

THE CHAIRMAN: While you are revoicing the other end of the scale, whatever you say here cannot affect any legal proceedings anyway.

A: Thank you.

MR TUSAIS: If I step out of those lines, you will remind me of course Mr Gileng. Just generally, this matter of Joseph Witne Baundo arose from combined police and CS personal raid in 2001, into the Gena area of Kerowagi, Chimbu Province---

A: Precisely. Let me add onto this. When they came to me I actually went to the village. It is about 20 kilometres to the north west of the township of Kundiawa. I went by car to a village they call Parivillage that is towards Gembogl and then I walked the remaining 17 kilometres into the village to justify, to confirm whether or not there was an actual raid, the houses were still standing or not, food destruction, desecration of burial sites that were alleged were in fact took place because of the host of false claims that came before the court against the State. So when they instructed me, then I wanted to confirm myself so I walked 17 kilometres back into the village. I slept there for two nights and actually confirmed the actual destruction that prompted me to come and fight in relation to my clients' claim. I was in fact there.

Q: Your proceedings, these were defended, were they by the State?

A: Yes.

Q: Was it by the Solicitor General's Office or it was briefed out? A: They were briefed out to Paul Paraka Lawyers.

Q: What has happened to that case now. Is it still pending?

A: It is still pending and I will come to that when you progress your question, as you descend down your question. Yes, it is pending before - and I will tell you the status when you come to it.

Q: Am I correct in saying that the defence filed by Paraka Lawyers acting for the State was that there was actually no police and CS raid into the Gena area of Kerowagi?

A: That is the defence but it was struck out upon my application

Q: All right, now whilst you were acting for Joseph Witne Baundo, just down the track, did you come across any corresponding or related proceedings arising out of the same set of facts?

[12.00 pm] A: Yes. That is when I - now, it goes about this way. The defence was filed or default judgement was granted, then there was this application to set aside the default judgement

by ParakaLawyers. There were various statements, one by John Wau, he is a community school teacher and I think about one of the defendants, I think Komayong. They filed this application to struck out the defence and then I went and defended it before Justice Sevua. That is when his Honour set aside the default judgement and then ordered that we file further and better particulars in respect of the claim. He gave us 14 days which we did. Paul Paraka lawyers filed another application to dismiss the proceedings on the basis that the particulars that we provided to the court was insufficient. That application went before his Honour Justice Kandakasi. His Honour, in part upheld the application, in part rejected the application. He directed that we file particulars over the special damages that were claimed by the 197 plaintiffs. They were filed in time, in fact on a Christmas day so I had to stay home - I think they gave us seven days to file the - then it was on a Christmas period and the New Year. So basically, we spend the seven days to bring these 197 particulars of the individual claimants and you can imagine the amount of work that we put in, but we were able to put in. Then they filed an application to the Supreme Court against the decision of Justice Kandakasi on the basis that his Honour exercised his discretion wrongly. That application went before the Supreme Court now, that prompted my clients to say, "look, why is that the lawyers for the defendants are taking this strenuous position. Because there was a same claim which was settled in that proceedings, they are ready to be paid. So why are we made to continue to defend this. We do not have money in our pockets to continue to defend these proceedings." Based upon that and then I sent a letter, I do not know whether I understand that - we filed an affidavit in court - sorry, am I taking too long Mr Chief Commissioner.

THE CHAIRMAN: No, you are giving evidence as you see fit.

A: All right, thank you.

MR TUSAIS: Is this a copy of that affidavit with attachments, the one I provided to ---

A: Yes, 27th, sworn on 27 June 2005.

Q: Of June 2005.

A: And filed on 1 July.

Q: Perhaps, I will hand this up to the Chief Commissioner so he can follow the thing. A: Yes.

THE CHAIRMAN: Yes?

A: So Mr Commissioner, that essentially sets out the basis for an application for summary judgement. There are a number of other affidavits that I also filed in court in support of my client's application for summary judgement and also an application to have Paul Paraka Lawyers restrained from having further carriage of the matter on behalf of the defendants, Mr Chief Commissioner on the basis that they acted in the other matter they settled. So the cause of action in relation to my client's claim arose from the same set of facts. Why? So they continued to act for the defendants when they acted for the plaintiff and settled. So then I raised this issue about the conflict and you know, abuse of professional privilege and breach of professional conduct rules.

THE CHAIRMAN: Do I understand that they were acting for the State and on instructions they were denying the ---

A: Yes.

Q: That there was any police raid?

A: That is correct.

Q: But at the same time as they had acted for other plaintiffs claiming on that same police raid which they asserted positively had happened and that they settled that claim?

A: That is correct.

Q: I see.

A: So that formed the basis for my client's application. First, is for Paul Paraka Lawyers to be restrained from having further carriage of the matter and then, I think the second relief we sought was for summary judgement. Sorry, Mr Commissioner, let me just allude to one of the relevant correspondence that I sent that sets the perimeters of my - which we did not receive any response to, that is letter dated 14 March 2005. It is Annexure document marked E which I set the basis of the issues of conflict and also why they should not be acting in the matter because of

various issues like the plaintiff under the name Gabriel Yer Waim filed proceedings under WS 1231/2002 and on 19 September 2005 there was no section 5 notice, there was no application for extension of time to file the proceedings out of time, there was no consent and authority as this was a class action. And then there was this proceedings filed by Paul Paraka lawyers under WS 3 of 2003 on 7 January 2003 under a person named Gabriel Y Yer.

[12.05 pm] A: Basically, they contained the same set of pleadings word for word adopted except for the change in the address from the first I think, address which has, I think care of ---

MR TUSAIS: The Post Office Box at the University of PNG?

A: Yes, Department of Finance, PO Box 324 UPNG, Waigani. They changed to Paul Paraka Lawyers. Otherwise, the relief sought, the names of the individual plaintiffs, except for some minor changes, Chief, you would note that they are practically the same. So I raised this issue about conflict and that is how we exchanged the correspondence culminating to this affidavit. So this affidavit essentially sets out the parameters of my objections for Paul Paraka's continuing representation as the Firm.

Q: Mr Gileng, just in summary. Your beef with Paul Paraka Lawyers was that they were acting both for the State, for the defendants and also at the same time acting for a party who are plaintiffs?

A: Of course and I raised those issues as a lawyer, I raised it as their professional Law firm that they have a duty to respond to me so that we can have my clients. claim expeditiously dealt with in a fair and just manner. They never responded to those issues that I raised and they still remain unanswered. That culminated to my client's application.

Q: Those proceedings that were sorry, filed as Umba Y Gabriel and handled by Paul Paraka Lawyers, WS 23/2003, is it?

A: Yes. When I made enquiries, you will also note from the affidavit that I filed in court, there was no response so I conducted my own search at the National Court registry. But in the National Court registry none of these two proceedings were in existence so then I checked at the Attorney General's Office when I got the copies of the two writs which I appended to my affidavit. So that is on my own enquiry. They did not respond to the specific issues which are pertinent issues for the conduct of the proceedings on behalf of my client and their client then. They never responded.

Q: Mr Gileng, just to clarify this. On the writ attached to your affidavit, this is by Umba Y Gabriel, there is no clear number written on it. It says 3/2003.

A: Yes, in my affidavit it says 3. I think it is a typographical error there, yes, that is the handwritten sort of - sorry, Mr Tusais, let me just ---

Q: About two thirds of the way to the back, there is a writ for Umba Y Gabriel.

A: Yes, at the back, sorry Mr Tusais, page 1, the cover page it looks 23 or 33/2003. It is handwritten there. It was typed but I think there is a handwritten note there that says 23 in the front and then 2003 handwritten. And in the first page WS 3/2002, I think it is also handwritten, it was handwritten 3 there, yes.

THE CHAIRMAN: It should be what, 23/2003?

A: Yes, in the front. In the front the cover page says 23, Chief.

Q: Yes, 2003. And the second page, writ of summons page does not follow through on it.

A: Yes, I think the problem may have been that it was handwritten or pencilled in so that is why that is ---

Q: Yes.

A: Thank you.

MR TUSAIS: Mr Gileng, I do not have any further question for you unless you want to expound to us or just add up any further comments.

A: Like I said, I simply based upon the evidence I have, contained in my affidavit and I also made reference to Mr Stanis Jepson who was formally employed by Paul Paraka Lawyers who was the principal lawyer who was having carriage of the matter. I do not think he is still in employment with Paul Paraka so if you wish to call him, you can call him. Then I also in page 5 of my affidavit, I

made reference to a Paulus Kama, page 5. I am sure you would have but I made mention of Paulus Kama of Akena Noku, that he also provided an affidavit in support of my client's application which I can hand up. That formed the basis of my client's application for summary judgement on the issue of liability. Let me put it here, Chief, let me put it here. The issue of summary determination was still pending before Paul Paraka Lawyers decided to file a notice of ceasing to act without providing any explanation. I am still – I do not know as to why they had to file a notice of ceasing to act. When I continued to push for my client's application for summary judgement to be heard and also for them to cease acting in the matter based on the issue of conflict, they filed a notice of ceasing to act, then the application went before his Honour Justice Los as he then was, in December 2006. He heard the application, he did not deliver ruling on it until he retired in April 2007 to contest elections. The application went before His Honour Justice Kandakasi in October 2008. So what I am trying to say here is that issue of summary determination in fact was not determined because of the issues of conflict and stuff like that we raised before with Paul Paraka Lawyers who then acted for the State. That was determined on the merits of my client's application and there are some affidavits in support that I wish to tender to the Commission. You should have it on file. But I made mention of Paulus Kama, that in a formal court it is hearsay evidence. But when I made reference to – what I was informed about Paulus Kama, affidavit in support is provided also by – Chief, I would like to also to assist the Commission with this Paulus Kama's evidence. It is the affidavit sworn on 13 June 2005. You should have it.

Q: Sorry, July or?

[12.10 pm] A: July, yes, 13 July and filed 4 October 2000, that is Paulus Kama. I would just like to number this – that is Paulus Kama. And there is also one by John Wau, Chief. John Wau, in fact, there was a statement in my affidavit which John Wau purportedly provided to the police which supported Paul Paraka's application to set aside my client's default judgement. Chief, you would note from that purported statement by John Wau, that document was not signed; purported statutory declaration was not signed by John Wau. So they based on that to set aside the default judgement. John Wau actually provided this affidavit which I will tender to the Commission now which confirms that there was in fact a police raid. And he sets the summary of what actually took place with respect to these other proceedings which is the subject of the Inquiry, Chief, which I wish to also tender. John Wau's affidavit sworn on ---

Q: 4th September?

A: 17 September 2005 and filed on 4 October 2005. That Mr Tusais, also for the purpose of the summary judgement. There is also further affidavit for summary judgement alone by Joseph Witne Baundo. He discusses about the other proceedings which is the subject of the Inquiry here. He goes on to talk about the meetings and stuff like that so it will be of assistance, I believe to the Commission. So, Chief, I wish to also tender this.

THE CHAIRMAN: Yes, thank you.

A: By Joseph Witne Baundo, sworn on 14 July 2005 and filed on 4 October 2005. That affidavit is from the principal plaintiff for my client. So actually, they talk about – they discuss about the issues of settlement and why Paul Paraka continues to act in the matter. And then that supports the application for restraining order and the summary judgement. So I wish to tender that, Chief. Also my affidavit, Mr Tusais, you have that already which has been tendered already, I do not know. Has it been tendered?

Q: No, but we will have them marked as exhibits now, Chief. THE CHAIRMAN: Yes.

A: Yes. I do not like to waste my time here if my evidence cannot be taken into account, so make sure that it is tendered. Q: Thank you, Mr Gileng. MR TUSAIS: Chief Commissioner, if we could start off with the affidavit of Mr Goiye Gileng marked 27

June 2005. THE CHAIRMAN: Yes. MR TUSAIS: It is in relation to proceedings WS 805/2001 between Joseph Witne Baundo and 197

Others –v– Simon Kauba, David Kumayong, John Wakon, Joe Jaikos, Richard Sikani and The Independent State of PNG. If that could be marked as Exhibit Gileng/Umba Y 1. THE CHAIRMAN:

Yes.

[EXHIBIT TENDERED – GILENG/UMBA Y 1 – RE WS805/2001] MR TUSAIS: In the order that they were tendered by Mr Gileng, the affidavit of Paulus Kama, sworn on 13 July 2005. Also in relation to proceedings WS 805, Joseph Witne. If that could be marked as Exhibit Gileng/Umba Y 2.

[EXHIBIT TENDERED – GILENG/UMBA Y 2 – AFFIDAVIT OF PAULUS KAMA DATED 13 JULY 2005 REWS805]

MR TUSAIS: Chief Commissioner, the third document is an affidavit sworn by Mr John Wau on 17 September 2005. Also in relation to Joseph Witne Baundo. Exhibit Gileng/Umba Y 3.

THE CHAIRMAN: Yes.

[EXHIBIT TENDERED – GILENG/UMBA Y 3 – AFFIDAVIT OF JOHN WAU DATED 17 SEPTEMBER 2005]

MR TUSAIS: Final one is the affidavit of Joseph Witne Baundo himself, that is 14 July 2005, exhibit Gileng/Umba Y 4.

[EXHIBIT TENDERED – GILENG/UMBA Y 4 – AFFIDAVIT OF JOSEPH W BAUNDO DATED 14 JULY 2005]

THE CHAIRMAN: Yes, thank you.

MR TUSAIS: I have no further questions for Mr Gileng.

A: Chief, before I excuse myself let me just make this point before I leave. I will not take long. As I have indicated earlier, it is my responsibility too as a citizen to give evidence to assist the Commission which is established by the State to assist the Independent State of Papua New Guinea and the Commission to establish the truth and veracity of the individual claims that are subject to the Commission of Inquiry. I have got nothing to be gained by coming and giving evidence before this Commission of Inquiry. The issues that I raised are official documents which are before the court served on the lawyers for the defendants then, Paul Paraka Lawyers and they had knowledge of it, they did not respond to those affidavits. But I think now – and then they filed a notice of ceasing to act. But now they have the opportunity to respond to those allegations if they wish. They remain issues of fact by my clients and those are tendered before the Commission of Inquiry.

[12:15 pm] So I realise Mr Sino and my other learned friend, they are still before the Commission of Inquiry, so if they wish to respond then those are the materials that I wish to tender and I tender as per the Commission's request. So they can, they are at liberty to respond. Thank you that is all I wish to say, Chief.

THE CHAIRMAN: Thank you, Mr Gileng. Anyway, I particularly note your concern to assist the Commission of Inquiry and we appreciate that you have done so. Any other matter? MR KASSMAN: Chief I understand that Mr Gileng was also in the process of putting together a formal statement. He could maybe do that and have that delivered next week anytime.

THE CHAIRMAN: Would you be able to do that say, about Wednesday? MR GILENG: I can do that, I cannot guarantee but I will try my best, I will try my best because last week I was – for a week I have been sick and then on Monday I had to go to Ramu Nickel so I was not able to put that statement together. But yes I can do that. THE CHAIRMAN: Many thanks indeed. MR GILENG: Yes. THE CHAIRMAN: Very well, are there any --- MR KASSMAN: No further matters for this morning. THE CHAIRMAN: We did have – Mr, you wish to make some submission? MR OTHAS: Chief Commissioner, the matter, Witne Baundo and also Umba Y Gabriel, the same issue is raised in the letter I referred to earlier so Mr Paraka will respond to those but as to the query made by Mr Gileng in relation to our response to his numerous letters and all this, as it appears once the issue of conflict of interest and all these was made aware, we filed a notice of ceasing to act but details of it we will be providing in writing by Mr Paraka by next week.

THE CHAIRMAN: Very well, thank you.

MR GILENG: Chief, in fact that there was a lengthy delay, denials about the entire thing until about two or three years later that they filed a notice of ceasing to act. Thank you. THE CHAIRMAN: We heard your evidence and we will no doubt have Mr Paraka's response. MR GILENG: Thank you.

THE CHAIRMAN: Any other matters? MR KASSMAN: No further matters. THE CHAIRMAN: Thanks very much. LUNCHEON ADJOURNMENT

[1.55 p.m.] THE CHAIRMAN: Yes?

MR KASSMAN: Chief Commissioner, we have three matters listed for this afternoon. Matters No 24 Tiam Investment Ltd –v– State, No 25 Charles Luta & Others –v– State and matter No 26 Don Polye –v– Jimson Sauk & Others. We will deal with those after we have the matter that we did not deal with this morning, matter No 23, which is Toka Enterprises Limited –v– Dr Puka Temu. In respect of that matter, the matter has been listed. We listed persons from which we have yet to communicate in writing as to the documentation we require and the aspects of evidence that we require of them. As per the list we have the names of Dadi Toka, John Goava, Pepi Kimas, Samuel Kodawara, Gaure Oduand Neville Devete. In respect of them, Mr Neville Devete, a Solicitor General, we have received a letter to advise that he is out of the country. We have also from the Department of Lands and we understand it is in respect of Pepi Kimas and Samuel Kodawara, Pepi Kimas is the Secretary, Department of Lands and Samuel Kodawara is the Surveyor General. We have been contacted by telephone by a lawyer with the Department and they will be producing documents they say by the end of this week.

We have Mr Allan Banyamai who is the lawyer appearing for Toka Enterprises and he has an application he wishes to make that goes to jurisdiction.

MR BANYAMAI: Thank you Chief Commissioner, for the records Allan Banyamai and I appear for Toka Enterprises Limited and I also appear for Dadi Toka and John Goava who have been named in the public notice on 2 July as witnesses. The parties I represent wish to make submissions on the issue of jurisdiction but at this juncture I also would like to inform the Commission that we have filed a judicial review application under OS 352 of 2009 and that matter was mentioned this morning but adjourned to the Registry pending the outcome of our submissions to the Commission which we will do today.

[1.59 pm] I have written submissions that I seek to tender for the benefit of the Commission. Whilst the submissions look voluminous the issues raised are essentially short and simple. The only aspect of our submissions which I wish to raise at this juncture is that we have annexed the affidavit in support of Mr Toka which is annexed to the submissions as Schedule “D.” I note from section 5 of the Commission of Inquiry Act that the Commission has the discretion to make its own rules in respect to procedure. I seek leave to rely on that affidavit in support of the application on their jurisdictional issue. So if that could be tendered in evidence. The history of this matter is, if I could take the Commission through the history of this case is as recited in the affidavit of Mr Toka sworn and filed on 7 July and which is the Schedule “D” to those submissions.

MR KASSMAN: Chief, I wonder if Mr Banyamai could clarify the affidavit that he has filed in the National Court he is filing, that he wishes to rely on in respect of the application he has made. Is that open to be in and accepted by the Commission as the evidence of Mr Toka for purposes of our Inquiry?

MR BANYAMAI: Only in respect to the jurisdictional issue. If the Commission decides not to pursue the matter that is the end of the matter. If he decides to inquire into the proceedings, then I will have to seek instructions on that but there is really nothing to hide in respect to the matters as deposed to in that particular affidavit, those are annexed documentation which recites the history of this prolonged litigation especially in the courts. But as in regard to my friends --- THE CHAIRMAN: It is already filed, this affidavit?

MR BANYAMAI: That is correct, yes. It is before the court.

MR KASSMAN: This is a matter of public record.

THE CHAIRMAN: Yes, I say it is a bit of public record so it is all right, yes, alright.

MR BANYAMAI: We also note that the Chief Commissioner has been named as a party to the OS 352. I have sought instructions from my client. He has no problems with the Chief Commissioner hearing this application and making a determination on the issue of jurisdiction.

THE CHAIRMAN: Very well, yes?

MR BANYAMAI: The submissions as set out in the document I handed up basically on the powers of this Commission to inquire into the proceedings referenced as OS 240 of 2007 and by way of

brief background that particular case arose out of the failure of the State and its relevant agencies to issue various titles to Mr Toka's company, Toka Enterprises Limited. There was a land board decision on 10 February 1989 in which various parcels or portions of land were awarded to Toka Enterprises Limited and if the Chief Commissioner looks at paragraph 4 to 37 you will note the attempts made by Toka Enterprises Limited to have the titles to those various portions of land issued to it and unfortunately nothing fruitful was done about those titles and as a result of that on 3 May 2007 the court proceedings under OS 240 of 2007 was filed and that particular proceedings involved an application for leave for judicial review as well as substantive orders for mandamus in an attempt to compel the State and the Lands Department to issue those titles to Toka Enterprises Limited.

[2.03 pm] I have set out the affidavit in a way that under Part „B. it recites the history of the matter in which Toka Enterprises had tried on numerous occasions to have the Lands Department issue title to it. Unfortunately, that was not done and after 18 years of trying, Toka Enterprises went to court to seek an order against the Lands Department to issue those titles. So that resulted in the proceedings referenced as OS 240 of 2007 and a crucial point which I would be repeating in my submission is that, that proceedings was filed on 3 May 2007. From the date on which the Land Board awarded the various parcels of land to Toka Enterprises and that is 10 February 1989 to 3 May 2007 when the proceedings under OS 240 were filed, there was no claim for payment ever made by Toka Enterprises and its Director Dadi Toka to the State. Let us not deny or take an issue with – so the proceedings under 240 were really judicial review proceedings but the plaintiff in that proceeding also sought damages as a relief. The case was litigated before the court until 17 August 2007 when a substantive matter was tried by His Honour Justice Salika who is now the Deputy Chief Justice and the decision on the substantive matter was not handed down until 27 June 2008 and that decision was really in respect to the orders in the form of mandamus and that particular order is annexed as „DT.23 to Mr Toka's affidavit. Following the granting of those orders, the court also directed that Toka Enterprises file submissions and evidence in respect to damages it had suffered for the period that a title was not issued to it and after a trial on that matter and hearing Counsel on submissions the court pronounced judgment on 21 November 2008. However, there were some typing errors on that judgment and so the parties were called back on 27 November 2008 to receive judgment on damages. In that judgment on damages the National Court awarded a sum of K27,784,536 to Toka Enterprises basically because of the negligence perpetrated by the agencies of the State in failing to award title earlier and as a result Toka Enterprises had suffered economic loss. That judgment is annexed as „DT24. to Mr Toka's affidavit and if the Chief Commissioner looks at that the judgment speaks for itself. There was evidence provided by the plaintiff in the proceedings about those damages. His Honour with respect rejected some of the claims made by the plaintiff and the Director of the plaintiff company was awarded special damages as well as past and future economic loss. Since the publication of that judgment to date there has not been any appeal by the State and its agents against that particular decision. So the award at this point in time remains enforceable.

[2.07 pm] After that award was made the plaintiff has been attempting to have the Solicitor General endorse a certificate of judgment in respect to that sum which was awarded in the judgment. For some reason or another the certificate of judgment has not been endorsed. It has been signed and filed by the Registrar of the National Court, sent to the Solicitor General's office, however it remains to be signed by the Solicitor General. So up to now there has not been any payment made to Toka Enterprises. That essentially recites the background to this case. The reason on the challenge of jurisdiction we raise at this juncture is that this Commission is with respect set up by the provisions of the Commission of Inquiry Act which I annex as Schedule „A. to the submissions I handed up, but each jurisdiction of powers are dictated to and regulated by the Terms of Reference issued by the Prime Minister. That particular document is annexed as Schedule „B. but I know the Chief Commissioner has a copy of that. There were earlier Terms of Reference – I stand corrected on that – which could have been issued in that and maybe another extension some

time after the lapse of the period that was gazetted on 12 May 2008 but I do not have the copy of that so my comments on that will be very much restricted to this particular Terms of Reference which were gazetted on 12 May 2008. I submit on behalf of my clients that the jurisdiction of this Commission to inquire into matters is very much restricted by the time period of 2000 to 1 July 2008 and that is expressly stated under paragraph (a)1 of the Terms of Reference. This is what it says, sorry the Prime Minister opens up the paragraph and then he goes on to state at paragraph (a)1, "To inquire into the existence and extent of illegal, false or improper claims for payment made to the State and approved or paid by the Department of Finance in the period 2000 to 1 July 2006". And then from thereon it goes on to list those other criteria under (i) to (xii). The point is that the Commission is only allowed under its Terms of Reference to inquire into those claims which were approved or paid by the Department of Finance between the period 2000 and 1 July 2001.

[2.10 pm] The first submission I make in respect of my client's case is that there has not been any claim lodged by Toka Enterprises firstly to the Finance Department between the period 1989 to the date judgment on the matter was handed down and that is 27 November 2008 but going back from that the proceedings were filed on 3 May 2007 and even from 1989 to 2007 there was no claim made by Toka Enterprises to be paid. This particular proceedings was only filed in 2007 which is outside the time period allowed for that but again it is not clear as to whether the Commission is allowed to inquire into court proceedings filed between the period 2000 and 1 July 2006. I submit that if the Commission is allowed to do that, these proceedings were filed in 2007 and therefore they do not fall within the jurisdiction of the Commission. So, that is the first submission I make and I will also be repeating those submissions in respect to paragraphs two and three of the Terms of Reference. In my written submissions you will note that this particular aspect is covered under page four. In that submission we are saying that even if there was a claim made by Toka Enterprises we deny there was a claim ever made between that period allowed for under this Inquiry. There was no payment ever received, even up to now and so on that basis there is really nothing to inquire into.

Another important point to note is that if this Commission is with respect inquiring into the matter, that will be more or less going to an inquiry in respect to the judgment which was awarded on 27 November. I am not saying that it will but if the Commission goes ahead, I do not know what my friends may ask in the questions that they are going to put to their witnesses but if there is going to be questions asked, my submission is that it would be really questions in respect to the propriety or impropriety of the decision that was handed down by a court of competent jurisdiction and at this point in time the court is ceased of that matter. There has not been any claim made by anyone to pay out Toka Enterprises except for the judgment which was handed down by the court on 27 November 2008. The only aspect of the maybe proceedings which may interest this Commission is the failure of the Solicitor General to endorse the certificate of judgment and that results in the interest component of the judgment running against time and the judgment at the time when it was handed down it was K27 million. Now it would be about K30 million or more, if the interest component is added on. That is not in the best interest of the State or anybody else. So our submission is that, the longer this matter is delayed and the reasons for failure to endorse the Certificate of Judgment being provided by the Solicitor General and his officers is that because the matter is before the Commission, they cannot do much.

[2.13 pm] That excuse only is the reason to delay and the more delay, the more interest is added on. So, it is all in the best interest of everyone else that this matter, in my submission the files should be returned. If they came from the Solicitor General they should be returned to the Solicitor General and judgment be honoured. There is also there has been an application filed in the National Court in an attempt to compel the Solicitor General to endorse the certificate of judgment. That motion will be heard on 15 July 2009. But as it is now if the Chief Commissioner looks at the Terms of Reference, firstly the proceedings were filed outside the period that this Commission is entrusted to inquire into and secondly there has not been any award or claim or any payment made by the State or made by Toka Enterprises to the State through the office of the Solicitor General or any

other office for that matter between the period allowed for in this Inquiry and that is the period between 2000 and 1 July 2007. Again that summarises my submission but I have set out the written submissions at the beginning of the document that I handed up and I invite the Chief Commissioner to read those.

The other aspect I wish to raise at this juncture is that if the Commission decides on this matter, we may not be prepared to proceed today. Let us say the Commission decides to proceed after hearing these submissions we may not be prepared to proceed today and at the same time I will also inform the Commission that there is a court case pending and we indicated to the court that depending on the outcome of the Commission's ruling on this matter we will revert back to court to seek an injunction. That essentially summarises my submissions, unless you want me to address. Thank you.

THE CHAIRMAN: Very, well, counsel, Mr Kassman?

MR KASSMAN: Yes, Chief Commissioner, we have submissions to make. I think the essential crux of the application is that there was no claim made for payment to the department of Finance from 1989 or whenever before that up until the date when the proceedings were commenced in 2007. In addition to that there has been no payment and as such it falls outside of the jurisdiction of this Commission and he says, follows my friend's interpretation of the Commission's Terms of Reference. On that point alone well, we say firstly, that the claim for economic loss certainly flows through the period in Toka Enterprise's pleading and also in the submissions now placed before this Commission they do confirm that among orders sought by originating summons seeking judicial review of some decision, they claim damages for economic loss incurred or losses incurred over an 18 year period prior to the commencement of those proceedings and that was in 2007. So we say, clearly aspects of the claim in itself fall within the period - when if you strictly look at the dates as far as jurisdiction is concerned the period 2000 to July 2006. That would be our first submission.

