

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 251 OF 2013S

STATE

VS

- 1. JOSEFA SAQANAVERE**
- 2. TUIMOALA RAOGO**
- 3. SAVENACA BATIBAWA**

**Counsels : Ms. J. Prasad and Ms. A. Khan for State
Mr. A. Vakaloloma and Mr. N. Bulisea for All Accuseds**

**Hearings : 23 to 26 February, 29 February, 1 to 4 March, 7 to 11 March,
14 March, 2016**

Summing Up : 15 March, 2016

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels in this case.

Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accuseds. There is no obligation on the accuseds to prove their innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.

5. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accuseds' guilt, before you can express an opinion that they are guilty. If you have any reasonable doubt so that you are not sure about their guilt, then you must express an opinion, that they are not guilty.

6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accuseds or the victims, that is, the "I Taukei Land Trust Board" and the "i-taukei" landowners. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favor or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:

"... [read from the information]..."

D. THE MAIN ISSUES

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:

- (i) On count no. 1, did Accused No. 1, and Accused No. 2, with another, between 4 May 2010 and 3 September 2012, at Suva in the Central Division, engage directly or indirectly in transactions involving proceeds of crime amounting to \$214,736.62 which was channeled through Accused No. 2's ANZ Bank Account No. 10089840, knowing or they ought reasonably to have known that the money are derived directly or indirectly from some form of unlawful activity?
- (ii) On count no. 2, did Accused No. 1 and Accused No. 2, with another, between 31 December 2009 and 2 August 2012, at Suva in the Central Division, engage directly or indirectly in transactions involving proceeds of crime amounting to \$94,387.88 which was channeled through Accused No. 2's BSP Bank Account No. 6945606, knowing or they ought reasonably to have known that the money are derived directly or indirectly from some form of unlawful activity?
- (iii) On count no. 3, did Accused No. 1 and Accused No. 3, with another, between 1 July 2010 and 3 September 2012, at Suva in the Central Division, engage directly or indirectly in transactions involving proceeds of crime amounting to \$239,407.20 which was channeled through Accused No. 3's brother's ANZ Bank Account No. 371087, knowing or they ought reasonably to have known that the money are derived directly or indirectly from some form of unlawful activity?
- (iv) On count no. 4, did Accused No. 1 and Accused No. 3, with another, between 3 October 2011 and 2 August 2012, at Suva in the Central Division, engage directly or indirectly in transactions involving proceeds of crime amounting to \$84,959.46 which was channeled through Accused No. 3's brother's BSP Bank Account No. 7703198, knowing or they ought reasonably to have known that the money are derived directly or indirectly from some form of unlawful activity?
- (v) On count no. 5, did Accused No. 1 and Accused No. 3, with another, on 2 September 2011, at Suva in the Central Division, engage directly or indirectly in transactions involving proceeds of crime amounting to \$5,411.10 which was channeled through Accused No. 3's BSP Bank Account No. 1242892 knowing, or they ought reasonably to have known that the money are derived directly or indirectly from some form of unlawful activity?

E. THE OFFENCE AND IT'S ELEMENTS

9. In each of the five counts, the accused was charged with the same offence of "money laundering", contrary to section 69(2)(a) and 3(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act No. 7 of 2005 and Proceeds of Crime (Amendment) Decree No. 61 of 2012. For the accused to be found guilty for any one of the counts, the prosecution must prove beyond reasonable doubt the following elements:
- (i) the accused
 - (ii) engages
 - (iii) directly or indirectly
 - (iv) in a transaction that
 - (v) involves money or other property,
 - (vi) that is proceeds of crime, and
 - (vii) the accused
 - (viii) knows, or ought reasonably to know
 - (ix) that the money or other property
 - (x) is derived or realized
 - (xi) directly or indirectly from
 - (xii) some form of unlawful activity
10. In order for you to understand the offence of "money laundering" as described above, you must consider it within the context of the allegations in this case. Here we are dealing with a specialized unit of the "I Taukei Land Trust Board (TLTB)". The TLTB was originally created by statute to control and administer all native lands for the benefit of itaukei landowners. It was a statutory trust. Part of its duties and functions was to lease out native lands, collect the lease money and distribute the same to itaukei landowners. The actual task of distributing lease money to itaukei landowners fell on the specialized "Trust Unit" [Please refer to the sketch in Prosecution Exhibit No. 2].
11. The "Trust Unit" was staffed by three layers of officers. At the bottom of the staff structure were the administration clerks, commonly known as the "Distribution Clerks". There were approximately six of them. They were the workhorse of the unit. It was their duty to identify and verify the itaukei landowners unit, the landowners unit bank accounts and other important informations and "feed

them" into the TLTB Landsoft computer system. Supervising the Distribution Clerks was the Accountant Landowners Affairs (ALA). His job was to see that the Distribution Clerks do their job properly and honestly.

