

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

CR 173 & 174 of 2018

REX

-v-

'Akosita LAVULAVU

'Etuete LAVULVAU

RULINGS AND JUDGMENT

BEFORE: THE HONOURABLE COOPER J
Counsel: Mr Lutui, DPP and Mr 'Aho for the Prosecution
Mr Edwards started the trial representing both defendants.
On Monday 26th April Mr. Lavulavu represented himself.
Date of trial: 12th April - 21st May 2021
Date of submissions: 28th May 2021
Date of verdict: 4th June 2021

The charges

1. On a joint indictment both defendants faced three counts.
2. Each an allegation of obtaining money by false pretences contrary to section 164 Criminal Offences Act.
3. Count 1 'Akosita Lavulavu and 'Etuete Lavulavu of Vava'u on or about 29 May 2014, at Nuku'alofa, you did obtain \$146,400 from the Ministry of Education and Training by false pretence, when you represented in an application for funds from the Technical Vocational Educational Training Grant that there were 255 students at 'Unuaki 'o Tonga Royal Institute for semester 1 of 2013 but you knew that was false, and the Ministry of Education relied on that false representation and paid the said money.

4. Count 2 'Akosita Lavulavu and 'Etuata Lavulavu of Vava'u on or about 18 November 2014, at Nuku'alofa, you did obtain \$249,600 from the Ministry of Education and Training by false pretence, when you represented in an application for funds from the Technical Vocational Educational Training Grant that there were 416 students at 'Unuaki 'o Tonga Royal Institute for semester 2 of 2014 but you knew that was false, and the Ministry of Education relied on that false representation and paid the said money.
5. Count 3 'Akosita Lavulavu and 'Etuata Lavulavu of Vava'u on or about 29th June 2015, at Nuku'alofa, you did obtain \$162,600 from the Ministry of Education and Training by false pretence, when you represented in an application for funds from the Technical Vocational Educational Training Grant that there were 271 students at 'Unuaki 'o Tonga Royal Institute for semester 1 of 2015 but you knew that was false, and the Ministry of Education relied on that false representation and paid the said money.

Elements

6. The elements of the offence prosecution must prove beyond a reasonable doubt are :
 - i. That a defendant made a statement. This can be directly or through the agency of another, that is to say, on his or her behalf.
 - ii. It was in fact false to some degree, arguable more than just de minimis, though any falsity can be enough.
 - iii. Either defendant knew it was or may be untrue.
 - iv. It caused them payment from the Ministry.
 - v. The conduct was dishonest.

Exhibits

7. The following became exhibits in the case :

Exhibit 1 : Prosecution Booklet.

- Exhibit 2 : Break down of Audit Report summary of findings¹.
- Exhibit 3 : Blank pro forma Student Loan Contract agreement.
- Exhibit 4 (a) : Tonga Office of Auditor General work sheet; Tongan.
- Exhibit 4 (b) : Tonga Office of Auditor General work sheet; English.
- Exhibit 4 (b) (i) : Tonga Office of Auditor General work sheet supplemental; English.
- Exhibit 4 (c) : List of 170 names shown as students at UTRI that TOAG spoke to.
- Exhibit 5 : Mr. Tangi's analysis of whether any of those 170 actually attended UTRI.
- Exhibit 6 (a) : List of students Miss Kivalu stated did not attend semester 1, 2013.
- Exhibit 6 (b) : List of students Miss Kivalu stated did not attend semester 2, 2014
- Exhibit 7 : Schedule of names obtained during TOAG interview cross referenced.
- Exhibit 8 : Names on enrolment list showing which years they featured.
- Exhibit 9 : Files 1-6 'Student' applications and loans; Files 7-9 receipts.
- Exhibit 10 : UTRI 2014 graduation program.
- Exhibit 11 : TNQAB letter and report on UTRI June 2014.
- Exhibit 12 : Incorporation documents for UTRI.
- Exhibit 13 : TNQAB guidelines for programme accreditation 2011.
- Exhibit 14 : UTRI application for TNQAB registration of Tourism & Hospitality course
2014.
- Exhibit 15 : UTRI QMS manual 2013.
- Exhibit 16 : UTRI QMS manual 2014.
- Exhibit 17 : TNQAB registration of UTRI 2014 – 2016.

