

**IN THE SUPREME COURT OF SAMOA**

**HELD AT MULINUU**

**BETWEEN:**                    **P O L I C E**

*Prosecution*

**A N D:**                        **TOLUONO FETI**  
**TOLUONO**, *male of Vaitele-*  
*uta and Vailoa Palauli*

*Defendant*

**Counsel:**                    P Chang and E Niumata for the prosecution  
S Toailoa (12 – 16 December 2011, 18 January 2012) for the defendant  
Defendant in person (16, 21 and 22 December 2011)  
R Papalii (9 January 2012) for the defendant

**Hearing:**                    12 – 16 December 2011 and 18 January 2012

**Written Submissions:** 28 February and 9 March 2012

**Reasons for Decision:** 22 March 2012

**Charges:**                    False Pretence, Forgery, Fraud and Uttering False Documents

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**REASONS FOR DECISION OF SLICER J**

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1. The defendant was charged with 15 counts of crimes all of which involved acts of dishonesty contrary to the Crimes Ordinance 1961 (“the Ordinance”) sections 89, 99, 107 and 108. Two of those charges, ones of forgery (S2084/11 and S16/11), involve the Ordinance s23, namely incitement, aiding and abetting. The Informations further alleged the crimes of false pretence, forgery and uttering a false document. They comprise two series of transactions occurring in 2004 to

2005 and August 2007 to January 2010. For convenience they will be described as the Stowers and Burke transactions.

2. At the commencement of the trial, the prosecution successfully amended some of the Informations by varying the dates of the alleged commissions. Those amendments were granted. The defence objected to the amendment of the charge comprised in Information S18/11. It had originally been alleged that the crime had occurred on 17 February 2005 and the amendment sought was to vary the allegation to 31 December 2009. The amendment was significant and prejudicial to the defence and the Court refused to allow the amendment. Accordingly it was dismissed.
3. Originally 30 Informations had been laid. At trial, the prosecution withdrew 14 of those charges.
4. The trial proceeded on 15 charges, five of which related to the Stowers transactions and ten to the Burke matters.
5. The Stowers allegations were those of:
  - false pretence
  - forgery
  - uttering false documents
  - obtaining credit by fraud

occurring between 23 December 2004 and 17 February 2005.

6. The Burke allegations were similar and encompassed a period between August 2007 and October 2010.

### **General**

7. There are a number of general ingredients which govern the various charges.

They are:

- (1) the Court must be satisfied beyond reasonable doubt on each ingredient of the charge;
  - (2) The onus of proof remains with the prosecution;
  - (3) Evidence of an accomplice must be treated with care and ordinarily require a form of corroboration;
  - (4) A defendant is entitled to remain silent throughout trial but if he elects to give evidence it is to be regarded as forming part of the whole of the evidence available for the fact finder.
8. In this case, the following ingredients required for the commission of each ingredient relevant to this case are:

- (1) False Pretence (Informations S2083, 2093, 59, 10 of 2011)
- (2) Forgery (Informations 2084, 16 of 2011)
- (3) Uttering False Documents (Informations 2085, 2087, 2094 – 2097, 13 and 2093 of 2011)
- (4) Mistake of fact; and
- (5) Claim of Right.

### **General Background**

9. Theresa Stowers and Rosita Burke were members of the same family. Each was the registered owner of land in Samoa and each lived overseas at all the relevant times. Each was related to a Samoan resident, Vaselisa Stowers (“Vaselisa”), who was a party to the transfer of their lands, without their knowledge or consent, to Toluono Feti Toluono (“Toluono”), the defendant. Toluono in turn mortgaged the Stowers land and retained the proceeds of that mortgage and sold portion of the Burke land to another and retained the proceeds.
10. The prosecution’s case is that he enlisted the support of Vaselisa in effecting the original, unlawful transfers by encouraging and representing her to be the lawful owner as both Theresa Stowers and Rosita Burke, and aiding her in forging her name as the true owner of the land. He then treated the land as his own and dealt with it accordingly.

11. The defence case is that Vaselisa Stowers deceived Toluono into believing that she was in fact Theresa Stowers and later became Burke through marriage. He claimed, at trial, to have acted under the honest belief that he was purchasing the lands for valuable consideration in good faith and engaged honestly in what were otherwise acts of representations of another.
12. There was no issue at trial that Theresa Stowers or Rosita Burke had neither transferred nor consented to the transfer of their respective lands.
13. There was no issue at trial that Toluono had mortgaged the Stowers land or sold portions of the Burke land.
14. There was no issue at trial that Vaselisa Stowers had acted dishonestly. She pleaded guilty to the charges brought against her and was imprisoned following her pleas.
15. Toluono and Vaselisa had been engaged in an affair commencing some time in the period 2002 – 2003, an affair which continued until at least 2010. Toluono was married and the relationship with Vaselisa ended when she became aware of that marriage. It is the defence case that she falsely implicated Toluono in her own dishonest acts as revenge for her betrayal.

## Legislation

16. The crimes alleged are those of false pretence, forgery, uttering and obtaining credit by fraud. The defendant is charged as a principal in some of the Informations or as a party within the meaning of the Crimes Ordinance 1961 section 23.

17. The legislature provisions relevant to the Information provide:

“89. Obtaining by false pretence - (1) Everyone is liable to imprisonment for a term not exceeding 3 years who:

(a) With intent to defraud by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any person other than himself or herself; or

(b) With intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

(2) A false pretence is a representation either by words or otherwise of a matter of fact either present or past, which representation is known to the person making it to be false and is made with the fraudulent intent to induce the person to whom it is made to act upon it.”

18. During the trial the defendant argued by analogy that land is not capable of being stolen since it cannot be moved or asported, as required by the Ordinance section 85. The argument was not repeated in the written submissions filed by the defence on 9 March 2012. The argument is rejected. The contention does not take into account the provision of section 88 which extends the definition to theft to a valuable security which would include a chose in action, title, deed and the like. Title to land enables the holder to obtain a mortgage providing money for the security. The contention also fails to take into account the wording of section 89(1)(b). The term valuable security is defined by the Ordinance section 2 as:

“‘Valuable security’ means any document which constitutes a title to or is evidence of title to any property or proprietary right of any kind whatever; and includes any negotiable instrument, bill of exchange, cheque or promissory note.”

