

Lelang, In re Organic Law on Duties and Responsibilities of Leadership [2013] PGLT 1; N5212 (LT) (8 May 2013)



N5212 (LT) PAPUA NEW GUINEA THE LEADERSHIP TRIBUNAL APPOINTED PURSUANT TO SECTION 27 (2) AND (7) (e) OF THE ORGANIC LAW ON DUTIES AND RESPONSIBILITIES OF LEADERSHIP AND: IN THE MATTER OF THE HONOURABLE JOSEPH DENNIS LELANG MP ("the Leader"), MEMBER FOR KANDRIAN GLOUCESTER WEST NEW BRITAIN PROVINCIAL ASSEMBLY.

REFERENCE NUMBER LT.N0.1 OF 2013

JUSTICE SALATIEL LENALIA

Chairman

HIS WORSHIP MR. IGNATIUS KUREI

Senior Magistrate – Member

HER WORSHIP MS. ROSSIE JOHNSON

Senior Magistrate – Member

Waigani: 25th & 26th March, 4th, 5th 23rd April & 8th May.

CONSTITUTIONAL LAW – Leadership Code – Misconduct in office – Failure to submit annual statements to the Ombudsman Commission – Admitted allegations – The Leader admitted liability on all four (4) allegations. Consideration as to whether the Leader should be recommended either for dismissal under s.27 (5) (a) or should he be considered for an alternative penalty pursuant to Section 28(1A) of the Constitution (Leadership Code). LEADERSHIP TRIBUNAL – Misconduct in office – Failure to submit annual statements for two periods – No serious culpability – "Public Policy and public good" – Alternative penalties – Relevant considerations. LEADERSHIP TRIBUNAL – Misconduct in office – Failure to submit annual statements for two periods though breaches the Leadership Code, did not constitute serious culpability – Appropriate penalty – Imposition of maximum fines appropriate.

Cases cited:

In the matter of Reference by the Public Prosecutor and in the matter of Gerard Sigulogo [\[1988-89\] PNGLR 384](#)

Ref: John Mua Nilkare [\[1998\] PNGLR 472](#)

Ref. Hon. Dr. Puka Temu MP (2006) [N3099](#)

Re. Hon. Peter Ipatas Member of Parliament and Governor of Enga Province (2006) [N3078](#)

In the Matter of Melchior Pep Member of Parliament (2007) [N3134](#)

Peter Peipul-v-Hon. Justice Sheehan, Orim Karapo & Iova Geita & Ors SCM 2 of 2002

Application by Gabriel Dusava (27.10.98) SC 581

Reference Grand Chief Sir Michael Somare MP (21.3.2011) [N4224](#).

LT. No.2 of 2012 Ref Hon. Mark Maipakai MP, Member for Kikori Open Electorate(N0.4) (15.5.2012)

Counsel:

Mr. P. Kaluwin, the Public Prosecutor

Mr. P. Korowi, for the Leader

8th May, 2013

1. **JUSTICE LENALIA-CHAIRMAN:** The hearing of the allegations against the Hon. Joseph Dennis Leland commenced on 25th March 2013. It was adjourned on the request of both counsels to 4th April. On this date, the Public Prosecutor formally represented the Reference to two members of the Tribunal. This was due to absence of Ms. Rosie Johnson who was absent for being ill and since there was no objection raised by Mr. Korowi, the two members accepted presentation of the Reference by Mr. Kaluwin of counsel assisting the Tribunal. The matter was adjourned to Friday 5th for the allegations to be formally put to the Leader. .

2. The Reference contains four allegations. Two of the allegations charges 1 and 3 are laid pursuant to **s.4(6)** of the ***Organic Law of the Duties and Responsibilities of Leadership*** as they relate to the Leader's failure to submit his annual statements for the two periods namely 24th January 2007 and 23rd January 2008 and 23rd January 2008 to 24th January 2009.

3. The other two charges laid pursuant to s.27(5)(b) of the Constitution relate to the Leader's failure to comply with directions from the Ombudsman Commission. All allegations relate to failure to submit annual statements on time and they date back to periods between 24th January 2007 to 24th January 2008 and 24th January 2008 and 24th January 2009.

3. I set out the allegations hereunder.

"ANNUAL STATEMENTS.

1. FAILURE TO SUBMIT ON TIME ANNUAL STATEMENTS TO THE OMBUDSMAN COMMISSION FOR THE PERIOD 24TH JANUARY 2007 TO 23RD JANUARY 2008.

ALLEGATION.1.THAT *from 23rd January 2008 to 15th January 2009 the Leader failed without reasonable excuse to give to the Ombudsman Commission his annual statement for the periods 24th January 2007 to 24th January 2008 in accordance with **Section 4(1)** of the **Organic Law on the Duties and Responsibilities of Leadership**.*

THEREBY *being guilty of misconduct in office under **Section 4(6)(a)** of the **Organic Law on the Duties and Responsibilities of Leadership**.*"

ADMITTED.

"ALLEGATION .2: THAT from 24th January 2008 to 15th January 2009, the Leader failed to carry out the obligations imposed by **Section 27(1)(b) and (c) of the Constitution.**

IN THAT during the period of leadership, the leader failed to promptly submit annual statements to the Ombudsman Commission for the periods from 24th January 2007 to 24th January 2008.

THEREBY being guilty of misconduct in office under **Section 27(5)(b) of the Constitution."**

ADMITTED.

"11.FAILURE TO SUBMIT ON TIME ANNUAL STATEMENTS TO THE OMBUDSMAN COMMISSION FOR THE PERIOD 24TH JANUARY 2007 TOP 23RD JANUARY 2008.

ALLEGATION .3:THAT from 24th January 2008 to 23rd December 2009, the Leader failed without reasonable excuse to give to the Ombudsman Commission his annual statement on the Duties and Responsibilities of Leadership;

THEREBY being guilty of misconduct in office under **Section 4(6)(a) of the Organic Law on Duties and Responsibilities of Leadership."**

ADMITTED.

ALLEGATION .4.THAT from 24th January 2008 23rd December 2009 the Leader failed to carry out the obligations imposed by **Section 27(5)(1)(b) and (c) of the Constitution.**

IN THAT during the period of leadership, the Leader failed to promptly submit annual statements to the Ombudsman Commission for the periods 24th January 2007 to 24th January 2008.