¹ Exhibit 1 page 50.

Exhibit 18 : UTRI Bank Transaction Booklet.

Exhibit 19 : Summary of cash receipts for the semesters counts 1-3.

Exhibit 20 : Search warrants.

Exhibit 21 : Affidavit for search warrants.

Exhibit 22 : Police Diary.

Exhibit 23 : Photocopy Cabinet Decision no.125 23rd February 2011.

Exhibit 24 : Cash receipt books and blank pro forma receipts 2013-2015.

Exhibit 25 : Draft MET Grants Administration Manual October 2015.

Exhibit 26 : Certified copy Muna Nasilai's contract employment with Ministry

Infrastructure.

Exhibit 27 : Photocopy Cabinet Decision no. 813; 24th June 2004.

Exhibit 28 (a) : UTRI Audit 2012.

Exhibit 28 (b) : UTRI Audit 2013.

Exhibit 29 : Photocopy of Auditor General Certificate dated 12th November 2014.

Exhibit 30 : Letter complaint that Mr. Lavulavu sent to Auditor General 6th October 2016.

Exhibit 31 : Letter complaint that Mr. Lavulavu sent to CEO of MET 28th November 2016.

Exhibit 32 : Letter to Ombudsman from Mr. Lavulavu complaining about Auditor General and the audit.

Exhibit 32 (a) : Letter to Ombudsman from Mr. Lavulavu complaining about Auditor General and the audit; Tongan.

Exhibit 33 : Letter from Ombudsman to Mr. Lavulavu 13th October 2017.

Exhibit 34 : Letter from Ombudsman to Mr. Tangi regarding complaint lodged by Mr. Lavulavu and conclusions.

Exhibit 35 : Table of monies that Mr. Lavulavu paid into UTRI 2013 – 2015 *.

Exhibit 35 (b) : Further explanatory document relating to Exhibit 35 *.

Exhibit 36 : Proposed guidance for non-government schools in relation to grant applications date 6th July 2018.

Exhibit 37 : Mr. Lavulavu's 3rd complainant to Police Commissioner Caldwell 21st September 2017 regarding police investigation; Tongan and English.

Exhibit 38 : Mr. Lavulavu's complaint to Police Commissioner regarding Mr. Tangi Auditor General 30th January 2017.

Exhibit 39 : Letter from Tu'amelie Faaitu'a Kemoe'atu regarding TVET grants dated 10th May 2010.

* Neither of these exhibits were agreed or found to be accurate.

Prosecution case

Sefita Tangi

8. Auditor General (AG) at Tongan Office Auditor general (TOAG) held this post for 5 years and 8 months. Before had experience working as Chairman of the Tongan Remuneration Authority from 2013 to 2015. He was Commissioner Inland Revenue and Customs 8 years. University degree in Banking and Economics, Masters in Commerce as well as fellow of the Tongan Institute chartered accountants.

9. He Audited 'Unuaki – 'O Tonga Royal Institute (UTRI) in 2015. It is agreed facts that at the relevant time 'Etuata Lavulavu was the President of that college, his wife, 'Akosita Lavulavu was the Director².
10. The audit itself was a routine procedure.
11. UTRI had submitted financial statements to the Ministry of Education (MET) who in turn passed them the office of AG.
12. He identified his report to the court. It was compiled by him in 2016.
13. He had a team working for him comprised of Maamaloa Loumaile Fotofili, deputy AG, Popua Mafi, 'Ilaisaane Sikulu, Lutimila Tafea, Salome Lavemaau.
14. Mr. Tangi had worked with Maamaloa Loumaile Fotofili before for 5 years.
15. He had no contact with the team as they prepared their report.
16. Usually the Supervisor would have handled the audit report. But his involvement came about because there were discrepancies and it was referred to him.
17. The major initial concern was that names of students from another college were also listed as being UTRI students. The team had finished the audit of a Catholic institution and they noticed some of those students were stated as enrolled at UTRI.
18. The team met with those students and confirmed with them that they were not students at UTRI. Mr. Tangi therefore approved a more detailed investigation with as many students as they could meet.
19. Further irregularities were discovered. The team reported back that the names on the list did not meet the criteria to count as students.
20. The two main criteria was whether they had paid for their school fees and had attended classes. These are the criteria that apply in every audit of every establishment.
21. The office of the Auditor General had prepared a document that distilled all the Cabinet Decisions that relate to the TVET³ grants.

