

Knight, In re [2015] PGLT 1; N6222(LT) (20 March 2015)



N6222 (LT)

PAPUA NEW GUINEA

THE LEADERSHIP TRIBUNAL APPOINTED PURSUANT TO SECTION 27 (2) AND 27 (7) (e) OF
THE ORGANIC LAW ON DUTIES AND RESPONSIBILITIES OF LEADERSHIP

AND

IN THE MATTER OF THE HONOURABLE RONNY BRUCE KNIGHT MP ("the Leader"), MEMBER
FOR MANUS OPEN AND MEMBER OF MANUS PROVINCIAL ASSEMBLY REFERENCE NUMBER
LT.N0.2 OF 2014 (NO.2) BEFORE:

HONOURABLE JUSTICE SALATIEL LENALIA -Chairman-
HIS WORSHIP MR. IGNATIUS KUREI – Senior -Magistrate-Member
HER WORSHIP MS. ROSIE JOHNSON – Senior -Magistrate-Member

Waigani

2014: 27th, 29th October,

17th -25th November,

1st, 2nd, 3rd, 5th, 17th - 19th December.

2015: 22nd, 23rd, January & 20th March

CONSTITUTIONAL LAW- Misconduct in Office- allowing integrity of the office to be called into question - Use of Office for own benefit - Failure to disclose vital information- .

LEADERSHIP CODE- Misconduct in Office- Use of funds under the Government of Papua New Guinea for personal interest and benefit and for the benefit of associates. LEADERSHIP CODE – Misappropriation of public funds – Allegations serious in nature – allegations criminal in nature- Non Disclosure of Interest- Conflict of Interest. Cases Cited:

Mao Zeming –v- Justice Timothy Hinchliff (2006) N 2998

Re. James Mopio [1980] PNGLR 416

Counsels:

Mr. C Sambua - for the Public Prosecutor and Counsel Assisting the Tribunal

20th March, 2015

1. **BY THE TRIBUNAL:** This Tribunal was appointed on 14th October 2014 to inquire into and determine allegations of misconduct in office by the leader Honourable Ronny Bruce Knight MP, Member for Manus Open Electorate, Manus Province. He was at all material times a person to whom Division III.2 of the *Constitution (Leadership Code)* and the *Organic Law on the Duties and Responsibilities of Leadership* apply.

2. The Tribunal commenced its inquiry into the allegations of misconduct in office against the leader on 27th October 2014. The Reference was presented at 1.30pm comprising two categories of misapplication of DSIP & DSG funds for the purchase of MV Trader Star. Upon presentation of the reference the "leader" was suspended from duty with full pay by operation of the law as spelt out under s. 28 of *Organic Law on the Duties and Responsibilities of Leadership* (OLDRL).

3. On 17th November 2014 the allegations were formally put to the leader through his counsel and he denied all five allegations and the tribunal began its inquiry. The Tribunal commenced hearing evidence in Waigani then moved to Lorengau in Manus Province and returned to Waigani and concluded its hearing.

4. There are two Categories with a total of five (5) allegations. The allegations 1 and 3 are framed under the *Constitution* and allegations 2, 4 and 5 are framed under S. 13 and S. 15 respectively under the OLDRL. The allegations are set out as follows:

CATEGORY 1 MISSAPPLICATION OF K650, 000.00 – MANUS DISTRICT SERVICE IMPROVEMENT PROGRAM (DSIP) FUNDS ALLEGATION 1:

THAT between January 2013 to August 2013 the Leader failed to carry out the obligations imposed by Section 27(1) of the *Constitution*;

BY conducting himself in his public life and in his associations with other persons in such a way that he:

(a) Placed himself in a position in which he had a conflict of interest and might be compromised when discharging his public or official duties; and

(b) Demeaned his offices as member of the Parliament for Manus Open and member of the Manus Provincial Assembly; and

(c) Allowed his official integrity and his personal integrity to be called into question;

AND FURTHERMORE the Leader failed to carry out the obligations imposed by Section 27(2) of the *Constitution*;

BY entering into transactions and engaging in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out the duty imposed by Section 27(1) of the *Constitution*;

IN THAT in his capacity as a Member for Manus Open, Member for Manus Provincial Assembly and Chairman of the Manus Joint District Planning and Budget Priorities Committee (JDP&BPC), in the process to obtain approval and secure K2.5 million from the JDP &BPC, he withheld vital information and pressured the Manus Provincial Supply & Tenders Board (PSTB) members to make a decision to purchase a vessel named "MV Trader Star" despite having received advice from the National Maritime Safety Authority and the PNG Weather Service Bureau on the sea worthiness of the vessel which was inappropriate for operations in Manus waters other than "calm and smooth river systems, and for the Manus Provincial Administration to reverse the decision to purchase the vessel and look for a better vessel with better safety construction and design;

AND FURTHERMORE despite having received advice that the vessel "MV Trader Star" was outdated and not sea worthy and inappropriate for operations in Manus waters other than "calm and smooth river systems", and for the Manus Provincial Administration to reverse the decision to purchase the vessel and look for a better vessel with better safety construction and design, the Leader misled the JDP & BPC and Manus Provincial Supply and Tenders Board by insisting on the purchase of the vessel which later required additional maintenance cost of about K180, 670.03;

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

ALLEGATIONS 2:

THAT between January 2013 and August 2013 the leader intentionally applied Six Hundred & Fifty Thousand Kina (K650,000.00) forming part of a fund under the control of Papua New Guinea, namely the District Services Improvement Program (DSIP) funds to purposes to which it could not lawfully be applied;

IN THAT in his capacity as a Member of Parliament and a member of the Manus Provincial Assembly and as the Chairman of the Manus Joint District Planning & Budget Priorities Committee (JDP&BPC), he withheld relevant information and misled the Manus JDP&BPC to approve an inflated amount of K2.5 million of the District Support Improvement Program (DSIP) Funds to purchase an out dated and unsuitable 26 year old vessel which was priced at or about K1.85m;

AND FURTHERMORE the Leader had expressed interest to purchase the vessel and initiated discussions to purchase a vessel for K1.95 million which was later negotiated to K1.85 million and after obtaining relevant documents and information on the vessel, the Leader engaged his associate (Joe Pokarup) to issue an inflated invoice for K2.5million and included in a draft "Bill of Sale of Motor Vessel" additional payment of K100, 000 to pay the balance of K1.75 million.