19. The transfer and mortgage documents constitute ‘valuable security’ within the meaning of section 89.

20. If the Court is wrong on this point and that one of the ingredients necessary for the commission of the crime, namely asportation, it may nevertheless have recourse to the Criminal Procedural Act 1972 section 39, which relates to a circumstance of a finding that part of the charge has been proved and permits a finding in accordance with the Lands Titles Registration Act 2008 which provides:

“Fraudulent acts – (1) A person who:

- (a) fraudulently procures, assists another person to fraudulently procure or is privy to the fraudulent procuring of: (i) the creation of a folio on the Register; or (ii) a recording in the Register; or (iii) any alteration of any instrument or form issued by the Registrar; or
- (b) fraudulently uses, assists another person to fraudulently use or is privy to the fraudulent use of any instrument or form purporting to be issued or used by the Registrar; or
- (c) knowingly misleads or deceives any person authorised to demand explanation or information in respect of any land or the title to any land in respect of which an instrument is proposed to be registered or recorded, is guilty of an offence and liable to a fine not exceeding 100 penalty units or imprisonment for 3 years or both.

(2) Any folio of the Register, recording or alteration, the creation of which, or the making of which, as the case may be, has been procured by fraud shall be void as between all parties or privies to the fraud.”

21. It is not necessary to decide whether the provision applies to the 2004 – 2005 allegations, although the law suggests that it does not, but it does apply to the 2009 – 2010 allegations.



## **Forgery**

22. The Ordinance section 107 relevantly provides:

“Forgery – (1) Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within Samoa or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within Samoa or not.

(2) For the purposes of this section, the expression "making a false document" includes making any material alteration to a genuine document, making any material addition to it, or other alteration whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(3) Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, although the offender may not have intended that any particular person should use or act upon it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything.

(4) Forgery is complete although the false document may be incomplete or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted on as genuine.

(5) Everyone who commits forgery is liable to imprisonment for a term not exceeding 5 years.”

23. Here there is no doubt that Vaselisa forged the documents of title or that the defendant signed the mortgage and the transfer of the Burke land. The question is the intent and knowledge of the defendant.

## Uttering Forged Documents

24. The Ordinance section 108 provides:

“Uttering forged documents – Everyone is liable to imprisonment for a term not exceeding 5 years who, knowing a document to be forged:

- (a) Uses, deals with, or acts upon it as if it were genuine; or
- (b) Causes any person to use, deal with, or act upon it as if it were genuine.”

25. The allegations are:

- (1) the defendant instigated or was a party to Vaselisa signing the transfer documents;
- (2) falsely signed the security documents knowing them to be false.

26. In relation to (1), the prosecution relies on the Ordinance section 23.

27. The ingredient central to this case is, ‘knowing a document to be forged.’ There is no doubt that a false document had been uttered. The question remains that of knowledge. A secondary question is whether a conviction on these charges is subsumed by conviction of the preceding alleged crimes (see: *Samau v Attorney General* [2011] WSCA 4).

## Mistake of Fact

28. The Ordinance section 9 states:

“General rule as to justification – All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Ordinance or under any other enactment, except so far as they are altered by or are inconsistent with this Ordinance or any other enactment.”

29. Common law provides for the defence of mistake of fact. The defence has been described as including claim of right.

30. The text *Criminal Law in New Zealand* by Garrow and Caldwell 6 Ed., states the legal ingredient in the following terms at 52 – 53, namely

“Ignorance or Mistake of Fact – Mistake of fact is an excuse for the commission of a crime where it negates the *mens rea* of that crime. The operation of mistake of fact was considered exhaustively by the House of Lords in *Director of Public Prosecutions v Morgan* [1976] AC 182, [1975] 2 All ER 347. It is thought that the following statement represents the law in New Zealand. ‘Except where an offence is so defined that proof of intention or foresight is unnecessary, mistake of fact is a defence provided that on the facts as the defendant believed them to be he did not have the *mens rea* required to constitute the offence charged. Where, owing to a mistake of fact, the defendant did not intend to do the prohibited act the defence is made out if the mistake was honestly made by him; but where the defendant intended the prohibited act and asserts that he was mistaken to facts which, had they existed, would afford justification or excuse, the general rule is that his mistake

affords a defence only if it was honestly made and there were reasonable grounds for making it.’: *11 Halsbury’s Laws of England*, 4<sup>th</sup> Ed, para 21 and authorities there cited.

The basis for the rule is well stated in the following passage from the judgment of Dixon J in *Thomas* (1938) 59 CLR 279, 299: ‘Whenever a legal standard of liability includes some exercise or expression of the will, some subsidiary rules of law must be adopted with respect to mistake. States of volition are necessarily dependent upon states of fact, and a mistaken belief in the existence of circumstances cannot be separated from the manifestation of the will which it prompts. Whether consent, intention, or motive is the element which a legal criterion of liability includes, it is undeniable that a misapprehension of fact may produce a state of mind which though apparently of the required description is yet really of an entitled different quality.’

A mistake as to the existence of a compound event consisting of law and fact is in general a mistake of fact; *Eaglesfield v Marquis of Londonderry* (1875) 4 Ch D 693, 702, 703 *per* Sir George Jessel MR, and *Thomas* (1938) 59 CLR 279, 306, 307, *per* Dixon J.”

31. But if the evidence raises the issue of mistake of fact, it remains the responsibility of the prosecution to establish to the requisite degree that there was no mistake of fact. Here the two questions become intertwined, namely:
  - (1) Did the defendant act dishonestly?
  - (2) Did he act under a mistaken but reasonable belief?

### **Stowers Transactions**

32. Theresa Stowers became the registered proprietor of the land as the trustee and beneficiary of her husband. The memorial shows a conveyance to the defendant dated 24 December 2004, No. 13581C produced on 10 February 2005. The purchase price stated in the deed was \$180,000. There is no documentation other than the stamp duty payments recorded on the transfer of any money paid to Vaselisa.
  
33. A mortgage to the Samoa Commercial Bank was produced on 17 March 2005. There is no dispute that the defendant was the transferee or mortgagor of the land. There is no dispute that the transactions were not authorised by Theresa Stowers.
  
34. The sole questions are whether the defendant acted with knowledge and dishonesty in the transactions.

### **Burke Transaction**

35. The Burke land was conveyed to her by deed of gift dated 16 July 1981 by Estelle Churchwood. The value stated for the purpose of stamp duty was \$4,000. The Land Register describes the conveyance from Rosita Burke nee Stowers to Toluono Feti Toluono, dated 10 August 2007, and produced on 19 October 2007 at 1:30 o'clock. A mortgage from Toluono to the National Bank of Samoa was produced on 30 November 2007. The mortgage was discharged on 3 February 2010 and transferred to Perise and Sapati Fili as joint tenants on 20 January 2010.