THEREBY being guilty of misconduct in office under **Section 27(5)(b) of the Constitution."**

ADMITTED.

4. After each allegation was read and explained to the Leader, he was asked if the facts relating to each allegation were correct and true. The Leader admitted liability through his lawyer to the four allegations.

Brief Facts & Evidence.

5. The brief facts and history of the allegations made against the Leader are contained in the Statement of Reasons filed together with the Reference and the Affidavit filed by Mr. Richard Pagen dated 4th April that was last month. Mr. Pagen is employed by the Office of the Ombudsman Commission as Lawyer and Team Leader of Team 2 attached to the Leadership Division. His affidavit gives a full account of how Hon. Joseph Dennis Lelang defaulted by not submitting the annual statements for the periods from 24th January 2007 to 24th January 2008 and from 24th January 2008 to 24th January 2009.

6. Once a person becomes a Leader, **Section 4(1)** of the **OLDRL** requires that within three months after becoming a leader, once in every 12 months he or she is required to submit to the Ombudsman Commission annual statements separately for himself and his spouse and any of their children under voting age.

7. Prior to the Leader being elected into the Parliament in July 2012 general election as a Member of Parliament for Kandrian Gloucester Open Electorate, West New Britain Province, he was the Acting Secretary for the Department of National Planning and Monitoring from 24th January 2008 until 11th March that same year when the Acting appointment was revoked. On that same date of his revocation, he was appointed to the substantive position as Secretary for that Department for a period of four years. The appointment was made with retrospective effect from 24th January 2008. All the four charges do relate to the Leader's former office he held as Secretary of the Department of National Planning and Monitoring. None of those cases relate to the current Office he now holds as a Member of Parliament for Kandrian Gloucester Open Electorate, West New Britain Province.

Leader's Counsel Submission.

8. Mr. Korowi of counsel for the Leader spoke to his fourteen pages written submission. He raised various issue on the penalty regime and submitted that his client's case does not involve serious culpability. He submitted that the Tribunal should consider the Leader's admission of the four charges alleged against him and he had shown remorse first on his letter to the Ombudsman Commission on 13th January 2008 (see Documents 6 and 13 in Mr. Richard Pagen's Affidavit sworn on 4th April 3013. Counsel asked the Tribunal to consider the Leader has shown early remorse as well as he has repeated the same remorse in the form of apologies to this Tribunal. (See Leader's Affidavit dated 16th instant month).

9. Counsel referred to the misconduct under consideration saying the four charges relate to the "appointed" office he held at that time as the Secretary of the Department of National Planning and Monitoring. And that the offences do not relate to the Leader's current "elective office."

10. Mr. Korowi nevertheless raised an issue with the two additional charges laid pursuant to **s.27(5)(b)** of the **Constitution**. Those charges include Allegations 2 and 4. He argued that, this is none other than duplicity of the same allegations charged in Allegations 1 and 3 in the Reference.

11. Counsel extensively referred to the cases of **Re. Hon. Peter Ipatas Member of Parliament and Governor of Enga Province** (2006) [N3078](#) and **Re. Ho. Dr. Puka Temu, Member for Abau Open Electorate** (2006) [N3099](#). Those cases relate to late submission of annual statements where the two Tribunals discussed the issues of "*serious culpability*" and issues of public and private life. In all counsel submitted that, the Tribunal on the instant inquiry should consider leniency on the penalty.

Public Prosecutor's Submission.

12. The Public Prosecutor, Mr. Kaluwin, of counsel assisting the Tribunal replied by submitting that on the issue of duplicity and double jeopardy, the Public Prosecutor has a duty to uphold the **Constitution** and the Organic Law on the Duties and Responsibilities of Leadership. I gather from that part of counsel submission that counsel is submitting that, the fact that, the Reference to the Public Prosecutor

and the Statement of Reasons by the Ombudsman Commission are in fact a term of Reference from which the Public Prosecutor can work from and lay charges or allegations against a Leader depending on what stems from the term of reference.

13. Mr. Kaluwin is submitting that this is what occurred on the instant reference and that, he had got the authority to charge additional charges according to what the evidence of each reference reveals to him.

14. Counsel submitted further that, the Leader on these allegations did not lodge his annual statements for 2 periods within the required time periods prescribed by **s.4 of the OLDRL**. Obviously the Leader is guilty of that but as well as that, **Section 27(5)** of the Constitution says that where a Leader fails to comply with a direction under **Subsection (4)** or otherwise fails to carry out any obligations imposed by **Subsections (1), (2) & (3)** is guilty of the offence of misconduct in office.

15. Counsel submitted that previous case authorities support the above proposition and the Tribunal should consider the totality principle of the facts and evidence of the four allegations and should consider the penalties provision in Section 2 of the Leadership Code (Alternative Penalties) Act and impose appropriate penalties.

Applicable Law.

16. Under the Constitution, Leaders are required to conduct themselves both in public, official and or in private life in the manner defined **by Section 27** of the **Constitution**. I quote **Subsections (1) – (3)** in the following terms:

"27. Responsibilities of office.

(1) A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not— (a) to place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or (b) to demean his office or position; or (c) to allow his public or official integrity, or his personal integrity, to be called into question; or (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea. (2) In particular, a person to whom this Division applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Subsection (1). (3) It is the further duty of a person to whom this Division applies— (a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and (b) if necessary, to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.

17. On the duties and responsibilities of leadership, it is the requirement of **s.4(1)** of the **Organic Law on Duties and Responsibilities of Leadership** to annually submit statements of income to the Ombudsman Commission. That Section reads:

"Statement of income, etc.

(1) A person to whom this Law applies shall— (a) within three months after Independence Day; or (b) within three months after becoming such a person, as the case may be, and at least once in every period of 12 months while he remains such a person, give to the Ombudsman Commission a statement to the best of his knowledge setting out, in respect separately of himself and his spouse and any of his children under voting age— (a) the total assets including money, personal property and real property in the possession or under the control of each of them; and (b) the total income received by each of them during the period to which the statement relates and the source of each of those incomes; and (c) the business connexions of each of them (including any business connexions with unincorporated profit-seeking organizations); and (d) the directorships or other offices in a corporation or an unincorporated profit-seeking organization held by each of them; and (e) all business transactions entered into by each of them (including transactions with unincorporated profit-seeking organizations) during the period to which the statement relates; and (f) all gifts received by them (other than gifts received in the normal course of events from close relatives) during the period to which the statement relates and the value of those gifts; and (g) the assets acquired by each of them during the period to which the statement relates; and (h) the liabilities incurred or discharged by each of them during the period to which the statement relates, and the amount of each such liability."