[2.16 pm] Secondly, the suggestion that this Commission lacks jurisdiction fails to address our other aspects of the Terms of Reference which are relevant and which are also relevant to the matter under inquiry. We firstly refer to Terms of Reference No 10. Now that states that this Commission shall "inquire into and conclude on involvement of legal firms in the making and paying of illegal, false or proper claims, Judgments, or out of court settlement against the State. We submit that under this term of reference that is Term of Reference No 10, this Commission is required to examine the process by which the legal firms went about making this claim against the State. This would involve the examination of the conduct of those legal firms particularly as to the time when they received instructions, due diligence et cetera in aid of those instructions, what searches were conducted particularly with the Department of Lands and Physical Planning. Further, we submit that this Commission is required to query the service of relevant notices by the claimant's lawyer on the Solicitor General as to the various hearing dates in this OS 240 of 2007. From the information available a number of firms as been identified as being legal firms engaged on behalf of the Toka Enterprises. Those firms include Warner Shand Lawyers, MS Wagambie Lawyers and Sanel Consulting Services which we understand is the trading name, the firm name of lawyer Mr John Goava. Under our Terms of Reference we certainly believe that the Commission is required to examine such lawyers on a number of issues. Firstly, as to time limitation issues, as to their understanding of the roles and functions of the Minister for Lands, the Secretary for Lands and the Registrar of Titles. The Commission should

[2.19 pm] also examine as to whether the Registrar of Titles, being a named party to the proceedings. I should say the Registrar of Titles is not named as a party to those proceedings. The Commission is also required to examine these lawyers as to the effect of the publication of the National Gazette on 16 February, 1989. The effect of the occupation by the National Broadcasting Corporation of parts of portion that was the subject of the town sub division lease and we submit the Commission should also examine these lawyers as to the existence of a cause of action after the expiration of this town sub division lease on 16 February 1995 and that is by

operation of law. So, we say there are just purely under Terms of Reference No 10, there are a multitude of aspects that this Commission is required to examine.

Terms of Reference No 11, this provides that, "the Commission shall inquire into and identify any improper or illegal involvement in or benefit or payment to any State officer made for or in any way arising from false, illegal or improper claims, judgments or out of court settlements against the State in the period 2000 to 1 July 2006." As I stated earlier in the judgment a sum of K8.669,700 million was claimed as past economic loss for a 13 year period from 1995 - 2007. That is an average of K660,900 per year in damages which certainly are covered under our Terms and Reference for the period - the year 2000 to 1 July 2006. The amount claimed against the State during that period equates to approximately K3,667,950. Clearly that sum exceeds K300,000, the monetary threshold over three times. Although some claims is granted by the National Court, the Commission is required to examine the circumstances as to why the hearing on assessment of damages as noted by the court was conducted ex parte. So in this regard the Commission is required to examine the involvement of State officers and in particular one Gaure Odu who we understand was the lawyer on record at the office of Solicitor General who we understand was lawyer on record in these proceedings. The Commission is required to examine and determine what searches and what inquiries were conducted by Mr Odu of the relevant State officers within the Department of Lands & Physical Planning. So, they are General Registrar of Titles, Secretary for Lands, et cetera, clearly, his apparent failure in not adequately - there is a clear indication of a failure to adequately prepare at the time when leave for judicial review was heard. There was clearly a failure to file affidavits on behalf of the State. On the assessment of damages, from the records we have where was no cross examination of Mr Dadi Toka on his evidence. The Commission should also inquire or call Mr Odu to explain as to when he became aware of this decision of the National Court, and if so, what steps he took to safeguard the interests of the State. We have yet to clearly ascertain this but it appears there has been no appeal lodged from the judgments on leave, on the actual judicial review substantive and from the assessment of damages. So there are a multitude of issues that warrant examination by this Commission. My friend raised question as to whether this Commission was examining the propriety or otherwise of the decisions of the court of competent jurisdiction. [2.30 pm] Well, certainly this is not an exercise to examine those judgments as I pointed out. This Commission is obliged, is clearly required to examine the conduct of State officers who were required to protect the interest of the State. My friend also raises question as to actions of this Commission which he suggests have led to the Solicitor General or the Attorney General withholding the endorsement of the certificate of judgment in respect of this proceeding. Clearly, this Commission has no power to direct the Solicitor General or the Attorney General as to the performance of their functions of matters that are currently before them. The Solicitor General and the Attorney General, if they have withheld endorsement, they have done that in the exercise of their own discretions or their own powers I would say. We say the Commission clearly has jurisdiction, clearly is required to examine this matter particularly with regard to the conduct of officers of the State who are tasked to protect the interest of the State. Clearly this Commission should also examine officers of the Department of Lands who from the records have been found to have failed in their duties. This Commission is empowered to examine their conduct. We should say that we have requisitioned files from the Department of Lands and Registrar of Titles and the Surveyor General. The legal officer in that Department has been in contact with the Commission and they have indicated that files and statements would be delivered either within this week or early next week.

[2.33 pm] The persons who have been listed to appear, there have been other persons and those are Mr Pepi Kimas, Mr Samuel Kodawara and Mr Neville Devete, they do not object to raise issue with the jurisdiction of this Commission. The Commission should be allowed to perform its role. No further submissions.

THE CHAIRMAN: Mr Banyamai?

MR BANYAMAI: Commissioner, I have a brief response. My friend has raised issues in regard to

the claims made in the originating summons filed under OS 240 of 2007. That claim was not made to the State it was a pleading made in a court proceedings filed before the court.

THE CHAIRMAN: The claim was not made against the State?

MR BANYAMAI: It was made against the State but I am trying to draw the difference between a claim made directly to the State and a claim made in court, through a court proceedings. The ---

THE CHAIRMAN: Where else do you make the claim, if not in court?

MR BANYAMAI: The Commission looks at the reference No 1 - turn to reference No 1, you will note it covers false, legal or improper claims made to the State. There is no extension of that clause as to whether those claims are made by court proceedings or not? So my submission is that those claims will have to be submitted to the State either through the Attorney General's office or the Solicitor General's office.

THE CHAIRMAN: And no claim was made to the State at all, are you saying it was made in court?

MR BANYAMAI: That is right, through a court proceedings, pleaded.

THE CHAIRMAN: There was no section 5 notice at all?

MR BANYAMAI: Section 5 notice was given. It only is given to indicate the intention of the party taking the matter to court.

THE CHAIRMAN: And when was that given? MR BANYAMAI: It is in the affidavit material but ---

THE CHAIRMAN: When?

MR BANYAMAI: Prior to the proceedings being filed.

THE CHAIRMAN: And the cause of action is?

MR BANYAMAI: The cause of action is ---

THE CHAIRMAN: You are back to „89?

MR BANYAMAI: That is the time when the Land Board awarded the land to Toka Enterprises Limited. The failure was ongoing up to the time when the proceedings were filed.

THE CHAIRMAN: So?

[2.37 pm] MR BANYAMAI: I am submitting that the Terms of Reference as per paragraph 1 relates to claims made directly to the State, through the Solicitor General's office or the Attorney General's office. This was not one of the claims and even if it is one of the claims, this claim was litigated in the courts. That is the first point and then my friend goes on to discuss or make submissions in respect to areas, roles and functions of officers but if the Commission looks at the statement of the case under paragraph (a), essentially the gist of the Terms of Reference and the primary role of the Commission is to really inquire into the disbursements of public funds. It is stated under paragraph (a) of the recitals in the Terms of Reference. So, in this case we say whilst a claim for damages was filed in the courts, there was no claim for payment lodged with the Attorney General's office or the Solicitor General. Although of course there was a Notice of Intention to take the matter to court given to the Solicitor General's office. My friend also raises issues in relation to his Honour, Salika's judgment. We submit that, that particular aspect can be raised in the appropriate forum which is in the appellant court. At this point in time there has not been any appeal against that particular judgment and His Honour very much discusses the failure of the Solicitor General's office to may bediligently attend to this matter, but if the Commission looks at the Terms of Reference in this particular area, that particular aspect of an officer's conduct or a lawyer's conduct is covered under paragraph 5, specifically covered under paragraph 5 of the Terms of Reference and paragraph 5 is restricted to that period 2000 to 1 July 2006. The judgment in this case was delivered on 27 November 2007. A trial was conducted during that month as well. So, it is clearly outside the jurisdiction of the Commission in respect of the timeframe.

THE CHAIRMAN: Yes, anything else?

MR BANYAMAI: And he referred to paragraph 10, but we submit that paragraph 10 is really in respect to legal fees paid out or claimed by Law Firms against the State. The affidavit material will provide and it will show that there has not been any legal claims made by Toka Enterprises to the State. Toka Enterprises may have engaged lawyers but those lawyers were paid out of its own funds. So, essentially what my friend with respect is submitting is that he is with respect attempting

to expand on what is allowed for in the Terms of Reference and I submit that is not the case here. If the Commission finds in our favour I ask that the files be returned to the Solicitor General. That is it. Files have indeed come from the Solicitor General's office.

THE CHAIRMAN: Very well, I will make a ruling on this overnight – 9.30 tomorrow morning. MR

BANYAMAI: Thank you.

THE CHAIRMAN: Yes, have we other matters to deal with?

MR KASSMAN: Yes, we do have the other three matters, we will need to deal with.

THE CHAIRMAN: Yes. I appreciate Mr Banyamai, we are running short of time and with those other three matters I have not the time. We are going to refer to those other three matters we have before us to take time off to consider and reply and then make a ruling. So I will deal with that tomorrow morning.

MR BANYAMAI: We are subject to the Commission's time, that is alright.

MR KASSMAN: Thank you.

MR BANYAMAI: Sir, can I be excused please?

THE CHAIRMAN: Yes, certainly Mr Banyamai, thank you for your appearance.

[2.41 pm] MR KASSMAN: Chief, we have three matters. The first matter is number 24, Tiam Investment Limited – v – State. In that matter we have asked for Zacchery Gelu to give evidence in respect of that matter. We have received a medical certificate saying that Mr Gelu is unwell and would be in touch with us by the end of this week. With regard to Mr John Pundari, Mr Pundari did attend the Commission this morning. The matters that we required Mr Pundari for examination were discussed with Mr Pundari, by myself and the investigator concerned. The issues raised have been addressed and we will, following conclusion of today send Mr Pundari a letter just to confirm that there is no further need for him to appear. As to the third person in respect of this matter, Tiam Investments, Paul Kalong, the Commission does not have his contact details and we have not been able to contact him. We have however received, as a result of our public advertisement on this, the Commission received this week a statement from – Chief we apologise we seem to have misplaced. There was a statement produced by a person who on sighting the listing of this matter has come forward to give evidence. He is actually present here and I think the appropriate course would be to have that statement produced formally.

THE CHAIRMAN: Would you come forward?

MR KASSMAN: Chief, I might need to speak with him on this. I might need to speak with him to clearly ascertain his position on this. So if we could may be have this adjourned to 9.30 tomorrow. We can deal with it then. So, that deals with that.

[2.45 pm] The second matter of Charles Luther and others we really have – there are two officers from the Department of Finance, Mr Jacob Yafai and Mr Otto Wenge. We have been unable to contact them. We understand Jacob Yafai is at the University of Papua New Guinea and so we might make enquiries there. The last matter is matter 26, the matter of Don Polye – v – Jimson Sauk and others. We have contacted Mr Francis Kuvi, unfortunately, he has court commitments today and tomorrow. He has come forward to give evidence in other matters this week and we were hoping to have it scheduled today. But clearly, I guess, he still has his court commitments. We might contact him today to see if we can have a fixture next week sometime. Other than that, Chief Commissioner, we have no further matters to be dealt with.

THE CHAIRMAN: All right, I will stand adjourned to tomorrow morning, 9.30. MR KASSMAN: Thank you.

AT 2.49 PM, THE COMMISSION OF INQUIRY WAS ADJOURNED UNTIL FRIDAY, 10 JULY 2009 AT 9.30AM

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EXHIBIT TENDERED – GILENG/UMBA Y 3 – AFFIDAVIT..... 4098OF JOHN WAU DATED 17 SEPTEMBER 2005

EXHIBIT TENDERED – GILENG/UMBA Y 4 – AFFIDAVIT 4099OF JOSEPH W BAUNDO DATED 14 JULY 2005

TRANSCRIPT OF PROCEEDINGS Commission of Inquiry

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COMMISSION OF INQUIRY

INTO THE DEPARTMENT OF FINANCE

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANIFRIDAY 10 JULY 2009 AT 1:50 PM

(Continued from Thursday 9 July 2009)THE CHAIRMAN: Yes Mr Kassman?

MR KASSMAN: Chief Commissioner, we have a number of matters listed for today. Firstly, I guessCommission would deliver ruling in the matter of Toka Enterprises Limited.

THE CHAIRMAN: Yes I apologise, for in fact for not having hearings this morning. The Commissionwas in fact engaged in a meeting relevant to the Commission of Inquiry.s business and accordinglywe have to put it off to this afternoon. So Mr Baniayamai, I apologise for having to call you back.

The ruling in this matter then in regard to Toka Enterprises Limited –vs– The State. The TokaEnterprises Limited is challenging the jurisdiction of the Commission of Inquiry to make inquiriesinto the facts and circumstances leading to the National Court Order of K27.7 million in Novemberlast year said now by counsel for the company to be arising to some K30 million when interest istaken into account. This claim was for loses sustained in 1989 from the failure of the LandsDepartment or the State to issue a lease for certain land on which it was proposed to build forcommercial purposes. Mr Baniayamai has made submissions. These have been fully considered.They essentially assert that the claim of Toka Enterprises filed in May of 2007 falls outside the 2000and 2006 period of the Commission of Inquiry and its Terms of Reference. He has confirmed thatbetween 1989 and 2007, no claims against the State was ever lodged regarding this matter.

Further, he states that the claim was not made against the State itself but arose under a claim by wayof judicial review filed in the National Court. These according to the Terms of References as heinterpreted them was not a claim made against the State. Importantly, Mr Baniayamai says that andToka Enterprises say that this Commission of Inquiry cannot inquire into the decisions of theNational Court.

Counsel for the Commission has stated that there is no inquiry or intention to inquire into thedecisions of the National Court in this matter. He submits that the Commission is tasked by itsTerms and Reference to examine claims made against the State and compliance with the statutoryprocesses laid down for such claims. Commission is also tasked to look at the conduct ofparticipants in the claims ranging across the lawyers. claimants and the public officials. In this case the claim encompasses across 18 years whichincludes the 2000 to 2006 period referred to in the Commissions of Inquiry Terms of Reference.

Considering all these the Commission is satisfied that this matter does fall within the jurisdiction of

this Commission of Inquiry and in its inquiry the Commission is certainly not in intervening in the court process. It has no authority or intention to reopen or retry the matter in its investigation. All it is tasked to do is to examine the process and the course of a claim from its commencement to completion to ascertain whether there has been compliance with the statutory process. Whether that process has been complied with by the parties and the public offices concerned and whether in fact the State interest were adequately protected by the officers of the Justice Department tasked with that under the Attorney Generals Act to do just that by raising ordinary or obvious defences. The processes in this matter are also of interest to the Commission of Inquiry because the claim arose through judicial review, apparently 18 years after the cause of action arose. The process of judicial review under the National Court Rules does include the possibility of claims for damages but the Commission of Inquiry's interest is to examine the process of claim to ascertain whether such claims for damages in Judicial Review override or exclude the operation of time bars under the Fraud Limitations Act and whether the operation – whether this process excludes the operation of the required notices under Claims By and Against the State Act.

[1.52 pm] Again, because the assessment of damages was not defended, this claim proceeded to be, in effect, the largest default judgement in the Papua New Guinea history. The Commission of Inquiry needs to inquire into the conduct of the Office of the Attorney General and Justice Department to see why this has occurred, whether the fact that Department has reason for not defending this matter or not offering any defence or to justify the fact that it did not appear on the matter at that time or whether if there had been any concern with the judgement that there was no appeal. Under all the circumstances, the Commission of Inquiry will proceed to inquire into this matter for its purposes only, not for the purposes of intervening with the court process.

MR KASSMAN: Thank you Chief Commissioner, in light of the Commissioner's ruling, as to the witnesses to be called, we dealt with this matter. We had listed Mr Dadi Toka and Mr John Goava, who I understand are present. As to officers of the State we are awaiting documentation from the Department of Lands, as I mentioned yesterday. The lawyers listed, that is Mr Gaure Odu is actually with the Solicitor General's Office but is based in Lae. We have made contact with him and we understand he will be available on Monday.

As for Mr Neville Devete, we understand or we have been informed that he is out of the country. We have been advised that Mr Devete will return by the end of this week. So as soon as we ascertain Mr Devete's availability, we will inform the Commission. I wonder if maybe my friend could indicate to the Commission as to the availability of Mr Toka and Mr Goava.

MR BANIAMAI: As I indicated yesterday, we filed a judicial review proceedings in the National Court and my instructions are to seek an adjournment in light of the Commission's ruling now, for at least two weeks to be able to deal with that matter. We have listed the matter as an urgent application but because of the need to come before the Commission and make those submissions, we have had the proceedings adjourned to the registry. Maybe two weeks is sufficient for us to deal with that issue and of course, my friend will need that time to organise his witnesses if they are to be called.

THE CHAIRMAN: Mr Baniyamai, I understand your application that you wish to test the matter by way of judicial review. You will be aware as the – the Commission is very much aware that the term of this Commission is to expire on 31 July. Accordingly, we cannot give that sort of time frame. Besides, simply notify us that you have a filed documentation or that you intend to file documentation which only takes it so far. I do not see there is any reason why you could not be reporting back to us by Wednesday as to where – the questions we are asking you as to what staff, what persons are available and or what the process of the court action is. So I will adjourn this matter to Wednesday morning by which time will expect you to be able to advise us exactly what your position is regarding this court action if that is what you wish to take.

MR BANIAMAI: Very well.

MR KASSMAN: Chief Commissioner, are you adjourning the hearing of that evidence?

THE CHAIRMAN: No, I am not adjourning the hearing and I am not adjourning the Inquiry. I am just

simply adjourning Mr Toka.s Toka Enterprises need to supply witnesses at that stage. We will proceed in the meantime with the inquiries as such.

MR BANİYAMA: If we do list the application for judicial review then I will let my friend know, thank you.

MR KASSMAN: Thank you.

[1:55 pm] MR KASSMAN: Chief Commissioner, we might just touch on the matters from this morning before we deal with other matters that have been moved from during the course of this week. We will firstly deal with the matter Pansat Communications, Matter No 27 Chief Commissioner. Pansat Communications and Post and Telecommunications -v- The State. There was no appearance by any of the interested parties this morning. Mr Damem did advise that he would be here after lunch today and we have not heard from him and the only other persons are Mr Neville Devete and the Mr Greg Sheppard. The Commission is aware of Mr Sheppard.s attendance on this and also likewise Mr Neville Devete. Maybe we could have this matter adjourned. We will maybe contact all relevant parties and advise the Commission if it needs to re-listed.

THE CHAIRMAN: For mention Monday morning, Tuesday morning.

MR KASSMAN: Maybe Tuesday morning.

THE CHAIRMAN: Very well, mention on Tuesday morning.

MR KASSMAN: Thank you, 9.30. Next matter is No 28 Walala Trading Ltd. For the record Mr Kambanei has undertaken to provide a written statement on Monday morning. There is another person listed, Mr Simeon Manihia, who is present here, obviously in answer to our request and the publication. He is here. We will ask Mr Simeon Manihia to step forward. Essentially, he has asked for further time to Wednesday that is the 16th to respond. We have no issue with that.

[2:00 pm] THE CHAIRMAN: Thank you Mr Manihia for turning up at short notice. Thank you very much for that. We will see you on Wednesday morning. Thank you.

MR KASSMAN: The next matter Chief Commissioner is the Matter No 29, the matter of Nipa Kutubu Development Foundation. As to the persons listed, Mr Kambanei, I think he will likewise be issuing a statement on Monday in relation to this matter. Mr Pato, we understand is not available. I guess we may also seek a written statement from Mr Rimbink Pato. As to the third person, Mr Anton Semeko, he is unable to make it. Anton Semeko is an auditor with the Department of Finance. He has produced an investigation report which is dated September 2006. This was produced this morning or just before lunch today. It has obviously been perused. If this matter could likewise be - we also understand we received communication from, it appeared to be executives of the Nipa Kutubu Foundation organisation.

[2:03 p.m.] They have made written representation essentially and submissions that go to jurisdiction of this Commission to enquire into this matter on the basis that they say it is a matter that is now before the Waigani Committal Court. I wonder if we could be may be have those representatives come forward and indicate their stance?

THE CHAIRMAN: These are you say trustees or I mean the directions of the Nipa Kutu Development Foundation? MR KASSMAN: Yes, they are executives? THE CHAIRMAN: Executives? MR KASSMAN: Executives.

THE CHAIRMAN: Who are they please? MR KASSMAN: The names are sorry, Joseph Ipiti, who is the Executive Officer, Henry Mek, who is the Treasurer and Kobal Keng who is the Chairman.

THE CHAIRMAN: Those gentlemen present? Would you call his name? Yes, please come forward. Your name is who? MR IPITI: I am Joseph Ipiti. THE CHAIRMAN: With you are? You have with you two companions; two other executives? MR IPITI: No, there are not. THE CHAIRMAN: By yourself? MR IPITI: Yes.

THE CHAIRMAN: Very well. MR KASSMAN: Commissioner, I have just handed up a copy of the letter signed by Mr Joseph Ipiti and also by Henry Mek and Kobal Keng which stated 6 July 2009 which is received by the Commission on 9 July 2009 which is yesterday about 3.26 p.m.

THE CHAIRMAN: Mr Kassman you going to comment on this?

MR KASSMAN: At this stage we, as I have mentioned, we have only just received it late

yesterday, this letter, and we have not had an opportunity to peruse the Waigani Committal Court documents. THE CHAIRMAN: You have any documents regarding the Committal Court proceedings with you?

[2.06 pm] MR IPITI: We do have, but I do not have them here right at the moment.

THE CHAIRMAN: It would seem in fact the matters you say in your letter, the matter before the Commission of Inquiry is now with the Waigani Committal Court? MR IPITI: Yes. THE CHAIRMAN: All right, well, if that is the case, we would like to simply see the documentation which establishes that, and we can take it from there. We can take your application from them. Could we have that by Monday morning 9.30 am? MR IPITI: Yes.

MR KASSMAN: That would be fine. THE CHAIRMAN: Alright, Mr Ipiti, thanks very much for coming and thanks very much for putting this notice in writing.

MR KASSMAN: Thank you. MR IPITI: Thank you. MR KASSMAN: That leaves the matters from this morning. I could also maybe quickly deal with

matters that are carried over from the course of this week. Chief, I might just maybe enquire generally with everyone that is here as to ---

THE CHAIRMAN: Do you wish it to be stand down? MR KASSMAN: If we could maybe just stand it down for five minutes. I will just ascertain where we are.

THE CHAIRMAN: Very well, to enable everybody to get a quick advice of where we are going, I will stand down five minutes.

SHORT ADJOURNMENT

[2:15 pm] MR KASSMAN: Chief Commissioner, I think we will only have to deal with the matters that are on the list for 1:30. We will deal firstly with the matter that is No 33, the matter of a multitude of proceedings, Peter Ame and 10 others et cetera. We have Mr Philip Ame who is the lawyer on record I understand. Essentially, Mr Philip Ame will be asked to produce documents. He has indicated that he has documents to produce and we will ascertain the matter from there.

THE CHAIRMAN: Yes?

MR AME: Chief Commissioner, thank you. Pursuant to this summons that was produced, I have produced about ---

THE CHAIRMAN: I can see there is a lot of paper there.

MR AME: 481 pages of ---

THE CHAIRMAN: Yes, I will be reading that tonight.

MR AME: Mr Aiwa has already photocopied that and it is with the Commission. In relation to the further summons about the Solicitor General not having about six files, firstly Chief Commissioner, at page 79 of the submission, I filed a notice of discontinuation for 11 matters, it is not 12. I dealt with 11 matters, that is page 79 and I have also provided a schedule in the one that I have filed and it is with Mr Aiwa. I produced that. I think misunderstanding is created by WS776 of 1996. That the parties are Aloysius Nape and seven others. This is a separate matter. It has been mistaken by Tom Nape in the proceedings that I had settled. Tom Nape's matter is WS1233 of 1996 and the matter which is not related to this proceedings it is WS 776 of 1996, it is Aloysius Nape. I have got a writ of summons for that and then I have also got a notice of change lawyers from Paraka Lawyers dated 18 May 2005.

[2.16 pm] Chief Commissioner, this matter was dismissed for want of prosecution on 21 July 2006 when Paraka Lawyers were having carriage of this matter on behalf of the State. Yes, the order is also and I also have got a covering letter from Paraka Lawyers dated 20 September 2006, advising that his Honour Kandakasi, J on 21 July 2006, dismissed the proceedings for want of prosecution. So these are the documents I would like to tender to the Commission in addition to the documents I have.

THE CHAIRMAN: Yes, thank you.

MR KASSMAN: For the record, that is a letter from Paraka Lawyers addressed to Ame Lawyers dated 20 September 2006, and in addition to that is a copy of the writ of summons WS 776/1996, Aloysius Nape and seven Others -v- The Commissioner of Police and The State. If we could have

those marked as Ame 1 and Ame 2 respectively.

THE CHAIRMAN: Yes.

[EXHIBIT TENDERED - AME 1 - LETTER FROM PARAKA LAWYERS TO AME LAWYERS DATED 20 SEPTEMBER 2006]

[EXHIBIT TENDERED - AME 2 - COPY OF WS 776/1996, ALOYSIUS NAPE & 7 OTHERS -v- THE COMMISSIONER OF POLICE & THE STATE]

MR AME: I would just like to draw the Commission's attention to page 79 of the documents. The first, 21 June 2000, in that letter which we have also made a copy to the Commission, we have advised the Solicitor Generals and confirmed the parties that we have these 11 parties and no other person, no other writ of summons was included in the settlement that took place. I also confirm that the 11 matters, writ of summons in which I have been summonsed to give evidence in the original summons which as a result where I have produced documents.

THE CHAIRMAN: Yes, very well.

MR AME: My pleasure.

THE CHAIRMAN: Thank you very much, Mr Ame, thank you for supplying that.

MR KASSMAN: Chief Commissioner, there may be a couple of questions that we have, I am not ready to proceed. I wonder if we could maybe just have it adjourned to Wednesday at 9.30 a.m. I will send Mr Ame an outline of what we may wish him to assist the Commission with, send that off on Monday morning and we can deal with that fairly quickly.

THE CHAIRMAN: Thank you. Sounds satisfactory to you Mr Ame?

[2:22 p.m.] MR AME: From me, Commission, if that can, my program can be in the afternoon because Wednesday is State motion's day and we normally---

THE CHAIRMAN: Yes, 1:30 p.m.? MR AME: 1:30 p.m. shall be alright then. THE CHAIRMAN: Thank you, Mr Ame? MR AME: Thank you, Commissioner. MR KASSMAN: Wednesday the 15th? MR AME:

Commissioner, thank you, if I can excuse myself? THE CHAIRMAN: Yes, Mr Ame. MR KASSMAN: Before we proceed to the next matter, just noting for the record, on Wednesday of this week 8 July, we had two matters dealt with, firstly, in relation to the matter of Soiat Williams and Mr Williams is asked to return that at 9:30 a.m. this morning and he did attend. We advised Mr Williams that we are perusing documents that he had presented and also those that were presented by the Department of Personnel Management. We advised Mr Williams that on our review of the documents, we would address any outstanding issues in writing to Mr Williams this coming Monday, 13 July, and if there was any response needed, we indicated and Mr Williams also indicated that Wednesday 15 July would be appropriate. Secondly, in relation to the matter of Sir Pato Kakarya, Mr Dan Kakarya also appeared this morning, this was following his request. Mr Dan Kakarya produced the written statement of the order of events relating to his claim and a pay out of K2 million, and Mr Kakarya also produced a document that goes to the basis of the computation of the amount of K2 million. Those documents were only received this morning and are being considered just for the record. We will now call the matter that is matter No 30 on the list for this morning, the matter of AOG Jubilee University. It is a claim to Department of Finance. I understand there are a number of persons here available to give evidence. We will call Doctor William Tagis first.