The purchase price was stated to be \$45,000. There is no record of any payment to Vasselisa for the transaction described as the transfer from Rosita Burke nee Stowers to Toluono.

36. There is a record of the payment by Perise Fili for \$45,000 being the purchase price paid to Toluono.

### **Commencement of Proceedings**

37. The unlawful dealings with the land came to light when members of the Stowers and Burke families came to Samoa, at separate times, and during those visits searched the land records. The searches showed that the respective lands had been transferred, mortgaged and/or sold with portion being retained by Toluono. Further inquiries were made ending with separate complaints to police who conducted their own investigations.

38. The Stowers Informations were commenced in December 2010 and the Burke matters commenced in the period June – September 2011. There were different Informations laid at different times but at trial all of the Informations, after amendments, withdrawal and the like were ones filed in 2011. The Informations proceeded with encompassed the period 24 December 2004 and 20 October 2010.

### **Evidence of Accomplice**

39. Vaselisa Stowers was a party to the course of criminal conduct. She has pleaded guilty to her involvement in both the Stowers and Burke matters, and sentenced to a 3 year period of imprisonment.
  
40. It is dangerous to convict on the evidence of an accomplice unless that evidence is corroborated. The need for caution with corroboration is the danger that an accomplice might minimize his or her role in the crime and exaggerate that of the accused, or might have a purpose of his or her own to serve. In some cases, an accomplice might hope for a lesser sentence if he or she assists the investigation or prosecution and gives evidence against another. It is for that reason that an accomplice is ordinarily dealt with before the trial of a co-accused. That has been done in this case.
  
41. Here, it is suggested that she has given false evidence to harm the defendant whom she found to be married or at least sought revenge for the ending of the relationship.
  
42. A further reason might be that she believed that her implication of a public figure might advance the causes of members of her family, Stowers and Burke, in reclaiming their property.

43. I will regard her evidence as requiring confirmation or proof from another credible source to her version which renders it probable to the requisite degree that the evidence or portion of her evidence is true. The evidence must affect the accused by connecting or tending to connect him or her with the crime.
44. Here there is an additional significant reason to rely on evidence independent of the testimony of Vasselisa. She had been involved in two other hearings concerning the criminal conduct. The first involved a civil action intended to recover the Stowers land in which Vasselisa gave evidence. The second concerned her own sentencing hearing.
45. Vasselisa is a cleaner by occupation and it was clear in her manner of giving evidence that she was easily confused but would give an answer which suited her version. The Court accepts that she became confused during the course of the prolonged cross-examination which concentrated on inconsistencies and contradictions of her evidence given during the civil proceedings and at the present trial. The Court accepts that she became confused but she remained adamant, even in re-examination, that she had not given the answers as recorded in the transcript which was tendered at trial. During the civil proceedings she had claimed to have been solely responsible for the fraud.



46. The Court does not accept her denials that she had given the evidence stated in the transcript. The passages of the relevant evidence given by Vaselisa on 22 February 2010 at the civil hearing read in translation:

“Wit                   that’s when I looked for the documents and I lied to the old man that I am Theresa Taufau that is the reason why the old man requested me to transfer the land to him.

...

Papalii               is it the correctness of your evidence that on day and time that the land was transferred to Toluono, Toluono did not know that you were not the owner of the land?

Wit                    yes.

...

Toailoa              Mr Roma asked you, you informed Toluono that there are lands of your family; did you tell him that it’s your land? and your response that is recorded in the transcript ‘...with a clean heart as I stated previously it was I who owned the land, that was my reply to the old man.

Roma                 before you two went to the land registry office, Toluono asked you who owns the land.

Wit                   Toluono asked me, I replied it was I...my name is Lisa when we went but when the record was searched, it was Theresa on the record then the old man asked me whether my name is Theresa, I replied yes I am.

HH                   how about Taufau?...Didn’t you tell Toluono that you name is not Taufau?

Wit                   no...as the matter was in progress I rethought it over and it was not true, what I did was not true then I spoke to the old man and related correctly to the old man the person who owned the land and told you that you are to pay \$200 for the debt.”

47. At trial she either denied or could not remember giving those answers. She repeated those denials during re-examination.

48. The Court will not accept her evidence on this matter and for the reasons stated above not accept her evidence unless corroborated.

49. *Cross on Evidence 7* Aus Ed. states the evidentiary position at 15105, in the following terms:

“[15105] Corroboration does not mean that there should be independent evidence of that which the accomplice relates, otherwise the accomplice’s testimony would be unnecessary.<sup>81</sup> It would merely be confirmation of other independent testimony. There is a judgment of Viscount Reading which is of the greatest importance because it settles a conflict between two views concerning the nature and extent of corroboration. According to the first view, independent evidence tending to verify any part of the testimony of the accomplice would suffice, while the second required that the evidence should not only show that part of the accomplice’s testimony as true, but it should also implicate the accused. Viscount Reading had favoured the latter:

evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime...The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute. The language of the statute, ‘implicates the accused’, compendiously incorporates the test applicable at common law in the rule of practice.<sup>82</sup>

It is submitted that the decision in favour of the second view is sound on principle because ‘false evidence given by an accomplice is commonly regarded as more likely to take the form of incriminating the wrong person than of imagining the crime charged.’<sup>83</sup>”

50. The second view, as stated by *Cross*, is important in this case. There is no dispute that the defendant was directly involved in the transactions. This is not a case of the 'wrong person' being named as being involved in the transfers and mortgages.
51. He was the person who attended the search registry, he was the person who engaged the solicitor, he had assured the solicitor of the identity of the transferor and that the consideration for the purchases would be dealt with separately, and it was he who executed the mortgage and the sale of portion of the land. The question is whether he did so in the belief that Vaselisa Stowers and Rosita Burke were the same person and entitled to the ownership of the land.

### **Registry Search**

52. Vaselisa did not have the education or skills to undertake the original searches of the title deeds. The Court accepts her version that she was taken to the office of the Registrar of Land and Titles and it was Toluono who arranged for the production of survey and title documents. There was some objection to the evidence at trial, and an adjournment was granted to enable the defence to check on whether Vaselisa had been accompanied by Toluono who requested the production of the relevant book registers and documentation. Those inquiries were made and the Court advised that the person who was at the Registry desk confirmed that both Vaselisa and Toluono had attended the Registry in December 2004. That joint visit would not have been necessary if the defendant believed that he was dealing with a bona fide vendor.