18. The Public Prosecutor also invoked two allegations under **Section 27(5)(b)** of the **Constitution**. The lawyer for the Leader did not object to this course as he indicated briefly he would make submission when they come to address the Tribunal of penalty. We quote Subsections 4 & 5 in the following terms:

"(4) The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (further provisions) may, subject to this Division and to any Organic Law made for the purposes of this Division, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.

*(5) A person to whom this Division applies who— (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or (b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),
is guilty of misconduct in office.*

19. On this case, let me comment on a number of factors. The first of those factors is on the nature of the allegations admitted by the Leader. When the Leader failed to submit his annual statements to the Ombudsman Commission for those two periods for which he has been made accountable, I am of the view that he did not demean various officers he held since his appointed to the position of Acting Secretary for three or so then he was confirmed Secretary for the Department of National Planning and Monitoring. I am further of the opinion that the Leader did not endanger, diminish or demean respect and confidence on him or in the government of Papua New Guinea.

20. Following the Leader's admission of all the four allegations, the Tribunal is obligated to consider and impose an appropriate penalty or penalties pursuant to Section 27(5) of the *OLDRL*. This provision

says that, if a Tribunal finds the Leader guilty of misconduct in office, it must recommend to the appropriate authority that he be dismissed from office or position. It states:

"(5) If the tribunal finds that a person to whom this Law applies is guilty of misconduct in office, it shall recommend to the appropriate authority that—

(a) he be dismissed from office or position; or (b) as permitted by Section 28(1A) (further provisions relating to the Leadership Code) of the Constitution and in the circumstances set out in that subsection —some other penalty provided for by an Act of the Parliament be imposed.

21. Other relevant penalty provisions are found in **Sections 28(1)(a) – (h)** and **28(1A)(1) – (5)** of the **Constitution**. The earlier proviso states:

"28. Further provisions.

(1) For the purposes of this Division, an Organic Law— (a) may give to the Ombudsman Commission or some other authority any powers that are necessary or convenient for attaining the objects of this Division and of the Organic Law; and (b) shall make provision for the disclosure to the Ombudsman Commission or some other authority of the personal and business incomes and financial affairs of persons to whom this Division applies, and of their families and associates, and in particular of interests in contracts with governmental bodies and of directorships and similar offices held by them (including powers to nominate directors, trustees or agents, or similar officers); and (c) shall empower the Ombudsman Commission or some other authority to require a person to whom this Division applies to dispose of, or place under the control of the public trustee, any assets or income where this seems to be desirable for attaining the objects of this Division; and

(d) may prescribe specific acts that constitute misconduct in office; and

(e) may create offences (including offences by persons to whom this Division applies and offences by other persons); and (f) shall provide for the investigation by the Ombudsman Commission or some other authority of cases of alleged or suspected misconduct in office, and confer on the Commission or authority any powers that are necessary or convenient for that purpose; and (g) shall establish independent tribunals that— (i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and

(ii) are required subject to Subsection (1A), to recommend to the appropriate authority that a person found guilty of misconduct in office be dismissed from office or position; and

(h) may make any other provision that is necessary or convenient for attaining the objects of this Division."

22. However, **Section 28(1A)** of the **Constitution** provides that an Organic Law may provide that where a Tribunal finds that there was no serious culpability on the part of a Leader who either pleads guilty or is found guilty of misconduct in office as in the current case were the Leader admitted liability to all four allegations alleged against him, the public policy or public good do not require dismissal, it may recommend to the appropriate authority that some other penalty provided for by law may be imposed. The above Section states:

"(1A) An Organic Law may provide that where the independent tribunal referred to in Subsection (1)(g) finds that—

(a) there was no serious culpability on the part of a person found guilty of misconduct in office; and (b) public policy and the public good do not require dismissal, it may recommend to the appropriate authority that some other penalty provided for by law be imposed. (2) Where an independent tribunal referred to in Subsection (1)(g) makes a recommendation to the appropriate authority in accordance with that paragraph or with Subsection (1A), the appropriate authority shall act in accordance with the recommendation."

23. In this case counsel assisting the Tribunal and counsel for the Leader agree that, there is no serious culpability on the part of the Leader. They also submitted that, the public good and public policy do not require that he be dismissed from his leadership position.

24. On the issue of culpability, the Tribunal is of the view that there is no serious culpability on the part of the Leader when he failed to submit his annual statements for the period stated in the charges. There are no other allegations apart from the four the Leader pleaded guilty to.

25. On considering rational underlying the requirement to file annual statements, serious culpability may be found in instances where, there has been total failure on the part of a Leader to file the annual statements or where there is found to be false or misleading information in the annual statements. This may border on dishonest intent on the part of the person concerned: **Hon. Dr. Puka Temu CMG MP** (24.8.2006) [N3099](#).

26. On the issue of public policy and public good, the Leader is a Member for the Kandrian Cape Gloucester Open Electorate. He is the parliamentary elected representative of his people. The people of Kandrian have given him the mandate to represent their interests in the National Parliament and by virtue of his election to the National Parliament he is also a Member of the West New Britain Provincial Assembly.

27. I am of the view that all Allegations which the Leader pleaded guilty to involved late filing of two annual statements for the two periods stated in the statement of charges which is in breach of **s.4(6)** of the **OLDRL**. I find these were not cases involving total failure or were not cases of false or misleading submissions of annual statements which may border on dishonest intent which would amount to serious culpability.

28. The Leader in the instant charges was charged with 2 initial charges of similar nature namely late submission of annual statements pursuant to **s.4(6)(a)** of the **OLDRL**. The additional charges were laid pursuant to **s.27(5)(b)** of the **Constitution**. From reading Allegation 2 and 4 it may seem like they are basically a repetition of Allegations 1 and 3.

29. However, having read, **Section 27(4)(5)(b)** of the **Constitution** and **Section 4(6)** of the **OLDRL**, they reflect on two separate breaches. Other members of this Tribunal share the same view that, since the Leader pleaded guilty to all charges, this is the reflection of the argument raised in previous case on the issue of duplicity and the Tribunal of the view that the Leader should be punished accordingly.