[2:26 pm] THE CHAIRMAN: Yes please would you come forward Dr. Swear him in. DR WILLIAM

TAGIS, Sworn: XN: MR KASSMAN THE CHAIRMAN: Thank you Dr, you sit down and we will hear you sitting down, that is fine. MR KASSMAN: For the record, your full name is Dr William Tagis? A: Yes Sir. Q: You are the director of the Office of Higher Education? A: I am the Director General, yes. Q: Sorry? A: I am Director General. Q: Director General, thank you. A: Yes.

Q: Dr Tagis, just briefly, the Commission is inquiring into a claim or payments made in respect of the AOG Jubilee University. We have asked for your attendance to assist the Commission with evidence as to your understanding of the establishment or otherwise of this University. Are you able to assist the Commission with evidence in that regard?

A: Yes Sir.

Q: Could you please explain?

A: I was appointed acting Director General on June 8, 2005. The first thing that happened to me that I dealt with at that time was the UPNG crisis.

Q: So you were appointed 8 June?

A: June 8, 2005, just acting.

Q: 2005?

A: The Jubilee University issue came about August 2005. At that time I was having to deal with the University of Papua New Guinea students' strike and staff revolt so it came a time when things were not quite settled and I was just settling in as Director General of the office. About that time I was requested to attend a CACC meeting at Morauta House. This meeting was to discuss the establishment of an institution to be called Jubilee University. I was called by Secretary for Finance to attend a briefing on the submission. I could not because I was at the UPNG Inquiry - UPNG Student Crisis Inquiry at PNGIPA so I sent an officer to stand in and then to advise me of what course of action or what we should do with respect to the submission.

[2:30 pm] A: In general I was asking for technical advice from the officer. Our advice to the Minister at the time is contained in the documents that I have in here.

MR KASSMAN: Have those documents been produced to the Commission as yet or you have them for production now?

A: Yes, they are here.

MR KASSMAN: Alright.

A: It was advised initially to me, advice by the officer that the submission was not sufficient. It lacked major factual information, principally finance.

Q: This is a submission from who?

A: From a group of people who were proponent, I call them the proponent of the Jubilee University.

Q: They were?

A: A person who calls himself the Chancellor now, chancellor of the Jubilee University, Mr Kambanei, and the others would have been a person called Dr John Oligar and a few other people that register in my mind.

Q: So there was a briefing in relation to the submission that this group of people wish to make to the Office of Higher Education?

A: Yes.

Q: You had your officer attending in your place?

A: Yes.

Q: Who is that?

A: Prisca Mauve.

Q: Sorry?

A: Prisca Mauve, M-A-U-V-E.

Q: Mauve.

A: She is the assistant director, quality assurance.

Q: So she attended this meeting then reported back to you?

A: To me.

Q: Did she have with her a copy of the submission?

A: She did.

[2:34 pm] Q: And her report? A: Yes. Q: Have those documents been produced to the Commission as yet or? A: The submission I did not bring but we have copies in the office. Q: Maybe we could have that produced maybe on Monday? A: Yes, sure. Q: That is the submission and your officer Ms Prisca Mauve's report? A: I have a copy of it here.

Q: You have that there. Maybe that could be produced? Just a single copy or there copies of it? Just one copy?

A: It is a couple of pages. It is somewhere here.

Q: You have a bundle of documents you wish to produce to the Commission?

A: Yes. Q: Maybe if I could maybe take a look that and have that recorded? THE CHAIRMAN: There

other documents you want to refer to? A: It is because Sir, because they are tied together and to my decision. THE CHAIRMAN: Yes, that is fine fine. It is just a matter of exhibiting them. If we exhibit them as a

bundle, we can refer them to as well. MR KASSMAN: I will return it. For the record this is your file, is it? A: No, this is a spare file which I brought in here Sir, to leave with the Inquiry. THE CHAIRMAN:

So it is a copy of your own file? A: Yes. THE CHAIRMAN: I see. MR KASSMAN: Maybe we could just have it marked generally as AOG Jubilee/Tagis 1. THE CHAIRMAN: Yes.

[EXHIBIT TENDERED – AOG JUBILEE/TAGIS 1 – BUNDLE OF DOCUMENTS] MR KASSMAN: I will return it to Dr Tagis. So Doctor, essentially the advice of Prisca Mauve was that the submission lacked merit or did not meet the required standards? What was the--- A: Both Sir. It did not meet the required NEC submission format and there was insufficient material, information on the finances, which to us, is and was important at that time, especially for the sustainability of the institution. There were general statements, Sir about finances, which did not meet with our satisfaction. Q: Are these requirements as set out by some legislation or some by-law?

[2.38 pm] A: There is the Accreditation Policy of 1995, Higher Education Accreditation Policy. I did –

-- Q: Accreditation Policy? A: Accreditation Policy. I did not bring that but we have copies, sir. Q: Accreditation Policy 1995? A: Yes. Q: That could be produced. A: Yes. Q: The response from Ms Prisca Mauve made reference to the requirements as set out in that policy?

A: Yes0

Q: Thank you. So what was the result of that report? Was there any action taken?

A: That report, sir, was the basis of my advise to the Minister for Higher Education about the

submission, and our technical view was, the submission was not competent, especially the financing0

Q: The advice was in writing, I gather A

A: Yes0

Q: And what is the date of that advice A

A: It may take a while to search. Here, it is, August 11, 2005.

Q: Essentially, your advice to the Minister for Higher Education was A

A: I was just starting and I was bit somewhat unsure at that time. There was a lot of politican

manoeuvring. My advice was and I can read this one.

Q: Sure0

A: It is a long letter, my advice in general was,

“(1) Because this is a major policy proposal, it has to go to CACC for its consideration. At this stage,

the discussions need to be firmed up with facts. It would not be useful to sign a document for reference to Cabinet because of the factual errors and the weaknesses in other areas in the submission.

(2) Alternatively, you could suggest to the Minister who is going to sponsor the submission to have the submission studied by the Office of Higher Education to review relevant sections of the submission. The Office of Higher Education could work on it very quickly in a few days and then refer to the CACC but only and as only after the Legislative Council has studied and made its input into the proposed Act. I could not find the Legislative Council's note or the note that the draft Act has been subjected to in close scrutiny in the submission. This submission especially is essential.

[2.41 pm] (3) The implications have been spelt out clearly, principally, funding, staffing, (noted that the Dean of the Law School at UPNG) and the Legislative Council have not vetted their registration.”

Those were our advise. Q: Following that advice, what occurred, was there any further moves for formal establishment? A: The submission went through to CACC. Q: Were you involved in that

deliberation? A: I was involved and I was asked what my view was. My view was the submission did not satisfy

those three advises. But since it is beyond me and I am not a member of the CACC, verbally I said it is up to CACC to make its technical determination on the submission.

Q: Are you aware of the outcome of any decisions, discussions of the CACC? A: I presume it was endorsed because it went to NEC and NEC made a decision, decision 191/2005. Q: Sorry, decision number ---? A: 191--- Q: /2000? A: 2005. Q: What is your understanding of the decision of the NEC? A: I wrote to the secretary to NEC after the decision was made. I do not think I have that letter here

but I can remember, I can recall as I saw it this morning. Certain aspect of the decision I dispute it. It related to two essential issues; (1), the issue of finance, the other one related to the issue or rather that the NEC instructed the Office of Higher Education to ensure that staff who were moving from existing universities to Jubilee University would be accorded all the protocols and the support by the Office of the Higher Education. Sir, my view to that was the Office of Higher Education is not responsible for staffing of universities. We do not and we have never interfered in the university's staffing decisions. I said to the Secretary, this decision is not tenable.

[2:45 pm] Q: What has come about now as a result of this, I understand there has been further NEC decisions? A: There was an NEC decision in 2000 – reference that one? Q: Sure, yes. Is that 34 of 2006? A: 2006, that decision 36/2006 at Alotau and the latest decision is decision 95/2009. THE CHAIRMAN: Sorry 595?

A: Decision 95/2009, it was made two weeks ago. MR KASSMAN: 95/2000. Essentially, in 34 of 2006 was for the CACC to thoroughly vet, CACC in collaboration with your office to thoroughly vet the submission and you say following – that is in 2006, and in decision 95 of 2009, what was the NEC decision?

A: It is rescinded NEC decision 191 2005 and Government is asking the AOG church to take charge of the establishment of AOG Institution of Higher Education in general, that is what it is saying. The decision says here.

Q: Alright. Our understanding is that obviously the establishment of all the Universities is effected by an Act of Parliament. Was there ever an Act of Parliament enacted for the establishment of the AOG Jubilee University?

A: I have no information on that but if I may be allowed to make reference to a gazettal which was the basis of the NEC decision of 2006, which the gazettal says, --- Q: What is the gazette number and date?

[2:49 pm] A: The date is 1 February 2006. I am trying to find the gazettal number.

Q: Do you have a copy of it or?

A: Yes, it is here, sir.

THE CHAIRMAN: Yes, if you can just read it if you find it.

A: Sorry, yes, sir. The gazette is G23, it is February 1, 2006 and there is an accompanying letter from the Prime Minister dated 30 January 2006.

MR KASSMAN: What is recorded in that gazette?

A: Alright, the gazette, it says, "Declaration of Jubilee University as an Institution of Higher Education. I, Grand Chief, the Prime Minister declare Jubilee University as an institution of Higher Education and to be an institution to which the Higher Education Act 1983 as amended applies. And (b), declare that the Jubilee University to be an institution to which part 6 of the Higher Education Act 1983 as amended applies upon being satisfied that it is desirable that Jubilee University be administered by a governing council in accordance with part 6. And a governing council has not been appointed under this or any other Act to come into effect on and from the date of publication of this declaration. Dated 30 January 2006."

There is a concern that we raised, the date of gazettal and the date given as the gazettal number G23.

[2:53 pm] Q: We might have to peruse that material. But in effect the NEC decision 95/2009 you say

rescinded earlier NEC decision of 191/2005?

A: Yes.

Q: So in effect, as far as your office is concerned it has no formal standing?

A: Sir, yes, it has. I presume NEC has some question about some things and so that then gave effect to decision of June 2006. I do have the – I do not know what it is but---

Q: Sure. Mr Tagis, I wonder if you feel you are able to comment. The records we have indicate that payments made from the Department of Finance to Jubilee University. These are records taken from the electronic Cash Book of the Department of Finance. A total of three payments have been made in respect of – I should say, firstly, on 18 November 2003, a payment of K500,000 was made from the trust funds suspense account No 2 for the description being, construction of classrooms at Jubilee University. The second payment was a payment made on 7 December 2005. I can produce these records. From the description of the Department of Finance, it was a payment made out of the Sepik Highway trust and the description was for the establishment of Jubilee University, a sum of K1,200,000. The third payment was made on 31 December 2005 and the last day of the year, made from the cash adjustment account and it is described as payment of course fees for 89 District Treasury officers, a sum of K1,300,000. So in total a sum of K3 million was paid. I am not sort of suggesting you comment on the correctness or otherwise of the fees or the payments but merely comment on these payments being made by the State? [2.57 pm] A: I would know about the transactions if the funds were channelled through the office of Higher Education which is the practice that exists today for declared institutions which Government gives funds to, usually it is transferred through the office of Higher Education, then I would know. From my understanding, we did not know about a Jubilee University, that concept, even at conceptual stage until August.

Q: Until when? A: August 2005. That is the only time my office was made aware. Q: Sorry, until that conceptual stage meaning – obviously was that the time when the discussions

were being held? A: Yes. Q: And Prisca Mauve was asked to attend, is that what you are referring to? A: It will be beyond that, before that. Q: When was this submission put for discussion with your

office? You say you could not attend so

Prisca Mauve attended on your behalf, when did that occur? A: In August. Q: In August? A: In

August 2005. Q: August 2005. So it is certainly strange that a payment had already been made for construction of

classrooms in 2003; the first payment of K500,000? That would be strange? A: It is strange. If I

may ask – for us, the office of Higher Education response to Government

instructions on the basis of institutions that will benefit from government fund, they would have been declared first. Q: Yes. Do you recall any funds of that nature, of that magnitude being

forwarded to your office, as you say, which is the normal course? A: No, sir. Q: So you can with certainty say that no funds at all

for this university have been passed through the office of Higher Education? A: Nothing and I can say this, sir the office of Higher Education operates a budget of, at now K34

million. It is a small budget. I know the line budget, I know how much goes for 135 which is where the funds are parked. There is none. Q: What I will put to you Dr Tagis is a copy of a public

notice from the Sunday Chronicle of 31 May 2009. Basically, it is titled „Office of Higher Education announcement. Papua New Guinea

is recognising institutions of higher education in 27 May, 2009.” That is a public notice issued from your office? A: Yes, from me.

Q: Obviously, it shows that the AOG Jubilee University as it is commonly known is not an institution listed in your public notice?

A: Exactly.

[3.01 pm] Q: Thank you. If we could have that marked as Jubilee/Tagis 2.

[EXHIBIT TENDERED – JUBILEE/TAGIS 2 – OFFICE OF HIGHER EDUCATION ANNOUNCEMENT
ON SUNDAY CHRONICLE OF 31 MAY 2009]

MR KASSMAN: Dr Tagis just in relation to that notice, is that a formal requirement, publication on a periodic basis, publication of that sort?

A: When I was appointed Director General in 2005 I made it my responsibility to inform public about Higher Education providers in Papua New Guinea.

Q: Why was that?

A: It was important because – there are a number of issues why this has become imperative. One, many students want to experience Higher Education, many. The second reason is that under the WTO on gas, education is one of those things that the World Bank indicated has indicated that can be used or become part of the consumable in countries and so as a result of that many institutions want to come to Papua New Guinea. Some are already established here, but without the requisite quality system. So it was important for us to ensure that the people of Papua New Guinea are protected and the courses that are on offer are credible and they comply with the quality assurance system in Papua New Guinea. That is one. The third one is that we want to promote other providers of higher education.

Q: You say other you mean institutions other than State?

A: Yes. Institutions other than the 28 declared institutions currently recognised by the Commission for Higher Education today.

Q: Sure.

A: These are principally private franchise institutions. Some of them are registered under the National Training Council but which are not recognised by the Commission as institutions of Higher Education.

Q: Were there any complaints received or any concerns, maybe put it that way from the public or from other State bodies or institutions as to the operations of the AOG Jubilee University?

A: The materials that I have here represents some cuttings from the newspapers but there were telephone calls and I think one or two written expressions of disagreement or dissatisfaction from students.

Q: Was this brought to the attention in any formal way to the Minister for Higher Education?

[3.05 pm] A: If I have access to the Minister files, I probably would respond to that but--- Q: I mean, through your own.

A: Yes, he would.

Q: I mean through your office, were any representations made to the Minister for Higher Education?

A: Yes.

Q: There were?

A: Yes.

Q: I guess in the outcome, was the NEC decision 95 of 2009?

A: Yes, that was but representation would have gone through the Commission for Higher Education. The office of Higher Education is the secretariat to the Commission for Higher Education and Commission for Higher Education has recommendatory functions. So it advises the Minister or government which goes through the Director General's acquiescence.

Q: Dr Tagis, I will produce to you another public notice that appeared in the National on 1 May 2009 which essentially is a publication to announce the inaugural graduation for the Jubilee University. As I said it is a publication in the National dated 1 May 2009. I guess you may have seen that publication. In view of your evidence that you have now given, what is the standing of, I guess anything that occurred on that as a result of that graduation? Do the diplomas, or degrees or whatever certificates that were bestowed or offered or issued, what standing does that have as far as your office is concerned?

A: My response will be a little bit lengthy. I will respond in three ways. One, when the public notice came up, the office of Higher Education wrote to the Chancellor, a person, asking him not to proceed with this graduation. In Papua New Guinea, although universities have the autonomy to decide their courses and their awards, the Commission of Higher Education has a responsibility to vet courses on offer in the declared institutions, universities or the other 24 issues of higher

education. Principally, those courses are considered by the Commission so that they could benefit from the National Scholarship called the TESAS. This is also the responsibility of the Commission to ensure that courses that are benefiting from government scholarships satisfy the domain criteria in academic standing. This is not a Papua New Guinea Law, this is an international convention which we must comply with. The other issue that Commission for Higher Education is responsible for is to ensure that an institution that have been authorised by Government to be established must graduate two cohorts of students.

THE CHAIRMAN: Must graduate?

A: They must graduate two cohorts.

Q: Two cohorts, yes.

A: Yes, first. For a three year college, they must have graduated the first cohort up to the third year of its operation. First year, second year and the third year, they graduate. This is for the two year colleges. For the four year colleges, and principally in Papua New Guinea, the universities, they must graduate the first cohort after the fourth year, which is the fifth year of its operation, and therefore the second one would be the sixth year. Within the Commission for Higher Education, Norman criteria that we have, which was endorsed by NEC last month, after the second cohort has been graduated, the Commission for Higher Education wants to go in and audit the course to ensure that they are complying with the institutional quality system and also the Higher Education key quality system.

[3:05 pm] After that, then the institution is satisfied, all those protocols, there were nine protocols, then the Commission can either recommend for accreditation or not, if it is not satisfied. The academic audit is conducted by a committee of the Commission for Higher Education, it is called the Quality Assurance Committee and it is made up of professors of the university and senior academics in that two year colleges. The professors are usually pro-vice-chancellor academic in the case of UPNG, Unitech, Divine Word, Goroka, Unre that is Vudal and PAU.

MR KASSMAN: In a nutshell, the process of accreditation, was that ever performed or was the audit performed in relation to AOG Jubilee University?

A: The Commission undertook two audits but it did not recommend – much of the recommendation was for the institution to consolidate or to attend to some critical areas.

Q: So there was some deficiencies found?

[3:12 pm] A: Yes. One of them we have allowed is, sustainability is very important – one of those big things, the financing. Second are the courses and also most importantly the professors. The Commission and office for Higher Education expects an institution to have tenured professors, not part timers or visiting professors. Part timers and visiting professors to our view, they only add value to institutional programs. So in a sense an institution must have tenured academics, they should be on the payroll, they should be on the staffing list.

Q: That did not exist?

A: We believe that it did not exist in this institution, not today.

MR KASSMAN: Commissioner, we have no further questions.

THE CHAIRMAN: Thank you, Dr Tagis, is there anything you would like to add at all from that, any further comment you would wish to make?

A: No Sir.

Q: Thank you very much, you have been most helpful and I will certainly take account of your – it may be that there are some other matters which we would like to your advise on on which we would need your explanation of and we will call you at a time suitable to yourself regarding that. Thank you very much.

MR KASSMAN: Thank you, there are some documents that Dr Tagis undertook to produce, we may have those sometime on Monday. Those are the submission that we put in August 2005 and the Higher Education Accreditation Policy 1995 and if you have the NEC decision, 95 of 2009, we certainly – we have copies of the others.

A: Here you then.

Q: Thank you, if I could have what was produced. WITNESS WITHDREW

MR KASSMAN: The next witness in relation to this matter, Chief Commissioner is Reverend Philip Dalaka.

REVEREND PHILIP DALAKA, Sworn: XN: MR KASSMAN

Q: For the record, firstly your name is Philip T Dalaka? A: Yes. Q: Your title I understand is Reverend? A: Yes. Q: You are known as Reverend Philip Dalaka? A: Yes. Q: Thank you. I understand you are also General Secretary of the Assembly of God? A: No, the General Superintendent of the Assembly of God. Q: I apologise, General Superintendent? A: Yes. Q: Reverend, you obviously heard the evidence from Dr Tagis and our introduction to it. Obviously it concerns what is commonly known as the Jubilee University or the AOG Jubilee University. I might be first hand to you what appears to be in a statement or Media statement that appeared in the Post Courier on 24 April 2009. I will just produce that for you to peruse. I guess you may have a copy, it is fairly lengthy statement. Is that a statement issued by yourself?

A: Yes. Q: For the record it is a Media statement by the, the topic is titled, „The Assemblies of God Church, the K4 million government assistance, the ANZ Bank loan, and the Jubilee University.. It is a full page

Media statement that appeared in the Post Courier on 24 April 2009 by Reverend Philip T Dalaka, General Superintendent Assemblies of God PNG. If that could be marked as Jubilee/Dalaka1? [EXHIBIT TENDERED - JUBILEE/DALAKA 1- MEDIA STATEMENT IN THE POST COURIER ON 24 APRIL BY

REVEREND PHILIP T DALAKA - ASSEMBLIES OF GOD PNG] MR KASSMAN: Thank you. Reverend, it is a fairly self-explanatory statement that you have made and a fairly detailed statement. I wonder if you could maybe assist with some background to the statement. What brought about a decision to make a Media statement of this magnitude?

A: Firstly, in October 2008 I was appointed to the office as the General Superintendent. Prior to that there was little or no knowledge about the activities that were going on from the church perspective, the leadership perspective. The reason why I put the Media statement was there was so much public opinion tarnishing the name of the Church as to some of the issues that we have covered here that has affected our position as a Christian Church and what we represent as a Church and what we preach as a Church. And therefore - I was in Australia at that time when I got back there was a Media release. I do not know who did it, stating that Assemblies of God Church, through LLG Jubilee University got K4 million from the government and according to our records as the church we have not seen that money. Therefore, I thought it was best for the best interest of our members to clearly explain because it affects us as leaders, leading a Christian organisation to just sit down and not do anything about this.

[3:21 pm] So that is why the Media statement came out simply to clear the public so that they are aware that, we as a church, represent the church to preach the gospel and the truth.

Q: Just very briefly, are you aware of the proponents or the persons behind the establishment of the AOG Jubilee University?

A: There may have been decisions before prior to my coming to the office, may have made decisions and with that respect with the establishment of the university, when I took office there was still no files in the office for me to work towards so with that I would not have any more detailed information to talk about. But since I got into office, I am trying to do my best to rectify and bring the Church into its original disciplines.

Q: So as far as you are aware, there has been no decision or no resolution of the AOG - sorry I should say Assemblies of God, your organisation towards the formation of this university, AOG Jubilee University?

A: As I have said, whatever decision that has been made prior to that me coming into office, we do not have records as well because our office files have been tempered with and our computer in the office and all of our files have gone since I took office.

Q: For current purposes, I guess the Media statement that you released here is the acquisition of

theChurch?

A: Yes.

Q: I think you mentioned there was a sum of K4 million but certainly from the records that we have obtained from the Department of Finance, it indicates that a sum of three payments totalling K3million were paid by the Department of Finance towards the AOG Jubilee University. From your knowledge of the records that are currently in your possession, were any of these funds received by the Assemblies of God or were any of these funds channelled through the bank accounts of the Assemblies of God?

[3:25 pm]A: The normal orders of the Church is the money comes to the Church first, I mean the Assemblies of God of Papua New Guinea and then the money, through the Church is released to the agencies within. But with respect to the K4 million that has not been done. It has not come to the Church, I do not have any records. I checked through our records, there is nothing whatsoever.

Q: Is it possible that there are accounts of any other, I apologise, I guess any other organisations or – I am not sure if this is the right term but I guess you might understand what I mean. Is it possible that there are other branches of the Church or divisions of the Church that have bank accounts through which these funds would have been deposited or channelled? Is that possible?

A: That could be possible, yes. According to our records as the National Church, we do not have any records whatsoever. But if it does go on to any other agency then it would have been without our Church leadership knowledge.

Q: Is there a process by which – you are the general superintendent and you, I guess, I understand you would be obviously sitting at the national level, national meaning the country with regard to the Assemblies of God, the Church. Are there processes by which your body or the position that you hold oversees the financial affairs and transactions of your branches throughout the country? Is there a process?

A: There are processes to which, like, if funds are coming in from outside, it comes from the main account and the main account disperses for accountability purposes. So it goes to various agency that it is responsible for. We run schools, we run aid posts, we run other agencies. Whatever funds come, say for example, from overseas donors, it comes to the main Church account so we are aware of where the funds goes through and if anything happens outside of this, the national Church leadership is not aware of.

Q: Sorry?

A: If anything happens outside of us being involved then we are not aware of.

Q: Are the accounts audited on an annual basis, the accounts of the Church?

A: Yes, our Church account is audited but all the other account, because we come under one entity, the Assemblies Of God, they do a report too, the Church leadership.

Q: Would there be any issue with you as the general superintendent producing to the Commission audited statements of the Assemblies of God for the period 2003, 2005? Would there be any issue with production?

A: When I took office there were literally no records whatsoever. I even wrote to even Jubilee, nothing came forth from them as per records and ---

Q: But you have custody of the bank statements, just the bank statements.

A: No.

Q: You have custody of the bank statements?

A: No. What happened in the past is because many pastors were concerned, not knowing some of the dynamics of how an university operates so it was taken over by people who knew what was happening and so pastors were probably in the past, I really do not know, were left in the dark, did not quite understand the dynamics of how the systems and the processes of education that comes into being. We are preachers. We do not quite understand the dynamics of education and how it is formed. But it was handled at that level with the trust and the confidence of the leadership at the time. And how they managed funds and was required by the council for them to submit reports and I have not sighted any of that report. [3:29 pm] Q: What about bank statements?

A: I have not seen any bank statements too as well.

Q: You do not have bank statements?

A: Probably has come to those responsible but they have not submitted that as per financial statement and reports to the Church council.

Q: What I mean is just the ordinary bank statements, statements issued by the Bank that contained details of all transactions on the bank account?

A: I have not sighted one

THE CHAIRMAN: Is that still the case now that you still do not see a bank statement?

A: If the bank statement goes then probably it goes to the university where they deal directly with the bank and the accounts they operate with.

Q: Are they operating all of the accounts of the Assemblies Of God?

A: No, the Church operates separately from the university in terms of finance.

Q: So that the Assemblies of God itself, has its own account, you have full control and records of?

A: Yes.

MR KASSMAN: Chief Commissioner, I have no further questions

THE CHAIRMAN: Yes, thank you, Reverend. We appreciate your frankness and coming forward as well in this matter. We will take everything that you say into account. Thank you, very much.

WITNESS WITHDREW

MR KASSMAN: Thank you. The only witness outstanding is Mr Thaddeus Kambanei. He has advised that he will submit a written statement on this coming Monday that is 13th. The next matter would be No 31, the matter of Tony Tepi and 64 others. The two persons listed to assist the Commission first was Mr Pundia Kange and his second was Mr Francis Kuvi. Mr Kuvi has been in touch with the office. We will need to ascertain his availability. With regard to Mr Pundia Kange, Mr Alex Kalandi is making an appearance as lawyer for Pundia Kange.

[3.33 pm] Just some background to it, Chief. The plaintiffs Tony Tepi and 64 Others sued the State for alleging they suffered various losses and damage as a result of a combined PNG Defence Force and Police raid at Maya village in Pangia in the Southern Highlands Province. This, they say allegedly occurred on 3 August 2003 during the supplementary elections. It is alleged that the security force members raided the village and destroyed properties and terrorised and assaulted innocent people for no apparent reason. On 29 October 2002, the plaintiffs filed writ WS 90/2004 in the National Court, Waigani, claiming damages amounting K1,424,000 plus other heads of claims. The information we have and that is from the files of the Solicitor General and some from the National Court indicate that the State failed to file a defence and as a consequence the plaintiffs obtained default judgement on 8 September 2004. Following default judgement a deed of release was executed on 15 December 2004 for settlement of damages in the sum of K500,000. On 16 December 2004, Mr Francis Kuvi as acting Solicitor General wrote to the Secretary, Department of Finance requesting that the deed of release entered into be settled. From the records we have only the sum of K200,000 has been paid and that was a payment made on 7 June 2005. It was a cheque raised to Tony Tepi and 64 Others, C/- Peri Lawyers. trust account. At the Commission hearings in Mount Hagen, Mr Tony Tepi confirmed that he had received K200,000.