AND FURTHERMORE the Leader did not disclose to the JDP&BPC members additional information on the vessel that:

- the cost of the ship was K1.85m while he advised that it was K2.5m; and
- the ship was built in 1970 and is 44 years old; and
- the Manus Technical Division's work on a technical assessment on the ship; and
- the ship is meant for smooth waters and is not fit in rough seas like in Manus; and

- the ship needed some major maintenance and repairs which cost is not included in the initial K2.5 million; and
- he had a hire vehicle from his associate (Joe Pokarup and his DA Force Ltd) for the amount of K100,000.00 as deposit or up- front payment money: and
- that there was no information on K100,000.00 whether it will be paid or loaned; and
- His associate (Pokarup & Morton) will be engaged as consultants to secure the vessel for them; and
- Did not inform the JDP&BPC at what price his Associate (Pokarup & Morton) will be engaged; and
- There was no approval from the Consultancy Steering Committee on 22 February 2013 JDP&BPC meeting and none of the JDP& BPC members knew his associates (Pokarup & Morton) role and the payments were made to them,
- There was no mention of his Associate (Pokarup & Morton) or any mention of the K100,000.00 that his associate was to pay and there was no mention of consultancy agreement between his associate (Pokarup & Morton) or Manus Provincial Government

THEREBY being guilty of misconduct in office under Section 13(a) of the *Organic Law on the Duties and Responsibilities of Leadership*.

CATEGORY 2 MISAPPROPRIATION OF K180, 670.03 DISTRICT SERVICES IMPROVEMENT PROGRAM FUNDS ALLEGATION 3:

THAT between January 2013 to August 2013 the Leader failed to carry out the obligations imposed by Section 27(1) of the *Constitution*;

BY conducting himself in his public life and in his association with other persons in such a way that he:

1. Placed himself in a position in which he had a conflict of interest and might be compromised when discharging his public or official duties: and
 2. Demeaned his offices as member of Parliament for Manus Open and member of the Manus Provincial Assembly; and
1. Allowed his official integrity and his personal integrity to be called into question;

AND FURTHERMORE the Leader failed to carry out the obligations imposed by Section 27(2) of the *Constitution*;

BY using his office for personal gain and entering into transactions and engaging in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out the duty imposed by Section 27(1) of the *Constitution*;

AND FURTHERMORE the Leader failed to carry out the obligations imposed by Section 27(2) of the *Constitution*;

IN THAT because the vessel was not sea worthy, an additional K180, 670.03 was required for maintenance and repair work (the work that should have been done by the **vendor**, vessel owner) thereby costing the Manus Provincial Government a total of K2, 680,670.03 when the vessel was sold at K1.85 million and that the Leader misled the JDP&BPC when he failed to disclose vital information

during the discussions to secure funding to purchase the vessel "MV Trader Star".

The leader had all the information that the vessel was not sea worthy and cannot withstand the conditions of Manus waters and that more funds were needed to fix and maintain the ship.

He also tempered with the meeting minutes by inserting a paragraph to indicate that Pokarup and Morton had made a deposit of K100, 000.00 with MV Trader Star owners hence requiring a refund.

AND FURTHERMORE from the same approved funding, Manus Provincial Government paid Pokarup DA Force Limited K149, 438.08 for the Leader's use of a hired vehicle Registration No. CAW 884;

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

ALLEGATION 4:

THAT between January 2013 and August 2013 the Leader intentionally applied One Hundred and Eighty Thousand Six Hundred and Seventy Kina and Three Toea (K180, 670.03) forming part of a fund under the control of Papua New Guinea to purposes to which it could not lawfully be applied;

IN THAT because the vessel was not sea worthy, an additional K180, 670.03 was required for maintenance and repair work (the work that should have been done by the vendor, vessel owner) which did not happen and the Leader pressured the JDP&BPC to approve and additional K180, 670.03 under the pretext of maintenance to carry out the maintenance and repairs of the vessel "MV Trader Star"

AND FURTHERMORE from the same approved funding, K149, 438.08 was paid to Pokarup and DA Force Limited to offset the Leader's bill for hiring the vehicle Registration No. CAW 884;

THEREBY being guilty of misconduct in office under Section 13 (a) of the *Organic Law on the Duties and Responsibilities of Leadership*.

ALLEGATION 5:

THAT between January 2013 to August 2013 the leader being a member of an executive body, the Manus Joint District Planning & Budget Priorities Committee (JDP&BPC), proposed to speak and vote on a matter before JDP&BPC in which he had an indirect beneficial interest, failed to make a disclosure of the nature of his interest,

IN THAT he –

(i) Failed to disclose to the JDP&BPC prior to or at its meeting No. 1/2013 on 5th April 2013 that he had an outstanding hire car bill of K149, 438.08 when he hired a vehicle Registration No. CAW 884 from DA Force Limited from which the funding of additional K180,670.03 was to offset; and

(II) Took part in the deliberations and decision of the JDP&BPC regarding the additional K180,670.03 of which K149,438.08 was to be paid to DA Force Limited for the Leader's use of a hired vehicle Registration No. CAW 884, without any disclosure being recorded in the minutes of proceedings and without the JDP&BPC resolving to allow him to do so;

THEREBY contravening Section 15(5) of the *Organic Law on the Duties and Responsibilities of Leadership*.

Evidence of (Public Prosecutor) Counsel Assisting the Tribunal

5. When the allegations were formally put to the leader he denied all five (5) allegations and the inquiry commenced. Evidence are by affidavits that were tendered by consent and others through witnesses which have all been marked as Exhibits and marked as "**Exh 1 – 86B**". Each witness' evidence will be discussed briefly.