30. It has been said that, this would amount to double jeopardy and most unfair on the part of the Leader: **Hon. Dr. Puka Temo CMG MP** (2006) [N3099](#), **Grand Chief Sir Michael Somare** Lt 1 of 2010 (15.3.2011) [N4224](#), **Hon. Mark Maipakai MP, Member for Kikori Open Electorate** (N0.4) (15.5.2012) LT. No. 2 Of 2012 or the case Hon. **Fidelis Semoso MP Bougainville Regional Member** (2012) LT. No.1 of 2012. I have a strong view that, **s.27(5)(b)(c)** of the Constitution says, when a Leader fails to comply with a direction of the Ombudsman Commission, he or she is guilty of the offence of failing to complying with such direction, it is a separate offence of noncompliance with directions from the Office of the Chief Ombudsman . Under **Subsection (4)** of the above **Section** and pursuant to **s.28** of the Constitution, the Ombudsman Commission is empowered to give directions either generally or in a particular case to give effect to the responsibilities of his or her office.

31. Having considered all the case law authorities cited to us by both the lawyer for the Leader and the Public Prosecutor of counsel assisting this Tribunal on the issue of duplicity, I share the same view with the Public Prosecutor on the issue for two reasons. First, when allegations of misconduct in office are referred to the Public Prosecutor by the Ombudsman Commission pursuant to **s.27** of the **Constitution**, it is in my view it is a term of reference from which the Public Prosecutor works from and he frames whatever charges that may become available to him from the Statement of Reasons. I have the view that it is his prerogative to decide what extra charges or allegations can be added apart from what the Chief Ombudsman has included in the Statement of Reasons. Such allegation ought to be related to those referred by the Ombudsman Commission.

32. Secondly, I come to such conclusion because **s.4(6)** of the **OLDRL** says that if a leader fails without reasonable excuse to submit his or her statement of income within three months is guilty of misconduct in office. Failure to comply with any directions from the Ombudsman Commission, creates yet another offence pursuant to **s.27(5)(b)** of the **Constitution**. This Subsection states:

(b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),

is guilty of misconduct in office.

33. In **LT. No.2 of 2012 Ref Hon. Mark Maipakai MP, Member for Kikori Open Electorate**(N0.4) (15.5.2012) N 529 LT, the Tribunal consisting of Mr. Ignatius Kurei, Ms. Nerrie Eliakim and myself as Chairman, I expressed the following sentiments on the issue of duplicity:

*"In my view this creates duplicity and ambiguity. Obviously, the Leader cannot be charged twice for the same thing. This would be double jeopardy. This tribunal is obliged to comply with strict rules of evidence and the principle of natural justice. On authority of the recent case of **Grand Chief Sir Michael Somare** (21.3.2011) [N4224](#) and the earlier one of **Hon. Dr. Puka Temu** (24.8.06) [N3099](#) and on the issue of duplicity alone, I dismiss these two Allegations."*

(But, see also the judgment on the case of **Fidelis Semoso MP Bougainville Regional Member** (2012) LT. No.1 of 2012 at page 30 paragraph 109).

34. I am of the opinion that, the rulings in the above cases do not bind the current Tribunal on the issue

of "double jeopardy" as each Tribunal is faced with various issues during the inquiry. After careful consideration of **s.27(5)(b)** of the **Constitution** and **s.4(6)** of the **OLDRL** it is my view that though the wording of Allegations 2 and 4 may be somewhat similar to Allegations 1 and 3, it does not involve duplicity or double jeopardy and the issue of double punishment does not arise here. The effect of this reasoning is that, **s.27(5)(b)** of the Constitution must be given its fair, liberal and literal meaning. I am strongly of the view that, those two provisions cater for two separate offences.

35. I am further of the view that, **s.27(5)(b)** of the **Constitution** is a separate provision dealing with failure to comply with any directions from the Ombudsman Commission. Still on the issue of duplicity, I agree with Mr. Kaluwin that s.27(5)(b) of the Constitution is "an all-inclusive provision for the finding of guilty of misconduct in office": **Peter Ipu Peipul-v-Hon. Justice Sheehan, Mr. Orim Karapo & Iova Geita** (24.5.2002) SC 706.

36. On my part, I would take the Leader's guilty pleas to Allegations 2 and 4 to be acknowledgement of his failure to adhere to directions by the Ombudsman Commission. He in fact acted quickly and replied sometime later. In the instant inquiry, the Leader has pleaded guilty to two additional charges which if he pleaded not guilty, would have gone into trial on the grounds of duplicity.

37. I agree with Mr. Korowi of counsel for the Leader that, this Tribunal should apply the "*totality principle*" on deciding the penalties to be imposed on the Leader. As well that the Tribunal must consider the Leader's plea to the two additional charges as mitigating factors and if the Leader entered a not guilty plea, could have run into a trial.

38. I also agree with both counsels that the four charges do not involve "serious culpability". On the instant inquiry, I am of the view that, the Tribunal should consider principles of the "*reduction in charges principle*" and it should find that there is "*no serious culpability*" and apply the principles of "*totality of breach principle*" and the "*totality of circumstances principle*": **Peter Peipul-v-Hon. Justice Sheehan & Others** (2002) SC 706, **Re: John Nilkare** (2.7.1997) SC 536, **Reference by the Public Prosecutor Re: Peter Ipatas** MP, Governor of Enga Province (2006) [N3078](#), In the Matter of **Melchior Pep Member of Parliament** (2007) [N3134](#), **Grand Chief Sir Michael Somare** Lt 1 of 2010 (15.3.2011) [N4224](#).

39. I have read the character references in the affidavits by Hon. Belden Namah MP the Opposition Leader and that of Superintendent Andy Bawa a police Officer with the Papua New Guinea Constabulary. Both speak very highly of the Leader. In case of Hon. Belden Namah, he commended the Leader for having designed and architected the country's first long term development plan in 2009 and the PNG Development Strategic Plan 2010 – 2030.

40. In case of Superintendent Andy Bawa, he says he has known the Leader for some time and he knows that Hon. Joseph Lelang MP is an honest and truthful and reliable Leader.