12. I-Taukei Landowners were paid their leasemoney on a monthly basis. The ALA calls the TLTB IT Department to produce a distribution List for the landowners' lease money. The IT Department sends the ALA the same by e-mail. ALA sends the same to his supervisor, the Manager Finance for checking, verification and approval. Once approved, the Manager Finance sends the same to ALA, who then sends the same to the Bank. On receiving the same, the Bank takes the money from their TLTB account, and pays the landowners their leasemoney.
13. At times, landowners want their lease money earlier than the monthly computer generated payments. They will have to be paid with TLTB cheques. The Distribution Clerks checks and verifies all information before it prepares the TLTB cheques. Then the cheques are taken to the ALA and Manager Finance for checking, verification and approvals. Once the applications are verified as true and correct, the TLTB cheques are paid out to landowners. You will see from the above that, the staff at the TLTB Trust Unit, that is, the Distribution Clerks, the Accountant Landowners Affairs and the Manager Finance, in terms of the elements of "Money Laundering" as described in paragraph 9(i), 9(ii), 9(iii), 9(iv) and 9(v) hereof, engaged directly and indirectly in transactions that involved money and cheques (property) on a daily basis. It was part of their job to engage directly and indirectly in transactions involving money and cheques, so long as they are properly paid to landowners.
14. The money and cheques they handled daily, in the nature of their jobs, can become "proceeds of crime", if they start to "flout the system". If they start to steal the landowners' leasemoney held in TLTB trust account in the banks or elsewhere, the money and cheques they handled immediately become tainted money and cheques, and become "proceeds of crime". When you steal a person's money or cheques, in whatever form or fashion, the money and cheques become "proceed of crime". It is a legal process which converts previously held untained money and cheques to tainted money and cheques because of the unlawful activity, that is, stealing the landowners' money.

15. The crime of "money laundering" is completed once the prosecution makes you sure that the accused knew or ought reasonably to know that the money or cheques he dealt with, were derived or realized directly or indirectly from some form of unlawful activity. In answering this issue, you will have to look at and examine the total evidence. You will have to look at the accused's background, his skills, what he said and did over the relevant period and the surrounding circumstances, to decide the above issue. Normally, when a person is "flouting the system" and stealing a person's money by various deceptive means, that is often taken as strong inferences that he knew what he was doing or ought reasonably to know that the fruits of his labour were the product of some unlawful activity. If you find that he knew or ought reasonably to know that the money or cheques he dealt with were tainted property, he is guilty as charged. Otherwise, he is not guilty as charged. It is a matter entirely for you.

16. In counts no. 1 and 2, in their particulars of offence, the prosecution began with the phrase, "...**JOSEFA SAQANAVERE and TUIMOALA RAOGO with another...**", and in counts no. 3, 4 and 5, the prosecution began with the phrase, "...**JOSEFA SAQANAVERE and SAVENACA BATIBAWA with another...**" The prosecution is alleging that the accuseds committed the above offences as a group. In other words, to make them jointly liable for the above offences, the prosecution is relying on and running its case, on the concept of "complicity and common purpose". "Complicity and common purpose" means as follows. When a person aids, abets, counsels or procures the commission of an offence by another person, he is deemed, as a matter of law, to have committed that offence also, and is punishable accordingly. To aid a person is simply helping a person do something easily. To abet is to help or encourage somebody do something wrong. To counsel is to advise someone to do something. To procure is to obtain something that's difficult. The prosecution is alleging that Accused No. 1, 2 and another assisted each other in committing the offences in count no. 1 and 2, while in count no. 3, 4 and 5, the prosecution is alleging that Accused No. 1 and 3 and another assisted each other commit the offences in those counts.