And for the record also during the Commission hearings in Mount Hagen Superintendent Ono Pia is the Provincial Police Commander for the Southern Highlands. He appeared, he gave oral evidence and produced documentary evidence that confirmed that this alleged unlawful - confirms that a police raid was conducted at Maya village in Pangia, Southern Highlands Province on 3 August 2003.

The attendance or the requirement for calling of Mr Pundia Kange has come about as a result of correspondence that the Commission has received stating to the effect that Mr Tony Tepi - basically, the claim with Mr Tony Tepi is untrue. The basis being Tony Tepi himself has lived all his entire life in the Eastern Highlands Province. I wonder if the lawyer Mr Kalandi can assist the Commission as to what evidence his client can assist the Commission with?

MR KALANDI: Thank you, Chief Commissioner, thank you Mr Kassman. I am basically here

to indicate to the Commission as per instructions of Pundia Kange that the claim that was lodged and the amount paid was not a genuine claim. He has ---

THE CHAIRMAN: Sorry, you were the lawyer involved in this claim? Did you act for Mr Tepi and 64 Others?

MR KALANDI: Commissioner, I am acting for Pundia Kange who has lodged a claim on that raid which the earlier claimant has lodged earlier. I have been instructed by Pundia Kange that Tony Tepi does not reside in Maya village. He is from Maya village but he does not reside in Maya village. He has been living his entire life in Goroka, in the Eastern Highlands Province. The raid occurred in 2002 right after the National Elections and not as alleged by Tony Tepi when he lodged his claim.

[3:38 pm] THE CHAIRMAN: Not in 2003?

MR KALANDE: That is right, not in 2003 but it was raided in 2002 right after the National Elections and that is when Tony Tepi was not living in Maya Village. We have been instructed by Pundia Kange who was a victim affected during the raid to file proceedings in the National Court. Before we filed the proceedings in the National Court he has engaged Harvey Nii Lawyers ---

THE CHAIRMAN: Who has ---?

MR KALANDE: He has engaged Harvey Nii Lawyers.

THE CHAIRMAN: I am sorry who has engaged Harvey Nii?

MR KALANDE: Pundia Kange.

THE CHAIRMAN: I see. That was for the original claim?

MR KALANDE: For the original claim. But then the Harvey Nii Lawyers when he was doing section 5 notice, he did not have the claimants of which I have a list totalling about 145 did not sign opposite the names and they did not do a power of attorney indicating that they giving Pundia Kange the authority to act on behalf of him or act on behalf of them. On that basis the Solicitor General's Office indicated that the notice, the section 5 notice did not cover the 145 others but it was given for Pundia Kange himself. I have the list of the claimants here so I will submit them later. When that happened Harvey Nii Lawyers wrote to the Attorney General, who he then was. When these were happening it went out of time, out of the six month period so Harvey Nii Lawyers wrote to Attorney General's seeking leave including the list of names this time. But then there was no response from the Attorney General's office so it was prolonged and then eventually an originating summons was filed to seek leave of the court to give notice to the State, that is OS No 522 of 2004.

THE CHAIRMAN: I am sorry, 2 ---

MR KALANDE: OS No 522 of 2004.

THE CHAIRMAN: Yes.

MR KALANDE: When that originating summons was filed, the case has been delayed, prolonged and up till 2007 Kange lawyers was engaged to continue with the proceedings.

[3.45 pm] Kange Lawyers then filed application, moved the originating summons and the applications that were filed in the National Court but the Court rejected that application on the basis that there was no power of attorney as I have indicated earlier, and the lists were not signed by the claimants. On that basis we have filed an originating summons for Mr Pundia Kange himself alone without the claimants this year, and that is WS 464/2009.

Mr Pundia Kange came to realise on Monday, in the National, 11 May 2009, indicating of the raids and the calling of Tony Tepi to come for the Commission of Inquiry. When he realised that he instructed us to do a letter dated 9 July 2009 to the Commission of Inquiry, attention to Mr Kassman, informing the Commission of Inquiry that the claim by Tony Tepi and 64 Others was not a genuine claim. The rightful person who was doing the claim on the basis of that raid was Mr Pundia Kange with the 154 Others which list I have now. On that basis the letter was written, basically telling the Commission of Inquiry that the claim was not a genuine claim. It is on that basis that I have appeared to assist the Commission of Inquiry, appealing that the claim by Tony Tepi and 64 Others was not a genuine claim. As Pundia Kange and the 154 Others, the people who had been affected at the time of the raid have filed a proceeding against the State and the Police and the Defence. Some Defence soldiers also who were involved in that, as a genuine claim because they

were the ones affected by the raid and not Tony Tepi and 64 Others. We have further been instructed to confirm the list of the 64 Others, with the list which I have now that Pundia Kange has submitted.

THE CHAIRMAN: They are in the 154 that you are talking about?

MR KALANDI: Yes, that is the list I am holding on to now. Those were the people who had been affected by the police raid in 2002 right up to the National Elections. We have served a writ of summons already on the Defence Force Secretary, Commander, the Police Commissioner and some Police constables who had been involved in the raid. There were some Defence soldiers too who were also involved in the raid. So we have named those parties and already served them the writ of summons on them.

THE CHAIRMAN: Yes, served on those Police officers and Army officers personally, has the claim against them personally now?

MR KALANDI: Yes, that is right. THE CHAIRMAN: Not against the State? MR KALANDI: Against the State and they have been named as parties to the proceeding personally.

That was basically the reason I appeared to inform the Commission of the previous claim by Tony Tepi as not being a genuine claim.

THE CHAIRMAN: Mr Pundia Kange, is he here today or? MR KALANDI: He is in the Southern Highlands. That was the reason why I appeared for him. I was given a letter by a Mr Kom indicating or asking him to appear before the Commission of Inquiry but due to the reason that he was in the Southern Highlands, I requested if the Commission could assist him to come down here to give evidence. But on the basis that they could not assist so bring it to here, it was my option that I could come and assist the Commission.

THE CHAIRMAN: Thank you very much then.

MR KALANDI: As I was already instructed of what had transpired.

THE CHAIRMAN: Thank you Mr Kalandi. Mr Kassman?

MR KASSMAN: We might have the documents that Mr Kalandi has in his possession to assist the Commission. We could, maybe, have those --- THE CHAIRMAN: Produced? MR KASSMAN: They are in fact court documents I understand, all matters of public record? THE CHAIRMAN: Very well, if you produce the copies. Have you got copies for us there have you? MR KALANDI: That is right. THE CHAIRMAN: Thank you, Mr Kalandi we can put that as Kalandi---

MR KASSMAN: We can mark them as --- THE CHAIRMAN: Tepi/Kalandi 1. MR KASSMAN: Sorry? THE CHAIRMAN: Tepi/Kalandi 1. MR KASSMAN: Yes, alright. [EXHIBIT TENDERED - TEPI/KALANDI 1 - BUNDLE OF DOCUMENTS] THE CHAIRMAN: Yes, thank you. MR KASSMAN: That is all in relation to that matter. THE CHAIRMAN:

Thank you very much and I appreciate your coming forward and on behalf of the clan.

[3:49 pm] MR KASSMAN: Thank you. The final matter Chief Commissioner is the matter of Matter No 32, the matter of Peter Terry and Lawrence Job -v- The State. We have on our list two persons to assist the Commission; Kalip Salo and Senti Margis.

THE CHAIRMAN: Yes, you are Mr? Please come forward.

MR KASSMAN: Chief Commissioner, with this matter we have received the documents from the Finance Department and from these two gentlemen here. We certainly are in the process of receiving documents. I am sure there will be more documents coming in. Obviously Mr Peter Terry and Mr Lawrence Job are here. I guess they could maybe initially assist with an indication of what documents they have may be of assistance?

THE CHAIRMAN: Yes, Mr Job?

MR JOB: Chief Commissioner of the Inquiry I have documents here, the full documentation of how I obtained 500,000 from Forestry Department through the Court, through the Attorney General to Finance. Secondly, this matter was before the Supreme Court with a three-men Bench. I appealed the contempt charge against this case here in the Supreme Court level and it went before a three-men Bench on June 25th, 2007.

MR KASSMAN: Chief, I wonder if it might be appropriate that Mr Lawrence Job be sworn in to basically to have the documentation produced as his evidence in addition to what he may wish

to advise the Commission?

THE CHAIRMAN: Very well. Is that suitable to you? Have him sworn then. He can produce his documents and give us such evidence he wants.

MR LAWRENCE JOB, Sworn: XN: MR KASSMAN Q: For the record your full name is Lawrence Job? A: That is correct. Q: That is your full name? A: That is correct. THE CHAIRMAN: Lawrence Job Polain? A: That is correct. Q: Which is it, the three names or just one? A: Three together on the court document.

[3:55 pm] THE CHAIRMAN: Lawrence Job Polain. A: That is correct. Q: Thank you. A: Thank you your honour. MR KASSMAN: Sorry, you are Mr Polain – how do you spell it? A: P-O-L-A-I-N. Q: Polain. Mr Polain, you commenced earlier and handed up a bundle of documents to the Chief Commissioner. You said those documents explained how you obtained the K500,000? A: That is correct. Q: And you wanted to maybe address some issue? A: Yes. I appealed the contempt charge against this case here before the three-men Bench at the Supreme Court in June 25th 2007 and while awaiting the decision, the former Chief Justice was the Chairman of the Bench plus this one Henschiff, died and because of that the decision has not come forth. So as of today we are waiting for that decision. On 25 May 2009 we appeared before His Honour, the Chief Justice Sir Injia and he said he will be doing a re-listing to the next Supreme Court sitting at the end of this month.

THE CHAIRMAN: So this matter is going to be re-heard? A: Re-heard. Q: Before another Bench? A: That is correct. Q: At the end of this month? A: Yes, for the contempt charge which I appealed against. Q: I see. A: So I understand it is not appropriate I should have the decision out for that matter before I can

be on this Inquiry. Q: I see. MR KASSMAN: Chief Commissioner, we are not obviously aware of what has happened. I guess Mr

Polain, have you provided the Commission with some of the documents you have lodged in the Supreme Court or? A: No, Sir. I mean I have just been called into this Inquiry but I can produce such documents sometime next week. THE CHAIRMAN: If the matter is before the Courts, then it may well be something that would exclude this Commission of Inquiry from looking into but because we are looking at the processes of how things have happened rather than what necessarily the court results. It may be that still we would be interested in aspects of it. If you would produce these documents quite happily without – they do not interfere with court's processes. Alright we take those on board, we will look at the matter and perhaps – you are living in Moresby?

A: In Moresby at the moment.

Q: Very well. Could you come back say on Monday morning 9 o'clock, 9.30 and we see where we are at that stage?

MR KASSMAN: Mr Polain, the documents you have submitted they would be what Mr Peter Terry would also submit to the Commission? You are submitting this only on your behalf or?

A: I am doing on behalf I mean as a landowner but he will have a document as a director of the Musau Timbers so he will have documents to submit to the Court.

Q: We will need time to peruse that material so we might adjourn to ---

THE CHAIRMAN: Tuesday.

MR KASSMAN: Yes I would suggest maybe Tuesday at 1.30 pm.

THE CHAIRMAN: Tuesday 1.30, thanks very much. Alright then, we will do that.

[4:03 pm] MR KASSMAN: I guess maybe Mr Peter Terry could also provide us with what he has and on Tuesday 1.30 we then proceed with the process of having them formally tendered. THE CHAIRMAN: Yes, thank you. You obviously you have presented well too. You have produced us with worthwhile books, bound books which makes it very easy to read. Thank you Mr Job.

WITNESS WITHDREW

MR KASSMAN: We also had Mr Kalip Salo and Mr Senti Margis. Chief, I just may be speak with the witness very quickly. Chief Commissioner, I apologise, both Mr Kalip Salo and Mr Senti Margis

arepresent here and they attend at our request. They have provided some information and documents to the Commission with the production of the material today by Peter Terry and Lawrence Job. It might be appropriate that we peruse that material and prepare to hear from all parties on Tuesday at 1.30 pm.

THE CHAIRMAN: Alright, if that is suitable to everyone? We have established that is suitable to Mr Salo and Mr Margis?

MR KASSMAN: Yes, we have established that.

THE CHAIRMAN: Very well, we will do it that way 1.30 Tuesday.

MR KASSMAN: I do not think there is any other matter unless there is any other---?

THE CHAIRMAN: Any other person that has been listed and wishes to be heard? Alright. MR

KASSMAN: Anyone here whose matter has not been dealt with or? We might adjourn.

THE CHAIRMAN: Very well, thanks very much. We will adjourn.

AT 4.06 PM THE COMMISSION OF INQUIRY ADJOURNED UNTIL MONDAY 13 AT 9.30 AM.

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TRANSCRIPT OF PROCEEDINGS Commission of Inquiry

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COMMISSION OF INQUIRY

INTO

THE DEPARTMENT OF FINANCE 20

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI TUESDAY 14 JULY 2009 AT 10:15 A.M.

(Continued from Friday 10 July 2009) THE CHAIRMAN: Yes, good morning.

MR MIROU: Good Morning Chief Commissioner. We have matters listed for this morning's hearing, the matters are Simon Mali and Others, the second matter is Diaya Kambere and Others, Buka Muand Others, Warea Wapi and Others. These four matters I understand that three matters were actually heard in Mount Hagen when the Commission was over there for a week and we have requested the attendance of Mr Daniel Tulapi who is present here in the hearing room to give evidence this morning on these matters. Just some administrative matters, Chief

Commissioner. The matter 10 in relation to Pansat Communications, at this point in time Mr Damem has not informed the Commission as to his availability and we will definitely write to Mr Damem this afternoon to inform him as to the matters that relate into his involvement on the Pansat Communication claim. With regard to Mr Sheppard and Mr Kuvi the same status quo is recorded and we will be writing to these persons this afternoon. THE CHAIRMAN: Yes thank you.

MR MIROU: We also have Mr Vincent Mirupasi, he is also involved in 20 these four matters but he has been listed to give his evidence on Thursday of this week as well as other matters and Mr Mirupasi is available. We will call Mr Tulapi.

THE CHAIRMAN: Yes very well. Thank you Mr Tulapi. [10:19 am] Swear him in please.

MR DANIEL BALI TULAPI, Sworn: XN: MR MIROU: Q: You have some documents there you wish to refer to?

30A: Yes, your Honour. MR MIROU: Chief Commissioner, I will just lead Mr Tulapi on the introductory matters and Mr Aina will have specific questions for Mr Tulapi. THE CHAIRMAN: Yes, very well. That is fine. I wish to say at this stage of advantage to the Commission if you got written matters, written statements, to put the statements and speak to those rather than a long and just an oral presentation of every single thing simply because we are very much limited by time and if you in fact can produce documentation of what you wish to and just simply speak to it, that would be fine. Yes, Mr Mirou. MR MIROU: Your full name is Daniel Tulapi?

A: Daniel Bali Tulapi. Q: Mr Tulapi, what is your occupation? A: Right now I am doing some little business. I am a former member for 10 Kagua-Erave electorate in the Southern Highlands and formerly a minister of State of the

Government of Papua New Guinea. Q: Thank you Mr Tulapi. Career or professional wise, what are your qualifications? A: I have attended a law school at the University of Papua New Guinea, graduated. Q: What year? A: In 1986. I also attended the Legal Training Institute with my friend

Mirupasi as well. Q: Did you complete? 20A: I completed with some honours I think and then I pursued, I am also one of the pioneer candidates for the Master of Laws degree program at the University of Papua New Guinea, when they first introduced the Masters Program at our University. I actually did not complete because I went to the elections and then I won in the National Elections at that time when I was pursuing my Masters program in law. Q: Mr Tulapi, your appearance this morning is basically to produce some documents. Mr Aina, who is the Investigator has had the carriage of this matter so he will take you through specific matters in relation to the documents that you have and then for purposes of production to this 30 Commission. I will let Mr Aina take over.

XN: MR AINA Q: Thank you Mr Mirou. Chief Commissioner, these four matters are all related to police raid. Like Mr Mirou mentioned three of the matters were heard in Mt Hagen and Simon Mali is the one that I am going to briefly give the background to that before I proceed onto ask specific questions from Mr Tulapi. Simon Mali and Others is a matter – alleged police raid of Uma village in Kagua, Southern Highlands Province on 27 November 1998.

[10:23 am] As he did not file any defence; hence default judgment was obtained by 10 the plaintiffs. According to information we have, Michael Gene, Secretary and Attorney General had offered to settle for the amount of K279,616.45 in July 2000 but somehow the Department of Finance ended up paying a total of K669,528.96, an overpayment of K389,912.51. We also know that the AG at the time had appealed the matter and was dismissed in the Supreme Court but somewhat orders were obtained subsequently in respect of the matter and got settled by Department of Finance in 2003. We also do not have information in respect of the disbursement of

the settlement of proceeds. Chief Commissioner, we also want to place on record that we did search in 20 the National Court Registry and the Solicitor General for files related to this matter but in both locations we did not have files for this matter.

THE CHAIRMAN: No files for WS844 of 94? MR AINA: That is right, Simon Mali and Others. The other three matters, Daiya Kambere and Others, Buka Mu and Others, Warea Wapi and Others, these were matters opened on the 19th in Mt Hagen hearing, 19 June 2009. These matters were separately litigated as a result of police raid at Kira village in Southern Highlands Province in 1994 by police based in Mendi. Chief Commissioner, in that hearing we have three of the principal plaintiffs namely, they are Daiya Kambere, Buka Mu and Warea Wapi who attended 30 and gave evidence. Basically, they confirmed that they were not aware of the settlement of the proceedings, including the payment from the Department of Finance. They stated that they did not receive any monies from the settlement because it was settled. Chief Commissioner, that is basically the facts relating to the four matters. Basically, I will ask Mr Tulapi to formally hand over the bundle of documents that he said to hand over.

MR MIROU: Mr Tulapi, do you have some documents that you wish to hand to the Commission this morning? A: Yes I got the copies of the summons. Q: If you can go through the documents and identify them for the purposes of --- A: I have also presented my documents to the Commission to make my intentions known to assist the Inquiry so the documents have been tendered with my covering letter to the Commission's Secretary. 10

THE CHAIRMAN: We already have them, have we? You say we already have them? A: You already have them, your Honour. So you might like to go through the documents and then ask me what they are and I might be of assistance.

MR MIROU: Chief Commissioner, there is a bundle of document which was received by the Commission on 2 July 2009 at about 3.20 p.m. There is a covering letter dated 1 July under the letterhead of Daniel Tulapi and is addressed to the Honourable Chief Commissioner, Commission of Inquiry and the subject matter is, "Intention to assist the Commission of Inquiry and 20 give evidence in relation to the matters that have mentioned here." The letter comprises of seven pages and in the letter it makes reference to a number of annexures. Annexure A is a letter to the Police Commissioner and there is about Annexure A to BB and these are the documents that have come together in the bundle of documents submitted on that particular date.

THE CHAIRMAN: Very well, and this is in respect of Mr Tulapi and Warea Wapi, is it? MR MIROU: Simon Mali and Others -v- The State, WS840 of 1994. The second matter is Daiya Kambere and Others -v- The State, WS 842 of 1994, Buka Mu and Others -v- The State, WS843 of 1994, Warea Wapi and 30 Others -v- The State, WS844 of 1994.

[10:28 am] THE CHAIRMAN: We will call it the bundle - Tulapi/Mali 1. Thank you. [EXHIBIT TENDERED - TULAPI/MALI 1 - BUNDLE OF DOCUMENTS]

THE CHAIRMAN: You have got a copy, you still holding a copy Mr Tulapi?

A: Yes, your Honour.

THE CHAIRMAN: You want to refer to it, yes, alright. Yes, Mr Aina?

MR AINA: Mr Tulapi, please can you confirm your knowledge of the four matters and describe the alleged police raid, exactly what happened at Uma village and Kira village in Kagua, Southern Highlands Province on 27 November 1998 and on 8 May 1994 respectively?

A: Yes Sir, the documents that are filled, I have now filed to the Commission is basically my statement to the Commission. I am adopting that as the same statement that I make. And these matters are - I say to the Commission with truth, absolute truth, that this claim is an absolute fraud. This claim WS 840 of 1999, no police raid took place. This village is the next village to my village.

Q: Is that Uma village?

A: Uma village and it is a village of Vincent Andawe Mirupasi who practise law as Mirupasi lawyers. And in my living memory - I do not live in Port Moresby. During the time that I had responsibility, the mandate as the member for Kagua Erave, I am living with his parent, I am living with his people and in fact Vincent Mirupasi and his families were living in my own village just next door. At that time 30 when he alleges that the police raid place in this WS 840 matter, in fact

Vincent Mirupasi himself and his family they were living in my village. My village name is Sumi. And all that – if I may say including all the four matters, this is the work of Vincent Mirupasi himself. I am not here to, Mr Mirupasi, attack you or whatever, I am here to tell the truth as a leader in the electorate. You are my friend.

Q: Mr Tulapi, can you like confirm whether there was a raid at Uma village and Kira village?

40

A: Absolutely not.

Q: Just confirm whether there is a raid or no. If there is a raid can you---

A: I just told you no. There was never any raid. I have read a statement of claim there is no such thing. Even I can tell you that police raids, police do not carry bush knives and spades and all these things to dig up kaukau gardens and banana trees and believe me for Heavens sake, as a leader I know this. There is no space for the cars to carry those weapons to uproot coffee trees and dig up kaukau gardens, uproot all 10 those these, chickens and all that. What the statement of claim as amplified by Mr Mirupasi, he is from the area and he knows. He is from Uma and he lived at one time in my village and then he moved back as I have stated in my statement.

THE CHAIRMAN: We will just keep to this point. You say that there is no raid on that time. I notice in your letter you say there was no police raid of the magnitude that the writ of statement of claim talks about.

A: Yes, your Honour that is correct. 20

Q: Does that mean that there was no big police raid or but there was, it could have been or there was a smaller police raid?

[10:32 am] A: Absolutely no raid your Honour, absolutely no raid

Q: All right, yes. We move on from there.

MR AINA: In both village, in Uma and Kira villages, is it not?

30 A: In Kira and Uma villages, absolutely no raid; there was no raid.

Q: Thank you Mr Tulapi.

A: Mr Mirupasi is from Ambiti village, Uma is a bigger area like Sumi is a bigger area, right. So it is a council ward area name. So he is from the Ambiti village. Your Honour, this WS840 Vincent Mirupasi used his own name, and his mother's name, his father's name, his brother's name---

40 Q: Mr Tulapi, please can you stick to our questions?

A: Yes.

Q: Do you know any of the plaintiffs in the four proceedings? Are they all from Mua village and Kiravillage where the alleged raids occurred?

THE CHAIRMAN: You talking about Mr Mirupasi, but there were in fact and all these other plaintiffs as well, do you know them, what are the names 10 of those?

MR AINA: These are Diaya Kambere and Buka Mu and Warea Wapi and they include several other plaintiffs.

THE CHAIRMAN: How many other plaintiffs were there?

MR AINA: The first Diaya Kambere, there are about 45 other plaintiffs, Buka Mu, there are about 48 other plaintiffs and Warea Wapi, about 78 plaintiffs in this proceeding. 20

A: Your Honour, we will start with WS840.

THE CHAIRMAN: Right.

A: The names of the plaintiffs are set out in the schedule to the writ of summons and in WS840, it is up to 67 plaintiffs. Alright plaintiff number one is Simon Mali. I know Simon Mali but he is the same person who is plaintiff No 67, his real name is Samaru Rea Yopoasi, he is the same person, Simon Mali. 30

Q: We will come back to that sort of thing. But at this stage there are 67 plaintiffs and do those plaintiffs all come from Mua village?

A: In this matter, in this one, except those I am going to identify that I know the others are nonexistent persons.

Q: They do not exist?

A: They do not exist, except the ones I am going to--- 40

Q: Yes, which ones?

[10:37 am] A: Simon Mali now I am identifying as the same person plaintiff No 67 which is SamaruRea Yopoasi, that the same person so he is a double plaintiff. Nane Yakapa yes, Nelson Mali yes, Uviva Lame yes, that is Vincent Andawe.s big brother, biological blood brother, No 5 is Pital Ame, yesthat is Vincent.s blood brother and No 6 Andawe Lame is Mr Mirupasi himself.

10 Q: Who is that please?

A: Andawe Lame is Vincent Mirupasi trading as Mirupasi Lawyers. He is the same person that is known as Vincent Andawe Lame Mirupasi. He is the same person your Honour and I absolutely swear as to, God is listening, I am absolutely sure of that.

Q: The rest of them are? A: Then Walibuna Lame, that is the mother of Vincent Mirupasi, No 9, 20 Alupa Mali is the same person as Nelson Mali, that is biological cousin brother of Mr Mirupasi, Alupa Mali and Timba Warea, I know this man, Walter Rimba.

Q: Sorry?

A: Timba Warea, plaintiff No 15, I know him.

Q: He is from Uma village?

30 A: He is from Uma village, that is a true biological uncle of Mirupasi, Walter Rimba, Yondo Rimba, Rami Rimba, Koso Gregeva, Samuel Gregeva, Rombola Gregeva, 33 is Bernard Kambe, 34 is Peter Yano. He is the president of the Kagua Local Level Government Council. Peter Yano. I noticed one name that is a deceased person.s name, died long time, that is plaintiff No 48, Ane Kano. It appears as if Ane is his first name and Kano is his surname but it is actually his full name Anekano. His father.s name is Sala, that is plaintiff number 48. The name appears from that village Ane Kano is one name, father.s name is Sala but he died long time ago. 40

[10:40 am] Q: You say he died prior to 1998?

A: Yes your Honour. There is another – 51, also it is Sande Ara, it is not his real name.

Q: He is a villager at Uma?

A: But he also died long time ago. Yes, he is a villager at Uma. Sande Ara means he is the father of Sunday, they just call him like that, the 10 custom is like that but his real name is Ibutu but he died long time ago as well. This plaintiff No 50 is Kiraha. There is only one Kira that I know in that village is an uncle of mine but the first name on Kira means – his real name is Kira Rambua, also deceased. In fact that man is my true uncle of Mr Tulapi – me. The rest, your Honour, they do not exist. Mr Mirupasi must have just introduced it, fabricated it, made it up.

MR AINA: Mr Tulapi, the other proceedings?

20 A: The other proceedings. Let us go to Buka Mu.s matter. The documents that I had were given to Allens Lawyers because the councillor of Kira village actually came to me, to Port Moresby, in all those matters he brought the files to me.

THE CHAIRMAN: From what village?

A: Kira Village. The councillor.s name – he is the current councillor – is councillor Yali Yapa. Councillor Yali Yapa brought these documents and then we were running around in all the offices, Police Fraud 30 Squad and all the lawyers and all these, trying to get this sorted out. So you might have copies there in the schedule of that similar type because these were done by the same law firm. In the schedule there are two names that I made specific mention to other authorities as well which is Paul Kawoipa Poto and Moroasi Gai. These two plaintiffs are listed in the Buka Mu matter. These two women are not from Kira village.

Q: Buka Mu is in respect to a police raid on Kira village or Uma village? 40 [10:45 am] MR AINA: Kira Village.

A: This is a different village now. Uma village is about 25 kilometres away from Kira.

THE CHAIRMAN: All right, councillor from Kira village came to see you, what did he come to see you for? A: Because they brought the – the letters were sent by Posman Kua Lawyers to the Kagua District

Office so the District Officers delivered 10 the letters to him so he came to me to find out what

this was all about. Q: I still do not know what you are talking about? A: All right the documents I have--- Q: No, he came with letters from the law firm, what were they about? A: They were about these matters. 20 Q: About a claim? A: About a claim.
Q: The lawyers were they enquiring whether there had been any damage or whatever it was or what? A: The matters actually, all these matters, in the first place I actually wrote to the Solicitor General, the Attorney General

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Q: You received a letter? A:

A: Yes your Honour?