53. The evidence, although slight in its import, corroborates portion of Vaselisa's evidence.

### **Afolau Construction**

54. The books of account do not confirm the defendant's evidence that the company had more than ample funds to enable him to readily pay Vaselisa for the purchased lands. The bank statements show that at most times, between May 2004 and 1 October 2009, it operated significant levels of debt.

55. On 17 February 2005, the Stowers land (Land Register Volume 10 Folio 253) was mortgaged to the Samoa Commercial Bank Limited with the customer shown as Afolau Construction. On 14 November 2007, the Burke land (Volume 20, Folio 136) was mortgaged to the National Bank of Samoa.

56. Both mortgages were taken out shortly after the purchase of the land.

57. As at the November period, the debit balance for Afolau Construction was between \$438,000 and \$476,000. On 23 February 2006, the Samoa Commercial Bank provided an overdraft facility of \$180,000 which had risen to \$216,944 by the end of March and \$403,642 by 31 May 2007.

58. The accounts show that at the relevant times the defendant's company was in need of capital. The claimed or inferred suggestion that funds were readily

available for cash purchases of the Stowers and Burke lands, through the company, are not consistent with either the Statement of Account or the timing of the mortgages. Those records support the prosecution's claim of motive.

### **Evidence of Vaselisa**

59. Vaselisa's version is that the defendant had initiated the relationship with her which had continued over a long period. The relationship was both sexual and emotional, commencing in 2002 and ending at least on her return from New Zealand in late 2006; if not, when she became aware of his marital status in 2010. She claimed she had been told by Toluono that he was single and that she had told him that her husband had left her in 2000. Vaselisa admitted at trial that she had been involved in the fraudulent conduct and had been persuaded by the defendant to take part in the two transactions. She had pleaded guilty to her role in the frauds and was serving a term of imprisonment.
  
60. In return for her participation she received the cost of travel and expenses during her trip to and stay in New Zealand between January 2005 and 2007. She said that during that period she stayed with her lover at hotels in that country as well as being taken to dinner and other forms of social contact in both Samoa and New Zealand. The defendant claimed the relationship was platonic and social contact was rare.

61. She claimed that it was the defendant who arranged the meeting at the Land Registry and conducted the search in December 2004. She further claimed that it was the defendant who arranged for her passport, visa and travel documents which confirmed to him her correct name, recorded as Vaselisa Nikolau Niupulusu. She had no contact with Toluono after her return from New Zealand until he rang her in 2007 shortly before the Burke transaction and was persuaded by him to pose as Rosita Burke, which she did.
62. Vaselisa had seven children, worked as a cleaner and struggled financially. It may be that her motive was the support and response of an important man of substance. She had raised her children on a low salary and her mother in law's pension.
63. She maintained her version during prolonged cross-examination. There were inconsistencies internal to her testimony but she maintained the substance of her evidence implicating the defendant. She admitted that she attempted to befriend Toluono. It was apparent during her testimony that she had little understanding of finance or the workings of the land holding system. She was confused by some of the questioning.
64. Vaselisa estimated that she had received approximately WST\$20,000 in airfares, support for her trip and time spent in New Zealand.

65. The transcript of the February trial shows that she had either lied about any involvement or knowledge by Toluono of the frauds at trial but she remained consistent of her own involvement in the crimes.
66. The Court has treated her evidence with great caution of the whole of her evidence and sought corroboration of significant portions.
67. In addition there is the evidence of a statement made by Vaselisa to police on 13 October 2010 which became evidence as “Exhibit D2”. In that statement she told police that:
- She had been persuaded by Toluono to sign the Burke document.
  - When she returned from New Zealand in 2007 the defendant contacted her and requested her to meet him at Tuimalealiifano’s office but did not tell her the reason. On 10 August, at the office, she was then requested to sign the document and did so. She then left.
  - One month later she was contacted by Toluono’s wife who ‘said a lot of stuff to me’ and she (Vaselisa) found out that the defendant was married for the first time. Until then she had believe Toluono’s claim that his wife had been dead for a long time.

- She received no money after signing the 2007 documents.
  
  - Before the 13 October statement she had been asked by Rosa Stowers to go to Amperosa's law office where she was interviewed and admitted that she had signed the Burke document.
  
  - The reason why she signed the documents was because Toluono convinced her.
68. The statement might explain why she had lied in the civil proceedings to protect the man whom she still believed was single and had affection for her.
69. The statement shows that her evidence given at trial was, at least, not that of recent invention made after 13 October or the date she visited the law office.
70. The civil proceedings brought by Theresa Stowers at which Vaselisa had accepted sole responsibility had been held in February 2010. She was formally interviewed by police on 12 January 2011 ("Exhibit D2") but made use of her statement made to Constable Maugafa Leaupepe on 28 December 2010. There was no evidence at trial of a December statement but the October 13 statement had been made to Constable Maugafa Leaupepe so it is possible that she misstated the date as December.



71. Vaselisa was sentenced on 15 March 2011 after her admission of her own misconduct and her implication of the defendant.

### **Defendant's Evidence**

72. The defendant holds a title as orator and the degree of Bachelor in Engineering from New Zealand. He has extensive administrative experience as Deputy Manager of Hutt Valley Energy Board and in 1990 became General Manager for the Electric Power Corporation ("EPC"). In addition, he was the Manager Director of Afolau Construction. He had the skills, knowledge and experience to effect complex and serious acts such as were required to effect the Stowers and Burke matters. That capacity is in contrast with the education and social skills of Vaselisa who had been employed as a cleaner.

73. The prosecution also claimed that the deterioration of the financial state of Afolau Constructions provided a motive for the 2007 transactions. The bank records ("Exhibit P18") showed the company to have an overdraft of \$60,000 at the relevant time, which provided a motive for the fraudulent conduct. There is also a suggestion that the 2004 Stowers transaction coincided with Toluono's resignation from the EPC and the 'start up' of Afolau Constructions and the capital necessary for such an undertaking.

74. Toluono was married and the Court accepts Vaselisa's version that he never disclosed his marital state to her. It also accepts that the relationship between

Toluono and Vasselisa was sexual and not platonic as he had claimed at trial. Vasselisa's version of the nature of the relationship is corroborated by what Toluono told his solicitor when he introduced Vasselisa.

75. He agreed that he first met Vasselisa in 2002 and it is unnecessary to determine the precise details of that initial meeting except to state that it was he who provided Vasselisa with his occupation and probably his contact number. The Court does not accept his version that at the initial meeting

“...all night she was persuading me and the other 2 to buy the land and I never took it seriously...”