² Agreed and disputed facts document signed by Mr. Edwards on behalf both defendants parties 19th March 2021 paragraph 2.

22. That was put in evidence along side those Cabinet Decisions. It is agreed that at the material time UTRI did qualify for a grant. Cabinet Decision 637, dated 13th July 2013 was the last relevant decision as it changed the payment to one of \$600 per “receipted student” per semester.
23. There is no written definition of what a “receipted student” is.
24. In fact, the application forms themselves had a declaration of truth. As part of that declaration compliance “...with all conditions of the TVET grant shown on the reverse.”
25. It transpired that the reverse was completely blank.
26. Mr. Tangi had to interpret what “receipted student” meant and concluded it meant fee paying student.
27. The field work by the team was carried out in 2016. Paragraph 8 of the report identified three broad areas of practice by UTRI that concerned the Auditor General.
28. Those were :
 - a) “Recruit mei tu ‘a”, the practice of outside recruitment and forms being completed by people other than the applicant. He stated that it boiled down to this; these were simply not genuine applications.

That the term “recruit mei tu ‘a”, came from the staff of UTRI themselves. For him nor the team was this normal practice.
 - b) Exchanging the need to pay tuition fees for other arrangements; for example
 - i. “student loan contract agreement”
 - ii. Commodity exchange
 - iii. Working on a part-time basis for the institute.
 - c) That the tuition fees were \$100 per student, but the grant was £600.

³ Technical Vocational Education and Training

29. This habit of recruit mei tu 'a also meant that staff were completing the applications forms, not an applicant. Mr Tangi's view was that was not normal.
30. Payments in kind was not an approved system. There was no record of what the student provided in exchange for fees.
31. Paragraph 12 of the report identified 23 people who did not attend at all and did not know how their names were on the register, as per row 12 page 50 of the exhibit 1 booklet.
32. The table 2 audit report⁴ is broken down into each student referred to in paragraphs 12 – 18 of the report.
33. A further list has been provided and is Exhibit 2. It was created in 2016 during the audit.
34. It itemises the following :
35. Para 12; those with no connection to the school 3 names in 2013, 12 names in 2014 and 8 names in 2015.
36. Para 13; No fees paid and did not attend the school. In 2013 26 names these included members of the floorshow, members of the band, 11 who had never applied at all 3 members of the UTRI restaurant staff.
37. In 2014; 50 names of people who had never attended at all and a further 5 names of people who had paid no fees.
38. 2015 a further 24 names that did not have payments associated with them and did not attend at all.
39. Para 14 related to the names who were signed up as paying via Student Loan Contracts, this was only introduced in 2014 and amounted to 278 names.
40. Para 15 was another way of paying the student fee referred to as "commodity exchange", where school fees had been waived in favour or providing the school with

⁴ Exhibit 1, page 50

other items, for example Tongan handicrafts. This was 62 students and related to 2015 alone.

41. Para 16 related to those names who had apparently paid their fees by working for the school. This further 100 names and related to only 2015.
42. Paragraph 17 of the report refers to a category called "Incomplete or no Application form." These were names of people who had never applied to join UTRI but had their details put on application forms, 286 over the three semesters in question.
43. These supposed students' details had been obtained by various means:
 - a) What had purported to be a Tonga Post survey; this at a time that Mr. 'Etuete Lavulavu was the director of Tonga post;
 - b) Completing a survey on villages;
 - c) People who had attended a training course held at Ministry of Infrastructure, this at the time that Mr. 'Etuete Lavulavu was the Minister with portfolio;
 - d) Applications completed in town by 'Alisi and or Mele Tovi;
 - e) People who had completed forms at Uata Shipping who had been told those forms were applications for them to work with UTRI on practical courses;
 - f) People enrolled in the Miss Heilala beauty pageant.
44. 20 names in the list for 2015 did not even have addresses attached.
45. Paragraph 18 of the report noted a further 35 names of people who simply did not exist.
46. Examples of incomplete forms were ones with no signature, no passport photograph, no birth certificate and no transcript of qualifications.
47. Mr. Tangi had not come across this in audits at any of the other institutes ever.
48. Paragraph 19 notes that the category "Unverified receipted student", there were meant to be "other arrangements" for the payments, but there was in fact no movement of cash