41. On this Reference evidence filed by the Leader himself and those who provided character references in the Leader's favour show that Hon. Joseph Dennis Lelang MP in his private and public life is highly regarded and respected by his peers, the community and the people of his Electorate who

voted him into the Parliament.

42. On the other side of the coin, with such personal and professional leadership background, it is unbecoming and inexcusable that the Leader failed to file his annual statements for those two periods. I note here that the offences to which the Leader pleaded guilty to do not relate to the current Office held by the Leader.

43. All Leaders covered by the **Leadership Code** and the **Organic Law on Duties and Responsibilities of Leadership** must live and lead by example. Leaders and parliamentarians are the country's lawmakers and they are expected to give priorities to their Constitutional obligations.

44. At least the Leader took notice of reminders given him to comply give his annual statements. The two failures to file annual statements were committed one after the other between 2007 and 2008 and the other one between 2008 and 2009. I am of the view that, the Leader would have learnt a lesson from the first warning given him by the Ombudsman Commission on the first period between 2007 and 2008.

45. Unlike in the case of *In The Matter of Hon. Dr. Puka Temo CMG MP* (2006) [N3099](#) where there were six allegation of misconduct in office all relating to the Leader's failure to submit his annual statements to the Ombudsman Commission, the instant case involves 4 allegations. In that case, the Leader denied the final two allegations. He admitted liability on four charges. Discussing the issue of breach of **s.27(5)(b)** of the **Constitution**, the Tribunal in the above case said at page 8 (par.26):

"In this case, the filings of annual statements are not done in the public domain and in association with others. The Ombudsman Commission privately communicates with a Leader and the Leader also responds also in private. The Ombudsman Commission and its staff, owing to the nature of their functions, cannot be regarded as members of the public for this purpose. Formal investigations, for that matter, by the Ombudsman Commission are also kept in total confidence. Thus the public does not and cannot know if a Leader has failed to file an annual statement."

46. Further on their discussion on the issue of a Leader's responsibilities pursuant to the **OLDRL** and the Leadership Code as a whole, the Tribunal in the above matter said at page 12 (see par 47):

"Leaders and parliamentarians, who are the country's lawmakers, are expected to be leading by example in upholding the laws of the country. It is therefore, a serious matter when a Leader breaches a law. A Leader's breach of a law could have a far reaching effect on the manner in which the rule of law is perceived by the people. In this case, the Leader has breached a specific provision of the Organic Law on the filing of the annual statements. Such a breach and any breach of the Constitution or Organic Law by a parliamentarian for that matter is a serious misconduct."

47. Looking at the penalty regime provided for breaches of the Leadership Code and OLDRL, it was said in Jim Kas's case that, the purpose of the Leadership Code is to protect the people from corrupt conduct and improper practices by Leaders and that s.27 of the Constitution casts or provides "a wide net to catch all kinds of conduct by leaders.": **Application Pursuant to Section 155(4) of the Constitution Ref: John Mua Nilkare** [\[1998\] PNGLR 472](#). On the instant case, what is the degree of

blameworthiness on the part of the Leader? This is the question that this Tribunal will answer.

48. The task of this Tribunal now is to determine appropriate penalty or penalties to be imposed and recommend to the appropriate authority. Before we do that, we must decide the issue of whether there was "*serious culpability*" on the part of the Leader or not and whether or not "*the public policy and public good*" require that the Leader should be dismissed.

49. I consider the course the Leader took in not complying with the law the first occasion, three months and the second occasion six months. The Tribunal's task is to decide on his degree of culpability on the part of the Leader and decide whether as a matter of national interest or public policy and public good such misconduct in office warrants dismissal or alternative penalty under **s.28(1)(g)(i)(ii)** or **(1A)(a)(b)** of the **Constitution**. These provisions state:

"(g) shall establish independent tribunals that—

(i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and

(ii) are required subject to Subsection (1A), to recommend to the appropriate authority that a person found guilty of misconduct in office be dismissed from office or position; and"...

50. The later part of the same Section provides for alternative penalties if the Tribunal find that there was no serious culpability involved. I have covered the issue of "serious culpability". I decide on the instant inquiry that there is no serious culpability involved. The later of the above provision states:

"(1A) An Organic Law may provide that where the independent tribunal referred to in Subsection (1)(g) finds that—(a) there was no serious culpability on the part of a person found guilty of misconduct in office; and(b) public policy and the public good do not require dismissal,it may recommend to the appropriate authority that some other penalty provided for by law be imposed."

51. The **Leadership Code (Alternative Penalty) Act** also provides for alternative penalties that may be impose on Leaders for breaches of the Leadership Code where there is no serious culpability.

Section 2 of the above **Act** states:

"2. Alternative penalties.

The penalties that may be recommended and imposed under and for the purposes of Section 28(1A) of the Constitution and Section 27(5)(b) of the Organic Law are that the person found guilty of misconduct in office—(a) be fined an amount fixed by the tribunal, not exceeding K1,000.00; or(b) be ordered by the appropriate authority to enter into his own recognizance in a reasonable amount, not exceeding K500.00, fixed by the tribunal that he will comply with Division III.2 (Leadership Code) of the Constitution and with the Organic Law during a period fixed by the tribunal, not exceeding 12 months from the date of the announcement, under Section 27(6) of the Organic Law, of the decision of the tribunal; or(c) be suspended, without pay, from office or position for a period not exceeding three months from the date of commencement of the suspension; or(d) be reprimanded,or if he is a public office-holder as that expression is defined in Section Sch.1.2(1) of the Constitution, that, as determined by the tribunal—(e) he be reduced in salary; or(f) if his conditions of employment are such as to allow of

demotion—he be demoted.

52. The Tribunal on this enquiry finds that, the Leader without reasonable excuse and explanation failed to furnish to the Ombudsman Commission his annual statements as they fell due for those two periods. At this stage, the Tribunal is obliged to consider and impose a penalty or penalties on the Leader. In his affidavit on the address of the penalty, the Leader gave reasons as to why he defaulted by the period stated on the allegations. There was not much delay.

53. Determination of any penalty begins with consideration of **s.27(5)** of the **Organic Law on Duties and Responsibilities of Leadership**. It provides that if the Leadership Tribunal finds a Leader guilty of misconduct in office, it can either recommend to the appropriate authority that the Leader be dismissed from the office he holds or recommend other penalty or penalties.