Q: From?

A: Councillor Yali?

Q: From Councillor and you do something. Why do you do it or what is it about because I do not know what is it about at this stage? 42

A: Yes your Honour. When he brought those documents---

Q: I read the letter and the letter said - who--/

A: Yes I read and the letter says - I will go through the letters, yes your Honour. This is the sort of

letter that were sent for these four matters by Posman Kua Aisi Lawyers?

MR MIROU: Is that letter in the bundle of documents that you have? 10

A: Yes sir?

THE CHAIRMAN: Yes, where about is that?

A: This letter says that, they mentioned all the matters, the same letters sort of, and then they were representing the - Posman Kua representing the State. So they are asking these people to come

forward with the belief that the claim is genuine and that you know the State want to set it aside. They were appealing against these 20 matters so they wrote to these plaintiffs, the letters were addressed to care of Kagua District Office. So the councillor had in possession of the four letters together with the notice of motion.

Q: Can I have a look at those because I still do not understand what you are talking about. Can I have a look at that letter that you talking about, these are the letters from the lawyers, is it?

A: This is the letter from the lawyers regarding these matters. These matters were being contested and challenged in the court. 30

[10:49 am] Q: This is from Posman Kua who were stating that they were going to move in the National Court to set aside the judgment in favour of Daiya Kambere and Others, is that right?

A: Correct, your Honour.

Q: On the grounds that there was no authority for them to have done so, that amongst other things that the consent order executed by Mr Gelu on the Deed of Settlement or consented or signed by Mr Gelu was without authority. So, yes now the result of that?

A: As a result of that, your Honour we, the councillor and I went to the Fraud Squad to complain that the villagers were not aware of this case going on your Honour because there was no police raid, the councillor was unaware because his name was also used as a plaintiff without his consent and knowledge. So I brought the councillor to the Director, Fraud Squad, Mr Damaru, and his statement was reduced into the police statement forms, together with other witnesses were also called to provide statements to the police and the councillor together with other witnesses gave police statements and those police statements of the witnesses are also in the papers that I have given which clearly states that there was never, absolutely no police raid. It is not only me saying

this, the councillor with other witnesses confirming what I am saying. So these matters were, because there was no police raid, the people were not aware of their names been used so they came to me and as a former member they said, our names were used and there were millions – the village people talking about big money going to Mr Mirupasi's hands and then they wanted their money because their names were used 20 and I said well, you cannot get – even if your name is used, I said this is a crime; it is wrong. You have to go to the police. I know your names were used but you are telling me that you were not consulted, you are unaware and you became aware of it but we said that the place, avenue to go was to refer them to Kosman Kua and to tell them what it is that is not the true claimant also I gave the assistance to this people who came including the councillor to bring them to the Fraud Squad and then we also filed complaints that these raids, these summons that were filed were absolutely fraud, it is false, it is not true. There was never any even a little bit of police raid, no raid. 30

Q: Yes, alright, we have moved on.

MR MIROU: Mr Tulapi, just for purposes of our records, if you may confine it to specific documents that you have in your possession and matters that are within your own knowledge. If that can be clarified so that we can speed up the ---

[10:53 am] A: All right. So in my documents that I have submitted, I have submitted the copy of the writ of summons, the court file as I had is not in the 40 National Court Registry, I have submitted the court files plus the statements that I have made to the police together with the councillor and the other witnesses to state clearly and say that this matter is not only coming before the Commission of Inquiry because as a Commission of Inquiry, this matter has been – this complaint has been on foot for a long time that these raids, when there was no raids at all, and that I have given statements to the police regarding this raid and I have indicated the names that are there, I have also given it to the Inquiry now and those statements clearly state that in fact there were no police raid and I was following this matter up, assisting the Solicitor General and the Solicitor General and these guys were, you know you lawyers who are dealing this and that and then it went nowhere. The police too these complaints too went nowhere but I know because I have been following this matter up, I know that the matter went to court and these things were set aside---

MR AINA: Mr Tulapi, sorry. Do you know of any of the four proceedings and how the court proceedings were conducted and concluded? Can you like specify to any specific proceedings that you are aware of?

20 A: I complained to the Solicitor General at that time and then---

THE CHAIRMAN: When was this?

A: On 15 January I made a complaint. I wrote a letter actually your Honour, I refer to this document to get the exact date. On 15 January 2001, I wrote a letter to Mr Gelu and told him not to pay any monies to Mirupasi Lawyers.

Q: The date was what please, which is? 30

A: On 15 January 2001.

Q: The Solicitor General was Mr Gelu then was he?

A: He was at that time.

MR AINA: This is in respect of which matter?

A: In respect of all those matters. 40

THE CHAIRMAN: You have got a copy of that letter have you?

A: It must be inside those documents that I have submitted. The documents, then Mr Gelu put a stop notice in Finance. There was a stop notice, he wrote a letter, Mr Gelu wrote a letter on---

MR AINA: Mr Tulapi sorry can you answer my question? I am asking, do you have knowledge of the proceeding, any of the four proceedings, specific proceeding that you want to 10

[10:51 am] MR AINA: Mr Tulapi, sorry, can you answer my question? I am asking, do you have any knowledge of any of the four proceedings, specific proceedings, if you any knowledge of it, can you like how they were conducted and concluded. Can you like be specific on any of one of these matters?

A: On all of the matters I wrote to the Solicitor General and I said, I will bring witnesses to defeat this claim against the State. I will assist the Attorney General.

THE CHAIRMAN: In 2001 at that time the claims were in Court but not 20 settled or finalized, or what was the status of it?

A: Yes, the matter was still in the Courts. I became aware of it when they were trying to pay so---

Q: So there was already a judgment had been given, is that correct? A: At that time?

Q: 15 January 2001, you started to take action about these matters. You wrote to the Solicitor General, Mr Gelu. At that stage were these four matters already decided; they had already been default judgments or?

A: They were still pending

Q: There was no default judgment? 32

A: No

Q: Before they were even defended?

A: Sorry, your Honour

Q: They were within time to be defended?

A: I am coming to that because what they did is they were told to make an appeal in one of the

matters and then what John Kumura did was that he corroborated with Mr Mirupasi – this is from Hite Lai because I have been frequenting their office and then ---Q: You say you wrote to Mr Gelu, did you write to him personally or Mr Kumura? A: In person, Mr Gelu. I was there in his office. Q: I see? 10 A: I went to his office I have been going to their office. I have been trying to push these matters to

stop these matters from being paid. Q: We would just like to keep a time track on these just so that we know in order of how things occurred. A: Yes your honour, what he did is – we were there with Hite Lai, Hite Lai was holding this file, these matters on file. I told her to hold the file because the file might go missing.

Q: Mr Tulapi, you will understand that the writs that you are talking about are 840 of 1994, 842 of 1994, they are all 1994 cases. Here it is in 2001 and you are saying to me that they had not progressed beyond, 20 simply being filed in Court. There was still time for them to be defended, there was still time for them to go to Court and be heard or is it not the case that there had already been default judgments entered. When were the judgments entered in these cases? Have you any idea. Do we have the files? Does it show the date of the judgments, does it show the date of the deeds of settlement or of the word of “deeds of settlement?”

MR AINA: Commissioner, we do have that information. THE CHAIRMAN: I just want the date that they were ---?

A: They were not paid Your Honour. At this stage it is still pending. 30 Q: No, we are just writing. We have to look at these in sequence to see what occurred. They had already obtained default judgment on 11 July 1995, is that not correct? And in 2000 there were consent judgment orders.

[11:01 am] MR AINA: In August 2002 Zacchary Gelu had entered into agreement with the plaintiffs to settle the claim without additional liability and consequently a deed of release was signed on that date 7 August 2002. A consent order was obtained including the certificate of judgment on 28 April 2003.

THE CHAIRMAN: A consent judgment, in all four? MR AINA: No, not all four. In three of the matters, excluding Simon Mali. 10 THE CHAIRMAN: Mr Tulapi, back to you then. You spoke to Mr Gelu in January 2001 and you made

protest about these matters. Yes, what happened, anything else next? A: There was also another matter which the cheques were drawn. We went to Finance and there was

K1,079,000. Q: Alright, when are we talking about? A: This date. Q: 15 January? A: Yes, your Honour. The letters were – actually I did not go and have it typed – told Mr Labu to ---

Q: You have documentation about that, do you in your documents? A: Yes, your Honour. The stories about this one is contained in Mr Mirupasi's own affidavit that he filed in Court and you can refer to

that. He talks about these matters, the status of these matters when he got the judgment---

Q: Mr Tulapi, it is not really very helpful to the Commission if you simply say these matters without putting them in sequence and in order and the time sequence. We need to know that just exactly where we are otherwise we do not know how they fit into the scheme of your evidence at all.
30

A: Your Honour, I put a stop notice and then the matter was stopped and then Vincent Mirupasi issued a suit for defamation against me for ---

Q: When was that?

A: In 2001.

Q: What action, have you got documents? What action was that?

A: He sued me in the matter of WS136 of 2001.

Q: Yes. Have you copied that document in here?

A: Yes your Honour. He sued me in that saying that I am defaming him because I went to the Solicitor General and Gelu and his guys in there they were talking and they, I am going there every day to assist them 10 and then they were working at the back of me and that I know full truth. He sued me with this one, this document, this letter was ---

Q: Is there any exhibit in this here?

A: Yes.

Q: Which one is it referred to in your letter?

A: It is the affidavit sworn by Vincent Mirupasi on the 10th day of December 2001.

Q: What one was that, the letter K, is that right?

A: Yes, your Honour. In there in page seven to eight he talks about these matters, these four matters. Vincent Mirupasi is telling the Court that 20 this matter is like this, like this and all these matters were in fact appealed. The State did appeal against all of the matters. Appeals were lodged for all four matters not only Simon Mali matter. The were Appeal Nos 10,11,12,13 and 14 - Supreme Court Appeals.

[11:05 am] The Supreme Court did make a decision in favour of the State in the matter of Simon Mali, 840 matter it is Supreme Court judgment decision No 690. So in the statements given by Mirupasi himself, he says he did obtain a judgment on 7 July 2001. That is what he said in the other proceedings in his affidavit and then he passed that judgment to the Attorney General and Attorney General passed it to - if may refer 30 your Honour to Vincent Mirupasi's affidavit paragraph 12 and 13. He says that he got a judgment against the State in this matter on 7 July 2000, and I have given the copy of that consent order of 7 July 2000, I have given it to the Commission.

Q: 7 July of this year or the 7th July---

A: 2000.

Q: 14th July? 10

A: 7 July 2000, your Honour.

Q: I see, yes.

A: So these matters were contested your Honour. I went to their assistance and we were contesting this matter, all along we were contesting this matter.

Q: You were contesting or the State was contesting? 20

A: The State contesting them and I am there to assist the State because in one other matter why I went there is there was a newspaper application about another matter which some Ausaid funds were misused and all that in the Works Department so then I ended up going to assist as said in that matter and then I was told about this matter so I continued to maintain my assistance. So then according to Mirupasi, he says that he received those payments that he did receive from Finance based on this order of 7 July 2000. That order never existed. What he is saying according to all the - in the other 30 proceedings that he told the court. Not a deed of release or not - all these things that he received his money from, not even by the deed of release. He got his payments by a court order; the four matters were settled for more than K2.6 million in his own words in paragraph 12, he got more than K2.6 million by this court order of 7 July 2000. Whether there was an order or

not is---

MR AINA: Commissioner, the payment vouchers that we obtained has the order, attached documents of orders for 7 July 2000. 40 A: Those orders were already set aside.

Q: Including the certificate of Judgment.

THE CHAIRMAN: For how much?

MR AINA: There were several of them, just for records for Buka Mu, the sum was for K473,979.77.

THE CHAIRMAN: That is the total? 10

MR AINA: That is the total for ---

THE CHAIRMAN: Not K2 million?

[11:09 am] MR AINA: That is for Buka Mu. I have the total here; the total pay out for the three matters for Diaya Kambere, Buka Mu, Warea Wapi in 2004, total K1,935,30.77

THE CHAIRMAN: Yes, on three judgments? 20

MR AINA: On three judgments. For Diaya Kambere, it is for K361,0000

This is the payment I can check to two court orders but for Buka Mu, the

payment as per the order, it is K473,979.77. For Warea Wapi it is K1.3

million. We have also being unable to verify these orders, ordered on 7 Jul{

2002 at the National Court, Registry. It is the orders that left them from the Finance Department

which are through the payments vouchers.

THE CHAIRMAN: Yes, alright Mr Tulapi? 30 A: From what I know is because I was following up this matter up with Attorney General, Solicitor

General's office, there were no orders, court never made any orders in this one. The matter was contested and it went to as far as the appeals level - because I am following this matter I am trying to-

I told the State that, I will give evidence, I will bring people down to give evidence that there is no raid so do not go paying them. It is not good.

Q: Now just please keep it in order. What are saying about no orders? You have told us that you exhibited the orders, the consent orders of 7 July 2000. Are you saying now that there were no orders?

A: There were no orders, your Honour. These orders, Mr Mirupasi will then tell us where it came from because we found these orders but these documents that I have ---

Q: Where did you find them?

A: Sorry?

Q: Where would you find the orders?

A: These documents were in the Solicitor General's office, John Kumura.

John Kumura gave me those papers.

Q: Very well.

A: Because if these claimants were paid, I am surprised they were paid 20 because this matter the State has been contesting it and as a witness I have being ---

Q: No, alright that is comment. That is a comment, you may do that perhaps later, but we are talking just simply the facts that you wish to give, that you wish to assert for the Commission. So you say these orders were not orders that were given to you, they were found in the Solicitor General's office.

[11:13 am] A: Yes your Honour. 30 Q: So what was wrong with them? A: Because if there was any order, I would have been aware of this, made aware of this because we were contesting this matter. This matter was contested and the State appealed, he got some orders,

default judgment was appealed your Honour. Q: You did not know about the Court making those orders, you never learnt that - I am trying to understand why there is something wrong with this order.

A: Yes your Honour. Q: Why is something wrong with it? A: Your Honour there was a default judgment. Because I was asked by the Solicitor General to assist

them in this matter, they told me, Mr 10 Kumura, Mr Gelu, Hitelai, before she became acting Solicitor General, she also had some carriage of this matter as well. There was sort of a default judgment and then they applied to set it aside and then they wanted to contest the matter so they asked me to bring witnesses and that sort of thing.

Q: No, you are telling about these things, you producing these things, this is an order, this is the default judgment, this is a consent order but it is not, there is something wrong with it. Why is there something wrong with it? 20

A: Because this order was not made in court. Q: Thank you. How do you know that? A: That is what I am saying. Q: How do you know that?

A: Because Mr Kumura, when I asked for these matters, this file this 30 complaint was on, I went from Kumura to Gelu, Gelu to Kumura, Kumura to Hitelai and I am following these matters.

Q: So your information, there was no order made in court because you were told that by somebody else, by Mr Kumura for example?

A: Correct your Honour.

Q: You did not go to the court yourself, you never looked at the court file, is that right? 40

A: I looked at the court files but at that time when I am getting copies there were some of these matters---

Q: This Simon Mali one, it even has got National Court stamp on it.

A: Yes.

Q: It has also got initials on it.

10 A: Yes, your Honour.

Q: Do you know whose initials they are?

A: No your Honour.

Q: They look like mine.

A: Could be.

20 Q: This is the order of 7 July, WS 840/1994, as you say, where is this information that the orders were not made in the court?

A: In the Solicitor General's office.

Q: They said that they had not been made?

A: There was no order, this matter has been contested. The matters are on appeal and they are ---
30

[11:18 am] Q: All right, well, we will take that at that point. So we will move on. You say on information that was given by the Solicitor General or Mr Kumura, there had been no court order made?

A: That is correct and Mr Kumura also told me that - this is Hitelai - these matters were on appeal in the other matter. She prepared the appeal papers and then Gelu - she went on leave and then Gelu did not - she left the papers, she prepared the documents for the appeal and then she took leave two days before she went on leave and she gave the documents to them to file it and then Gelu did not file it so he 40 wrote back to me saying that the stop notice was already placed in Finance. Gelu wrote back to me saying that there is no - you know the time for appeal has lapsed and he said we cannot pursue your matter, that this matter has to be paid so I think he wrote back to Finance and then Mr Mirupasi was paid. But I know that Hitelai at one point in time was holding those files for the purposes of appeal and all these things for some default judgment and that sort of thing.

Q: So the matter then proceed to what, after that, please? 10 A: It went to the Supreme Court and then the Supreme Court gave a decision. Q: Which was? A: That the plaintiffs' consents were not obtained.

Q: The plaintiffs' consent? A: Consent and also they were unaware of the proceeding so these - he 20 just put the names of the plaintiff saying that they are plaintiffs so the Supreme Court said that you cannot bring proceedings like that, the plaintiffs will have to---

Q: Who took the proceedings in the - who was conducting the sitting in the Supreme Court? A:

Hitelai. Q: Not Mr Gelu? 30 A: In this matter? Q: Yes. I am trying to understand what you have said that it was contested, the default judgments were being contested in the National Court, then there was to be an appeal, Mr Gelu told you that, it was out of time and that they would have to pay, and now you say there was a Supreme Court hearing about the matter and have in fact, threw out the default judgment perhaps.

40 A: Sorry your Honour, my correction. This other matter that I said they did not file, it is a different matter – not these four matters, it is a different matter.

Q: Mr Tulapi, what are we talking about? A: These four matters were appealed against, your Honour, I got it wrong. There was a matter how I went into the Solicitor Generals Office with Mr Gelu, there was also another matter which is not these four matters.

10 Q: Is that relevant at this time? A: No. This matter actually did go, all these matters did go to the Supreme Court. Q: What happened to them? A: The Supreme Court made an order that Mr Mirupasi will have to actually get the plaintiffs to ---

20 Q: Certify that he was representing them? A: Yes your Honour. Q: Was that all, did they go back to court? Was that the only order --- A: Never went back to court. Q: Is that the only order that the Supreme Court made? 30 A: Also there was no order for them to pay any money. Q: Have you given us a copy of the order on the Supreme Court? A: No your Honour. I think the order should be contained in the actual judgment like judgment No 690.

Q: Is that the only issue that was before the Supreme Court, whether in fact there was authority to back it? We will need to see the judgment, 40 if there was. Is it possible that this order of the Supreme Court only made one order and that was that the claimants, the appellants had to supply their written authority for the claim to be paid out? A: No, the order was that the proceedings were improper in the first place. Q: And why? A: Because what Mirupasi Lawyers did is that they just named the 10 plaintiffs and all that, the Supreme Court said that is not the way to – there was no proceedings in the first place. Q: What is this? A: That is the sort of my understanding, it has to be done properly again. Q: 690 of what year? A: 2001, 690, it is a common, even in Posman Kua.s submissions they 20 have cited this case. [11:23 am] Q: And they set aside the judgment in all four cases? A: Yes your Honour. Q: After that and what, you carry on. A: So after that Mr Mirupasi should have brought this people and that I was following this matter so then they put a new proceedings and we 30 should have gone to court. I was waiting for my day in court.

Q: He issued new proceeding? A: He did not issue new proceedings.

Q: So? A: You know he received monies so when he sue me in court, he gave his statements to the court in the other matter when I am trying to assist 40 the Solicitor General and I said this is false. So Gelu gave him this letter that I wrote to him and Mirupasi used that letter to sue me and issue this proceedings. So in this proceedings he is saying that he is talking about all these raid matters as well because even in that court I told them that this is false.

Q: You have a copy of those proceedings? A: Yes, I have got this affidavit that I have handed.

10 Q: We are just following the line that you have adopted. These matters went to the Supreme Court, they were set aside, what happened? Was there any consequences for the plaintiffs, the appellants, after that, what happened? A: So Posman Kua came in because despite the proceedings they end up getting paid.

Q: When did that happened? Do you anything how it happened? 20 A: Well, your Honour ---

Q: You are saying that despite the Supreme Court hearings, setting aside the judgment that the Solicitor General then went on to or the Finance Department went on to paid out on the matter? A: Correct.

Q: And do you know how that happened?

30 A: The Solicitor General, these guys who were pursuing this matter, they are the ones who allowed this to happen.

Q: Do you have any documentation about that?

A: The Supreme Court order if these payments were made---

Q: No I understand that what you are saying. But your part in it, what you know about it. You are saying that after the Supreme Court dismissed these cases, even so, the claims were paid out through the Solicitor General's Office or the Finance Department despite that?

A: Despite that.

Q: Yes, all right.

A: And then what I ---

Q: How do you know that? 10

A: I heard from the Solicitor General's Office that after that they were trying to do a deed of release.

Q: Did you sight any documents like that or do I take it that part of the information takes us up to the setting aside of the judgements by the Supreme Court ---

A: Correct. 20

Q: But your knowledge of what happened afterward is what?

A: I do not know how he got paid.

Q: You do not know how he got paid? A: Yes, because I was waiting for this matter to appear again in court, this matter to appear again in court where because I went to the Solicitor ---

30

Q: How do you know that those payments were settled? How do you know it was settled?

A: Because Mr Kumura told me that these matters were ---

Q: Subsequently settled?

A: Yes.

Q: And your evidence is that you cannot understand how that happened? 40

A: Correct, your Honour.

Q: Is there anything else you want to add to that? A: In the other matters I want to add that these four matters, they are all one village and it is not separate villages, they sort of made three, four different summonses so that more money would be paid or that sort of thing but the names that were used in those proceedings as well in the other three proceedings, some of those names are also 10 manufactured names, they do not exist.

Q: Alright. You have not set out any details of that in your written statement at all?

A: I have set it out.

Q: Of who these people are in these other matters?

A: Yes. 20

Q: Have you named those persons?

A: Yes.

Q: Can you refer me to those?

A: That is Paul Poto Kawaipa is one of the plaintiffs.

Q: No, is it just one or are there two or five or twenty or fifty or whatever 30 ---

A: Two of the---

Q: Only two?

A: Two of the guys that I know that everybody else would know, one is a District officer in Kagua, he is a Morowasi guy, a District Officer.

Q: He is named as a plaintiff? 40

A: He is a plaintiff. He included that as a plaintiff so this is what I am saying and Mr Mirupasi and I are from the same place.

Q: Which case is that one on?

A: Buka Mu.

Q: Buka Mu and how do ---

10 A: Kambere and these ones are just duplication of Buka Mu and ---

[11:27 am] Q: No, it is not. You just cannot simply say, „duplication., you have to be in specific. I suggest that if you have that information that you go through that and you can perhaps give us a list of those names?

A: Some names are yes, but there are all for one village Kira – all those three other proceedings, the 840 is from Uma that is about 24 kilometres away from Kira village that is Vincent and I our village. The other three matters are Kira the same village. In those three 20 matters, I am just highlighting as an example of what the claim is that Paul Poto and Morasi guy their names were used, although they are not from that village, from Kira village and they actually ended up taking this money like Paul Poto's son is studying in Australia and with this money and they are doing all sort of things. Because I am from the area I know these people.

Q: So these people were paid out?

A: They were paid out. So these people used names in the Kira 30 proceedings of the people's names some of them two names but they come from another village which is Vincent Mirupasi's ---

Q: How do you know that this people were paid out?

A: Because the bankers and everybody in the village knows, I know.

Q: They and other people as well?

A: Only those. 40

Q: Only two got paid?

A: Only those two and three of them there is another guy Oka. There is another guy called Oka and Morasi and these three were the guys who were paid in all these claims. As far as me and the village people are concerned these are associates of Mr Mirupasi, those three men and if they use their name an improper way, did not get the money although there was no raid but they used their name. The village people's concept is different. 10

Q: I see, yes you have given us the evidence and we have now been through your documentation that you wish to put to us. Are there any other questions you wish to ask?

MR AINA: No, Commissioner I was going to ask about the distribution or disbursement of the proceeds but he has already answered it so I have no further questions.

THE CHAIRMAN: You say that monies were not disposed, distributed to 20 anybody except those three persons?

A: Because the village men with the councillor we went through this thing in detail and they did not receive the money. They paid Morasi guy, district officer and Paul Poto. Mr Mirupasi's political candidate in election times and he paid himself.

Q: Are you saying you went round all of the villages particularly and asked them?

30

A: Yes, your Honour.

Q: Each one individually?

A: Yes.

Q: When did you do that?

A: Yes, because that Mr Mirupasi is aggressive.

40

Q: When did you do that?

A: It would be the last election also through the police they asked me to get them to go to Mendipolice and then submit their statements.

[11:30 am] Q: Very well, anything else, any other questions?

MR MIROU: Just one question. Mr Tulapi, you say you went to the police. Did you go to the Mendipolice headquarters to enquire with the Commander as to the raids that were conducted during that period and time? I know it was a long time back 1994, apart from going to the Fraud Squad? 10

A: If you can see from the statement that the scene of the crime that it is serious. You see in the statement it says 200 policemen is plenty of police. I do not know whether there is 200

policemen in Southern Highlands alone or I do not know but that is a lot, you can see that is a lot. So when I am holding the office at that time, it is a serious matter because houses were burnt down, people will not be – that there is a problem, it is a crisis because they got no homes and those kind of matters first thing will come to me. It has to come to me because when a police does something the people will always go to their member, that is the first thing they will do because it is a serious matter. So if there were 20 people homeless I would even be aware of it. It is a big thing, even the Media or whatever could have, so there is no – that time I was holding office right, 1994 and these matters, I am holding office. I am responsible to these people and I should know everyone of them. Q: I thought out of an understanding that the police were involved in those raids so the proper place at that time was the Mendi provincial police headquarters to make those enquiries on behalf –

A: There is no records of that, there should not be. If there is any record, then it is a false record. I can tell you that, if there is any record in any police station. 30

Q: Thank you Mr Tulapi. THE CHAIRMAN: Alright then, thank you. Mr Mirupasi is present here, he is going to give evidence about this on Thursday, is that correct?

MR MIROU: Yes.

MR MIRUPASI: Commissioner sorry, I am very angry today so I do not want to say anything. I will come back on Thursday.

THE CHAIRMAN: I understand that you would wish to. You obviously have a right to answer all these matters, say give evidence as well. You will realize however that the Commission of Inquiry is on a very short term and that if possible, if you can supply us with written statement at the same time that would suffice.

MR MIRUPASI: I might just add Commissioner that we have given everything we need to give, but if there is any specific matters that you wish us to answer your queries on then maybe the Counsel as well as maybe the 10 other officers can ask us those questions.

THE CHAIRMAN: Yes, very well.

MR MIRUPASI: Because I think you got probably another 10 days to work and I think that is not enough time. But I do not wish to – these matters are very long matters, they are not straightforward. The raid matter of Simon Mali and Others, in fact it is a 21 year old raid matter and I have even forgotten people that have died and even some of the names of the plaintiffs so I do not want to drag the matter any longer. We have provided all the documents that we think that the Inquiry require but as I said if there is any specific matter that you want us to clarify, then we should be asked. We are ready for the Manoburn matter on Thursday. We have always provided documents for that one but if any specific matters you want us answer on that one too we will come for it on Thursday. THE CHAIRMAN: Alright.

MR AINA: Commissioner, we will write him an official letter in writing to appear on these matters. Probably I will ask him answer specific questions that we may wish to get his assistance from.

THE CHAIRMAN: Very well. Thank you very much, Mr Tulapi.

MR TULAPI: Chief Commissioner, before I go. I would like ask the Commission if it is possible for me to sit in to hear especially --- 30

THE CHAIRMAN: Yes, you are welcome.

MR TULAPI: Yes, thank you. Especially for him to deny or admit who you know as I said that the plaintiff.s are his mother, father and himself and I want to see that sort of because I do not want to be seen as coming here to – Mr Mirupasi, I am not here to carry out an vendetta to you or anything.