17. Furthermore, there are three accuseds on trial in this case. Each of the accused is entitled to be tried solely on the evidence that is admissible against him. This means that you must consider the position of each accused separately, and come to a separate considered decision on each of them. Just because they are jointly charged, does not mean that they must all be guilty or not guilty. Most

evidence in this case are admissible against all accuseds. However, regarding their police caution interview statements, which may contained some admission on some elements of the offence, the statements therein are only admissible against the maker of the statement, and on no other. In other words, you must totally disregard what the accused said about his co-accuseds on the commission of the offences. You may only take into account what he said about himself, regarding his role in the commission of the offence.

18. There are five counts in the information. You must consider each count separately in the light of the total evidence presented.

F. THE PROSECUTION'S CASE

19. As previously stated in paragraphs 10 and 11 hereof, this case was about what allegedly occurred at the TLTB Trust Unit from 31 December 2009 to 3rd September 2012 – a period of approximately 3 years. The purpose of the TLTB had been described in paragraph 10 hereof, and the Trust Unit and its staffing arrangements had been discussed in paragraph 11 hereof. The process where leasemoney was paid to itaukei landowners on a monthly basis via the Landsoft computer system had been described in paragraph 12 hereof. Payment of leasemoney to landowners via the TLTB cheque system had been discussed in paragraph 13 hereof.
20. At the material time, Accused No. 1 was a substantive Distribution Clerk at the TLTB's Trust Unit, and he was also the Acting Accountant, Landowners Affairs. As a substantive Distribution clerk he well knew their role of identifying and verifying the name of Landowning units, their bank accounts and other important data they feed into the TLTB Landsoft computer system. As the Acting Accountant Landowners Affairs, he had six Distribution Clerks under him, and he supervises them in ensuring that itaukei landowners receive their leasemoney via the Landsoft system on a monthly basis, or via the cheque payment system, when required.
21. Working under Accused No. 1 as a Distribution Clerk was one Tukana Levaci. He was Accused No. 2's first cousin. Mr. Levaci allegedly fled Fiji when this case was investigated by police in 2012. Nevertheless, according to the prosecution, Accused No. 1, Accused No. 2 and Mr. Levaci colluded in defrauding the TLTB and itaukei landowners of \$214,736.62 from 4 May 2010 to 3 September

2012 (count no. 1). They also defrauded the TLTB and i-taukei landowners of \$94,387.88 between 31 December 2009 and 2 August 2012 (count no. 2). Accused No. 1 and Mr. Levaci created false data within the Landsoft payment system and the TLTB cheque payment systems, and ensured the passage of stolen leasemoney to Accused No. 2's bank accounts in count no. 1 and 2. Thereafter, they used the stolen money for themselves.

22. Accused No. 1, Mr. Levaci and Accused No. 3 repeated the above schemes in count no. 3, 4 and 5. Accused No. 3 provided his younger brother's bank accounts in count no. 3 and 4, to receive the stolen leasemoney, as mentioned in those counts. Accused No. 1 and Mr. Levaci created false data in the Landsoft leasemoney and TLTB cheque payment system, to ensure the passage of stolen leasemoney to Accused No. 3's brother's bank accounts. Accused No. 1 also ensured the stolen leasemoney was sent to Accused No. 3's bank account as mentioned in count no. 5. Thereafter, they used the stolen money on themselves. All at material times, all the accuseds and Mr. Levaci knew or ought to reasonably know that the money they were receiving were proceeds of crime and stolen from TLTB and the i-taukei landowners.

23. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find all the accuseds guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASES

24. On 23 February 2016, the information was put to the accuseds, in the presence of their counsels. They pleaded not guilty to the charges. In other words, they denied the allegations against them. When a prima facie case was found against them, at the end of the prosecution's case, wherein they were put to their defence, Accused No. 1 choose to give a sworn statement and called three witnesses. Accused No. 2 and 3 gave sworn evidence and called no witness. That was their rights, as accuseds in this trial.

25. The defence cases were simple. On oath, Accused No. 1 denied the allegations against him. He admitted he worked with Tukana Levaci, but was unaware of his alleged fraudulent activities. He denied he was the master-mind in these fraudulent activities, and denied committing any fraud on TLTB or the itaukei landowners. He denied stealing any money from TLTB. As for Accused No. 2,

he admitted receiving the money mentioned in count no. 1 and no. 2 into his bank accounts. He said, Mr. Levaci asked him to provide his bank accounts, to assist the landowners received their leasemoney. He said, when he withdrew the money, he gave the same to Levaci. He didn't know the money were proceeds of crime until Levaci told him in late 2012.