6. Richard Pagen- Affidavit sworn on 10 November 2014 and filed on instant date. **Exhibits 1-41, 58, 59, 61 – 67**. This is the tribunal's key witness who was involved in the investigations. He compiled the Statement of Reasons for the OC.

7. Peter J Kelso- Affidavit sworn and filed on 14 November 2014. **Exhibits 68A – 68C**. He is the manager for Firewalls Logistics and the company placed an advertisement in the print media for the sale of "MV Trader Star". The Hon. Ronny Knight MP contacted Simon Tewson for the price which initially was K1, 950,000.00 and reduced to K1, 850,000.00.

8. The Sale & Purchase Agreement was between Firewalls Logistics Ltd and Pokarup & Morton as business advisers and agent. The vessel was sold to Manus Provincial Government through Pokarup & Morton. Pokarup & Morton came on board after Hon. Ronny Knight had dealt with Firewalls Logistics and agreed on K1.85million as the selling price.

9. Patrick Sapak- Affidavit sworn on 6th November 2014 and filed on the 10th November 2014. **Exhibits 69 - 1, 69-2, 69-2(a) to 69-2(h)**. He was approached by Ombudsman Commission through a letter dated 23 August 2013. His reply dated 28 August 2013 is **Exhibit 51**.

10. This witness is a public servant with the Manus Provincial Administration as Property Manager and Executive Officer for the Manus Provincial Supply & Tenders Board. He is responsible for coordinating meetings and recording meeting minutes. He is aware of the meetings that were held to deliberate on the procurement of "MV Trader Star". At the meeting on 5/4/2013 PSTB decided against the purchase of the vessel as there were no documents regarding MV Trader Star which must come from the Open Member's office. This witness had to request for information from NSMA and PNG Weather Service for technical advice to assist the Board in its deliberations regarding this motor vessel. Upon receipt of these technical advices the PSTB decided against the purchase of the vessel.

11. On 12th April 2014 William Pano writes to PSTB chairman and justifies why PSTB must approve the purchase with attachments pertaining to the vessel. There was pressure in mobile phone messages from the Open Member to the chairman and this witness.

12. Jimmy Gamoga- **Exhibit 70**. This witness is Assistant Director (Forecasting & Warning Centre) National Weather Service. He confirmed being contacted by Mr Hamou who was chairman of Manus PSTB to provide advice on weather, sea level, climate etc.

13. Roy Yamo from Southern Cross Assurance Limited gave evidence on the insurance cover taken out

by Manus District on MV Trader Star (**Exhibit 71**).

14. Susanna Germino is the General Manager for Steamships Trading Company in Port Moresby since 2012. She tendered various documents, quotes and receipts on the following page(s) 51, 69- 70, 194 – 196, 207, 207(a), 678 – 693 in the SOR. Others are marked as **Exhibits 72 – 75**.

15. David Kidu –Affidavit sworn on 12 November 2014 and filed on 14 November 2014 marked as **Exhibit 76** and attachments as **Exhibit 76A – 76C**. He is employed by Digicel PNG Ltd as the Principal Legal advisor. It was through this witness that the mobile text messages (SMS) between certain mobile phones including that of the Leader was tendered. The messages showed the words used and whether those words could amount to pressure on the chairman of PSTB and other members. **Exhibit 76, A, B, C**.

16. Captain Narur Rahman- Affidavit sworn on 26 November 2014 and filed 27 November 2014. **Exhibit 77, 77A-77D**. He is from the National Maritime Safety Authority and is the Executive Manager in charge of Maritime Operations. He has a wealth of experience in the area of Maritime Law and the Merchant Shipping Act. He is aware of MV Trader Star because he was approached by the Provincial Administrator Kule-en Hamou who was also the chairman of the Manus PSTB for technical advice on the motor vessel. The advice is in a letter dated 28 March 2013. (**Exhibit 69(2)**)

17. Basically, NMSA is a regulatory body and is mandated to ensure that the *Merchant Shipping Act* and other subordinate legislations are complied with. The PSTB was informed that M.V Trader Star is 26 years old which has been modified and refitted twice after its first construction. A detailed survey of this vessel conducted by Manton Group in Port Moresby between 27 June and 12 July 2012 is found in the "Annual Survey Report, MV Trader Star" and describes the vessel as inappropriate for operation in waters other than "calm and smooth, and river systems". He advised that if it is the intention of the Manus people to operate such a vessel within the confines of a river or internal waters, then the procurement of the vessel may have a justification.

18. The Survey Report referred to deficient water tightness of applicable sections of the vessel. This is a breach of the Load Line Regulation leading to a non-issuance of the vessels PNG Survey Certificate by NMSA. The cost of rectifying the deficiency may be quite exorbitant. Deficiencies in the Wheel House equipment and Fire Fighting appliances can be rectified if the owners wish to spend more money. Another deficiency refers to the vessel having insufficient stability under certain conditions of operation. In conclusion he asked the people of Manus to reverse their decision in purchasing MV Trader Star and instead look for another vessel with better safety construction and design even if the price was slightly more than 2.5 million kina. Safety is of utmost priority.

19. Kule-en Hamou- Affidavit sworn on 7 November 2014 and filed on 10 November 2014. **Exhibit 78, 78A – 78B**. He was at one time the Provincial Administrator and chairman of the Provincial Supply & Tenders Board. Manus being a one Province one District, the PA is also the District Administrator and the executive officer to the JDP&BPC. As the DA he is the meeting minute taker and in his absence, the advisor to LLG. He requested for the technical advice from NMSA and the National Weather Office to deliberate on MV Trader Star because the JDP&BPC when forwarded this matter to them had no

information on the vessel. He provided this information to OC during their investigation.

20. Andrew Posong- Affidavit sworn on 7 November 2014 and filed on 10 November 2014. **Exhibit 79, 79A- 79D**. He was at one time the acting Provincial Administrator for Manus. His evidence is similar to Kule-en Hamou. After PSTB had informed JDP&BPC and refused to approve purchase relying on information from NSMA there were text messages through mobile phone from William Pano and Open Member to him and the chairman Kule-en Hamou to make a decision quickly. There was pressure.