76. It would be unlikely that at a social function a person with Vasselisa's background would be able to dominate the conversation with a person she had just met with land sale proposition.
77. Toluono claimed that Vasselisa kept persistently ringing him at work using the EPC landline, and it is unlikely that the Chief Executive Officer of a large organisation would continue to allow his staff to transfer persistent and unwelcome calls to his office connection.
78. He consulted a real estate friend about the value of the land. In 2004, he went with Vasselisa to the Land Registry Office. There was no specific reason for doing so since a search would ordinarily be undertaken by his solicitor. He had known

Vaselisa as Lisa but that at the Registry she told him that her name was also Theresa Taufau Stowers, and Falefiso the registry officer provided the relevant documentation in the name of Stowers. The Court does not accept the reasonableness of his claim that:

“I believed her partly bcoz (sic) I knew I was going to get a lawyer to make a thorough search, who happened to be Tuimalealiifano.”

79. The Court accepts that at the lawyer’s office, Vaselisa told the solicitor that her name was Theresa Stowers. She did so at the defendant’s behest and was complicit with him in the fraud. The Court does not accept that he paid Vaselisa the sum of \$100,000 in money and recorded the payments in his receipt book ‘which I had given later to Tuimalealiifano’. Tuimalealiifano strongly denied that he had ever been given such receipts and his evidence is accepted. It was the defence claim that the receipts were destroyed during the fire of Tuimalealiifano’s home; a claim rejected by Tuimalealiifano.
  
80. The Court accepts that rejection and finds that Vaselisa was never paid the sum of \$100,000. Her share for the fraud was the trip to New Zealand. There is a disparity in the evidence of the defendant as to the amount and nature of the payment. At one stage he stated that he had paid \$100,000 before the transfer (Transcript p20) but later stated the remaining balance owing was \$40,000 (Transcript p21) and that Vaselisa ‘asked for a trip to visit the relations in New Zealand in this fee’ (Transcript p21) to be paid from the balance. He said he gave

her \$20,000 in cash for the trip but gave no other evidence of payment of the balance either \$60,000 or \$20,000 depending on the disparity above.

81. It is common ground that he assisted Vaselisa in her journey to New Zealand. The difference is that the defendant claimed payment only with no involvement in her visa, passport or travel arrangements. The prosecution's case is that he made those administrative arrangements which showed that he was aware of her true identity. That difference will be later considered.
82. Toluono claimed that he had met with Vaselisa in New Zealand on only one occasion when he took her to dinner with a fellow Samoan, Lu Mano. Lu Mano did not give evidence at trial. He claimed that she was able to track his movements and kept chasing him for 'this money and the land' (Transcript p28). He averred that she had learnt of the Fijian trip through another, but as a matter of fact he did go to Fiji alone.
83. Vaselisa returned to Samoa in late 2006 and, according to Toluono, again contacted him asking him to buy further land for \$45,000 and showed him a map. The following exchanges in his evidence in chief is, in the Court's opinion, unsatisfactory.

“Wit                    name mentioned was Rosita Burke.

Def                    and what was your reaction when she mentioned the name?

Wit well I said your name is Lisa, this is Rosita Burke and she said that's the same person, it's me.

Def did she give you any explanation as to how she can also be Rosita Burke when she was also Theresa Taufau Stowers under the earlier transaction?

Wit no she kept on insisting that's her other name.

Def did she give you an explanation why the surnames were different: Burke and Stowers? The first transaction was Theresa Taufau Stowers; the second transaction the surname is Burke, did she give you any explanation as to why the differences in those surnames?

Wit what she said to memory was that was her husband's family name.

Def which on? (sic)

Wit Burke.

Def and the Stowers?

Wit Stowers was her maiden name.

Def apart from the map or the copy of the plan that she had, did she give you any further document at any stage showing the particulars of the owner of the land?

Wit no, until we saw Tui, she gave some more documents.

Def Tui you're referring to is your lawyer; Tuimalealiifano?

Wit yeah that's right.

Def now when you first went to see Tuimalealiifano for this transaction, did you and Vaselisa went together?

Wit yes.

Def what, if anything, did you say? What were your instructions to Tuimalealiifano when you and her visited on that occasion?

Wit well I also told him that I wanted a thorough check to see if she's the same person as Rosita Burke.

Def yes?

Wit           and he said yes and she also had a will saying she's inherited the land.

Def           she also had a will?

Wit           [no reply].

Def           I thought I had asked you earlier whether she had any other documents apart from the plan and you said no.

Wit           well she didn't show me this one until we got to Tui.

Def           okay, and whose will was it?

Wit           this was Rosita Burke's will willing the land to her.

Def           Rosita Burke willing the land to Rosita Burke?

Wit           to Lisa Theresa Vaselisa.

...

Def           and this will that you're talking about, was it tendered in any of the prosecution's evidence or not?

Wit           well I'm not too sure whether it was but she showed the will to Tuimalealiifano it said this will to her. I didn't read the will."

84. He continued claiming the will was given to Tuimalealiifano, a matter contradicted by his solicitor.

85. Thus on his account the perpetrator of the fraud has used a number of names, Vaselisa, Lisa, Theresa Stowers and Rosita Burke, over a period of 5 years.

86. Again, no money was paid at settlement as is normally the case. Tuimalealiifano did not receive the money. The defendant stated that he had paid Vaselisa the \$45,000 from his construction company in three instalments, all paid before

settlement, which were receipted and given to Tuimalealiifano (Transcript pp 34 – 35), who denied that he was supplied with such receipts. The Court accepts the evidence of Tuimalealiifano on this point.

87. Toluono claimed at trial that he remained unaware of any irregularity until approached by members of the Stowers and Burke families.

88. There remained the issue as to whether he had approached Tuimalealiifano and asked him to allow an affidavit verifying that he had, in fact, paid the purchase monies to the solicitor. The following exchanges show his response to the issue:

“HH                   there is one outstanding matter which I will invite you to consider.

Def                   yes.

HH                   and that is the alleged conversation where he approaches Tui and asks whether it is okay to put in an affidavit that Tui had received the money.

Def                   oh yes.

HH                   it should be put to this witness.

Def                   yes, Tuimalealiifano had testified to this court that during the civil trial you had approached him and requested him to say in his affidavit that the moneys were paid directly to him or the purchase moneys for the land was paid directly to him. Do you recall that part of Tuimalealiifano’s evidence?

Wit                   yeah I do recall but that’s not what I said to him to be honest.

Def                   what exactly did you say to him?

Wit                   well I said to him where the receipts which were given to him, the amount of money was paid to Lisa.