that could be traced in relation to them. This was one of the most disappointing aspects of their audit, he said.

49. When audit team enquired about roll call registers they were given an Excel Spreadsheet. There was no manual roll call register, so they were told.
50. In any event the auditors had been told that there were no roll calls that were carried out.
51. Their experience was that every other institute had a manual roll call register and no other institute ever had an Excel Spread sheet.
52. The audit concluded that if those names whose fees were not properly paid were included in the TVET grant application then the grant had wrongly been applied for, and only 19 out of 942 were eligible.
53. Turning to the application forms themselves. The application for 2013 listed 255 students eligible.
54. Mr. Tangi's view was that eligibility criteria was (i) school fees paid and receipted, and (ii) the student attended throughout the semester.
55. The name of the applicant was Mrs. 'Akosita Lavulavu and the sum of the grant per student was \$600.
56. Likewise the application in 2014 was for 416 students and in 2015 271 students, each, apparently applied in the name of Mrs. 'Akosita Lavulavu; though the defence dispute that she signed off herself.
57. Regardless, the grants were on each occasion paid to UTRI.
58. When each application had been submitted to MET they in turn sent them to the Auditor General.
59. As a foot note, Mr. Tangi noted that the name included in the list of students had Daiara Fulivai, she was in fact an employee of the TOAG.

Cross-examination

60. Mr. Tangi agreed that the Education Act did not provide any guidance on the making of these applications.
61. It provided for making of regulations but none had been passed.
62. The Ministry of Education had not been approached nor interviewed about why they had authorised the grants.
63. Mr. Tangi explained that his involvement came after the decision to grant had been made. He had not asked MET why they signed off on the applications.
64. Audit was triggered after application was made and granted and paid, then the paper work was sent to them.
65. With the consent of all parties Mr. Tangi had returned to his office to discover out of those students said to have had a "Loan Contract Agreement"; paid by their fees "Commodity Exchange" and paid their fees by "working for the institute" (some 440 names); how many had actually attended as students.

Popua Mafi

66. She had worked in the Audit office for 11 years. She was the leader of the field team.
67. She also noted that for fees apparently paid, there were many receipts dated the 31st March, which was in fact the cut off date for the application. That in itself was odd.
68. She reported to Mr. Fotofili and the scope of the audit widened.
69. They obtained the records from UTRI with their permission.
70. From the 942 students in question they were able to get contact details for a number of students, but only some 170.
71. She thought that for about 80% of the applications the stated phone number did not work.

72. The interview process of the students was that questions would be asked by her and a colleague would then record contemporaneously what was stated and the interviewee would sign it off.
73. The figure of 942 did not identify whether any of those names were simply duplicates from one or other of the other applications in question.
74. When a named person has left the country at the time of their field work, Miss Mafi's team spoke to a family member. This happened on a few occasions.
75. Daiara Fulivai was one not present at her home at the time as she was studying in New Zealand. Her mother provided the answers to their questions.
76. In that case her mother explained she had never studied at UTRI
77. She added some detail to the audit report; paragraph 17 incomplete or no application form category.
78. For example the Tonga Post survey was when people thought they were answering a survey about mailboxes but their details were then used to populate the student forms for UTRI.
79. In the case of Semisi Faletau, he had studied at the Ministry of Works (as the Ministry for Infrastructure was formerly known) and when Mr. 'Etuete Lavulavu was the Minister. He had been contacted by Mr. 'Etuete Lavulavu to tell him that he had to attend training at UTRI as part of already completed course he had undertaken in Samoa. The duration of that training was one month.