26. As for Accused No. 3, he admitted receiving the money mentioned in count no. 3 and 4 in his brother's bank accounts. He said, Mr. Levaci asked him to use his brother's bank accounts to assist landowners receive their leasemoney. He said, when he withdrew the money, he gave them to Mr. Levaci. He said, he didn't know the money were proceeds of crime. As for count no. 5, Accused No. 3 admitted he received the money in his bank account. However, he said he didn't know they were proceeds of crime.
27. Because of the above, the accuseds are asking you, as assessors and judges of fact, to find them not guilty as charged. That was the case for the defence.

H. ANALYSIS OF THE EVIDENCE

28. In analysing the evidence, please take on board what we discussed in paragraphs 4, 5 and 6 hereof regarding the burden and standard proof, and our different roles as discussed in paragraphs 1, 2 and 3. Remember the burden to prove the accuseds' guilt beyond a reasonable doubt stays with the prosecution from the start to the end of the trial. There is no burden on the accuseds to prove their innocence, and if they choose to give evidence, they are entitled to do so, and if they introduce a reasonable doubt into the prosecution's case, and you are convinced accordingly, you are entitled to find them not guilty as charged.
29. When the defence made their closing submissions, they submitted that there was no direct evidence to connect the three accuseds to the five alleged "money laundering" allegations in the information. They said, there was no eye witness produced by the prosecution, to link the three accuseds to the alleged crimes. Even their police caution interview statements, tendered as Prosecution Exhibits 71(A) and 71(B), 73 and 80, showed no confessions to the alleged crimes by the accuseds. The lack of direct evidence to connect the accuseds to the alleged crimes was obviously a difficulty for the prosecution.

30. Nevertheless, in her closing submission to you, the prosecution pointed to what is often called "circumstantial evidence" to link the three accuseds to the "five money laundering" allegations in the information. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.
31. In the next following paragraphs, we will discuss the evidence of the various circumstances relating to the crime and the defendant which the prosecution say when taken together, will lead to the sure conclusion that it was the defendants who committed the crime.
32. First, we will look at the sketch of the TLTB Landsoft computer system, tendered by Ms. Miriama Naivalu (PW2), as Prosecution Exhibit No. 2. Prosecution Exhibit No. 2 presents the alleged crime scene in its diagrammatic form. TLTB is presented as a trust. TLTB controls and administers all native land in Fiji. It rents out native land to tenants, collects the rent from tenants, and pays the leasemoney to i-taukei landowners. TLTB has created a specialized "Trust Unit", tasked with paying out leasemoney to landowners.

33. Various witnesses had described the working of the "Trust Unit". The "Trust Unit" is headed by the Manager Finance, followed by the Accountant Landowners Affairs (ALA), and approximately six Distribution Clerks. The Distribution Clerks are basically the workhorse of the unit. They identify and verify the Landowning Units and their name, identify and verify their land, their bank accounts and other important information, and feed the same into the TLTB Landsoft computer system.
34. Leasemoney are paid out monthly. The ALA request a distribution list for leasemoney from their IT Department. The IT e-mails the list to the ALA. He checks and verify the same. He sends it to the Manager Finance to verify and approve. If approved, the Manager Finance send the list back to the ALA. He checks again and then sends the list to the Bank. This authorizes the Bank to take money out of the TLTB Bank Account and pay the landowners' bank accounts. This is the electronic payment of leasemoney on a monthly basis.
35. Sometimes landowners wanted to be paid before the end of the month because of some social demands. A written request had to be submitted to the "Trust Unit". Distribution Clerks attend to the request. They check and verify the request. They check whether the landowners had money in his account. If so, they prepare a TLTB cheque. They send the same to ALA who checks the same. If true and correct, he sends it to the Manager Finance, and he approves it, he signs the cheque and send it to the ALA and the Distribution Clerk to despatch to the landowner. This is the procedure for payment of leasemoney via TLTB cheques. Please, refer to Prosecution Exhibit No. 5 and 6 for an example of the above.
36. According to the prosecution, if the staff at the Trust Unit worked diligently and honestly, payment of landowners' leasemoney via the TLTB Landsoft computer system and via the TLTB cheque system would work normally and correctly. However, if the staff at the "Trust Unit" begin to "flout the system" and steal the landowners' leasemoney by fraudulent means, than this would give birth to the crimes of "money laundering".
37. Having now set the crime scene through a discussion of the sketch in Prosecution Exhibit No. 2, we now discuss the people who manned the "Trust Unit" at the material time. Mr. Rokotamana Tubuna (PW10) was the Manager Finance from July 2010 to July 2014. Before he joined TLTB, he