Def           you went for the receipts?

Wit           yeah but he couldn't provide the receipts.

Def           and did he tell you why he couldn't provide the receipts?

Wit           he said his government house at Vaiala had burnt down, burning all the receipts, the ones I gave him and the other ones I had, the originals I had.

Def           so there were 2 lots of receipts that you gave him?

Wit           yes.

Def           you gave him the copies and you also gave him the originals?"

89. In cross-examination he contradicted much of his evidence in chief. The contradictions can be summarised in the following terms:

- (1) He told his counsel that he had commenced making payments before he resigned from EPC but when challenged altered it to say the payments were made in 2003 after he had resigned (Transcript p42);
- (2) He told the prosecutor that he decided to buy the land after the resignation but later agreed that the decision had been made before that resignation (Transcript pp42 – 43);
- (3) He agreed that he went to the Land Registry Office in December 2004 'but only after confirmation with Tuimalealiifano did I start paying Lisa' (Transcript p43);



(4) His wife of 30 years was related to the Stowers family but knew nothing of any land holdings of the Stowers family (Transcript p44);

(5) He had told Vaelisa of his marital status, but added:

“Pros and you told her you were not married?”

Wit well that’s beer talk, I don’t see why I should tell her about my marriage.”

(6) He agreed that he would occasionally meet with Vaelisa socially once a month or two (Transcript p47);

(7) He agreed that he had seen the documents showing that Theresa Stowers had inherited the land from her husband Michael Stowers and was described as a widow whereas he had earlier said that Vaelisa had told him that she was married but her husband now lived overseas (Transcript p48 – 49);

(8) He had looked at the will but did not notice the difference between the signatures on the deed of transfer (Transcript p53);

(9) He provided the receipts to Tuimalealiifano at settlement;

(10) He had mortgaged the land within seven days of the transfer but he had earlier been able to pay \$100,000 from the company funds;

- (11) On the Burke documentation the vendor was described as Rosita Burke, a married woman of Apia (Transcript pp 58 – 59);
- (12) He did not assure Tuimalealiifano that he knew the vendor well but simply told the lawyer to ‘confirm that she was the same person’ (Transcript p61);
- (13) He was inconsistent in his explanation that Vaselisa had told him that her married name was Burke and Stowers her maiden name (Transcript pp61 – 62);
- (14) The purchaser of the Burke land Perise had only paid him \$25,000 (Transcript p64) in cash (Transcript p65) and his niece was wrong in her evidence (Transcript p68);
- (15) As to the receipts and the evidence of Tuimalealiifano, he answered ‘yeah, he was another crook in this bcoz (sic) you can’t get the deed without a legal person’;
- (16) He had told counsel that there had been a second visit to the Land Registry Office but then insisted that there had only been one visit. The significance is that the Stowers transaction was in 2003 and the Burke one in 2007. There would have been no need to obtain the Burke documents in 2003.

90. The Court does not accept the defendant as a credible witness.
91. The Court is required to be cautious in accepting any evidence from Vaselisa as an accomplice without corroboration. In addition, she had lied during the trial about her evidence given at the previous civil proceedings although it is possibly a result of confusion. During the civil trial she said that she was solely responsible and did not implicate the defendant.

### **Evidence of Tuimalealiifano**

92. The Court accepts the evidence of Tuimalealiifano Vaaletoa II (“Tuimalealiifano”), the solicitor who conducted the legal procedures and documentation concerning both transfers. He knew Toluono for a long period in his capacity as the Chief Executive Officer of EPC. He trusted Toluono.
93. In December 2004, he recalled meeting with Toluono and a woman introduced to him as Theresa Stowers. Toluono told him that the woman was his girlfriend and had been living in a de facto relationship for two years and she wished to sell him her land. She confirmed the statement. Toluono had produced the survey plan and title. Tuimalealiifano correctly asked the woman if she had her own lawyer but it was Toluono who replied that they wished Tuimalealiifano to act for both parties. Toluono said the sale price would be \$45,000 per acre and Tuimalealiifano recorded the total price as \$180,000. Tuimalealiifano later contacted Toluono to confirm the price as \$180,000. The conveyance and

associated documentation was prepared and signed by the woman on 24 December. There is no doubt that Vaselisa was the person who signed the transfer. Tuimalealiifano's version supports the conclusion that it was the defendant who controlled the meeting and provided instructions. Significantly no money, other than fees and stamp duty, was provided for settlement. It was Toluono who, on 24 December, advised that the purchase price would be dealt with separately. There is no independent evidence that the money was paid to Vaselisa other than the WST\$20,000 already mentioned. The fees and stamp duty were paid by Toluono.

94. In early February 2010, Toluono came to see Tuimalealiifano at his government, not legal, office. At that time, there was no solicitor/client relationship and no privilege attaches to the conversation. The Court accepts that Toluono asked Tuimalealiifano if he would agree to the defendant stating in an affidavit that he had given the \$180,000 to Tuimalealiifano. Tuimalealiifano refused since it was not true.
95. That approach is evidence of consciousness of guilt and an admission against interest. It supports the inference that Toluono was aware of the true nature of the transaction.
96. The evidence of the settlement day being 24 December is consistent with Vaselisa's evidence that soon after she travelled to New Zealand at Toluono's

expense and followed with arrangements made by him for that journey. That in turn supports the inference that since the journey required the provision of a passport, Toluono was aware of the true identity of the person who signed the transfer, Vaselisa Nikolau Niupulusu.

97. Tuimalealiifano provided an account of a further meeting with Toluono in August 2007. Toluono came with the same woman previously known to him as Theresa Stowers with documentation in the name of Rosita Burke. The explanation given by Toluono was that Theresa was known as Stowers and Vaselisa confirmed that her Christian name was Rosita and Burke was her married name.
98. Vaselisa had returned from New Zealand in late 2006.
99. Tuimalealiifano requested the production of a passport or marriage certificate but both the woman and Toluono insisted on the correctness of identity. Tuimalealiifano did not press the matter because of his trust in the defendant, especially since he was then a Member of Parliament. Tuimalealiifano prepared the documentation and was told by Toluono that the purchase price was to be \$80,000. Both Toluono and Vaselisa said that it had already been paid. There is no evidence that the money was ever paid. The Court accepts that the sum of \$80,000 was never paid to Vaselisa and that the statement made by Toluono was false.