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80. Overnight I read all of exhibit 4; the work sheet. These were the notes of the interviews with the 170 people that had been able to be identified from the applications forms of the 942 names that made up the applications in question.
81. I had a number questions based on the Work Sheet and Miss Mafi clarified the following :
 - a) B/1/3 = filings part catalogued a,b – just a filing reference.

- b) Pio Petelo, page 2. "2014 construction of the mechanic building"; first semester, 2013, he was student at UTRI, 2014 a construction worker, then in 2015 student 'Ahopanilolo.
- c) Kifi Fauolo "joined construction of the mechanic building", similar situation to Petelo, 2013 students UTRI, 2014 no longer student but construction worker; also Mr. Fakatou, last entry P2 Exhibit 4 (b).
- d) Malakai Po'ese the reference to his being there at middle school. He did not go to UTRI.
- e) Sioeli & Villiami Po'ese students at UTRI in 2015 & 2016.
- f) Melefehi Hakalo, surname was in fact Halalilo, she was at UTRI only in semester 1, 2013.
- g) P 9 Meleane Finau the relevance of line "and there were application forms they filled out." was a reference to the entry forms for school filled out in the school office.
- h) P10, Jessie Malupo, attended UTRI Miss Mafi did not know when though. The reference to the beauty pageant was reason why she came to Tonga.
- i) P 15 Loloma Leha'uli; this person did study at UTRI 1st Semester 2014. But only until the time for parade the opening Parliament.
- j) Akanesi Tangifua, page 15, was in New Zealand, and no information was available.
- k) Page 26 Ma'ata 'Ai, why could that person answer for 'Akanete Fotu? Because she connected to the latter as she worked at their family business.
- l) Ane Tu'akoi at UTRI 2013, 2015 until October but not 2014.

Examination in-chief continued

82. The roll calls not manual. They were not properly done. When they requested roll call books, they were told that they had been carried out using electronic devices.

83. Print-outs are the ones referred to in the report; they were Excel Spread sheet. She did obtain print outs; they referred to their supervisor for directions. He directed a further in depth look at roll calls because the print outs were unreliable.
84. The concern was not with the document per se but that it gave rise to the suggestion that there were no contemporaneous documents; and that was because there had been no real roll calls.
85. Recruit Mei tu'a; recruitment from outside, the signing up of names by teachers who were going out to get names on paper.
86. One of the first things an audit did was find out the system institutes used to get students on their books. This practice of Recruit Mei tu'a is what this institute did; was the explanation from Mele Tovi, the Principal of UTRI.
87. Regarding paragraph 17; 286 forms which were incomplete. Examples were: no photograph, other forms with same name, different photographs, some forms no signature also date of birth absent.
88. The 286 names in row 17 of Table 2 of the report; they were unable to confirm any had attended UTRI.
89. They did audit those other semesters 2nd 2013 and other 2014; UTRI fell short of requirement for TVET grants in those semesters.
90. Miss Mafi noted that the audit took 4 weeks, as opposed to the normal 1-2 weeks.
91. It took place around June 2016.
92. Regarding the applications for the grants, the first semester applications had to be submitted by 31st March the following year, the second semester applications by 31st August.
93. Normal procedure was also to confirm with the bank whether payment had been received.
94. Discovered that UTRI did not have a separate account for the grant, it simply went into the school account.

95. Miss Mafi spoke to Mrs. 'Akosita Lavulavu. The audit team did not refer her to any records, only requested her to provide them with records needed and discussed with her about the receipt of grant and how funds were used.
96. Mrs. Lavulavu gave them authority to check the UTRI bank accounts.