THE CHAIRMAN: No, it is not a contest, we are not having a contest between the two of you at this stage Mr Tulapi. You have given your evidence and we will wait for him to – you have given all the details at your command. It could give us cause for us to ask Mr Mirupasi if he wishes to make comment, he does and he can do that and he has already supplied some documentations as well. We will hear from him on Thursday. We will hear 10 from him on Thursday. If you as the other

party wish to be present there is no reason why you cannot be. Alright, any other matters?

WITNESS WITHDREW

MR MIROU: Commissioner, there are no other matters for this morning.

THE CHAIRMAN: Very well, we will stand adjourned. Thank you.

LUNCHEON ADJOURNMENT

[2:00 pm] MR KASSMAN: Chief Commissioner, we essentially have two matters to deal with. The first one concerns the claim by Joel Aundambui –v– Post PNG Ltd and Another. That was a claim, alleged breach of copywriter arising out of the issuance of postage stamps featuring clay pots. As the Commission, we are aware that the proceeding in fact is active and is in Court we understand there was some action on the matter in the National Court today or this week. By way of background we had Mr Kemaken appear last week. Mr Kemaken apparently is on record for the claimants, the plaintiffs in the action. Essentially, the aspect of inquiry for this Commission I guess concerns a NEC Decision or what appears to be a NEC Decision made, NEC Decision No 172 of 2008. It is apparently dated 19 September 30 2008. The Commission has heard evidence from Winnie Kiap, Secretary NEC and Dr Allan Marat, the Attorney General and Minister for Justice confirming that that NEC Decision was a forgery and Mr Kemaken who appeared before this Commission advised that he had a possession of a copy of that through a source. He identified the source and undertook to advise the Commission of the location of that source. We have Mr Peter Maiden. Peter Maiden is here to give evidence. It will be fairly short and if

I could have him called to give evidence formally. THE CHAIRMAN: Mr Maiden, would you come forward please. You just stand to be sworn and we will hear from you sitting down.

MR PETER MAIDEN, Sworn: XN: MR KASSMAN 10

[2.03 pm] THE CHAIRMAN: Will you just stand to be sworn. We will hear from you. Thank you. MR

KASSMAN: For the record, your full name is Peter Maiden? A: My name in full is Peter George Maiden. Q: Thank you, and you are the Managing Director of Post PNG Ltd? 20 A: Correct. Q: Mr Maiden, just give a brief outline of what is before the Commission. Before we go to the NEC Decision, you have assisted the Commission with some documents, firstly, by way of a letter of 3 March 2009 to the Chief Commissioner to which you attached some documents, and secondly, by way of a letter of 2 June 2009 also to the Chief Commissioner. Are those the only records you have available relevant for purposes of the claim to address what we are inquiring into?

A: I guess I am not sure if I am in a position to answer that question because I am not sure necessarily of what the Inquiry may necessarily be all about --- Q: Sure.

A: It is sort of a naïve response, however, I understand the Inquiry is about a criminal action. Q: What if I may be just hand to you your letters that were submitted just for identification? One is letter dated 3 March.

A: Yes. Q: The other is a letter dated 2 June 2009 addressed to the Chief Commissioner. A: Yes.

Q: Maybe just for the record Chief, if we could have those marked? THE CHAIRMAN: Post PNG/Maiden 1 & 2. A: Yes, they are my letters to you. MR KASSMAN: Maiden 1, would be the letter of 3 March and Maiden 2 would be the letter of 2 June 2009.

[EXHIBIT TENDERED – POST PNG/MAIDEN 1 – LETTER OF 3 MARCH 2009] [EXHIBIT TENDERED – POST PNG/MAIDEN 2 – LETTER OF 2 JUNE 2009]

30 THE CHAIRMAN: Good, yes.

MR KASSMAN: Mr Maiden, the matter the Commission is focusing on is the NEC Decision. I will show you a copy of that Decision.

A: Good, I am familiar with this document.

Q: You are, how did you come to have possession of that, was that forwarded to you by any person or any entity or?

40 A: I guess if I just go back in my own mind here. I have not re-briefed myself or refreshed myself with this case but ---

Q: I think I can assist you there. We understand from what you have forwarded to us, it

wascirculated by copy of a letter dated 21 October 2009, addressed to Honourable Patrick Tammur, Minister for Communication and Transport from Kemaken Lawyers.

A: I understand that to be the fact.

10 Q: So, that is the only source from which you have come to read this?

A: Yes, however there has been an alternative channel and that has been through the Post Courier newspaper.

Q: It was reported?

A: The Post Courier newspaper phoned me on 17 February 2009 and inquired as to my knowledge of such information, such a document and I advised the reporter that I do not discuss litigation matters with the newspapers. The reporter asked several other questions and I asked the reporter whether or not she was aware of whether or not the document was a fraud or not and those two responses were reported in her article in the Post Courier on 18 February 2009.

[2.07 pm] Q: As I mentioned earlier the Commission has received fairly clear evidence from the Secretary to the NEC, Winnie Kiap to confirm that this is certainly a very good fabrication and we have received no further evidence any way to challenge that. Just in relation to the NEC Decision, there clearly was, in a sense a direction – a purported 30 direction for settlement of this claim. Was there any direction issued in pursuance of this from any State authority?

A: The answer is, yes in the sense of myself becoming aware of this particular document. I wrote to the Secretary of NEC, Winnie Kiap and asked if she could advise me of its background. She wrote back and responded to say that their records do not have this as a decision by the NEC and that it was a fraud and that I should pursue this matter with the police.

40 Q: Just briefly has that occurred?

A: I have taken it up with the Fraud Squad. It was reported to the Fraud Squad I believe in late February or early March and we have had some subsequent communications with that Squad.

Q: So it has been handled by the Fraud Squad? A: It has been registered with the Fraud Squad by ourselves.

10 Q: Do you have some confirmation from the Police Commissioner as to the investigation or prosecution in relation to fabrication?

A: Yes, I have no information on progress on this matter with the Police or the Fraud Squad.

Q: I understand you made a formal complaint to the Lawyers. Statutory Committee concerning Mr Kemaken raising an issue of misconduct. What has become of that complaint?

20 A: The Law Society has responded to me to say – I am not sure here of my facts as I speak to you but whether or not this was a new process in the Law Society or not but they responded to my second letter to them by saying that I needed to formally now advise them so therefore my letter was not accepted as a formal complaint and that I needed to have that – I am looking for some words here. Those words are something along the lines of a stat dec.

Q: So essentially, I guess that would be the Law Society or the Statutory Committee's request that you have your statement formally put in a 30 formal statement, sworn statement I should say.

A: Yes, I believe that is probably where they were coming from and they sent me documentation on that and as I sit with you here today, I have not responded to that to date.

[2.11 pm] Q: Are you aware of or has it been brought to your attention any other attempt to rely on this NEC Decision, in pursuance of this or any other claim for payment by the State?

40 A: I think I would refer you to my second letter to you.

Q: Yes.

A: Where I am aware of that – I will call them – for the purposes of today I will use the word, „unidentified criminal persons., pursuing their interests through Post Courier and I believe that, that is an ongoing process.

Q: Meaning that would be now part and parcel of what is before the 10 Police for investigation?

A: In part, yes. I believe that should they wish to conduct an investigation and ask certain questions, they will be led to the respective individuals who have purported information to the Post Courier.

Q: Just with regard to the claim, you could confirm that the claim is being defended by Post PNG?

20 A: Vigorously sir. The original stamp was issued in January 2003. I believe that an action was taken up against Post PNG around April 2004. Where we are today means that there has been some change in the representation of lawyers for the other side. I have been advised by our in-house counsel that the party making the claim against us, went for I will call it, „judgment before trial. in Madang, I believe. Last year, that was – I am not sure of the formal word in the courts, that, that was not accepted. I am not sure who the law firm was which was representing the other side in that particular day but today, 14 July 2009 a mirror image of that process occurred and I am advised by 30 my in-house counsel that the Judge did not accept the request for early judgment and an award against Post PNG.

Q: From the records that we have, the State is not named as a defendant, that remains to be the case? A: I believe so, yes.

MR KASSMAN: I have no further questions. Chief Commissioner?

40

[2: 15 pm] THE CHAIRMAN: Mr Maiden, is there anything else you would like to say at all?

A: That I welcome the opportunity to sit here and share information about a criminal activity, sir.

THE CHAIRMAN: Thank you very much. Thank you very much, your assistance is very much appreciated.

A: You are welcome. 10

THE CHAIRMAN: Thank you, you may step down.

MR KASSMAN: Thank you Mr Maiden.

WITNESS WITHDREW

[2:18 pm] MR KASSMAN: We dealt with this last week on Friday 10 in the afternoon. It is listed and described as matter No 32 on the list that was 20 published recently in the two newspapers. It is listed as claims of Peter Teri and Lawrence Job –v– The State and on that occasion we had both Mr Peter Teri and Mr Lawrence Job present in person and they submitted some bundle of documents in fact to the Commission. Also present that day were the two named persons, Kalip Salo and Senti Magis. We have received documentation from both gentlemen also. Our understanding on this matter essentially is that the both named persons are currently out on bail pending a Supreme Court appeal and I understand that is an appeal from conviction. I have not myself had the opportunity to peruse the relevant court documents but at this stage the focus of our inquiries stems from the two cheques each 30 in the sum of K500,000 that were raised by the Department of Finance and paid to both; one of which was raised in the names of Peter Teri and Lawrence Job.

Chief Commissioner, we have listed to give evidence as originally stated both Kalip Salo and Senti Magis, I understand they have some documents that they wish to present to the Commission. I myself have not had the opportunity to peruse material that was submitted by both Peter Terry and Lawrence Job. I guess at this stage we would maybe ask for both Kalip Salo and Senti Magis to maybe advise the Commission of what documents 40 they have. They have certainly been in communication with the Commission.

THE CHAIRMAN: Yes, are they present?

MR KASSMAN: Yes they are present.

THE CHAIRMAN: Swear him please.

10 MR SENTI MAGIS, Sworn:

XN: MR KASSMAN

[2:22 pm] Q: For the record, is your full name Senti Magis? A: Correct. Q: Is that your full name or are you known by any other name or just Senti Magis? 20 A: Senti Magis. Q: Mr Magis, I understand you are from – you are a local from the area that concerns essentially what clearly are some claims in respect of the royalties. Can you confirm that, what village you are from et

cetera? A: Yes, I confirm that I come from Mussau Island, I hail from that island where there was a

timber permit that was issued for logging operations. 30

Q: You have some documents that you wish to assist the Commission with, what are those documents and you just advise of their relevance? A: Yes, I have documents with me.

THE CHAIRMAN: Could you identify what these documents are? MR KASSMAN: You have some documents you wish to present, may be you could have those produced and we can have them marked? 40

A: Yes I have. THE CHAIRMAN: And you got two copies, one for us and one for you? A: One for me where I will be reading from Mr Chief Commissioner Q: I see. We will take those and you can refer to them as you go. MR KASSMAN: Chief Commissioner, just very quickly for the record, it 10 appears to be a three page

written submission by both Kalip Salo and Senti Magis who identify themselves as Director/General Manager of Mussau Timber Development Limited. I guess this three page document is as at today's date? And then it has a number of attachments to it, I guess those attachments are referred to in the statement. May be we could have this formally marked as Mussau/Magis 1?

THE CHAIRMAN: Yes.

[EXHIBIT TENDERED – MUSSAU/MAGIS 1 – THREE PAGE 20 WRITTEN SUBMISSION BY BOTH KALIP AND SENTIS] MR KASSMAN: Mr Magis, just briefly what are you presenting now to the Commission?

A: Mr Chief Commissioner, this document is a submission and it is only a summarise of the events that took place where we have been invited to provide evidence to this Commission. And this document where we have the attachment, the first we highlighted is a K22,434,924 that the letter that is also attached here from the Giriwana Limited was 30 addressed – that is attachment A – to Mr David Nelson, the Managing Director of PNG Forestry by Mr Peter Teri Gerere making query about the Mussau Timber Company royalties which provide information and also evidence that Mr Peter Teri Gerere had not used Mussau Timber Limited letterhead and there is a question of why. Had he used Geriwan Limited when he was asking for Timber royalties, and the permit that was issued at the operation of the logging operation on Mussau Island is No 1641 and consolidated to 1629. So that is the letter about timber royalties and nothing to do with land because you can see as we have already attached a decision 40 by Justice Davani that the land issue has nothing to do with that and that is attachment H to the submission that has already been made.

[2:25 pm] Q: Sure.

A: When that issue was going around and the decision by Justice Davani to put everything on hold –

Q: Sorry Mr Magis, you are saying that as far as the National Forest Authority was concerned, the Mussau Timber Development Limited 10 was the landowner company recognised for communication or whatever with respect to the project?

A: Correct, that was given a timber permit to others logging our logs on the island. And so while the decision of Justice Davani to put hold to anything about that issue because the issue of royalty and the appropriate and proper representative was also an issue that was raised so the decision was put on hold. Mr Peter Teri Gerere and Mr Lawrence Job Polain, out from nowhere with no involvement with the Mussau Timber Limited had made those letters to the appropriate 20 authorities for payments and that has already been adduced in attachment D, E, and F.

Q: Just before you go on, is that an issue that is now the subject of criminal prosecution?

A: Correct and this is the reason why both gentlemen were sent to Bomana and you can see Justice Sevua's ruling, that is attachment R.

[2:29 pm] Q: Sorry Mr Magis, essentially obviously we will need to read this 30 material but essentially the issues are that payments were made by the Department of Finance to the persons named, that is Peter Teri and Lawrence Job a sum of K500,000. Do you have any evidence on this submission to make in relation to that? As you will understand the Commission of Inquiry is purely concerned with claims against the State, the involvement of officers of the State in the processing of such claims et cetera, so are you able to assist the Commission by addressing that as

an issue?

A: Mr Commissioner, attachment N of the document that I have provided is the cheque which we believe that as being payment was made because of that letter from Teri Gerere. I have also provided document were Teri Gerere had sold his shares.

Q: Sorry you are referring to attachment N, that is the remittance advice and the copy of the actual cheque for K500,000 to Peter Teri and Lawrence Job?

A: Yes correct. 10

Q: Go ahead.

A: The court proceedings were lodged by Kalip Salo and myself as plaintiff because we detected or we came to realise that something was going wrong because Peter Teri Gerere and Lawrence Job were never at any time been voted by the people of Mussau to be represented between the period of 1994 up to year 2000 and minutes have already been provided today to Commission staff.

[2:33 pm] Q: You say that there was a payment made following the letter that they had written to Mr David Nelson of PNG Forest Authority of 10 December 2000, is that what you are saying? A:

Correct.

Q: Do you have any other document that accompanied this payment of K500,000? Do you have any other document issued by Finance Department that accompanied this payment?

30 A: Not at this stage or at anytime we have been given except that K500,000 but there is also in question another K500,000 that was paid initially to Mr Paul Toiu and that is another issue where I believe this Commission of Inquiry has been set to look into whatever happened to the payment.

Q: Both payments are - sorry that is a copy of which you marked as annexure O, the letter O, is that correct, is that the payment you are referring to?

40 A: Correct.

Q: Both are by the Department of Finance, did you receive any other documentation that accompanied these two payments?

A: Adding on to that, it would be interesting to note that while that K22,434,924 was being awaited for, another letter was also submitted, that is attachment I, also requesting for another K13,757,185 so for any other payment not that we may have been aware of, and I believe that is the reason why this Commission has been established to peruse 10 further into these claims, but I can inform the Commission that the consent order attachment S of the documents that I provided is the consent by order of both Lawrence Polain and Peter Teri Gerere had consented that they were never parties or directors to the Mussau Timber Development Limited and that is a consent order, attachment S. Then you have a look at attachment E, certificate of judgment. So both gentlemen had admitted to the court proceedings by these documents that had been adduced that they were correctly termed by Justice Sevua that they were crooks in attachment R.

20 Q: Just come back to attachment S, the consent order. Where do you say in that order you quote "identified" or "noted" that they had consented to an order that they were not the lawfully appointed representatives?

A: Thank you item 3 of attachment I.

Q: Item 3 or item 2?

A: Item 3, the following first plaintiff was the duly appointed General Manager of the second plaintiff, that is Mussau Timber, Kalip Salo 30 was fully recognised and also directors. And that is a consent order.

Q: You are saying that - so the payments obviously were made without any proper basis?

[2:37 pm] A: Not at all, no proper basis for these claims and also payment made.

Q: By the Department of Finance?

A: Correct, they were falsified payment and claims. 40

Q: Just the proceedings themselves, sorry, you referred to that consent order, since that consent order, has there been any other action taken in the court proceedings of OS 596/2004? A: Our legal counsel had written to the Police Commissioner to investigate what Justice Sevua's decision on attachment R and so far nothing has been done, and within that attachment R,

the judgment was to investigate a list of people. That action by Police is still pending. 10

Q: You might need to supply us another copy of the judgment. He seems to have some pages not copied well. In any event, Mr Magis, as to the payment you say – so there were two payments; one of K500,000 in a cheque made payable to Peter Terry and Lawrence John. From your knowledge, what has come of those funds? What has come about those funds? Have they been frozen anywhere with the National Court or?

A: When the two gentlemen were sent to jail for contempt of court for not paying K500,000 into the National Court trust account and one of the issues that they were brought out is they were going to pay the money into the National Court trust account. And the Supreme Court decision is still to hear that appeal is still pending.

Q: So as far as you know, where are the funds, the K500,000?

A: As the director of Mussau Timber at this stage I have no idea because police have not done their part to investigate where the money has been either banked or where they have been placed, we have no idea at all. And the money is subject to these court documents, Mussau Timber is the right recipient and the money has not been given to Mussau Timber.

Q: Well, you have provided a copy of the actual cheque. Have you inquired with the Department of Finance to determine whether the cheque was cleared and presented for payment?

A: After the court when we made inquiries into Finance, they only pointed to these two cheques that have been paid out. 40

[2:41 pm] Q: Chief Commissioner, I guess I say from our cash book, it has been confirmed that the cheques were cleared for payment on – we can confirm. The Bank of Papua New Guinea has confirmed that the two cheques had been presented and were cleared for payment. You have mentioned – Mr Magis, I have not had an opportunity to peruse in detail the material – that there was a requirement for the repayment of the funds and---

A: Well subject to the order of the court yes, there was supposed to have been 10 been---

Q: From your knowledge, where the funds in a particular account at that time when the court made the order for repayment?

A: Not at all.

Q: Sorry?

A: No. 20

Q: You do not know?

A: We are still looking around where the money had gone.

Q: So the court made the order for the repayment of the money or the payment of the money to the National Court.? A: Correct.

30 Q: Is that trust account?

A: Yes.

Q: When the court made that order, was there evidence before the court of the location of the funds, where they in a bank account somewhere or what?

A: No, no information has been given.

40 Q: No information. So, basically the submission you wish to make to confirm that the payment of K500,000 and the two payments, the first one made payable was in respect of royalties, that should have been paid to Mussau Timber Development Limited, that is essentially your evidence or your submission?

A: So far there is no money that has been given to Mussau Timber from those two lots of K500,000, I would say a million kina, nothing has been given to us. We have no idea about it and adding to that on item I, is the letter, another letter when that money was paid and they were 10 working around it is another claim by Peter Teri Gerere for K8,897,933, that is within item I attachment. And while that issue was still on another letter for payment to be made to Lawrence Job for up to K4,859,259 that is attached to letter I or Attachment I. So we stepped in as responsible directors of Mussau Timber to ensure that the money goes to the right recipient and that is Mussau Timber Limited on behalf of the people of the island of Mussau.

Q: Have you had any positive response from the PNG Forest Authority on your representations? 20 [2.45 pm] A: Yes, our representatives was recognised by the IPA and documents have been given to the members of the Commission

Q: No, sorry, I am just asking the question. Obviously, you are saying payments should have been made. Certainly payments were made by Department of Finance but not by PNG Forest Authority but by Department of Finance. You have raised this with the PNG Forest Authority, you have obviously raised the fact that payments have been made by Department of Finance. Has PNG Forest Authority advised you of any action they are taking or they have taken in respect of royalties payments?

A: The only advice we got from PNG Forest Authority is the trust account was totally dried out and we have already produced the document for another 300,000 claim lodged by Mr Lawrence Job to Forestry Authority. And that has to be investigated whether the trust account is part of that money for Mussau Timber that has been dried and document has been provided to the staff of the Commission.

40 Q: Chief Commissioner, I certainly would need some time to peruse the material.

THE CHAIRMAN: I just want to be clear. I understand the story that you are saying is that Mussau Timbers is the representative of the Mussau people on Mussau Island regarding timber rights. You have got the timber rights and a Forestry Management Agreement with the Forestry Department. Is that correct?

A: Correct. 10

Q: That logging has been continued and all the royalties should have gone to Mussau Timbers? A:

Correct, that is the arrangement. Q: Through the Forestry Department trust account? A: From the Forestry trust account to Mussau Timber and then to be paid to the resource owners or through the trustees. 20

Q: Now, instead of that happening there has been two persons coming on, Mr John and Mr Teri who

have put in claims to the Finance Department. Have they put claims to the Forestry Department as well did they, or they go straight to the Finance Department? A: Mr Commissioner, that is correct.

That is why these letters were addressed to the managing director of the National Forest Authority demanding payments. 30

Q: Demanding payments as what; on behalf of whom? A: It was going to go to them because nothing to do with the Mussau Timber Limited or Mussau Timber development.

Q: No, but who do they profess to be? A: They pretended --- Q: They said give us the money, give us the royalties because we are or I am what? I am the

landowner or what? A: If they had been landowners they had to --- Q: No, what did they claim?

How did they claim? A: They claimed because they may have known that there would have been money and they came in

to claim as proposing to be --- 10 Q: Just as individuals. A: As individuals. Q: And who? A: Not under the umbrella of Mussau Timber Limited.

Q: Who was authorized the payment? Did the Forestry Department authorize payment? 20 A: That is an area that the Commission has to establish where there - because they lodged letters to Forestry and Finance Department had given payments of that 1 million.

Q: They lodged letters to the Forestry after they got the payment from the Finance Department or before? Did they make the claims of the Forestry Department who gave them authority to go to the Finance Department and ask for the money?

30 A: They could have been after they lodged their claims or lodged their requests.

Q: Mr Kassman's question is, what did the Forestry Department say? How do they explain how this happened? A: When we went to the court, Mr Commissioner, Forestry did not turn up to make an explanation. Q: I see, thank you. 40

A: That is why the decision has been --- Q: Did the Finance Department, did they give you any documentation to show why they paid out the money to those persons?

A: Mr Commissioner, none at all. Q: I see, thank you. All right, so that is where you are at this stage, that is where you are at now? 10 A: Correct. Q: Thanks.

[2:48 pm] MR KASSMAN: Mr Magis, just having perused the first letter which is the one you referred of 10 December 2002 by Mr Peter Teri Gerere of Giriwan Limited, Mr David Nelson PNG Forest Authority. In there he says essentially that monies were not collected or paid to the landowners and as such within – he says not paid to the landowners within the grace period of 20 six to seven years and he says the money is therefore transferred to the Government Consolidated Revenue accounts as revenue and used for government purposes and essentially he then proceeds to provide some particulars pointing to a claim. Are you aware of the payments actually been made by the PNG Forest Authority or the Department of Forests to the Department of Finance? Are you aware of any such event happening where royalties were not collected and returned to Consolidated Revenue? Are you aware of that ever happening?

A: Forestry and Department of Finance, we made an attempt to sit with 30 them a number of times but they were not prepared to accept us to a round table meeting with them because the court proceedings had already been in the process.

Q: Was there any evidence addressing that issue? Was any evidence produced by Department of Finance? A: Yes Mr Commissioner, there were letters written. We wrote to the Ombudsman Commission, that is in attachment B about the issue that was taking place. 40

Q: That is your own letter? A: Yes our letter. Q: I am asking for any letters from Department of Finance addressing that issue? A: Nothing at all. Q: Nothing at all. THE CHAIRMAN: You never received any written response from the Finance Department? A: None at all Mr Commissioner. Q:

Have Mussau Timbers received royalties beforehand? Do they ever received any royalties at all? 20 A: It is evident that the cheques were collected by Mr Lawrence Polain and Mr Teri Gerere which shows that they had been given money.

Q: Before the two K500,000, before that? A: Nothing at all. Q: No, maybe I did make myself clear. How long has Mussau Timbers been eligible to receive

royalties, does it mean for many years? 30 A: For many years they are suppose to.

Q: And did you ever receive any royalties? A: In the past yes money was received and it was given straight to the trustees that pay to the actual landowners but then while we were waiting for the next lot of payment these two gentlemen stepped in.

Q: I am looking at these documents you gave me before as to referring payments of certain people. Is it possible that the witnesses are aware of who they are?

[2:53 pm] MR KASSMAN: Mr Magis, we understand there is a statement being produced to the Commission that makes reference to a document that lists names of people who were to have received monies from Peter Terry and Lawrence John, was that an issue raised in the court proceedings?

A: Correct. 10 Q: That was the criminal proceedings or? A: Criminal proceedings. Q: This was from a witness by the name of Mr Edward Miro? A: Presented to Edward Miro and I have got another witness that is right here that can testify that he

also saw that document and he was there with Edward Miro. 20 Q: Was this evidence before the criminal court or? A: It was before the criminal court. Q: You say there is someone other than Edward Miro who is present? A: Yes, there was a gentleman that was with Edward Miro at that time.

Q: And Edward Miro is not here? 30 A: The other gentleman is right here in this---

Q: What about Edward Miro?

A: Edward Miro is in Australia right now but the other gentleman that eye witnessed this document is also with us this afternoon.

Q: But you do not know of the document itself or how it was produced, or are you involved in it or? 40

A: From the information that was provided to us and also to the proceedings of the National Court, the document was taken off Mr Lawrence Job Polain when there was a scuffle and Polain was about to avoid being caught in that scuffle, he dropped a file. That is how the document was given

to us, the file was held on to by Mr Edward Miro and another person who is right here with us gave that document to Mr Kalip Salo and myself as supportive document that money was taken from Finance and this is another part of the money being distributed to those list of names. 10

Q: Where is the original of that document or where is that document you are referring to now? Where is that document?

A: The copy of that document is now with the Commission but the original we do not know where it is but that copy was given to us. That is the copy that we made copies out from that was handed over to us.

[2.57 pm] Q: Sure. So you say there is someone here who can give evidence in 20 relation to the actual document?

A: Yes, correct.

Q: So you have no personal knowledge of that document itself, it is merely information that you have?

A: Information that was provided to us.

Q: Do you know from the information essentially that certain people 30 were identified to receive certain sums of money, do you know whether any payments were made to any other person?

A: From that document we were relying on it that because of the figure that was placed on it, there could have been payment but subject to Judge Sevu's decision he made mention of those very people to be investigated.

Q: Do you know whether those investigations have taken place?

40 A: Since then a letter has been written to Police Department and I have no idea whether the police has done any investigation or not. That could still be pending.

MR KASSMAN: I have no further questions.

THE CHAIRMAN: Mr Magis thank you very much for your evidence. we will take it from there and make further inquiries. Thank you, very much. MR MAGIS: Thank you, Chief Commissioner and members of the panel, 10 thank you very much.

WITNESS WITHDREW

MR KASSMAN: Chief Commissioner, just for the record, we did list Mr Kalip Salo to give evidence. I just conferred with him. He says that there is nothing further that he will add to what Mr Senti Magis has said. So for the record we will dispense with the need to hear from him. 20

THE CHAIRMAN: Very well. MR KASSMAN: Chief Commissioner, we will maybe call Mr Lawrence Job just to give some evidence

basically as a follow up to his evidence he gave last week. He had undertaken to produce some more documents. Mr Job is obviously continuing to give evidence. THE CHAIRMAN: Yes, you are still under oath Mr Job, sit down.