was working for BSP Bank. He supervises the "Trust Unit". The Unit is under the leadership of the Accountant Landowners Affairs (ALA), and at the material time, Accused No. 1 was the ALA. Under the ALA were six Distribution Clerks, and one of them was Tukana Levaci. Tukana Levaci was the first cousin of Accused No. 2, who did not work for TLTB.

38. According to the prosecution, under the guidance and approval of Accused No. 1 as the ALA, Tukana Levaci and Accused No. 2 colluded in stealing \$309,124 of leasemoney from TLTB. (Please, refer to count no. 1 and 2). Accused No. 2 provided two bank accounts to Mr. Levaci, that is, ANZ Bank Account No. 10089840 and BSP Bank Account No. 6945606. Accused No. 1 and Mr. Levaci then fraudulently stole the above money from TLTB and deposited the same in Accused No. 2's above bank accounts.
39. At this stage, we refer to Prosecution Exhibit No. 75, outlining the 43 transactions, wherein a total of \$214,736.62 was stolen by Accused No. 1, Accused No. 2 and Mr. Levaci, at the material time. The three jointly assisted each other in tampering with the Landsoft system electronic payment of leasemoney and prepared fraudulent TLTB cheques, and diverted the stolen money to Accused No. 2's bank accounts. Please, refer to the following fraudulent cheques, that is, Prosecution Exhibit No. 42, 18, 12, 19, 40, 41, 49, 50, 6, 7, 38, 39, 36, 37, 9, 17, 24, 34, 35, 32, 33, 51 and 52. Note the cheques are arranged according to transactions No. 1 to 14 of Prosecution Exhibit 75 (count no. 1). On the electronic transfer of funds from TLTB Bank Account to Accused No. 2's bank accounts, Accused No. 1's and Mr. Levaci's computer user names were commonly used. Looking at how the above transactions were carried out, according to the prosecution, Accused No. 1 and 2, including Mr. Levaci, knew or ought reasonably to know that the money they were dealing with were proceeds of crime.
40. According to the prosecution, the above methods of operations were also carried by Accused No. 1, Accused No. 2 and Mr. Levaci in count no. 2. Please, refer to Prosecution Exhibit No. 76. There were altogether 22 transactions. Money from TLTB Bank Account were paid to Accused No. 2's bank account via fraudulent electronic transfers and fraudulent TLTB cheques. From inside TLTB Trust Unit, according to the Prosecution, Accused No. 1 and Mr. Levaci undermined the Landsoft system and created fraudulent cheques to ensure TLTB money went to Accused No. 2's bank

accounts. Thereafter Accused No. 2 withdrew the money and shared it with the others. Please, refer to the following fraudulent cheques, that is, Prosecution Exhibit No. 15, 22, 45, 46, 13, 20, 10, 11, 43, 44, 14, 21, 47 and 48. Note the cheques are arranged according to transaction 1 to 7 of Prosecution Exhibit No. 76 (count no. 2). Looking at the way Accused No. 1, Accused No. 2 and Mr. Levaci manipulated the system, it was obvious, according to the prosecution that, they knew or ought reasonably to know that they were dealing with proceeds of crime, at the material time. On the electronic transfer of funds from TLTB Accounts to Accused No. 2's bank accounts, Accused No. 1 and Mr. Levaci's computer user i.d were often sighted.