Cross-examination

97. Miss Mafi confirmed the following :
98. The team had gone through the records and tried to contact the students, those that had been identified were the 170 that were interviewed by the team as recorded in Exhibit 4 (a), (b) and (c).
99. Her clear impression was that those people's accounts given were not false. They gave them their trust and accordingly the information they gave them she felt was reliable.
100. A number had said they were doing dance at the school were then said to be enrolled as students.
101. She was unaware if dance was in fact part of the curriculum or a short-term course.
102. Nor whether Construction was part of the syllabus.
103. In relation to the taking of the documents from UTRI, Mrs Lavulavu had given permission to the auditors to do that. That had been around June 2016. The documents were loaded into their vehicle and Mrs Lavulavu was present as was Mele Tovi.
104. It comprised of the binders of student applications and the receipts for school fee payments.
105. They did not return them to UTRI but took the documents to the police later. They should have listed the documents they took she agreed. But she felt they acted with integrity and expected to be trusted as a result.
106. At the school for 4 weeks. If they wanted something they would ask Mrs Lavulavu, but would have not have interviewed her every day, was how she described it.

107. There was no basis to put anything said into official documents. There was one meeting and that was documented.
108. In relation to other staff, for example Mele Tovi, the same applied regarding conversations with her. Regarding meetings with Mele Tovi there were minutes kept.
109. We would not document everything. As for staff, Felisita Kivalu was only other we spoke to. She also filled out some of the applications. Loiti spoken to, an actual teacher that was it.

Mr. Tangi's further evidence

110. He provided the break down of the numbers how many students from each of the rows in Table 2 of the audit report had been spoken to by the audit team.

| | | |
|---------------|---|-----|
| • Row 10 | Studied and paid fees | 9 |
| • Row 11 | Studied but fees settled through other arrangements | 15 |
| • Row 12 & 13 | No connection with UTRI/ No fees paid nor attended | 110 |
| • Row 14 | Loan contract with school | 5 |
| • Row 15 | Commodity exchange | 1 |
| • Row 16 | Working for Institute | 8 |
| • Row 17 | Incomplete or no application | 10 |

111. Mr Tangi provided a written breakdown of the numbers of names from rows 14-17 inclusive who had attended UTRI and stated that there were none.

112. He stated he could not find the other students.

Cross-examination

113. Asked about that he stated it would have been too large an exercise to meet everyone named.

Mele Tovi

114. She had worked at UTRI from 2011 to 2016 and was both a teacher and someone who worked in the Admin. She taught “bridging” classes, to “drop out” kids, subjects like basic mathematics, office management and tourism.
115. As part of Admin she was involved in the enrolment process.
116. They would do this in school, in the community, presentations in a tent or by telephone.
117. Those names would then be compiled and given to the management, that is to say Mr and Mrs Lavulavu.
118. Once a person had signed a student application form they were counted as enrolled.
119. It did not matter that they never provided any further information like the date of birth, their photo or the proof of qualification, as long as their name was on the form.
120. After recruiting there was the orientation day, that was to go through the payments with the student.
121. To her “received” meant that a payment method was in place.
122. Muna Nasilai and Felisita Kivalu were both in the Admin and helped with this. Both were in Admin, they passed the spread sheet to them and compiled the list and got that to recruiters to follow up the student and teachers and recruiters followed up to ensure came to school and studied. The final list then went to management Mr. and Mrs. Lavulavu.
123. Semester 1 spanned 1st week February to last week June. Semester 2 from first week August to last week November.
124. 1st Semester list finalised before 31st March, for 2nd semester finalised August 31st.
125. There was also the process of on-going recruitment.
126. Anyone could join at any stage during the term.
127. Because there was the practical side to the training there were courses by the students in places like Ministry of Infrastructure as well as Uata shipping or the resorts.

128. As a consequence of that the teachers would go to these places and they would hold afternoon classes from about mid way through the semester. These would be in afternoon and for three afternoons a week. That carried on until June.
129. People who attended those classes were asked to sign a form and were then considered enrolled at UTRI; even if the form is never further completed they were counted as enrolled.
130. The application for the TVET grant, count 1, was filled out by either Muna or Felisita. It was signed by Mrs. Lavulavu.
131. The list of 255 students was prepared by Admin and finalised 31st March. Applications for second semester grants would be finalised by end of June.
132. UTRI ran an "open recruitment" policy, which meant people could be enrolled at any time during the semester.
133. 255 was the number at the end of the semester and indicated 255 attended the course at the college.
134. The application in 2014 for the grant the subject of count 2 was for 416 students. Most of the names from 2013 application (count 1) were duplicated into the 2014 list.
135. She stated that this was because it was a two year program and that there was a graduation that year, 2014. But, on further questioning she conceded that in all her time there, 2011 to 2016 there had only ever been that one graduation.
136. The names that were on the list of students would only be removed if that student wrote a formal letter requesting same. Otherwise they would remain on the list for that semester and the following semester. In this case that would be from 2nd semester 2013 to the first 2014.
137. She claimed the school followed up to check on attendances.
138. This check completed by roll calls. Those roll calls were done either entered onto a manual record or an electronic device she said.
139. Those 416 students were comprised of those in the work as well as those at school.