21. Genevieve Kalenda- Affidavit sworn on 7 November and filed on 10 November 2014 – **Exhibit 80, 80A- 80B**. She is the Provincial Works Manager for Manus and a member of the Provincial Supply & Tenders Board (PSTB). This board ensures that tenders are conducted in accordance with the *Public Finance (Management) Act* and provides periodic reports to the Central Supply & Tenders Board.

22. A meeting was called on 5th April 2013 by the chairman of the PSTB regarding a letter from the chairman of JDP&BPC Honorable Ronny Knight. The board had initially dealt with the agenda to procure a vessel for Manus but had not approved it due to not having sufficient information before the Board. At this meeting the chairman indicated that the priority agenda was the vessel. The Board was pressured by the Honorable Member to approve the purchase of MV Trader Star. He referred to the mobile phone messages in **Exhibit 76 and 76A** from David Kidu of Digicel PNG Ltd.

23. Robert Siwer- Affidavit sworn on 7th November 2014 and filed on **10th** November 1014. Marked as **Exhibits 81, 81A & 81B**. He is currently the executive manager to the Provincial Administration. Manus is unique in that it is a one province one district with one Provincial Administrator who is also the District Administrator and is also the executive officer to the Joint District Planning & Budget Priorities Committee (JDP&BPC). The Open Member is the chairman of this committee. This witness is the next senior officer in the administration and in the absence of the Provincial Administrator or the District Administrator he stands in as EO for the Committee and takes meeting minutes.

24. The JDP&BPC meeting minutes No.3/12-17of 22nd February 2013 was taken by Henry Kalai who is the leader's project officer. Robert Siwer was present at that meeting but the leader appointed Mr Kalai to take the Meeting Minutes. A week later Mr Kalai took the Meeting Minutes to him for his signature. He refused to sign arguing that he did not record the Minutes and that it would be proper for Mr Kalai to sign. Kalai insisted he was instructed by the Open Member to sign so Robert Siwer reluctantly signed and it was taken to Port Moresby.

25. His evidence also was that at this meeting there was emphasis on the need for a third level ship for Manus people but no mention of Pokarup and Morton to be engaged as consultants. Pokarup and Morton were not on the agenda and there was no discussion for an upfront payment of K100, 000.00. However he is aware that the JDP&BPC passed a resolution to purchase a ship in PNG for K2.5million.

26. Paul Silas- Affidavit sworn on 6th November 2014 and filed on 10th November 2014 – **Exhibit marked 82, 82A, 82B**. He is the president of Nigoherm Local-level Government and a member of the Manus Provincial Assembly and member of the Manus JDP&BPC. This is his second term in office and there has never been any meeting minutes provided after the JDP&BPC meetings until recently when

the Ombudsman Commission began its investigation in 2013. He recalls the JDP&BPC meeting on 22 February 2013 and chaired by the Open member who appointed Henry Kalai to record the meeting minutes. The meeting was held at Pontoon and the leader introduced the idea of a third level shipping for Manus. There was no mention of the purchase price except that K100, 000.00 was immediately required as upfront payment to put the ship "off" the market. At this meeting there was no information about a particular ship and any discussions or mention of Pokarup & Morton.

27. John Popot- Affidavit sworn 6th November 2014 and filed 10 November 2014. **Exhibit 83, 83A – 83B**. This is his third term as president Penabu Nali LLG hence a member of the JDP&BPC. He is Deputy Governor for Manus and also member of the Provincial Assembly. He was approached by the Ombudsman Commission in a letter dated 23 August 2013 and he responded. He says the issue of third level shipping for Manus was discussed at the first meeting at Pontoon. It was at this meeting that the chairman Honorable Ronny Knight informed the members of the need for Manus to have its own ship. It was also at this meeting that the Open Member informed the Committee that he has negotiated the price from K3million to K2.5 million and there was an urgent need to make an upfront payment of K100, 000.00 for the ship. The amount of K2.5 million was approved later for the purchase of a vessel. There was no mention or discussion about the engagement of Pokarup & Morton. There was no information made available regarding the vessel or its current condition but JDP&BPC approved the amount.

28. Prior to 2012, the former Open Member for Manus would circulate meeting minutes within two weeks but since the current MP was elected he has attended six meetings and no minutes have been circulated until Ombudsman Commission produced to him the minutes of the meeting on 22nd February 2013. He disagrees that Raymond Toro did not attend the meeting and his name appears twice on the Minutes as present and also absent. Hon. Thomas Kosum's name is not on the Minute. He disagrees with the Meeting Minutes as having included Pokarup & Morton because it was not an agenda and was not discussed at all.

29. Stanley Micah- Affidavit sworn on 6th November 2014 and filed on 10th November 2014. **Exhibit 84, 84A-84B**. He was president of Pobuma LLG and member of the JDP&BPC in 2012. At the first meeting the Open Member verbally told the JDP&BPC about a third level shipping for Manus. That the price of the ship was K3 million but he has negotiated for K2.5 million. There were no documents about the ship, no name of the ship except that he negotiated the price to K2.5 million. Further, that K100, 000.00 was required to be paid immediately as upfront payment to take the ship "off" the market. There was no discussion about engaging Pokarup & Morton to negotiate the purchase of the vessel. He was also approached by OC through a letter dated 23th August 2013 and he responded on 28th August 2013 and this response is similar to that of Robert Siwer.

30. John Micah – Affidavit sworn on 6th November 2014 and filed on 10th November 2014. **Exhibit 86, 86A- 86B**. He is the former president of Balopa LLG and was unseated in the 2013 Local-level Government elections. As president he was a member of the JDP&BPC and was at the meeting at Pontoon where the Open Member introduced the 3rd level shipping. Another meeting was conducted on 22nd February 2013 where the Committee resolved to buy a ship. There was no information on the

price of the ship or any documents or pictures of it. The money was approved to buy the ship with an upfront payment of K100, 000.00 so that the ship can be taken off the market. Pokarup & Morton to be engaged as agents to negotiate the purchase was never discussed in these meetings.