100. In June 2008 fire destroyed Tuimalealiifano's home and the conveyance files relevant to these proceedings were lost. It was suggested in cross-examination that the files contained some twenty receipts recording payments of the purchase price. Tuimalealiifano remained adamant that no such receipts were provided to him by Toluono or had been placed on or present in the files. The reason why the files had been kept at home is that Tuimalealiifano had reduced his practice and left his solicitor's rooms when he ceased to be the solicitor for the Congregational Christian Church. The Court accepts the evidence that at no time were receipts provided by the defendant. It rejects the defendant's claim.
101. There were minor discrepancies between the evidence of Tuimalealiifano and Vaselisa confined to the number of visits and whether some documents were signed at the counter or the inner office. But they are minor. The substance of Vaselisa's evidence on the events of December 2004 and August 2007 are corroborated by the solicitor who undertook the legal transfers.
102. The conflict between Tuimalealiifano and the defendant is significant. It was the defendant who controlled the meetings. Tuimalealiifano denied that he had ever been provided with receipts. It was the defendant who said the money had been paid. It was the defendant who approached Tuimalealiifano and asked him to agree to a false affidavit that the \$180,000 had been paid to his firm. It was the defendant whom Tuimalealiifano knew and trusted. The absence of the deed of conveyance ("Exhibit P2") which might have alerted Tuimalealiifano to the

difference in the signatures was not pursued by the solicitor because he had trusted the defendant.

103. Tuimalealiifano was persuaded that the 2004 transaction was urgent and in doing so corroborated Vaselisa's claim that she was sent to New Zealand with the defendant's assistance in both financial and travel arrangements.

### **Perise Fili**

104. There is also corroboration of Vaselisa's evidence by Perise Fili who purchased the land from the defendant. The difference involves the discrepancy of the purchase price of \$45,000. Perise said that she and her husband purchased the land for the purchase price of \$47,893 which included the requisite stamp duty. She had been the party who had undertaken the proceedings. The amount is corroborated by the documentation provided by Filisita Heather and corroborated by "Exhibit P13" (Tab 12) with the conveyance being prepared by her solicitors, the Atoa Law Firm. She denied the defence suggestion made in cross-examination that the only money paid was \$25,000. The defendant's version was to the contrary.

### **Objective Evidence**

105. There is objective evidence in the form of documentation, already referred to, the evidence of members of the Stowers and Burke families and the accounts provided by the mortgagees and purchaser which enables the Court to decide the

accuracy and veracity of the conflicting accounts given by Toluono and Vaselisa. To that should be added the evidence of Tuimalealiifano, the solicitor who acted for both the above, and a man who now holds a high office of the State of Samoa.

106. The Court rejects the suggestion by the defendant that he was a ‘crook’ or acted improperly. It accepts his evidence completely. He had known the defendant for over 10 years and the two had, for some time, occupied offices in the same building. Tuimalealiifano knew Toluono well and trusted him. He had never met Vaselisa except during the transactions. His dealings were professional and he had nothing to gain in his giving other than truthful and accurate evidence on the trial. The Court accepts him as an honest and reliable witness to the events which are the subject of these proceedings.

107. His evidence in chief can be summarised in the following terms:

- In December, Toluono came to his office accompanied by a woman whom he introduced as Theresa Stowers. Toluono said that the woman ‘was his girlfriend and they had a de facto relationship for about 2 years and that she had some lands at Alafua that she wanted to sell to him’. Vaselisa confirmed her name as Theresa Stowers. Evidence of the nature of the relationship contradicts the evidence of the defendant.



- Toluono produced documents which he said they had obtained from the government department and they wished to have the land transferred from Stowers to himself. Vaselisa confirmed ownership and intention to sell.
  
- Tuimalealiifano asked the woman whether she wished to engage her own solicitor and ‘Toluono said that they wanted to just have me as their lawyer to do the conveyance bcoz (sic) she was going to New Zealand soon, so I asked them about the price of the purchase of the lands...’  
That answer suggests that Vaselisa was correct in her account of the New Zealand trip, its organisation by the defendant and that the defendant knew of the purpose of that trip prior to the visit. When asked about the purchase price ‘the woman who said that she was Theresa Taufau Stowers looked at Toluono and Toluono said, oh about \$45,000 quarter acre so there’s four ¼ acres...’
  
- Tuimalealiifano conducted the relevant searches and contacted Toluono asking him as to the purchase price, who replied ‘that they have arranged that he would give it personally to (her) himself’. Tuimalealiifano again rang the defendant after the deed had been prepared asking him to bring the vendor to his office for completion. That was done. The defendant and Vaselisa both attended; Vaselisa signed and Tuimalealiifano witnessed her signature, in good faith. The transfer was registered. The defendant paid all of the fees for the vendor and purchaser.

- In February 2010, after Tuimalealiifano had ceased to practice as a solicitor the defendant came to his government office and said:

“...if I could agree to him saying in his affidavit for that case that he gave the \$180,000 to me and I said to him no how can you do that when you know that that is not true then I said to him that I would also come to the court and give me own evidence that morning, that day; which I did and it was my evidence your honor that I was not given \$180,000 for the purchase price of the said lands by the defendant.”

That approach and request is significant and the Court regards it as evidence of consciousness of guilt.

- In 2007, the defendant and the same woman again came to his office with a deed of conveyance in the name of Rosita Burke. When questioned

“Toluono said that that lady Theresa Taufau Stowers was also called Rosita Burke and then I said how come when we have had that transaction in 2004 and her name was Theresa Taufau Stowers and the lady so-called Taufau Theresa Stowers said that was her other Christian name Rosita and that she is sometimes called Lisa, Rita and that Burke was her married name and that the name she wanted to convey to the defendant was her land under the name Rosita Burke so I asked the defendant if they could provide a passport or a marriage certificate to confirm that she’s both Theresa Taufau Stowers and also Rosita Burke. They insisted emphatically that she was the other person too; Taufau Theresa Stowers and also as Rosita Burke, that Burke is her

married name now and her maiden surname was Stowers. This was the instructions given to me.”

Toluono confirmed the response and told Tuimalealiifano that the purchase price was \$80,000 and ‘that they have arranged that he would give the \$80,000 to the lady himself’. The deed was prepared and Tuimalealiifano contacted the defendant asking him to arrange for the vendor to attend his office for settlement. Both attended and Vaselisa signed under the name Burke. The defendant told Tuimalealiifano ‘that he has already given the \$80,000 to the lady and the lady agreed to that’ (Transcript p11). The transfer was lodged on 19 October 2007 and registered on 31 October. The land was mortgaged on 7 January 2008 (discharged on sale) and sold to Perise and Sapati Fili on 20 January 2010 for an amount of \$47,893. That figure suggests that it included \$2,893 as stamp duty.