41. The modus operandi used above were also used by Accused No. 1, Accused No. 3 and Mr. Levaci in stealing TLTB trust money in counts no. 3, 4 and 5. Payments via electronic transfers or TLTB cheque payments must be vetted by the ALA, a position that Accused No. 1 was holding in an acting capacity, at the material time. Accused No. 3 provided his brother's two bank accounts to Mr. Levaci to store the stolen TLTB trust money. For count no. 3, please refer to Prosecution Exhibit No. 77. There were 27 transactions. Transaction No. 1 to 3 were via payment through fraudulent TLTB cheque payments. Please, refer to cheque and cheque butts in Prosecution Exhibit No. 28, 29, 16, 23, 30 and 31. Note that the payee in the cheque butt and the payee in the cheque itself were different. This is unusual. Normally the payee in the cheque butt is the same as the payee in the cheques. This was a common feature in all the TLTB cheque payments in all counts. This evidence appear to show that the people preparing and vetting the cheques knew or ought reasonably to know that they were dealing with proceeds of crime.
42. On the remaining 24 electronic transactions from TLTB Bank Accounts to Accused No. 3's brother's bank accounts, Accused No. 1 computer user i.d was widely used. The Landowner's bank accounts were tampered with, and funds diverted to Accused No. 3's brothers bank accounts. Note that Accused No. 3's brother had two different names for 2 bank accounts. Accused No. 3's brother was a beggar by profession.
43. Accused No. 1, Accused No. 3 and Mr. Levaci used the same methods when stealing landowners leasemoney in count no. 4. Please, refer to Prosecution Exhibit No. 78. There were 11 transactions in all, and they were all electronic transfers from TLTB Bank Accounts to Accused No.

3's brother's bank account. A total of \$84,959.46 were involved. The TLTB Landsoft computer system were tampered with and leasemoney were diverted from landowner's bank accounts to Accused No. 3's brother's bank account. Accused No. 1's computer user i.d was identified as the one tampering with Landsoft data to divert funds to Accused No. 3's brother's bank accounts. Accused No. 3, who worked for TLTB as an administration clerk, according to the prosecution, assisted Accused No. 1 and Mr. Levaci steal the money from TLTB. It would appear from the prosecution's view point that, Accused No. 1, Accused No. 3 and Mr. Levaci, knew or ought to know they were dealing with proceeds of crime.

44. In count no. 5, according to the prosecution, Accused No. 1 tampered with the Landsoft system data, and diverted \$5,411.10 to Accused No. 3's BSP Bank Account No. 1242892. Please, refer to Prosecution Exhibit No. 79. There is only one transaction. Accused No. 1's computer user i.d. was traced as the one diverting the funds from the landowner's account to Accused No. 3's account. Accused No. 1, being the Acting ALA, obviously knew or ought reasonably to know that he was dealing with tainted money.

45. Having considered Prosecution Exhibits No. 75 (count no. 1); 76 (count no. 2); 77 (count no. 3); 78 (count no. 4) and 79 (count no. 5), it may be now prudent to consider Ms. Miriama Naivalu's (PW2) evidence and her report, submitted as Prosecution Exhibit No. 3. You must carefully read and understand PW2's report properly. PW2's report dated 25 October 2012 was self-explanatory. PW2 was directed to conduct an internal audit of the TLTB Trust Unit as a result of a complaint by the late Ratu Tevita Makutu. He complaint that he was not receiving the correct amount of his leasemoney. PW2's audit found that the TLTB's Trust Unit had been alleged compromised from within. Accused No. 1, as Acting ALA, had allegedly tampered with the Landsoft System data, and electronically transferred landowners' leasemoney to Accused No. 2's ANZ and BSP Bank Accounts, to Accused No. 3's brother's ANZ and BSP Bank Accounts and Accused No. 3's bank account. He was assisted in the above by a distribution clerk, Mr. Levaci. It was discovered that by allegedly doing the above, he effectively undermined his supervisor, the Manager of Finance. PW2's report does not paint a good picture of the Trust Unit, under the effective supervision of Accused No. 1. He had not solved the problem by effectively putting a stop to it. If anything, he allegedly encourage the rot by supporting it.