31. The meeting minutes of these meetings were taken by Henry Kalai in ink. He is unaware of meeting minutes being circulated all these time until the Ombudsman Commission requested for certain information and produced Meeting Minutes pertaining to the allegations of misconduct in office by the leader.

Evidence for the Leader

32. The brief summary of the leader and his witnesses' evidence is set out here.

Marklyn Papi –Affidavit sworn on 28/11/14, filed 03/12/14. **Exhibit L1**; Polly Wada- Affidavit sworn on 28/11/14 and filed on 03/12/14. **Exhibit L2**; Edward Pelemon- Affidavit sworn on 28/11/14 and filed on 03/12/14. **Exhibit L3**; Barnabas Manuai – Affidavit sworn on 28/11/2014 and filed on **03/12/14. Exhibit L4**. Mark Siwer – Affidavit sworn on 01/12/14 and filed 03/12/14. **Exhibit L5**. Chris Omen – Affidavit sworn on 01/12/14 and filed on 03/12/14. **Exhibit L6**. Jacob Steven- Affidavit sworn on 28/11/14 and filed 03/12/14. **Exhibit L7**. Graham David- Affidavit sworn on 27/11/14 and filed on 03/12/14. **Exhibit 8**. These witnesses are people from the outer islands of Manus and areas not accessible by road who were assisted by the vessel MV Trader Star in delivering building materials for schools, churches or ferrying people from one place to another to attend to church activities. Their evidence is that the vessel is seaworthy but it is no longer operating due to the tribunal.

33. Henry Kalai – Affidavit sworn on 28/11/14 and filed on 03/12/14. **Exhibit 9**. He has been in the Public Service for more than 27 years most of it with the National Parliament. He is the Project Officer of the Manus Administration and works with the Open Member. He was present at the JDP&BPC meeting on 22nd February 2013. He said he took the Meeting Minutes of that meeting in hand writing then had it typed and later presented it to Robert Siwer to check. This arrangement for him to take Meeting Minutes was due to previous administrative problems so he was reassigned the task. He confirmed that it was Robert Siwer's duty to take meeting minutes as the executive manager but when asked by Open Member then he assumed that responsibility.

34. The Meeting Minutes of 22nd February 2013 is full of errors. There are names of members who were present as absent and the other way around and one member (Raymond Toro) as absent and also present at the same meeting of 22nd February 2013. The Meeting Minutes do not make reference to a previous Meeting Minute as is suppose to be the process in any formal meetings and to accept the previous Meeting Minutes as correct record of the discussions and resolutions or decision taken in that previous meeting.

35. Despite this witness taking the Meeting Minutes of 22nd February 2013 it was brought to Robert Siwer to sign. Robert Siwer was informed that the Open Member who is the chairman of the JDP&BPC has instructed that he signs it so that it can be taken to Port Moresby.

36. Luke Sihamou- Affidavit sworn on 01/12/14 and filed on 03/12/14. **Exhibit L10**. He is the president

of Bisakani Soparibeu LLG and member of JDP&BPC. He was approached by OC by way of a letter dated 23/8/2013 (**Exh.27**) and he did respond. (**Exh 46**). He confirmed it was the task of Robert Siwer to take JDP&BPC Meeting Minutes. He did discuss with Henry Kalai before answering the questions from OC. In his response then he seemed to forget a lot of things compared to his affidavit (**Exh. L10**) which was very detailed. In oral evidence he is not sure of the answers and contradicted himself ie.MB Manus Trader/ MV Trader Star (totally two different ships).

37. Francis Kolopen- Affidavit sworn on 28/11/14 and filed on 03/12/14- **Exhibit L11**. He was appointed by Hon.Ronny Knight as deputy chairman of the JDP&BPC when he was the LLG president of Los Negros but no longer a member after he was unseated in 2013 LLG elections. He was present at the meeting on 22 February 2013 and both Henry Kalai and Robert Siwer were present. The Open Member chaired the meeting and Henry Kalai took the minutes. He confirms that what is captured in the Meeting Minute of 22/02/13 is true and reflects all the agenda and all that took place in that meeting. (**Exh. L11**)

38. He confirmed Raymond Toro was absent that time as he was in overseas. His name being recorded as Present/Apology is a mistake. Thomas Kosop was present at the meeting but recorded as absent is also a mistake.

39. Captain Taian Popeu- Affidavit sworn on 02/12/14 and filed 04/12/14. **Exhibit 12**. He is the current captain of MV Trader Star with over 27 years of experience with various companies. He commanded the ship on her maiden voyage from Port Moresby, Alotau, Lae and on to Manus. MV Trader Star is seaworthy. He is also been observed as not of much assistance to the tribunal because there were a couple of questions asked about his experience that he was unable to answer and appeared to be thinking hard and long.

40. Charles Siniu- **Exhibit 13A; L13B**.This witness was stood down and recalled. He was approached by William Pano who handed him certain documents and requested for the Coastal Trade Permit to be issued. He says MV Trader Star is seaworthy without the periodic inspections so long as the Survey Certificate was valid. Amongst the documents that William Pano handed to him was a Certificate of Registration of Business Name "Pokarup and Morton". He said he did not check but thought they may have some business connection. William Pano owned the vessel.

41. Hon. Ronny Bruce Knight- Affidavit sworn on 3/12/14 and filed on 4/12/14 - **Exhibit L14**. This is the leader who is before the tribunal. He denied all the allegations and any involvement in the negotiations of the purchase of MV Trader Star. He denied engaging Pokarup and Morton and or had any direct dealings with Joe Pokarup. He also went through all the Meeting Minutes of the JDP&BPC. Regarding the Meeting Minutes of 22nd February 2013 he pointed out the mistakes and said that all meeting minutes have mistakes. He denied allegations of tampering with this minute and says that a lot of things said at that meeting have been ommitted but he browsed through and since it was already signed he just signed. He said he did not observe who took down this Meeting Minute.