- When asked whether the passport or marriage certificate referred to above had been produced, Tuimalealiifano replied (Transcript pp11 – 12):

“...yeah I did ask for passport or marriage certificate but they didn’t provide that but they both, as I had said before emphatically said that she is the same person, that was her other name and that was her land that she was selling to the defendant so the defendant who is well known to me and at that time I think he was Member of Parliament and I had no suspicion in accepting his word in confirming that she was also Rosita Burke.”

Tuimalealiifano was cross-examined at length but did not vary the above testimony. He agreed that his house as destroyed on 12 June 2008 and the file of the above transactions along with some other client files were destroyed with it.

108. He had effectively ceased practice and transferred client files to his home. He denied that he had been given some twenty receipts recording purchase payments by Toluono. Toluono in 2004 – 2005 said that they had been with those files. He disputed the claim that Toluono had approached him in 2010 requesting confirmation of the receipts and maintained his version that he had been asked to confirm false testimony that he had been given the \$180,000. When asked the reason for accepting the word of a total stranger he stated that the defendant had confirmed the identity and had provided the documentation. He had not undertaken the relevant searches personally but through a subordinate. As to a document not returned by that subordinate he told the Court that he had been ‘assured by the defendant that the person we were dealing with was Theresa Taufau Stowers’ (Transcript p28), that he ‘didn’t need any further proof bcoz (sic) Toluono told me that was her’ and he believed Toluono to be a man of integrity.
109. When pressed on the Burke transactions his relevant replies were:

“I asked them for a passport or a marriage certificate and they said they didn’t have those but the defendant insisted that she was also known as Rosita Burke so why would I confront them with that?”

...

I did insist but the defendant said believe him, believe that so I have do believe them.”

110. The Court accepts his testimony, unshaken by cross-examination. He was never provided with any receipts; he had been assured by the defendant that the money would be or had been paid to the vendor, told of the de facto relationship and the New Zealand trip, been approached into confirming false testimony and belief on his trust in the defendant in accepting the false identities provided by both Toluono and Vaselisa.
111. Tuimalealiifano corroborated part of Vaselisa’s evidence that it was Toluono who played the major role in the transaction and that she merely asserted to the versions provided to the solicitor.

### **Conclusion**

112. Even if the prosecution’s case was regarded as solely circumstantial in nature it would be open to the Court to convict the defendant of dishonesty. But there is some direct evidence by the co-offender which is corroborated by others. Vaselisa may have lied to the Court in the civil case when she accepted sole responsibility. But her claim of the nature of the relationship with Toluono is corroborated by Tuimalealiifano when he was first introduced. Vaselisa may have lied or been confused in some of her evidence in this Court but the timing of the trip to New Zealand supports her claim that it was as payment for her part in

the fraud. It is unlikely that she would pursue the one man for many years over a self constructed plan to deceive. It was the defendant who dealt with the Land Registry Office and had the knowledge and experience to compile and organise the search for and provide the relevant documentation. It was he who chose the same lawyer for the relevant transfers. His own evidence at trial was internally inconsistent and contrary to the evidence of his niece and lawyer. The defendant was married to a woman who was related to the Stowers family. On his evidence he could easily have asked her for confirmation of Vaselisa's identity. It is unlikely that a reasonable person would believe Vaselisa that Stowers was:

- her married name in relation to the first transaction;
- her maiden name changed by marriage to Burke for the second transaction.

The land records showed Theresa Stowers to be a widow.

113. The defendant's approach and request of Tuimalealiifano in 2010 shows consciousness of guilt and knowledge of the real nature of the dishonest conduct by both Vaselisa and himself.
114. The sale of portion of the land to Perise Fili at a price far less than he had paid for its purchase and his denial of Perise's evidence supports the prosecution's case. The payment of the \$45,000 was paid directly into his personal account on 31

December 2009, immediately on settlement in reduction of his personal bank debt of \$41,551.

115. The defendant was not accepted as an honest or reliable witness. Added to the other accepted evidence and allowing for misstatements by a joint offender the Court is satisfied beyond reasonable doubt that he is guilty of dishonesty in relation to both the Stowers and Burke transactions, either as a principal or an accessory.

116. The defendant is not entitled to a defence of claim or colour of right. In *Police v Tipi Malaitai* [1994] WSSC 12, the learned Chief Justice applied common law authorities of New Zealand (*Murphy v Gregory* [1959] NZLR 868; *R v Nottingham* [1992] 1 NZLR 395) the United Kingdom (*R v Bernard* (1938) 26 Cr App R 137) and Australia (*Wolden v Hensler* [1987] 163 CLR 561). The test is that of an honest belief.

## **Findings**

### ***(1) Stowers Transactions***

| <b>Information</b> | <b>Date</b>          | <b>Charge</b>  | <b>Verdict</b>                    |
|--------------------|----------------------|----------------|-----------------------------------|
| S2083              | 10-02-05             | False Pretence | Guilty as Principal               |
| S2084              | 24-12-04             | Forgery        | Guilty as Instigator and Abetting |
| S2085              | 23-12-04 to 17-02-05 | Uttering       | Guilty as Principal               |
| S2087              | 23-12-04 to 17-02-05 | Uttering       | Guilty as Principal               |
| S2088              | 17-02-05             | Uttering       | Guilty as Principal               |

(2) *Burke Transactions*

| <b>Information</b> | <b>Date</b>          | <b>Charge</b>  | <b>Verdict</b>                        |
|--------------------|----------------------|----------------|---------------------------------------|
| S16                | 10-08-07             | Forgery        | Guilty as Counselling and/or Abetting |
| S2093              | 29-12 to 21-01-10    | False Pretence | Guilty as Principal                   |
| S9                 | 9-08 to 19-10-07     | False Pretence | Guilty as Principal                   |
| S10                | 10-08-07             | False Pretence | Guilty as Principal                   |
| S2097              | 29-12-09 to 20-10-10 | Uttering       | Guilty as Principal                   |
| S2096              | 29-12-09 to 20-10-10 | Uttering       | Guilty as Principal                   |
| S2095              | 29-12-09 to 20-10-10 | Uttering       | Guilty as Principal                   |
| S2094              | 20-01-10             | Uttering       | Guilty as Principal                   |
| S13/10             | 09-08-07 to 21-01-10 | Uttering       | Guilty as Principal                   |
| S2092              | 16-11-07             | Uttering       | Guilty as Principal                   |



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**JUSTICE SLICER**