46. Various i-taukei landowners gave evidence in the trial. They were Mr Joana Vunisa Natagi (PW3), Adi Laite Koroirua (PW4), Alena Waqasiwa (PW5), Wiliame Bouwalu (PW6) and Samuela Burese (PW7). The landowners said they often received leasemoney from TLTB for the lease of their land. They said, they had not given TLTB or anyone, the authority to pay any third party their leasemoney. You must carefully consider the evidence of these itaukei landowners.
47. Next, you must consider Mr. Avisalome Raimuria's (PW12) evidence and report. At the material time, PW12 was working for TLTB as a system analyst programmer. He worked in the IT Department and dealt with the Landsoft computer system. He also conducted an audit of the Trust Unit and produced a report, tendered as Prosecution Exhibit No. 53. In the report, PW12 said Accused No. 1 and Mr. Levaci's computer user i.d was used on most occasions to conduct the fraudulent electronic transfer of TLTB trust money to the fraudulent bank accounts in counts no. 1, 2, 3, 4 and 5. In his evidence, he said, it was TLTB IT Policy for TLTB staff not to share their user i.d. This was for security reasons and to encourage accountability among TLTB staff.
48. Next, you must consider the deposits into Accused No. 1's ANZ Bank Account No. 9498030 from 8 January 2009 to 13 September 2012 – a period of approximately 3 years 8 months. The same was tendered as Prosecution Exhibit No. 72. In conjunction with the above, consider the following deposit slips into Accused No. 1's account – please, refer to Prosecution Exhibit No. 62, 63, 65 and 66(1) to 66 (80). What you make of these deposit slips is a matter entirely for you.
49. Then, you will have to carefully consider each of the accuseds' police caution interview statements, which were tendered as follows:
- (i) Accused No. 1 : Prosecution Exhibit No. 71(A) and 71(B)
 - (ii) Accused No. 2 : Prosecution Exhibit No. 80
 - (iii) Accused No. 3 : Prosecution Exhibit No. 73

You have watched each of the accused give evidence. They did not challenge the admissibility of their caution interview statements. If you think they are telling the truth or otherwise, you are entitled to treat their answers as you wish. You may accept and/or reject some parts of it or the whole of it. It is a matter entirely for you.

50. In his sworn evidence, Accused No. 1 denied the "money laundering" allegations against him. He said, he didn't do any fraudulent activities against TLTB and while employed in the Trust Unit. As for Accused No. 2 and 3, in their sworn evidence, they admitted receiving the money mentioned in count no. 1 and 2 for Accused No. 2, and the rest of the counts for Accused No. 3. However, they said they were doing so to help landowners, and they never knew or ought to have known they were dealing with proceeds of crime. Compare their answers to the type and amount of withdrawals from the fraudulent bank accounts as shown in Prosecution Exhibits No. 75 (count no. 1); 76 (count no. 2); 77 (count no. 3); 78 (count no. 4) and 79 (count no. 5). Were the moneys given back to landowners or were the money shared among themselves? The answer to this question is a matter for you.
51. Looking at all the above evidence relating to the various circumstances relating to the crimes and the accuseds, and when considering them together, does it lead you to the sure conclusion that it was the accuseds who committed the crimes alleged in counts no. 1, 2, 3, 4 and 5. Alternatively, what does the above circumstantial evidence tell you? To answer the above is a matter totally for you. On the acceptance or otherwise of the above evidence, take on board what I said in paragraphs 1 and 2 hereof.

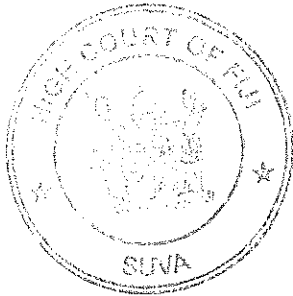
I. **SUMMARY**

52. Remember, the burden to prove the accuseds' guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accuseds, at any stage of the trial. The accuseds are not required to prove their innocence, or prove anything at all. In fact, they are presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accuseds' guilt, you must find them guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accuseds' guilt, you must find them not guilty as charged.

53. Your possible opinions are as follows:

(i)	Count No. 1:	Money Laundering :	Accused No. 1 :	Guilty or Not Guilty
			Accused No. 2 :	Guilty or Not Guilty
	Count No. 2:	Money Laundering :	Accused No. 1 :	Guilty or Not Guilty
			Accused No. 2 :	Guilty or Not Guilty
	Count No. 3:	Money Laundering :	Accused No. 1 :	Guilty or Not Guilty
			Accused No. 3 :	Guilty or Not Guilty
	Count No. 4:	Money Laundering :	Accused No. 1 :	Guilty or Not Guilty
			Accused No. 3 :	Guilty or Not Guilty
	Count No. 5:	Money Laundering :	Accused No. 1 :	Guilty or Not Guilty
			Accused No. 3 :	Guilty or Not Guilty

54. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for All Accused : **A. Vakaloloma, Barrister & Solicitor, Suva.**