42. He denies receiving any quotations for the vessel. The amount of K2.5 million included consultancy fees and costs for repairs and everything. The fees for Pokarup & Morton despite there being no formal engagement or agreement entered into was a total of K348,420.36 which the leader agreed it was

alright from a business perspective.

He also denied the vehicle hire from DA Force Limited either by himself or William Pano. He has not sighted the invoices made to the Manus Administration.

43. Virgil Toanchina- Affidavit sworn and filed on 11/12/14. **Exhibit 15, 15A, 15B.** He is a Master Mariner, Consultant, Auditor and a Marine Surveyor. The vessel was built in 1970's and gone through several refitting. It has 7 crews and the maximum number of passengers is 20. He confirms conducting inspections on MV Trader Star in June/July 2012 and again in October 2013 on MV Trader Star and the Annual Survey Report pointing out defects in 2012. In 2013 when he conducted the inspections the defects had been rectified as in the 2013 report.

44. William Pano – Affidavit sworn and filed on 04/12/14. **Exhibit L 16, 16A, 16B, 16C, 16D.** He is first secretary to the Open Member for Manus. He lives in Port Moresby and has a vehicle (Hyundai Sonata) as part of his entitlement which is not the same as that referred to in the SOR. This was given to him by the leader to use in Port Moresby. He has no qualification in the shipping industry. He is a relative (cousin) of Joe Pokarup and he verbally engaged Joe Pokarup of Pokarup & Morton to procure MV Trader Star on behalf of Manus Administration. He has attempted to register Manus District Services Limited in October 2014 but its taking longer because of the tribunal. He has obviously taken the lead in everything concerning the vessel in writing letters, meeting with people and engaging agents to negotiate procurement of MV Trader Star on behalf of the Manus Administration.

45. In his affidavit he says he wrote a letter dated 25th September 2012 for the leader to Mr James Marape who was the Finance Minister then to secure funds to repair MB Manus which was at Motukea for an amount of K2, 655,472. On 29th January 2013 the Prime Minister presented a cheque of K23 million.

46. At the same time he and the Open Member had started looking for other vessels on the market and saw the advertisement in the print media on MV Trader Star. They had also identified two other vessels overseas. They decided on the vessel that was already in the country which was the Trader Star. The other vessel was for K9 million. He and Hon Ronny Knight then approached Joe Pokarup of Pokarup & Morton to assist in purchasing the vessel. The quotation for K2.5 million was from Pokarup & Morton and inclusive of delivery.

47. He denies DA Force Limited hiring a vehicle to the leader or to him. He has a vehicle that he uses in Port Moresby that the leader has provided to him. He has no knowledge of a vehicle Registration No. CAW 884 from DA Force Ltd.

48. Joe Pokarup- Affidavit sworn and filed on 04/12/14. **Exhibit 17.** He is from Lou Island and cousin to William Pano. He is a partner with Morton and operates as Pokarup & Morton. He was approached by William Pano for the purchase of MV Trader Star. His engagement is by Hon Ronny Knight through William Pano. He provided all inclusive quotation for K2, 500,000.00 (K2.5 million) to Ronny Knight and Pano and began negotiations with Firewall Logistics Limited and arrived at an agreed price of K1, 850,000.00. (K1.85 million).

49. He is the owner of DA Force Limited that operates hire cars, security and others that make money. He denies hiring a vehicle out to Hon Ronny Knight or William Pano but says he has made available a vehicle for his staff to use and run around to do work for Manus Administration. He has not sent a bill to Manus District Administration but had a 17% commission calculated into the K2.5 million. The invoices from DA Force Limited for hire of vehicle is not true, these are his commission that he has been receiving as well as consultation fees. Those invoices for hire of vehicle CAW 884 are a "business lie" and meant for internal accounting purposes. He also gave evidence that he informed Firewalls Logistics that he was holding K100, 000.00 in his company's trust account on behalf of Manus Administration was not true. That money was going to come from the Manus Administration.

Counsels Submissions on Verdict

50. Submissions from Mr Sambua, counsel assisting the tribunal is a book of 33 pages and comprehensive. He sets out the evidence of each witness called by the prosecution. His submission is that as a leader elected into Parliament and taking that political office as Open Member for Manus on 10th July 2012, qualified him as a Leader and as such and by virtue of the operation of law was subject to the *Leadership Code (Division III.2 Constitution)* and the *Organic Law on the Duties and Responsibilities of Leadership*.

51. As a leader, his public and private life was subject to public scrutiny and was required to conduct himself accordingly. The duties are as spelt out under the Constitution in that he:

- He must not place himself in a position where he could have a conflict of interest; or
- Must not compromise his position when discharging his duties; or
- Must not demean his office or position and allow his integrity to be called into question; or
- Must preserve the integrity of the government of PNG at all times;
- Must not endanger or diminish respect for and confidence in the integrity of the government; or
- Must not use his office for personal gain; or

Enter into transaction or activities that might cause the public to doubt the leader is carrying out his duties. Such conduct also applies to his spouse, children and associates.

52. He submitted that two of the allegations, 1 and 3 are for breaches under *Constitution* as alluded to in the above paragraph. The allegations 2, 4 and 5 are breaches under the *OLDRL* and relate to misapplication of public funds under the control of the Government of PNG.

53. Further that the leader being the chairman of Joint District Planning & Budget Priorities Committee (JDP&BPC) failed to comply with procedures stipulated under the ***Public Finance (Management) Act*** in securing funds and the purchase of MV Trader Star at an inflated amount and used for other purposes like hire of vehicles, payment of commission at 17% by the associate, consultation fees which

are serious demonstration on the part of the leader and total disregard and blatant misapplication of the public finance procedures.