54. I also note the terms of **s.28(1A)** of the **Constitution** provides that an *Organic Law* may provide that where a Tribunal finds that there was no serious culpability on the part of a Leader who has been found guilty of misconduct in office and public good and public policy do not require dismissal, it may recommend to the appropriate authority that some other penalty provided for by law may be imposed.

Appropriate Penalty.

55. It is established law that when a Leadership Tribunal determines to impose an alternative penalty under the **Leadership Code (Alternative Penalties) Act** it must decide if there was serious culpability on the person either found guilty or as was in the current inquiry where the Leader pleaded guilty or admitted liability of misconduct in office to all four allegations. We are thus obliged to consider or determine whether the public policy and public good do not require dismissal: **Peter Peipul-v-Hon. Justice Sheehan, Orim Karapo & Iova Geita & Ors** SCM 2 of 2002 decision dated 24.5.2002.

56. The Supreme Court said the word "*culpability*" "*involves serious blame, an act involving wrongful intention or negligence, an act deserving censure.*": **John Nilkare-v-The Tribunal** (1997) SC 536. In this sense, the word culpability relates to the degree of blameworthiness placed on a Leader who fails to carry out the duties and responsibilities on the part of an offender, in this case the Leader. I consider the fact that the Leader alone was responsible.

57. Mr. Kaluwin further submitted on the issue of serious culpability saying when considering the penalty the Tribunal should consider misconduct in office in context of the overall circumstances of all the charges. He said, this Tribunal should start with the premise that when a Leader pleads guilty, even for allegations of failure to submit annual statements, a Leader ought to be dismissed for misconduct in office. In the **Application by Gabriel Dusava** (27.10.98) SC 581 the Supreme Court said, the purpose of the Leadership Code is directed toward "*removing a person who is considered after due inquiry, to be unworthy of continuing in office.*"

58. In fact as the Chairman of this Tribunal I am of the opinion that, deterrence must be considered in cases where leaders who hold high public positions to show disapproval of the type of conduct glaringly exhibited by non compliance with provisions of the **Leadership Code** and the **Organic Law: Jim Kas (27.9.??), Application by John Mua Nilkare** (15.4.97) SC536, **Michael Nali-v-Hon. Justice Batari, Nialin Kiteap & Thomas Vougusang** (10.3.2006) [N3015](#).

59. The proposition on the penalty regime is that, in cases where Leaders are found guilty, the Tribunal *"starts with the premise that it shall recommend dismissal from office unless pursuant to s.28(1A), (a) and (b), it found that there was no serious culpability and that public policy and public good do not require dismissal."* (See, **Peter Peipul-v-Hon Justice Sheehan, Orim Karapo & Iova Geita & Ors** (supra).

60. I re-produce **s.28 (1A)** of the **Leadership Code** on the penalty regime because there are two options when the Tribunal is faced with considering what penalty it should impose on the Leader. It states:

"An Organic Law may provide that where the independent tribunal referred to in Subsection (1)(g) finds that— (a) there was no serious culpability on the part of a person found guilty of misconduct in office; and (b) public policy and the public good do not require dismissal, it may recommend to the appropriate authority that some other penalty provided for by law be imposed."

61. I consider the fact that, the offences pleaded guilty to by the Leader do not relate to his current office. They relate to his former Office when he was the Secretary for the Department of National Planning and Monitoring. Be that as it may, back then he was a Departmental Head and he was required to comply with directions by the Ombudsman Commission.

62. All Leaders cannot be seen to demean their offices or position they hold and they should not allow their public or official integrity to be called into question. (See Ch.3 of the of the Constitutional Planning Committee Report and on the penalty regime see cases of **In the Matter of Michael Pondros Member of Parliament** (1983) [N425](#), **Timothy Bonga-v-Justice Sheehan & Others** [1997] ONGLR 452, **Gabriel Dusava-v-Justice Doherty & Others** [1999] PNGLR 419 or **In the Matter of Peter Yama, Member of Parliament** (2004) [N2746](#).

63. Having considered the Leader's guilty plea to all four charges, and having considered counsels' submission on the penalty, I am of the view that the four cases do not involve serious culpability. I consider that maximum fines of K1,000.00 be imposed on all the four Charges. The Tribunal is unanimously of the view that, though the Leader pleaded guilty to all the four allegations, we consider that in his favour however, impositions of such penalties must carry the message that, failure to submit annual statement in time as provided for by the terms of the **OLDRL** is a serious allegations and where failure is couched with false or misleading filing of documents borders on serious culpability.

64. I am also of the view that, penalties imposed lower than the maximum fines would have the effect of diminishing consideration by the Constitutional Planning Committee about the serious nature of offences committed by Leaders who are representatives of their people or of the Government of the day. The maximum penalty for any offences under the Leadership Code is dismissal from the Public Office held by a Leader.

65. Having considered the Leader's guilty plea to all the charges and what I have referred to above, I consider imposition of the maximum fines of K1,000.00 for each count pursuant to **s.2(a)** of the **Leadership Code (Alternative Penalties) Act 1976**. The total amount recommend to be paid by the Leader is K4,000.00. The fines are recommended to be payable within 7 days.

66. In compliance with **Section 27(1A)(2) & (3)** of the **Constitution** the Tribunal's recommendation will be forwarded to the Head of State for appropriate action. The Leader on this case will stand suspended until all fines have been paid. Also in compliance with Section 27(6) of the *Organic Law on Duties and Responsibilities of Leadership*, the Tribunal will send a copy of the decision of such recommendation to the Speaker of Parliament for presentation to the Parliament and to the National Executive Council.

Applicable Law:

67. **MR. I. KUREI, SPM:** Indeed I have the benefit of perusing the Chairman's line of consideration and discussion of both statute and case laws with regard to the four admitted allegations. I fully agree with what is said and I need only to briefly say the following.

68. Papua New Guinea's Constitution is said to be a homegrown in the sense the Constitutional Planning Committee (C.P.C) had wide consultation including seeking views of majority of people from all walks of life before final report was tabled in the then House of Assembly.

69. The Final Report of the C.P.C Chapter 3 with regards to Leadership Requirements had gone at great lengths to put together views of people on what sort of leaders and their performance is required from them by the public.