30 MR LAWRENCE JOB, recalled:

XN: MR KASSMAN Q: Mr Lawrence Job you gave evidence last week in respect of this matter, you have also heard the evidence, well some evidence from Mr Senti Magis. I understand you have got some documents that you wish to produce following the evidence you gave last week?

A: That is correct. 40 Q: What do you have to produce? A: On Friday I was asked to produce if there were any documents I had before the Supreme Court.

This case is before the Supreme Court and I am here to tender the documents from the Supreme Court saying that this matter is the very matter that the issue is before this Inquiry as per the Supreme Court for the re-listing and rehearing and this is the document before me.

10 Q Maybe this could be marked as Lawrence Job 2. THE CHAIRMAN: Yes. [EXHIBIT TENDERED - LAWRENCE JOB 2 - DOCUMENTS FROM SUPREME COURT] MR KASSMAN: Is that the only document that that you---

A: Can I say something a little more further? 20 THE CHAIRMAN: Before you do, just only on that document, is that the only one you have? A: Yes, that is the only one I have. Q:

Can you give us a copy of that? A: This is a copy of it.

30 Q: That is a copy of that?

THE CHAIRMAN: Thank you.

[3:06 pm] A: I gave you my copy on Friday, your copy on those two cheques, I think I have rectified on those documents. The 500,000 and the other 500,000 and I have the documents. I think you have seen the documents on how I obtained that and I appealed the contempt charge against me to the Supreme Court and the case is before the Supreme Court for the re-listing and rehearing of the case and I think it is more appropriate that the matter should be finished at the Supreme Court before we can take the matter down here because that will be in regard to the inquiry of how I obtained the cheque and I think it is an abuse of court process, the way this matter is going.

THE CHAIRMAN: The appeal proceedings are about a contempt of court orders?

A: That is correct.

10 Q: They do not appear to be anything to do with the payment of cheques at all regarding royalties under a Forest Management Agreement or Timber Permit. Nonetheless we will look at the matter very closely. Show Mr Togi please, to Mr Kassman. Yes, would you show that to – give that document to Mr Kassman? Yes, there is something else you wanted to say?

A: I have a letter here regarding the copy of that second cheque that was raised at the Department of Finance and the officer that was the one that issued the cheque by the name of Mr Boas Hembahi. I think he is the guy who should be taken into the Inquiry – the people out there obtained the cheque, the second cheque.

Q: That is the letter to the Commissioner?

A: Yes, to the Commission. [3:10 pm] Q: Yes, very well. We will take that on board.

MR KASSMAN: Chief, I understand Mr Job, in view of the Court proceedings the Commission of Inquiry should not be inquiring into this matter. I have just one or two questions. 30 THE CHAIRMAN: No, that is in regard to the first cheque, is it that you talking about? A: Yes. Q: Yes certainly. MR KASSMAN: Mr Job, with regard to the payments, were the funds disbursed or distributed to the Mussau or I should say the legitimate landowners or who should receive royalties from the timber project? A: I will answer your question. Let me say this. There is two, there is an issue between the landowner and the company that has not been rectified and this is not the right forum to rectify them, that should go before the Court; the landowner issue and also the company which is two different groups who are claiming to be company directors and so and so and there is no documents saying that this is the legitimate company directors of the company. The company has been defunct and has gone out. There is no company operating at this time since 1996. So your question raised is whether the money go to the landowner. Q: That is right. A: I am coming in as a landowner. That is where the log operations is operating now on the land and the cheque that was raised in my name and Peter Terry, the recipient of the cheque is the former director of the company. Q: Sorry? A: The former director of the company. Q: Yourselves? 20 A: No, I am not the former director, I am the landowner. The former director was Peter Terry. Q: Alright. THE CHAIRMAN: You are saying that the cheque was disbursed amongst the landowners? A: Yes, should have gone to the landowners but what I am saying it has gone to the director of the company, Peter Terry. Q: Peter who? A: Peter Terry. Q: He got the 500,000? 30 A: Yes, that is correct. Q: All of them? A: That is correct. Q: Did he distribute any of that? A: I would not have an answer to that. Q: You do not know? A: No, I do not know. Q: Did you receive any monies at all yourself? A: Not at all. Q: Pardon? 10 A: Not at all. Q: None at all, I see. Are you saying that Mussau Timbers has been out of – has not been active or as been defunct since 1996? A: 1996.

[3:14 pm] Q: And who were the ---

A: In 2004, the Directors in this audience had gone into IPA to become directors of the company and that is what I have said earlier, the issue of the company has not been determined who is the legitimate 20 company directors to deal with the money.

Q: So you are saying that the present directors of Mussau Timbers are self appointed?

A: That is correct

Q: I see. I think we need to further examine the matter.

MR KASSMAN: Sorry Mr Commissioner --- 30

THE CHAIRMAN: But you can ask any further questions but we will need to further examine thematter when we are more informed.

MR KASSMAN: The payment, you are well aware of the payment being made, the K500,000?

A: That is correct.

Q: And the payment made by Department of Finance?

A: Finance.

Q: Not by PNG Forest Authority? A: No. From the court through the Solicitor General office, deed of release was been signed by – I have got the document, I think you should have a document there to say that a deed of release was signed and after Finance---

Q: Is the deed of release in the documents that you have provided? 20 A: Yes, it is in that document I presented on Friday.

Q: So the deed of release was signed? A: By the Solicitor General. Q: Is that the first occasion that you have been involved in a claim in relation to royalties?

30 A: That is correct.

Q: So why was it pursued with the Attorney General and not with PNG Forest Authority? A: No, it was endorsed by PNG Forest and then the money was going to be paid and there was a courtproceeding against this matter so we went to court.

Q: What was endorsed by PNG Forest Authority? 40

A: There is a letter on that document I gave you on Friday from the Managing Director Forestry who endorsed that payment. Q: To be paid by the State not PNG Forest Authority? A: That is correct, that is why they referred us to Finance to be paid and then there was a court proceedings came in so we went to court and after the court there was a deed of release signed and

the money came out. 10 Q: What actually happened, where the royalties actually paid to the State because they were not collected and they ended up with consolidated revenue with the Department of Finance?

A: That is correct. Q: Do you know that or you were just assuming that? A: No, I am saying as the landowner I am trying to say this. When there 20 is a dispute between two parties, in any case in any royalties the monies are tucked away until they solve the problem who is going to receive the money. So that is why most of that money was tucked away in the trust account which was sent to Department of Finance Consolidated Revenue.

Q: Did the Department of Finance confirm that? A: That is correct.

30 Q: Do you have documents that say that? A: Yes, there is documents – we went into Finance and they said, “yes, there is money in the trust account.” That is why they paid that money.

Q: You said you produced a deed of release, we have not sighted one. A: You have not sighted one?

40 Q: Yes. No, that is not a deed of release, that is just a letter. So you say that was the authority?

[3.18 pm] A: Yes, there was also a letter from the Office of the Department of Treasury, Tosali stating on that particular payment. THE CHAIRMAN: Thank you. Do we have a copy? A: Yes, Sir.

10 MR KASSMAN: We do have a copy. Mr Job, that is not a deed of release, that is just really a letter by the acting Solicitor General, Francis Kuvi, to Secretary, Treasury. Were you advised that there were funds belonging to the landowners that were held in a trust account managed or operated or dealt with by the Department of Finance or Department of Treasury?

A: Yes, I said earlier that we had a meeting with them, they said there were money in the trust account. Q: Sorry? 20

A: There were money in the trust in the Department of Finance. Q: Apart from this sum of K500,000, have you received or been a party to or been aware of any other payments made as royalty payments by PNG Forest Authority?

A: Not that I know, this is the only money that I am aware of. Q: You say you have not benefited at all from the K500,000? 30 A: No. THE CHAIRMAN: You were following that letter from Mr Kuvi to the Finance Department, K500,000

was paid out? A: Yes. Q: You collected it?

40 A: I did not collect it. Q: Who collected it? A: Peter Terry collected it. Q: And he still got it or what did he do with it? A: I would never, I mean, I do not have an answer for that, whether he still got that money or not. 10

Q: Have you ever asked him about it? A: I have asked him but he never said anything. Q: Pardon? A: I have asked him but he never said anything. Q: I mean, you were a party to this court action and you were one of the 20 two who were chasing

the money and you never asked anybody? A: No, I said, I asked him but he never gave me an answer. Q: Where is he now? A: He is here, he is in here. Q: So he might still have it?

30 A: I presume he might. MR KASSMAN: So Mr Job, you have not benefited, you have not received any; not one toea. A: No.

Q: I have no further questions. THE CHAIRMAN: No further questions. All right, thank you Mr Job, Mr Polain, thank you for your evidence and we will take it from there.

A: Thank you very much Chairman and Commissioners. [3.23 pm] THE WITNESS WITHDREW

MR KASSMAN: Chief Commissioner, we will call Mr Peter Terry. We will call Mr Peter Terry? 10 THE

CHAIRMAN: Yes, is Mr Peter Terry here? MR TERRY: Yes. THE CHAIRMAN: Very well, swear him in.

PETER TERRY GIREGIRE, Sworn:(Sworn Evidence in Pidgin) 20(Interpreter: Mr Nolan Kom)

XN: MR KASSMAN

Q: Your full name is Peter Terry? A: Yes. Q: Are you related to Lawrence Job?

30

A: Yes.

Q: How are you related to Lawrence Job?

A: It is like my father is married to his relatives.

Q: Mr Terry, the Commission wants your assistance as to whether you were involved in the claim that

was made to Department of Finance. Do you understand that?

40

A: Yes.

Q: Are you aware of that?

A: Yes. Q: Mr Lawrence Job has just given evidence and has said that of the cheque for K500,000, all the money was received by you.

A: Yes. 10

Q: Sorry, you are saying that that is correct, you received all of the money?

A: Yes.

Q: When did you receive the money?

A: 8 September 2004.

20 Q: What did you do with the money? A: When I got this money, I was trying to go to the bank and the order came and held me up. THE CHAIRMAN: Who held up the money? A: The same group.

MR KASSMAN: So you said there was a court order? 30 A: Yes. Q: What bank account was the

money, the cheque deposited into? A: It was to my personal account. Q: Your personal account at which bank and which branch? A: BSP in Port Moresby. 40[3:27 pm] Q: You say the money was put

into your account and the Court Order stopping you

from using that money, is the Court Order still in place?

A: The account has been closed since that Order.

Q: So what happened to that money that was put into the account?

A: This money was there but the people that I was with pushed me to take the money to pay them in respect of the expenses.

Q: Was it the whole amount or?

A: No, the Order is still there.

Q: So how much is it?

THE CHAIRMAN: Pardon? Some of it still there? Some of that is still in 10 the account?

A: Yes, the Order is still there and the Court is in the Supreme Court.

MR KASSMAN: How much is in the account now?

A: 175 is still there.

Q: K175?

A: K175,000.

Q: K175,000. Is that right, K175,000?

A: Yes.

Q: Who is the signatory of that account. Is it just yourself?

A: It is myself. 20

Q: Do you have a bank statement?

A: No, I have not got any bank statement.

[3:32 pm] Q: So, you are saying there is only K175,000 there and you also say the other of the K500,000 – so K325,000 you said has been withdrawn?

A: Yes.

Q: Who received those sums?

A: My lawyer, rent for my vehicle, house, for my food because I was here and some of the friends who have worked with me I paid them.

Q: So of all those payments you actually withdrew the cash?

A: Yes.

Q: When did you stop withdrawing money from the account?

A: March 2005.

[3:36 pm] Q: And when did you stop withdrawing money from the account? 10 A: March 2005.

Q: Was that when the court order ---?

A: Yes.

Q: When the court order was served, did you make any withdrawals?

A: No.

20 Q: Did you pay any of this money to any officer of the Finance Department or court or the Solicitor General?

A: No.

Q: So all the money that you withdrew, you used for your own expenses and your supporters or lawyers?

A: Yes.

30 [3:39 pm] Q: From the statement that was given to Police by yourself on 1 June 2005, you said you had withdrawn 367,000 on 9 September 2004, is that correct? A: No. Q: Sorry? A: No. Q: Your answer is no. Did you ever give a statement to Police? A: No. Q: So you have never given any statement to Police or investigators in relation to this money? 10

A: No. Q: Out of all this money that you have received or you withdrew from the account, did you make any payments as royalty payments?

A: No.

Q: Did you make any payment to Mr Lawrence Job?

20

A: No.

Q: Was he helping you with this claim?

A: He is landowner and he joined me on this thing.

Q: Why did he not benefit from this?

A: Because he has got his own claim there.

30

Q: You are saying he has another claim?

A: Yes.

Q: Did he ever receive that payment for that claim?

A: Yes.

Q: How much was that?

40

A: Before I came he got K38,000 on his own royalty claim.

Q: Did you ever receive any money form the PNG Forest Authority?

A: No.

Q: Is this the only payment that you received from the State, from Finance Department? A: Yes. 10

Q: So no other payments? A: No. THE CHAIRMAN: This 500,000 you claimed it on behalf of

landowners? A: Yes. Q: So you collected the 500,000 but you have not paid out to anybody, 20 any

other landowners? A: Yes. Q: Did any of your other fellow landowners ask you what you have done

with the money? A: No. Q: Did you tell them that you had the money? 30 A: Yes, I did but this thing

held me back. Q: You mean all your fellow landowners knew you had the money but never asked

you what you were

doing with it? A: No. Q: So you have actually spent 325,000 of money that belongs to other

landowners without reference

to them, is that right? 40

[3.47 pm] THE CHAIRMAN: You have actually spent 325, you said of money that belongs to other landowners without reference to them. Is that right?

A: Yes, I did. But in the eight years I have been in the city, nobody helped me.

MR KASSMAN: Chief Commissioner, I have really not prepared anymore questions at this stage.10

THE CHAIRMAN: Very well, thank you for your evidence, Mr Terry. We will take the matter from what

you have said and from the evidence given and if there is any further matters to raise with you, we will do that later, give you notice of it.

WITNESS WITHDREW

MR KASSMAN: We have no further matters to deal with, Chief 20 Commissioner, we will adjourn.

THE CHAIRMAN: Stand adjourned then till tomorrow morning.

AT 3.50 PM, THE COMMISSION OF INQUIRY ADJOURNED UNTIL WEDNESDAY 15 JULY 2009 AT 9.32 A.M0

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TRANSCRIPT OF PROCEEDINGS Commission of Inquir{

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COMMISSION OF INQUIRY INTO
THE DEPARTMENT OF FINANCE

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANITHURSDAY 16 JULY 2009 AT 10:30 A.M.
(Continued from Tuesday 14 July 2009)THE CHAIRMAN: Yes Mr Mirou?

MR MIROU: Thank you Chief Commissioner. We have this morning the matter that was listed
SimonMali and Others –v– The State, Diaya Kambere and Others, Buka Mu and Others and Warea
Wapi andothers. These four matters have been listed for this morning and we have Mr Mirupasi
who isavailable to assist the Commission in reference to these proceedings and he will give
evidence on oath.

THE CHAIRMAN: Is Mr Mirupasi ready, thank you. Swear him in.

MR VINCENT MIRUPASI, Sworn: XN: MR MIROU Q: Thank you Mr Mirupasi. We thank you for your
attendance this morning to assist the Inquiry with
the claims that has been mentioned. Your full name is Vincent Mirupasi? A: Yes. Q: You are
currently the principal of Mirupasi Lawyers? A: Yes. Q: Mr Mirupasi, can you briefly state for the
records your experience and qualifications? A: Thank you. I finished Law School in 1989 and 1990 I
attended LTI and I have been practicing Law
since then for 19 years and I run my my practice now. I employ seven lawyers plus other staff. Q:
Your practice is mainly in the area of civil jurisdiction? A: Mostly civil litigation but commercial as
well as some criminal as well.

Q: Thank you. Mr Mirupasi, you received a letter from the Commission dated 14 July
2009requesting your attendance to assist theCommission with respect to four matters that your
Firm or yourself was involved in?

A: Yes.

Q: And these matters are Simon Mali and others, Diaya Kambere and others, Buka Mu and others
andWarea Wapi and others. In that letter there were specific questions that were raised for you
torespond to the Commission this morning?

A: Yes, I have got the letter.

Q: Before we proceed to those specific questions, you also heard Mr Tulapi give evidence in
relationto these matters on Tuesday. Not really related to that but in your own experience with
these proceedings, you got any general issues that you want to raise or matters that you want to
raise forthe Commission before Mr Aina will take you through specific questions?

A: Commissioner, what I intend to do is go through the four matters. There is another matter,
thematter of Charles Luta and Others –v– The State. That matter should also be together because
wehave been dealing with these matters together all this time so it is----

THE CHAIRMAN: Is it linked to this other matters?

A: Yes they are all raid matters from Kagua.

[10.35 a.m.] Q: Very well we will hear what you have to say. Mr Aina, you have any comment
onthat?

MR AINA: Commissioner, Charles Luta is handled by another investigator but it was opened

lastweek Thursday. It is also listed for today, we can ask the investigator to come in to sit in this.

THE CHAIRMAN: Yes, very well, if you need to do that, yes. Alright you can hear the evidence and maybe of assistance to his contribution to the Inquiry. Yes, very well.

A: We can deal with the four that you are involved in and that one later so I would like to go through the history of the case, the court proceedings, this matter is still before the court so I would like to

be brief as much as possible because they are still subject to the court's decision. The payments--
--

Q: Yes. We are not looking to make the decision about it, as you know we are looking at the events leading up to it and how people were involved in the process. A claim is made and then and how it progressed through to government officers, how the Claims Against the State Act were complied with, that is what we are looking for. But carry on, we are not going to restrict you from giving evidence that you want.

A: Alright, and tell the bit about what the existing court proceedings relate to and then -- Mr Tulapi is not here, I want to wait for him to come in and I can rebut to the things he said because---

Q: It is not a contest between you Mr ---

A: He has attacked me Commissioner, he has attacked my --- Q: I appreciate you -- let me finish. He is not here, you can rebut whatever it is by saying what you want. He is aware that you are giving evidence today and if he wishes the transcript will be available to him in any case.

A: So I would like to rebut those things that Tulapi has said and also the transcript recordings of Councillor Yali in Hagen. In the matter of Simon Mali, this is a raid that was conducted in -- by the way I have given copies of the documents that my Firm has which I believe to be relevant with cover letter setting out the brief history of the matter to the Commission. This one is dated 13 July 2009 in which I have said my Firm handles this matter, I handle it, my other lawyer Mr Pokia there, he has had carriage of this matter a number of years as well, other lawyers also have had carriage of the matter depending on who is available we pass the file around in the office. The raid was conducted 21 years ago on 27 November 1988 at Uma village that is in Kagua, Southern Highlands Province.

[10:38 am] I am from that village and your previous witness Mr Tulapi he is also from a nearby village, Sumi several kilometers away.

THE CHAIRMAN: From what village?

A: Sumi.

THE CHAIRMAN: S-U-M-I?

A: S-U-M-I, yes. That would be about five or six kilometers away. We are enemy tribesmen, we have been fighting over land issues. Our grandfathers, ancestors and those before them, they were fighting each other, killing each other and this thing has been going on. Recently his tribe has burnt down my village, my tribe has burnt down his village and he is carrying on this issue in Port Moresby for the last 15 years. But in relation to the claim, I was in the previous partnership with Nii and Mirupasi that is where we issued the initial writ on this matter in 1994, together with the other matters; Diya Kambere, Buka Mu and Warea Wapi. That is why they have references 8-4; two 843 and 844, all filed together.

Q: There is four. We are now in four. Is this matter of Luta and Others, that makes it five, is it? Four or five?

A: Yes, that is right.

Q: What number is that one?

\$. Luta's is WS542 of 1995 that was slightly later but Mali was 840, WS840, 'iaya Kambere 842, Buka Mu 843 and Warea Wapi 844. Whilst in the Firm of Nii and Mirupasi we obtained a default judgment on liability but damages to be assessed, and that thereafter we negotiated with the Solicitor General's office then and settled this matter.

[10:42 am] Q: All four? A: For K279,616.45. Q: That was all that was or was that the first one? A: First, the Simon Mali one. The Diaya Kambere one I settled that for K361,000.51. Buka Mu we

settled that for K473,979.77 and WareaWapi for K737,310.13. These deeds we applied for judgments on these deeds and we asked that all these proceedings be heard together. Sorry, the Luta matter was settled for K743,057.91. We then sought a consent judgment on these deeds so that we could enforce them but there is a Supreme Court decision in the Simon Mali matter and Others.

Q: I am sorry I have not heard that. What did you say?

A: Those consent orders we said they were consent orders but the Solicitor General argued that they were not consent orders and subsequently on an appeal named in the matter of Simon Mali and Others versus – appeal against by the State. Those consents were set aside.

Q: What the consent or the deeds of release were set aside?

A: Yes the consent and subsequently the deeds were set aside.

Q: So did you actually get to orders of the Court?

A: Yes, the Supreme Court made those decisions.

Q: No. Did you in fact you have consent judgments for those figures?

[10:48 am] A: They argued that they were – while you recall your Honour that you were involved and I was involved in Hagen and we were claiming that there were consents but the Solicitor General appeal that they were not consent orders so the Supreme Court deemed them not to be consent orders and the deeds were set aside with further orders that the statements of claim be amended. So those writs were amended and Mr Pokia had carriage of that matter, the amended writs I have delivered to you, he got his signatures on them with the amendments for all matters and after the service of the amended writ on the Solicitor General we renegotiated because the liabilities we had already being decided, that was still on foot and the Solicitor General made offers for the same amount accept for the Simon Mali matter and the reason for that was that in this letter dated 6 August 2002, from the Solicitor General to us, his reason was that 14 years had passed and on top of the damage that the villagers and this people had suffered, justice had been delayed and interest had been accrued and the cost had been incurred and all of that. To compensate for that he offered K669,528.96. We accepted those offers and then all the details, the figures were incorporated in a Deed of Release, one deed each to all the proceedings and it was delivered to the Solicitor General and the---

Q: You drafted the Deeds of Release yourself?

A: We drafted them in our office and it has got our printery, the print is our office print – four of them and the Solicitor General then sent them to the Secretary Finance, letter I have here is dated 12 August 2002 and we have received payments on those deeds for all of them.

[10:52 am] We have received payments on those deeds, for all of them, and we passed on their payments after deducting our fees except for the Mali matter that was paid short by K20,000 and the---

THE CHAIRMAN: Sorry, where was the K20,000 short from you or from the Finance?

A: The Simon Mali settlement. Otherwise everything has been paid. There is an extra amount of K362,689.87 that has been paid.

Q: What does that figure relate to?

A: That is an extra amount that has been paid.

Q: So you have been paid out in full on all of those four claims except for K20,000 on the Mali matter?

A: Yes.

Q: Was this K369?

A: There is an extra payment that was received but that is for the interest that was claimed for all the settlements. So that amount is K362,689.87 and I wrote to the Secretary for Finance on 19 April, yes Commissioner, this amount of K362,000 was paid under the name of Warea Wapi. It was to cover the interest amounts claimed and which were claimed in our letter of 19 April 2004 to the Secretary for Finance set out all those matters and the interest amounts calculated.

[10:57 am] Q: So your letter of 19 April 2000 and what? A: 2004. Set out the interest calculations. We then on receiving that payment we wrote to the Secretary for Finance on 1 June 2004 confirming that this extra amount was received in settlement of the interest sums and I have enclosed copies of those letters together with the documents in the copies of documents I have provided to you. The payments – we worked on these matters without receiving payment from people. These people are poor villagers, they got no money to pay legal fees and we have fee agreements, some are written, some are not written but all based on trust and understanding. These are my people, when we get the monies, we fight hard to get the monies, I mean in this case we are talking 17 years but we do our bills, we get our share and we give the remainder to the respective plaintiffs, that is what we have done. It is not easy to make everybody happy but the way we deal with these matters is that we approach the clients in the villages, ascertain that the claim is genuine, take the names of the people affected, take details of the destruction, damage and the sufferings and then they also appoint their man or their people that they appointed to communicate with us. Some are leaders, some are local people we deal with those people.

[11:00 am] A: We cannot have a situation where we have six hundred or thousand people flooding into our offices we do not have the time. In the case of Simon Mali and Others, the principal contact has been Simon Mali and also myself because that is my village and in the case of the Kira raids, after the raids were conducted I attended the village myself and these people are also distantly related to me. We had a meeting and they appointed four guys for representatives to deal with me. One of those was Alupa Kepu who is the village leader, headman from the village, the other person was his son Stanley Alupa, he is literate so to make the communication easier. The other person was Oka, Oka Rorepa. Oka is the owner of the truck that was initially damaged at the station, Kagua station, which then led to the fight and then subsequently the police attendance at the village and then the raid. So he lost plenty and he was appointed one of their representatives.

[11:03 am] A: Another person who was Kenda Nakisi. Kenda Nakisi is from the neighbouring village but he is educated to university level and also related to people in the village to make communication easier and to advance the matters. I have been dealing with these guys, these appointed representatives. We refuse to talk to anybody else that come to our office for the very reason that we want to deal with only the correct people and we are talking 15 years ago these people were appointed and from that time till now I keep dealing with them. Councillor Yali Yapi was not a councillor at that time. He is a plaintiff. He only appeared on the scene after the money was distributed because he did not get what he wanted or the amount he wanted. He is also a very vocal supporter of Daniel Tulapi. He is actually his campaign manager in the village. That is my story.

There is a number of important points I want to make. One is that I have to stress again that the Malimatter is 21 years old and the other matters are 15, 16 years old. We have no reason to be pursuing these claims for this number of years if these claims are false. We have plenty of work, we are in the serious business of practising law, we are not interested in pursuing false fraudulent claims. We leave that business to ex politicians, conmen, people who have nothing better to do in life. The other important point I wish to make is that Mr Tulapi is here – he can hear it too – they attacked me personally on Tuesday.

MR TULAPI: I am not a conman.

THE CHAIRMAN: Mr Tulapi, you are here as a member of the public and you can be there as you wish. If you wish to try to evidence perhaps later on, you may do so.

MR TULAPI: Yes.

THE CHAIRMAN: At this stage you will remain silent and not comment at all. MR TULAPI: Yes, your Honour.

THE CHAIRMAN: Please Mr Tulapi.

A: He attacked me personally and even named my old mother who is so innocent and he has attacked my Firm as well continuously for 15 years on these matters.

[11:08 am] I have previously sued him for defamation in 2001 and I have a judgment on that

suit and that is enclosed in the documents that I have passed on, and that judgment is for the sum of K65,000 and that was made on 20 September 2002 in the matter of WS 136 of 2001 which is yet to be settled. I keep thinking he is unemployed and I cannot enforce this but I told the Inquiry, he is a busy man so I have to ask him to pay. The next point of course, Commissioner, is on the question of credibility. As I have said I have been practising law for 19 years, so as my Senior Lawyer Mr Pokia and other lawyers we have in the office. Again we are in the serious business of practising Law, nothing else. We do the normal things that business houses do, so those attacks are unfounded. I have already said that Counselor Yali is Mr Tulapi's campaign manager in the village. As for Mr Tulapi, he was convicted for fraud with the former PNGBC and Counsel Mr Mirou will confirm that because he deals with criminal matters and that is the very reason why he has not been admitted to practise Law even though he has completed his Law Degree. He of course told the Commission that it was Degree with first honours. I also know, Your Honour that - Sorry Commissioner, that he did not serve his term although he was convicted, he claimed that he was mentally unfit so they sent him to Laloki Psychiatric Centre.

THE CHAIRMAN: They did?

MR TULAPI: Your Honour, it is not true.

THE CHAIRMAN: Mr Tulapi, please, there is no need for you to---

MR MIRUPASI: Is he a lawyer?

THE CHAIRMAN: Mr Mirupasi, the Commission of Inquiry is concerned with hearing evidence regarding the particular matters. You can make a general comment perhaps as to what you consider the credibility of this particular witness. I do not wish to go into a detailed analysis of why you feel so.

A: Commissioner, this Tulapi is interjecting. I am giving a statement on his credibility.

Q: Yes right, you have gone that far.