54. Mr Eagan counsel assisting the leader took the tribunal through his written submissions. He submitted that the vessel MV Trader Star was sea worthy and suitable for calm waters and waters in and around Manus Province. It meets the standards and complies with the requirements under the [Merchant Shipping Act 1975](#).

55. He submitted that the allegations of misappropriation of funds are serious and would have been appropriate to have the allegations particularized so that the leader can be given the opportunity to properly defend the allegations. As they are and in the manner the allegations have been drafted they are not supported by cogent evidence and the tribunal to dismiss the allegations.

Relevant Laws

56. The relevant laws are set out here.

Section 27 of the Constitution states:

(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. (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.

57. The Organic Law on the Duties and Responsibilities of Leadership sets out in detail what is required of a leader and especially the conduct of the leader.

Section 13 of the OLDRL states:

A person to whom this Law applies who-

(a) intentionally applies any money forming part of any fund under the control of Papua New Guinea to any purpose to which it cannot be lawfully be applied; or

(b) intentionally agrees to any such application of any such moneys, is guilty of misconduct in office.

58. Section 15 of the *OLDRL* relates to Disclosure of Interest before Debate or Voting. This is to ensure that the leader does not use the office for his own benefit, interest or personal gain and to declare his interest where there exists a conflict of interest situation. The whole Section 15 is quoted.

(1) A member of a legislative or executive body who proposes to speak or vote on any matter before the body or a committee of the body, and who has a direct or indirect beneficial interest in the matter, shall first disclose to the body or the committee the nature of his interest in the matter.

*(2) If so requested by any other member of the body with the leave of the person presiding, the member shall give reasonable particulars of his interest in clarification or expansion of his disclosure.(3) A disclosure under Subsection (1) shall be recorded in the minutes of proceedings of the body or of the committee of the body, as the case may be, and after the disclosure, the member—(a) shall not take part in any deliberation or decision of the body, unless the body otherwise resolves; and(b) shall be disregarded for the purposes of constituting a quorum of the body for any such deliberation or decision; and(c) may, by resolution of the body, be excluded from the meeting.(4) Where—(a) after a member has made a disclosure under this Law any information comes to his knowledge that leads him to believe or suspect, or ought reasonably to make him believe or suspect, that the disclosure was inadequate or incorrect; or(b) any information comes to the knowledge of a member which, if known earlier, would have obliged him to make a disclosure to the body of which he is a member, he shall—(i) immediately inform the Speaker, Governor, Chairman or other person who normally presides at meetings of the body; and(ii) disclose the information to the first meeting of the body after the information comes to his knowledge.(5) A person to whom this Law applies who fails to make a disclosure as required by this section is guilty of misconduct in office.(6) In this section "member of a legislative or executive body" and "member" means a person to whom this Law applies who is a member of—(a) the Parliament; or (b) the National Executive Council; or(c) a Provincial Government; or(d) a Local-level Government or Local-level Government Special Purposes Authority; or
(e) any other legally recognized body having governmental functions. Emphasis added)*

Findings

59. The Reference that was presented to the Tribunal comprised two categories of misappropriation of funds and a total of five (5) allegations. Two are Constitutional breaches under s.27 and the three allegations are under s.13 and s.15 of *OLDRL* respectively. The leader is alleged to have misappropriated an amount of K650,000.00 and K180, 670.03 DSIP and DSG funds and that he failed to disclose his interest to the JDP&BPC regarding the engagement of his associate Pokarup & Morton in negotiating the purchase of MV Trader Star.

60. The leader Hon Ronny Knight is the chairman of the Manus JDP&BPC and this is the body that decides on the expenditure of government funds for projects and activities in the District under the DSIP funds and DSG components. The purchase of MV Trader Star was from funds under the control of the Government of PNG allocated for infrastructure and development initiatives and activities within the District.

61. There is evidence that the idea for Manus to have a third level shipping for the province has always been a priority agenda and Manus has had vessels like MB Manus and MV Tauwi. The Hon Ronny Knight when elected into office as Open Member for Manus reintroduced the idea of a third level ship. This was to improve capacity to deliver services to the people of his electorate in delivery of building materials, aid post supplies and initiate activities to assist and enhance participation in economic activities at all levels focused on improved livelihood for the people of his electorate.

62. This idea became a reality upon the purchase of MV Trader Star and indeed served the people of Manus and has had positive impact on the people and community at large until recently when its operations were halted due to the tribunal.

63. In my view, the issues involve the process of acquiring the vessel and the amount for its purchase. From evidence that is before this tribunal the leader who is the chairman of JDP&BPC misled the members when he withheld the information on the cost of MV Trader Star.

64. The evidence is that he had engaged in initial talks with one Simon Tewson from Firewall Logistics Limited on the purchase price from K1.95 million to K1.85 million. At the JDP&BPC meeting he only mentioned the amount of K2.5 million and that a further K100, 000.00 was urgently needed to put the vessel "*off the market*". He did not disclose or put before them any other information about the vessel. They went ahead to resolve to secure the funds for the purchase of the vessel as it was a need to deliver much needed services to the people.

65. When the matter went before the PSTB for its approval for the procurement of the vessel MV Trader Star there was no information on the vessel or technical advice pertaining to the item so the PSTB refused to deal with the matter until there was information before them. The chairman then wrote to NMSA and the Weather Service for technical advice. Upon receiving advice the PSTB noted from the report from Capt. Rahman that the vessel was not sea worthy, it was 26 years old and had been modified and refitted twice and it was not suitable for operation in waters around Manus other than in calm, smooth river systems. Also that peoples' safety is given first priority in purchasing ships for the Maritime Provinces. It was on this basis that the procurement was refused initially.

66. However, I find that the Leader was adamant on purchasing the vessel and despite the advice he put pressure on the JDP&BPC and PSTB to approve the funds and the procurement of the vessel. His constant mobile phone messages (**Exhibit 76, 76A**) to the chairman of PSTB Mr. Kule'en Hamou to call the meeting did pressure the members to approve it.