70. The Leaders whether they hold an "appointed" or "elected" position is a secondary consideration. A leader is a leader, the primary role he has is to lead at high standard which is required of him as set out in the relevant laws. After all for an "elective" position the leader is mandated by his people through election process. Whereas "appointed" leader derives his mandates from the Constitution or relevant legislations.

71. In this case the Leader, in his former role failed to submit the annual statements on the required periods he not only breached Section 4 of OLDRL but also Section 27 (5) of the Constitution.

72. The Law is not silent on the issue of duplicity. It is plain clear when the Leader did not comply with Section 4 (1) (b) of OLDRL he also breached Section 27 (5) of the Constitution. *In LT. No.2 of 2012 Ref. Mark Maipakai M.P, Ref. Grand Chief Sir. Michael Somare M.P (21-03-11)* and other leadership cases in similar situation it was said to be duplicitous. However I remind myself those cases do not by law bind us in this case. The authority to rely on is the case of *Ref. John Mua Nilkare [1983] PNGLR 472.*

Appropriate Penalty.

73. The Leader has admitted all four allegations for not submitting annual statements within 3 months mandatory time limit as set in Section 4 (1) (b) of OLDRL. Both statements were submitted late some six (6) to seven (7) months respectively. Nonetheless the misconduct had occurred within the meaning of Section 27 (1) (b) (c) of the Constitution.

74. In determining the appropriate penalty. Section 28 (1A) of the Constitution provides for criteria need to be considered that is culpability, public policy and public good. In deriving an appropriate penalty, laws provide for dismissal from office as ultimate penalty. *Leadership code (Alternative Penalties) Act* provide for lesser penalties like fine etc.

75. In order for the Leader to be dismissed from office for his misconduct there must be serious culpability or serious blameworthiness.

76. In the case of *John Nilkare – v – The Tribunal* (1997) SC536, the Oxford Dictionary meaning of the word "Culpability" (deserving blame) has been expounded to include, serious blame, an act involving wrongful intention or negligence and an act deserving censure.

77. The Leader made admissions on the four allegations, considering the facts in the Statement of Reasons as well as the respective submissions, I am of view that the Leader is culpable for his negligence in not submitting annual statement as required. However considering findings of other Leadership Tribunal these is no serious culpability in my view.

78. I therefore fully agree with the Chairman's recommendations, despite the Leader admitting the four allegations. And taking into account that public policy and public good do not require the ultimate penalty of dismissal. It is imperative the maximum penalty under Leadership Code (Alternative Penalties) Act be recommended and applying "principle of totality" maximum fine be imposed on each charge and total amount of K4,000.00 – is recommended.

DECISION ON PENALTY

79. **MS R. JOHNSON, SM:** The Reference from the Public Prosecutor comprised of 4 Allegations for failure to submit annual statements to the Ombudsman Commission on time. The Reference was presented to the Tribunal on 4th April 2013. It was also formally put to the Leader on 4th April 2013 and he admitted to all the four (4) allegations.

80. The Tribunal has heard submissions from counsels on penalty. There were pertinent issues raised by counsels in their respective submissions which we will address. The first issue raised by counsel assisting the leader was in relation to the two additional allegations added to the Reference by the Public Prosecutor. He argued that when the matter was first referred to the Public Prosecutor it contained two principle allegations only. This gives rise to the issue of whether or not the Public Prosecutor has the power to do so. That is to add new allegations to what was referred by the Ombudsman Commission.

81. I am of the view that laying of additional charges is the prerogative of the Public Prosecutor. This is a decision that is made independently after perusing the Statement of Reasons from the Ombudsman Commission. The Statement of Reasons forwarded to the Public Prosecutor is in my opinion the terms of reference (TOR) that actually sets the basis on which the Public Prosecutor relies on as far as the framing of the allegations or charges are concerned. The Public Prosecutor having exercised his powers and after being satisfied that the Statement of Reasons gives rise to additional charges or allegations I fail to see why they should not be added on.

82. The next issue is whether the additional allegations amount to duplicity. Counsel assisting the leader submitted that the additional allegations by the Public Prosecutor are duplicity of the same act or offence. The leader has been through a process with the Ombudsman Commission and has been heard and the additional charges are unfair, unjust and inappropriate. He paused the question, can the

Public Prosecutor introduce new terms of reference (TOR)?

83. It is therefore pertinent to read and fully understand the two different provisions under the two different Acts. Allegations 1 & 3 fall under *Section 4 (1)* of the **Organic Law on the Duties and Responsibilities of Leadership**. It states that:-

"Statement of income, etc.

- **(a) Within three months after Independence Day; or**
- **(b) Within three months after becoming such a person,**

As the case may be, and at least once in every period of 12 months while he remains such a person, to give to the Ombudsman Commission a statement to the best of his knowledge setting out, in respect separately of himself and his spouse and any of his children under voting age ..."

84. The leader is required by law to declare in his annual statement a whole lot of things provided under Section 4 (1) (a) to (h) assets including money, business connections, liabilities amongst others. This is a mandatory requirement.

85. Allegations 2 & 4 come under *Section 27 (5) (b)* of the **Constitution** which is set out below:

"(5) A person to whom this Division applies who –

(a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or

(b) Fails to comply with a direction under subsection (4) or otherwise fails to carry out the obligations imposed by subsections (1), (2) and (3),

is guilty of misconduct in office".

86. Public Prosecutor assisting the Tribunal submitted this is not the case and referred to the case of **Gerard Sigulogo** and **John Nilkare**. In the case of Gerard Sigulogo it was a judicial review on the Tribunal's decision where it was held by Amet J (as he then was) that the charges under the Organic Law on the duties and responsibilities of leaders and the Constitution were valid and not bad for duplicity. He went on to say:-

"...The charges were laid under different sections of the Organic Law and the Constitution, and were perfectly valid. ... They are not criminal charges. I do not consider the joinder of separate charges together was unfair to the applicant. Rather I would have thought it would be unfair to separate them and prosecute them on different occasions..."

87. The tribunals in the case of **Re Michael Somare and Re Arthur Somare** decided on annual statements and held there was duplicity. Also in the case of **Re Mark Maipakai** in addressing the issue of duplicity the chairman of the Tribunal stated that:-

"...this creates duplicity and ambiguity. Obviously the Leader cannot be charged twice for the same thing. This would be double jeopardy..."