A: Alright, I withdraw that.

Q: I did not see any, unless you need to show some reason for why we should hear - Mr Tulapi, you were advised that you can be present here today to hear what was said and in relation to these enquiries regarding these four matters. In fact five. You have heard those but it is not a matter for you to comment as the evidence is given or at all. If you wish to be heard about any further matters, then we will consider hearing that. At this stage you are interrupting and I wish, ask you to stop.

A: I will stop complaining.

Q: Thank you, alright now, so Mr Mirupasi, you have made comments sufficiently saying that you will

consider Mr Tulapi's credibility and respect of the matters he has given should be doubted. Very well, you have said that, we have heard it, I do not see any reason why you at this stage we should hear chapter and verse why you say that?

A: I will not go to the Psychiatric Centre Commissioner.

Q: Yes.

A: But I have made my point I have said what I had to say.

Q: Anything else?

A: Other than that, there is another matter which I referred to - never mind. The Luta matter of course I will continue with when the other investigator comes in ---

MR MIROU: Commissioner, he is here now, Mr Colin Geno.

THE CHAIRMAN: Your submission you made in respect of the third of that further matter, yes we will be able to take that.

A: The Luta matter it is ---

THE CHAIRMAN: Sorry, before you proceed further, I want to say that the Commission is concerned with the processes. You have told us that once the proceedings was settled the second time, you went back and the Solicitor General offered the same amount except in the matter of Mali which was raised to K669,000. That in fact deeds were drafted by you and almost - and that was all,

sums were paid out. Then you advised that a further K356,000 that was paid out by the Department of Finance for interest on all those matters?

[11:15 am] A: Plus some other matters as well. Q: Some other matters as well? A: Yes, for which we had orders, deeds outstanding at Finance and that were paid. Q: The point I wish to take up is, you had settled by a deed with the Solicitor General, how was it that this K362,000 for interest – I understand you went directly to the Finance Department for payment of that?

A: We wrote to the Secretary for Finance telling him that he paid this much but there was still interest on that ---

Q: I will narrow it down to give you – what I am talking about is, you have got a deed of release for K669,000 or in respect of or whatever the figures were?

A: Yes.

Q: Did those deeds of release also require payment of interest or was that a fixed figure?

A: No they had to be paid within reasonable time, they were outstanding so interest became accrued automatically on unpaid monies and we claimed those.

Q: I know you have done it. As I say we are interested in the processes?

A: Yes.

Q: Processes on Claims By And Against The State Act. You have settled the matter with default judgment, settled the figure, consent orders, deeds of release or whatever ---

A: Yes.

Q: For specific sums?

A: Yes.

Q: Now the deed of release usually says, that is the lot?

A: Yes.

Q: So but you are saying that in fact, after that, you say well we have not been paid, this money has not come out to us in a reasonable time so we ask the Secretary of Finance to pay interest?

A: We claimed that those interest portions on all those unpaid judgments and orders and settle ---

Q: Yes, and the point I am trying to make is that the Secretary of Finance accepted that claim and paid out?

A: Yes.

Q: Alright. It did not go back through the Solicitor Generals?

A: I do not know but we wrote to him, set out the amounts that were paid, on the dates that they were paid, the days that had not been paid, we calculated interest, we said these respective amounts are owing to this particular matter, and then we got paid that amount for the interest.

Q: Yes. Did the amounts that you settled under the deed they included amount of interest, amount for interest up to that day?

A: They were all the figures put together in the deed were owing up to the time of settlement for all damages.

Q: For damages which included interest or rather damages do not include interest but ---

A: Interest and interest on costs all add up to that date, all incorporated in the deed.

Q: Yes, so but in fact having gone through the courts, having gone to the Solicitor General's office, having signed the deed of release and fixed the figure to date, nonetheless the Department of Finance was prepared to entertain and did pay out on the claim directly made to them for interest over and above that on delays of payment?

A: That is correct. For us as lawyers when an order or judgment is outstanding, then automatically interest accrues and not paid within reasonable time then we claim it. So it is a normal course of our business.

Q: That is right, thank you. Any questions you got Mr Mirou? It is appropriate with those issues that you wish to raise on those four matters we deal with those before we deal with the other matters when Mr Mirupasi is gone.

MR AINA: Chief Commissioner, I have specific questions in relation to the four matters. I want to ask

specifically in regards to how some of those Court processes were conducted in those matters.

THE CHAIRMAN: Yes, get right in with it.

MR AINA: Firstly, for records sake, can you Mr Mirupasi mention what your clan name is in Kagwadistrict?

A: Uma is my village. You mean in my village?

Q: Yes, village.

A: My big tribe is called Mirupa tribe.

Q: Is your name Andawe Lame? It is a village name?

A: It is also my village name, there is also another person in the village by name as well.

Q: On that Simon Mali writ of summons 840, WS840 on schedule 7, that name No 6 on the list, Andawe Lame, is that your name on the schedule? Schedule 7, page 7, No 6.

A: Yes, that is my name but as I have told you there is also another person in the village too.

Q: But you confirm that is your name?

A: That is me.

Q: Thank you.

THE CHAIRMAN: You were the claimant there?

A: Yes. As I said this Mali matter is from my village, it involves my tribesmen and claimant 6 is my name, yes.

MR AINA: Thank you. You were also a lawyer and claimant in that matter. My next question Mr Mirupasi, as evidence given by witnesses, is there a actual raid conducted in Uma and Kira village. Can you confirm?

[11:19 am] A: I have told you. I have told you those raids were conducted and the Kira one, the plaintiffs sure have confirmed those in Hagen as well and the police have confirmed those.

Q: Is that, those raids do they like the magnitude of the raid conducted, does it warrant compensation in excess of two million?

A: In fact these settlements are small compared to many of the raid claims that have been made which I believe you have investigated. These are realistic claims made by simple village people, they are not big.

Q: I just want to know the magnitude of it whether it warrants a compensation?

A: I am telling you these are reasonable settlements and we, as lawyers, we try to make sure that the instructions are supported by evidence.

Q: So you would produce evidence that these raids have been conducted, especially police records?

A: I have told you that the raids were conducted, the Kira raids have been confirmed, the raids as well. But I have told you also that other people they live in Moresby they do not know what goes on in the village but you ask every other Kagua man, here and in the village, they will tell you about these raids. We have been pursuing them I repeat myself for 15 years, 17 years, 20 years, we have no reason to be pursuing false fraudulent claims those years.

Q: My next question is specifically in regards to Simon Mali. In your submission on Tuesday, which I have here, to the Commission, it is on 14th July 2009, you supplied this bundle of document, especially in regards to Simon Mali. You said that as Zacchary Gelu at that time cleared the deed of release signed on 7 August 2002, on 12 August 2002 the Department of Finance. In that bundle of documents you attached two letters. Can I produce this document for the Chief Commissioner. Chief these letters are not on the Solicitor General's letterhead, but you have supplied them without the letterhead. Can you also pass this to Mr Mirupasi. Mr Mirupasi, these basically are the same matters. The content of it is the same. Can you confirm these are the same letters, the contents are the same?

[11:22 am] A: You have copies with those I provided to you?

Q: No, these are letters you provided. I am just getting a copy from this bundle of document that you provided like there is two letters you attached; one is attached with the deed of release and the other one is a letter on its own so I am just giving a copy of what you have supplied.

A: The letter dated 12 August 2002 to Kambanei, that is copy given to us by the Solicitor General. The original I think they send it to the Finance Department. But what is your question again?

Q: My question is, are they the same letter because the content and everything is the same. I just wanted you to confirm if this is the same letter because the other one is attached with the deed of release and the other one is on its own?

A: What difference does it make?

Q: My point is that, the signatures in each of these letters, though they are the same, the signatures does not look the same if they are signed by Zacchery Gelu. If you can look at page 2 of both of these letters that you supplied?

\$. What I can tell you is that I have got these copies of documents, letters from the Solicitor General's

office. The proper person would have to be Zacchary Gelu to come and confirm those signatures. But these copies we received from the Solicitor General's office.

Q: Basically my question is, these signatures are not the same and these are not on the letterhead and these are copies for Solicitor General so I am wondering how you got these letters?

\$. I am telling you that I was given copies by the Solicitor General's office and you have to confirm or---

Q: Not on the letterheads? A: No, I have got copies. These are copies given to us. I assume the original would have gone to the Secretary for Finance. But you have to confirm that with Mr Gelu.

THE CHAIRMAN: Do you have any reason why there should be two letters; two copies of exactly the same letter?

\$. \$I am saying is I received these copies from the Solicitor General's office. They are on the file. I have got them copied and I brought them to you to answer your queries in relation to the dates of events. I also said Commissioner that these matters are very long and we have voluminous files. We have files over 13 or 14 of them and many documents and letters and I brought you documents and letters that I laid my hands on in the office on those files.

[11:27 am] MR AINA: Mr Mirupasi, I have an affidavit which you filed in the National Court on 17 June 2003. These copies of them from the Solicitor General file in amongst the Diaya Kambere WS425 file. We do not have file for Simon Mali and Solicitor General and the National Court. In that affidavit, I will just give you a copy to refresh your memory. You stated that the court made orders for the sum of K669,529. You have received payment on - the court made orders on 28 April 2003 but were not endorsed by the Solicitor General then, Mr John Kumura. Can you confirm to the Commission whether the SGS endorsed this orders?

A: Which orders are you referring to? Are you referring to the certificate or the order?

Q: The certificate of judgment.

A: I have told you that we got paid on the deeds.

Q: So you have got payment based on the deed of release that you received, that you signed in 2002?

A: Those deeds that I referred to?

Q: Why did you sign and endorse this certificate of judgment?

\$. I am not in control of what goes on in the Solicitor General's office. I represent my client's interest

and the deed is as good as a court order and if I get paid on the deed, then my client is happy, I am happy and in this particular case, simple villagers who suffered at the hands of policemen and they had been waiting for compensation for many years and I did not have to wait for court order, if I get paid on the deed, that is a valid, legally enforceable document and that is good result for my client.

Q: Chief Commissioner, why I am mentioning this is because this document was not endorsed was submitted to the Finance Department and payments were made based on a certificate of

judgment that was not endorsed by the Solicitor General. I also have a court order which is duly made by the National Court, it is in the same matter again in 7 July 2000 and this certificate of judgment were also signed---

A: Commissioner, I think I have already said we by-passed all of that, we went to the Supreme Court, we got a deed, court paid on those deeds, all of these, we have gone beyond that.

THE CHAIRMAN: Mr Aina, what is the relevance of it here? We have heard evidence from Mr Mirupasithat those deeds, those judgments were set aside in the Supreme Court and that he went back again and dealt with the Solicitor General on the basis that there have been no action to remove the default judgment so they renegotiated the matter and those are the deeds that he has acted on. Is there any matter, issue arising that you wish to take him up on?

[11:38 am] MR AINA: Sorry my next question relates to the deed of release that you sent to Department of Finance for payments. In the deed of release for that particular matter, can I give a copy to Commissioner just for his information, the deed of release is in there. In the deed I want to quote paragraph 1.4. It is on the second page.

THE CHAIRMAN: You introduce the file and just continue.

MR AINA: It says; "I basically said the proceedings should be discontinued within seven days of the settlement after signing. You got payment based on the deed of release where the proceedings discontinued then after receiving full payment in 2004.

A: Commissioner I do not - from our recollection because the payments were not forthcoming within seven days or within reasonable period the proceedings were left current, not discontinued.

Q: So after 2005, it is still like currently proceeding in the court.

A: It might be but my clients are not interested. They have got their money, we are not pursuing another double claim or triple claim or whatever you might be after.

Q: Are you aware that this matter has - Solicitor General has exhausted the matter and it is costing Solicitor General to pay lawyers currently who are proceeding these matters in court?

A: I am aware, I have told the lawyers that the matter has been settled, the claimants have got their monies, I have written to the previous Attorney General, current one, we have also told them that these claims are not false or fraudulent, they are so many years old. It is uneconomical to keep running these proceedings because even by the challenge if these deeds are set aside, we come back to court, we will bring the witnesses with their evidence. I can tell you Commissioner that the

interest alone will surpass any judgment. That will be beaten by cost, our cost and the State lawyers'

cost but nobody wants to hear this. But for your information, as far as our clients are concerned, they pursued damages for the suffering and harm caused to them, they got their money, they are happy, these are all legalistic. I can tell you my clients are not interested. Q: So as a lawyer you do not care whether the Solicitor General is still incurring costs in that matter which has been fully settled?

[11:42 am] A: No, I care, I am a tax payer, I have raised my consent in the letters that I have written saying these matters have been settled, paid there is no need to keep these matters on foot. But it is up to the Attorney General and the Solicitor General to deal with the matter appropriately.

Q: I would appreciate if you could provide these letters that you wrote, copies of those letters?

A: I will.

Q: My next question, in that Deed of Release has been signed, you also signed as witness for both the plaintiff, the principal plaintiff and the Solicitor General on Page 2, Simon Mali?

A: There is a ---

Q: There is a stamp there?

A: Yes, I signed as a witness to Mr Gelu's signature.

Q: Yes, I am aware you are a plaintiff as well. Is it legal for you to sign as Commissioner of Oath in a matter where you are also a plaintiff as Commissioner of Oath?

A: Unless you refer me to a provision that says I cannot but the proxy has signed the Deed and I have witnessed the signature?

Q: That is Commissioner of Oaths?

A: Yes.

Q: Can you go into the disbursement of proceeds. You have mentioned that already but I want to know when did you basically withdraw the proceeds and how was it moved to Uma village and distributed to the plaintiffs?

A: I just said that is a matter between me and us, my Firm and the plaintiffs. We have received the proceeds, we have kept our share for our bills and we have given them their monies and that does not – the manner of disbursement does not make this claim fraud or bogus. We have got the money, we have settled the claim, we worked hard, we have got our share, we have billed, we have been acting for this matter for 17 years. We have given their money, they are unhappy, then they will complain to us, they will complain to the police or proper authorities or the Law Society.

[11:45 pm] Q: Can you explain how you distributed it?

A: I have told you we have given them their funds, we got ours and we have given them theirs.

Q: As you have given to---

THE CHAIRMAN: Part of the Terms of Reference, Mr Mirupasi, are fact that we have to look at the conduct of lawyers involved in various claims and that is a very broad picture and it can be taken as far as necessary. He has the authority to ask you the question there, but the essential thing is, as you pointed out, the payments to your clients and that sort of thing. But in the simple distribution of funds to clients in the claim, how do you effect it, that is what is being asked. How did you effect it? We went to the village and took cash and we got receipt for them to honour our trust account, whatever, that sort of thing.

A: Commissioner, what I have done is, as I have said earlier is that in all these raid matters, they had the spokesmen and the people that they appointed who we dealt with during the course of the pleadings and in keeping them up to date with what was happening with the case, and after receiving payments we used the same medium, same process and after getting our monies we give the monies to this man or the spokespeople and then they---

Q: No, I said that, but that simply the question is as a lawyer, you received the monies into your trust account, you have to account for that, your trust account has to show how it is done and that is what the question is, how was that done?

A: Yes, we have received the monies, we have cleared them. We got ours after billing them even though the working progress is exceeding the settlement money because of all the years that we have spent but we had reduced them and we kept our share and we have given them theirs.

Q: All right, how did you give it to them? Did you write a cheque on your trust account for the balance that was due to them after the account, did you give them a bill of cost, show them the bill of cost, show them what the deductions are as per the ordinary dealings under Law Society provisions?

A: As I said Commissioner, that if the claimants are unhappy, then they will--/

Q: No, we are simply asking, not whether they are unhappy or not, we are simply saying, did you

account for the funds to your plaintiffs in accordance with the ordinary practice of a lawyer in upgrading a trust account?

A: Commissioner, I keep saying that we did bills on the matters, we kept ours and we gave them

theirs. Except that Commissioner if the claimants are unhappy---

[11.48 am] Q: How did you actually give them the money?

A: In the manner that they want us to give, whether they want us to give them cheque or cash, we follow their instructions.

Q: And it is accounted for in your trust account?

A: We have got records that – as I said these are matters between us and our clients

Q: Show us the actual distribution from payment from the Department of Finance, the cheque drawn

and paid into your trust account and therefore afterwards accounted for yourself for costs, expense

and the payment out to plaintiffs. Can you do that?

A: I have given you copies of the cheques and all the other details, I do not have them with me--/

Q: Copies of the cheques to the clients

A: Copies of the cheques as well as copies of our bills. As I said your Honour that is a matter between us and our clients. If our clients are unhappy then ---

Q: We are simply talking about process Mr Mirupasi. I am asking you in fact if you can just show us the copies of the bills and accounting for them in the trust account. In other words just a copy of the trust account, disposition of those funds. Can you do that within a couple of days?

A: Yes, you have asked me the specific questions relating to which--- Q: Very well, we will do that and we will have a letter to you today. Any other matters? MR AINA: Chief Commissioner, I will write a letter to him to provide documentation in respect of the

other five matters. We will request for his bank statements and --- THE CHAIRMAN: Anything else?

MR AINA: No. THE CHAIRMAN: Very well, Mr Mirupasi, do you want to go back to this matter of

Luta? [11.52 am] A: Yes. I have given the history on the matter already. As I said they were all procedures

that were issued together with the others, this one a bit later than the other four. But the raid in this matter was conducted in 1992.

Q: The dates are not here.

A: Dates are 2nd and 18 July, 27 and 29 August at Murua Marili that is a place close to the station and we also settled this matter with the other four matters but following the Supreme court decision we had to re-negotiate again and re-settle it following offers and acceptance.

THE CHAIRMAN: The Supreme Court decision did not affect the default judgment?

A: No, that was on liability.

Q: Did not the issue of liability – so the State remained liable and you filed---

A: So we re-negotiated, filed and served the amended writ on 19 July 2002 and re-settled it following acceptance of offer from Mr Gelu, the Solicitor General and we settled it on 7 August 2002 for, as I have said K743,057.91. We have received those payments and passed them on minus our

fees. Mr Luta is Mr Tulapi's political opponent. They have been fighting each other in the elections. He was also an MP for a while. So that is where Mr Tulapi's interest comes in this matter and we have

been also pursuing this matter for the last 17 years. That is what I have to say on the matter unless you have some specific questions.

MR MIROU: Maybe Chief Commissioner, for purposes of record, we will also write to Mr Mirupasi requesting particulars in relation to disbursements from Trust Accounts as to how K743,000 was actually disbursed to the plaintiffs.

[11:56 am] THE CHAIRMAN: Very well we can ask him the same questions we have asked him. Let me get this clear. The information that we have is that a claim was filed, it was not defended, the Solicitor General Mr Gelu signed a deed of release in August 2002 or in 2002 but that was challenged by the acting Solicitor General after Mr Gelu's departure and it went to the Supreme Court and the Supreme Court on December 20 of 2000, it says the default judgment was set aside as well. Is that right?

A: No. There is no mention of a set aside of default judgement. The only Supreme Court

decision available is the Simon Mali Supreme Court decision.

Q: Pardon?

A: The only decision that is from our record is the Simon Mali Supreme Court decision.

Q: SCA 10, 11, 12, 13 and 14 of 2001?

A: SCA 10 of 2001.

Q: I think the question we are looking at is whether in fact the Supreme Court having obtained default judgement, having you settle the matter, suddenly the matter is back in the courts and there is a set aside on 20th of - default judgment and consent orders of 7 July 2000 were set aside. Is that the evidence we have?

MR AINA: Yes, that is correct.

THE CHAIRMAN: And what evidence we have of that? Where did that come from?

MR AINA: The Supreme Court made a decision and they set aside the consent orders and --/

THE CHAIRMAN: Yes, all right, what number is that, what number is that Supreme Court decision?

MR AINA: It is SCA 10 of 2001.

THE CHAIRMAN: What about 11, 12, 13 and 14?

MR AINA: There were appeals made but the appeal was not heard.

THE CHAIRMAN: Say it again.

MR AINA: But the appeals are still pending in court.

A: Commissioner, those appeals were filed but on agreement we said, the decision made in the Malk

matter because they are all the same, we will follow those --/

Q: Decides them all 0

A: Yes 0

Q: And the appeal is by your client A

A: Yes 0

Q: The decision in the Mali matter was the 5th? Where is the effect that ---

MR AINA: It was the effect that the decision to set aside the consent orders to stay. So they said

there is no reason for appeal and they set the decision to set aside, the consent orders is in place 0

A: Our appeal was refused and --/

THE CHAIRMAN: The appeal was to stay the orders of the National Court setting aside ---

A: The appeal was against the decision to say that there were no consent orders when we argued that

there were consent orders that we obtained in Hagen. The court held that there were no consent orders such as to be set aside, but the court also made observation that the pleadings needed to be amended so we filed amended writs in all the matters and the base on which we then pursued the

settlement with the Solicitor General's office. That was what I said earlier. That Supreme & court proceedings did not set aside the default judgements nor did it dismiss the proceedings. The proceedings were and have always have been on foot.

[12:00 pm] Q: So you are able to go back to these to Solicitor General and renegotiate it? A: Yes, absolutely. Q: Is that what the other evidence is, to support the evidence? Alright, if there is any further

questions then we will come back to you about that but any other questions on this? MR AINA: Just one final question. Where were these National Court matters registered first registered in 1994? A:

Waigani. I have given you copies of the writs which says National Court of Justice at Waigani.

You are getting confused with the proceedings heard up in Hagen. They were simply transferred for the

endorsement of those Orders which were subsequently set aside but they have always been

atWaigani. THE CHAIRMAN: Alright. Very well, we will stand adjourned.

WITNESS WITHDREW

LUNCHEON ADJOURNMENT

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TRANSCRIPT OF PROCEEDINGS Commission of Inquiry

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COMMISSION OF INQUIRY

INTO

THE DEPARTMENT OF FINANCE 20

Mr Maurice Sheehan Chairman & Chief Commissioner

AT TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI,

THURSDAY 30 JULY 2009 AT 10:25 AM

(Continued from Thursday 16 July 2009)

THE CHAIRMAN: Yes.

MR MIROU: Yes, good morning, Chief Commissioner. Presently, the matter for hearing this morning is the claim in respect of Manoburn Earthmoving Company Limited. We have present this morning Mr Mirupasi of Mirupasi Lawyers. He is counsel in charge of these proceedings, as well present at the hearing room is his client Mr Titipu who is the principal of Manoburn. We also have Mt

Kopave who is with the Department of Works and has some knowledge and understanding of this project. Chief Commissioner, we would like to thank Mr Mirupasi for making time available and it is to be noted on record that Mr Mirupasi has been of great assistance to the Commission. He has provided an arch-lever folder which summarises the events in respect of these proceedings since this

firm took over in May of 2002 until the present time. We note also from the records that was provided, the documents provided by Mr Mirupasi, there is an appeal to the Supreme Court and we understand the matter has been expedited by way of a hearing and this is pending a decision. This is

in respect to the decision of Mr Justice Kanadakasi for endorsement of the deed of release which is the subject of this claim and Mr Mirupasi is present this morning. The Commission itself will note that we do not wish to interfere in what the Supreme Court will decide. 22

THE CHAIRMAN: The deed of release in respect of the payment of monies under this claim is before the Supreme Court on which Mr Mirupasi is acting. Very well

MR MIROU: Yes. The deed of release was signed sometime in 2002 in the amount of K8.6 million and I understand about K5 million has been paid and this appeal, the current appeal, which has been

lodged by the State it is against the enforcement of that balance. Mr Mirupasi would like to say something on this matter

THE CHAIRMAN: Mr Mirupasi?

[10:23 am] MR MIRUPASI: Chief Commissioner, I am myself with Mr Pokia. He is the lawyer who has been partly or mostly handling this matter from the beginning till now and we have got our

client

principal who is sitting with us too. We have given the Commission the folder that contains all of

what we believe to be relevant to the Commission from the plaintiff's point of view. I believe the State lawyers would have done the same. We, as lawyers, we are bound by the Rules of the Court, the professional conduct rules and to this extent there is a Supreme Court decision pending and I believe from my enquiries and I am told that this decision could be forthcoming any time. I want to ask the Commission that even though our client is eager to say his part, it would not be right – we have cooperated, we have given the documents that we need to be given and the other side have done the same – we think it would be best the Commission goes through these documents and make this matter – possibly your last matter for your Inquiry – and give the Court time to deliver the decision. We want to give some more evidence, our client wants to say his bit but in fairness to the Supreme Court we should give some more time. I mean it should give you time to do other 10 inquiries and make this the last matter for the Inquiry.

THE CHAIRMAN: Very well. I agree with that Mr Mirupasi, yes. Under the circumstances since the matter is about to be – when do you say it is likely – a decision is likely to be delivered at any time this month or next month? MR MIRUPASI: Yes. The Bench, I might add was Judge Hartshorn, Judge Lay and Judge Yagi and from our experience we think we will get a decision soon.

THE CHAIRMAN: Very well. I think we will adjourn on that then. MR MIROU: We would like to make a specific request to counsel with respect to – he has provided a document which relates to the costs aspects, the payments that were made to Mr Mirupasi, if we can get an undertaking for Mr Mirupasi to provide the bill of costs with respect to that?

THE CHAIRMAN: That is an aspect that probably would not, might not impinge on the decision on the matter. Yes, would that be probable? MR MIRUPASI: I mean that also follows from the initial proceedings which was dismissed with costs. But I have given a copy of certificate of taxation. Is it the application of taxation you want or?

THE CHAIRMAN: No, I think – what is it we want? MR MIROU: The bill of costs. 30 THE CHAIRMAN: Costs of yes, what they are, what they were for? MR MIROU: Yes. THE CHAIRMAN: Costs of acting in this process for “X” years or whatever it is.

MR MIRUPASI: That should be the taxable bill of costs, yes. THE CHAIRMAN: Yes, thanks. MR

MIRUPASI: We will do a copy of that and give it to you. THE CHAIRMAN: Alright. MR MIROU: Thank you. THE CHAIRMAN: Thank you Mr Mirupasi. That is fine and I thank you for turning up. Yes, if we are

not to inquire into it, I will have to delay Mr Titipu's wish to have something to say too until it is over

but if after that he wishes to speak or if we then need to inquire into, we will come back to you. MR MIRUPASI: And if the decision is delivered quickly we will inform Togi. THE CHAIRMAN: Yes, that will be fine. Thanks very much. MR MIROU: If Mr Mirupasi and his client can be excused? THE

CHAIRMAN: Yes, thank you. [10:25 am] MR MIROU: Thank you. Also in this, we have Mr Kopave who was I understand short

served. He only received the letter this morning with documents in relation to – so if I may request on his behalf to have his matter adjourned and I can talk to him and discuss the matter. 20

THE CHAIRMAN: Mr Kopave, you are with the ministry in which Department A

MR KOPAVE: Commissioner, I am with Department of Works.

THE CHAIRMAN: And you are?

MR KOPAVE: FAS – Acting FAS Operations. 30 THE CHAIRMAN: You are familiar with this whole claim are you?

MR KOPAVE: Yes, I was the FAD serving when we ran the contract.

THE CHAIRMAN: Would it be possible then for you to rather than publicly hear it or take evidence from you, it would be useful if you could supply your own history of the matter or what you wish to say about the matter? I mean we are particularly interested to know what the contracts

where, what contracts where and what the title of the contacts where and what they provided for?

MR KOPAVE. Yes. 10

THE CHAIRMAN: For example, I understand the contracts provide for – they are all Minor Works contracts which established for a certain amount of money and the process of that the Commission will be looking is to see how it escalated into higher things and that. Alright, if you could perhaps supply or discuss with Mr Mirou and perhaps give us something in writing about it within a week perhaps?

MR KOPAVE: Yes. MR MIROU: For the record we thank Mr Kopave for attending this morning on short notice. THE CHAIRMAN: Yes, thank you that is good, alright.

MR MIROU: Thank you, there are no other matters.

THE CHAIRMAN: Thank you, we stand adjourned.

AT 10:30 AM THE COMMISSION OF INQUIRY ADJOURNED INDEFINITELY.