67. For the allegations of misappropriation of funds, the vessel was advertised at the sale price of K1.95 million and after successful negotiations the amount was reduced to K1.85 million. The

JDP&BPC approved K2.5 million and later approved additional K180, 670.03 for maintenance of the vessel. If the Leader was concerned about bringing to the people of Manus much needed services in transport it would have been appropriate to purchase a new vessel than spend money on an old vessel that required maintenance. The Leader was presented a cheque of K23 million which included repair costs for MB Manus. What happened to that money which was enough to buy a brand new ship at about K9 million?

68. The Leader, William Pano and Joe Pokarup have denied the hire of a vehicle from DA Force Limited. From the evidence there are invoices from Joe Pokarup operating under DA Force Limited to the Manus Administration and an amount of K149, 438.08 paid.

69. There is also evidence that Joe Pokarup calculated his commission on the purchase price of K2.5 million at 17% which is K425, 000.00. In any business arrangements are done in a proper way of engaging services and especially of nature where millions are involved are very crucial. Basically, a prudent business deal would be first and foremost to tie each party down so that the contract or agreement of engagement is binding on all the parties. I am at a loss that this was not considered at all by a professional accountant and a respected Leader in this procurement whilst Joe Pokarup entered into an agreement with Firewall Logistics Limited for the purchase of the same MV Trader Star.

70. A Leader who is entrusted with the authority to decide and direct the use of Government funds according to the guidelines and for the purposes for which it is intended for allows it to be inflated, then additional funds approved by the JDP&BPC of which he is the chairman and pays for services he says he did not engage. Evidence from Joe Pokarup is that the hire was for his boys using a vehicle doing work for the Manus Administration. Given the amounts as alluded to above, I form the view that the Leader, William Pano and Joe Pokarup colluded for Joe Pokarup's verbal engagement in the procurement of MV Trader Star and diverted funds as in hire car and commission to their individual and collective benefits. This is a very serious misappropriation case of funds under the control of the Government and those implicated should be dealt with by way of criminal charges.

71. Allegation 5 of the Reference is framed under s.15 (5) of the *OLDRL*. From the evidence that is before this tribunal, the Leader was aware of so much information from the beginning and yet withheld so much of it to the detriment of the members who required that information to take decisions. Being chairman of the JDP&BPC he failed to inform the members of his association with Joe Pokarup. The fact that Pokarup & Morton was never discussed in the meetings yet ended up being recipient of so much Government Funds is of grave concern. I find the Leader had known Joe Pokarup through William Pano who are cousins. He failed to inform the Committee of which he was chairman of his association with Joe Pokarup and proceeded to push for the amount of K2.5 million to be secured.

72. I find the conduct of the Leader to be questionable amounting to clear breaches of the *Leadership Code*, s.27 (1) (2) of the *Constitution*. As a leader he has a duty to conduct himself in such a way in both his public or official life and private life and in his associations with other people as not to compromise his official duties, demean the office, allow his official or personal integrity to be called into question and the integrity of the Government to be diminished or questioned. I find his actions to be in breach of the *Leadership Code*.

73. I wish to briefly discuss the order the allegations are drafted. Firstly, the five allegations arise from the same set of facts but are breaches under different laws and provisions. In this case there are two *Constitutional* breaches under s.27 and three breaches under the *OLDRL*.

74. Section 27 of the *Constitution* deals with the integrity of a leader and especially those conduct that lack integrity. The various provisions under this Section can only be established by other offences being committed first and the consequences of the offence should fall under the various provisions of Section 27. Section 27 cannot on its own be said to constitute a breach.

75. I take on the approach that there has to be an offence committed under the *OLDRL* for a *Constitutional* breach to occur. Therefore, given that a Constitutional breach is Allegation one in the drafting of this Reference that is before this tribunal, it is my view that it is akin to "*putting the cart before the horse*". In considering all these factors in a holistic approach I find that there should be just one Constitutional breach as in Allegation 1.

Summary of Government Funds Expended on MV Trader Star and related Purposes.

76. Below is brief summary:

- K1.95 million – Purchase price tag on advertisement of vessel.
- K1.85 million – Negotiated price between Leader and Simon Tewson of Firewall Logistics Limited
- K2.5 million – fund approved for purchase of the vessel.
- K180, 760.03 – additional funds approved by JDP&BPC for repairs of vessel. This is an inflated amount on a quotation of K64, 000.00 from Steamships.
- K2, 680,760.03 – total of all the monies from Manus Administration.

77. From the evidence all the money from the Manus Administration were paid to Pokarup & Morton. Apart from the purchase and other related expenses, the agent and associate for the Leader benefitted from the Manus Administration as what may be termed as broad daylight robbery when requisitions were raised in very short space of time as commission, work done for Manus Provincial Administration, hire of vehicle, advance for work yet to be done amongst others.

78. It is manipulation, abuse of powers in the use and redirection of funds under the Government of Papua New Guinea. All add up to very substantial amounts that the District should have expanded on other priority areas. Certain of the amounts are set out below to show bad practice and failure to comply with the law as in the Finance (Management) Act and standard practice and procedures and the abuse and redirection of funds-

- K149, 438.08- hire of vehicle CAW 884 and related fees
- K425, 000.00 – 17% Commission calculated on K2.5 million by Joe Pokarup.

Summary of Findings

79. Having discussed the evidence as set out above, I make the following findings-

CATEGORY 1

Allegation 1 – NOT GUILTY (Constitutional Breach s.27 (1) (2))

Allegation 2 – GUILTY (s.13 OLDRL-Misappropriation)

CATEGORY 2

Allegation 3 – GUILTY (Constitutional Breach s.27(1) (2))

Allegation 4 – GUILTY (s.13 OLDRL – Misappropriation)

Allegation 5- GUILTY (s.15 OLDRL- Non disclosure)

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Ms. R. Johnson

Member

.....
Justice S. Lenalia

Chairman

.....
Mr. I. Kurei

Member

The Public Prosecutor : *Lawyer Assisting the Tribunal.*

Jema Lawyers : *Lawyer for the Leader.*