88. Reading the allegations as they are presented it appears on the face of it that the same set of facts

is being relied on. This is where the confusion lies. However, I am of the view that each tribunal is different in conducting due inquiry according to the Reference and it is my view that the above cases do not bind this Tribunal.

89. I have also carefully considered **Section 27(5)(b)** of the **Constitution** and **Section 4(6)** of the **OLDLR** and am assisted to form the view that the allegations are not the same. They are separate in that one is failure to comply with Ombudsman Commission directions and the Organic Law is about failing to furnish annual statements on time. Therefore each provision creates a separate offence is no duplicity. The Constitutional provision under Section 27 is a wide net.

90. I would like to state here that the confusion is also caused by the manner in which the allegations are drafted. It is pertinent that the allegations are simple so that it is understood by the leader before he takes the plea. Tribunals in the past have deliberated on this issue and provided alternative versions of drafting the allegation which are simple, clear and easily understood. It is important that Tribunal decisions are complied with by the respective offices. Times have changed and we too must embrace changes that are expected of us to diligently perform our respective duties and responsibilities.

91. Having heard submissions on penalty, the Tribunal is obligated to complete its task to consider and deliberate on the issue of appropriate penalty or penalties. We are mindful that any penalty the Tribunal decides on will be in the form of a recommendation to the "appropriate authority" in terms of **s.28(1A)** of the *Constitution* and **s.27(5)(a)(b)** of the *Organic Law on the Duties and Responsibilities of Leadership*.

92. Given that the Leader has admitted to all four allegations he is therefore guilty of misconduct in Office. We now refer to the law on penalties and consider what penalty is appropriate to impose in this case.

Relevant Penalty Provisions

Section 27(5) of the OLDRL states:

(5) If the tribunal finds that a person to whom this law applies is guilty of misconduct in office, it shall recommend to the appropriate authority that-

(a) he be dismissed be dismissed from the office or position; or

(b) as permitted by Section 28(1A) (further provisions relating to the Leadership Code) of the Constitution and in the circumstances set out in that subsection – some other penalty provided for by an Act of the Parliament be imposed.

Section 28(1A) of the Constitution states:

28(1A) *An Organic Law may provide that where the independent tribunal referred to in Subsection (1) (g) finds that-*

(a) there was no serious culpability on the part of the person found guilty of misconduct in office; and

(b) public policy and public good do not require dismissal,

it may recommend to the appropriate authority that some other penalty provided by law be imposed.

The Leadership Code (Alternative Penalties) Act provides alternative penalties. **Section 2** of the Act states:

The penalties that may be recommended and imposed under and for the purposes of Section 28(1A) of the Constitution and Section 27(5)(b) of the Organic Law are that the person found guilty of misconduct in office-

(a) be fined an amount fixed by the tribunal, not exceeding K1,000.00; or

(b) be referred to the appropriate authority to enter into his own recognizance in a reasonable amount, not exceeding K500.00,

fixed by the tribunal that he will comply with Division III.2(Leadership Code) of the Constitution and with the Organic Law during a period fixed by the tribunal, not exceeding 12 months from the date of the announcement, under Section 27(6) of the Organic Law, of the decision of the tribunal; or

(c) be suspended, without pay, from office or position for a period not exceeding three months from the date of announcement of the suspension; or

(d) be reprimanded; or

if he is a public office- holder as that expression is defined in Sch.1.2(1) of the Constitution, that, as determined by the tribunal; or

(e) he be reduced in salary; or

(f) if his conditions of employment are such as to allow for demotion- he be demoted.

93. From the above penalty provisions it is obvious that there are certain elements that are stated that must be considered in the light of the misconduct in office. These elements are "serious culpability", "public Policy" and "public good".

94. In order for the Tribunal to consider appropriate penalty or penalties, it must firstly ask itself, was there any serious culpability on the part of the leader. The phrase "serious culpability" has been widely interpreted by various tribunals in considering appropriate penalty or penalties.

95. We are mindful of the amendment to **Section 27(4)** of the **OLDRL** which now requires that due inquiry be conducted with legal formalities and in strict compliance with the rules and provisions of the *Evidence Act*. In this case the leader admitted or pleaded guilty to all four allegations in relation to annual statements and it's for this that we have to decide on penalty. We ask the question, does public policy and good governance require his dismissal from office?

96. In this case the leader filed his annual statements for the period 24th January 2007 to 23rd January 2008 late by seven (7) months and for the period from 24th January 2008 to 23rd January 2009 late by six (6) months after the due date.

97. Culpability relates to the degree of blameworthiness on the leader. The tribunal is entitled to

consider both aggravating factors and mitigating or factors in favor of the leader. The Tribunal notes the leader is very well educated and has been in the public service for the past 17 years or so and is of good character. In aggravation is that the first and foremost duty of a leader is to comply with the Leadership Code which includes the duty imposed on the part of the leader to furnish his annual statements on time. In this case he filed late, 7 months and 6 months respectively despite the notices from the Ombudsman Commission.

98. In mitigation the Tribunal is mindful that these allegations were committed not in his current leadership position, but the previous leadership position when he was the secretary for the Department of National Planning and Monitoring. Whilst his apology to Ombudsman Commission on those two occasions are noted, the reason that he was busy with his job is unacceptable because it is a mandatory requirement to submit annual statements on time. In mitigation we also note that the leader was present all through the tribunal sitting. Further and most importantly are his admissions and his cooperation with the Tribunal and his constant appearance in all the proceedings.

99. We have considered penalties in similar cases. In the case of Re **Puka Temu** he was fined. In **Re Sir Michael Somare** the Tribunal recommended suspended from office for 14 days without pay. In **Re Arthur Somare** he was also fined him.

100. In conclusion, the maximum fine be imposed. The Tribunal is of the view that there is no *serious culpability* for what he did or failed to do.

Recommendation of penalty

For the foregoing reasons and in accordance with the relevant penalty provisions as pursuant to s. 28(1A)(a) and (b) of the **Constitution** and s.27(5)(a) and (b) of the **Organic Law on the Duties and Responsibilities of Leadership**, and s.2 of the **Leadership Code (Alternative Penalties) Act 1976**, I recommend to the appropriate authority a fine of K1,000.00 for each of the allegations. The leader is fined a total of K4000.00.

Lenalia, J.
Chairman

Mr. Ignatious Kurei
Principle Magistrate
Member

Ms. Rosie Johnson
Senior Magistrate
Member