140. Two students were mentioned; Ema Heleta and Duita Pohiva. Miss Tovi suggested that the school catered for “drop-out kids” looking after those that society had left behind, as it were.
141. There were 9 class rooms used in 4 buildings in total throughout the school.
142. Miss Tovi claimed that a receipt was only issued if the student had both completed the hours and paid.
143. She said that she was unaware of the audit or that it had uncovered irregularities.

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Cross-examination

144. There was no cross-examination or any further questions for the witness at all.

Felisita Kivalu

145. She is 32 years old. When she joined UTRI in 2013 she worked in the head office in Admin with the Principal and the Director; the two defendants. Area of administration of UTRI where she worked were as a telephone receptionist and also with the registration of students.
146. Each student who wanted to enrol she would help; she would register them and help them fill out the form. She would do this in the office.
147. That necessarily required the applicants to provide a copy of passport and birth certificate amongst other details as well as signing the form.
148. In her view the form demanded that all the questions should be answered and material to be supplied by the student was mandatory before the form could be considered complete.
149. She would follow up if there was information that was incomplete. But, only a few students properly went on to provide all they should have; even though there were repeated attempts by her to get this information.

150. Form of payments when she was there were: (i) cash; (ii) exchange commodity, (iii) loan, (iv) entered by scholarship, (v) carry out work for the Institute.
151. Payments were made to Mrs. Lavulavu, handed over and the issue of a receipt. A few times she made receipts for the list of students. Director of UTRI Mrs. Lavulavu directed her to do that.
152. The practice at UTRI was to count any form with a signature on it as an enrolled student.
153. That list then distributed amongst staff in Admin for issuing receipts. Fakauku, Mele Tovi, Lolani Satini, also worked on this. The Principal Mrs Lavulavu told them to issue receipts to those students in the list, their fees had been paid for from the student loan, was what they were told.
154. Mr. and Mrs. Lavulavu directed her to compile the student lists based on those created and registered and return it to them to be approved.
155. The lists of students did not accurately reflect the number who attended the college, in her view.
156. In relation to 1st semester 2013 that contained 255 names as being registered she believed only 61 attended.
157. That list of students which was compiled for the TVET grant application 1st semester 2013 has a stamp on each page and Miss Kivalu's initials within it.
158. Mrs. Lavulavu directed her sign it. Miss Kivalu believed that it was only being kept for a record at UTRI.
159. Whilst she did not know everyone who did and did not attend because she was not a teacher, she was familiar with who attended and who did not because there were roll call records. These roll call records she saw herself.
160. Therefore she was able to distinguish between names who she was familiar with and those that she was not, so state who did and did not attend the college.

161. In relation to the 2014 TVET grant application, of those named on the list of names, some 416, she thought only 113 really did attend.
162. In relation to both the lists that were attached to those two applications those listed were on the basis that they were enrolled, whether they attended or not.
163. She had been asked by prosecution to go through the two lists, 2013 semester 1 and 2014 semester 2 and compile a list of those that did not attend.
164. This became exhibit 6a for 2013; 6 b for 2014.
165. Of the 2013 list exhibit 6 (a) was a list of 73 names who did not attend.
166. Therefore 61 students who did attend, 73 who did not attend and the other 121 on the application list she did not know whether they existed, or not.
167. For 2014 her exhibit 6 (b) is of 99 names that did not attend.
168. Therefore 99 students that did attend, 113 that did not; the other 243 names she could not account for.
169. She stopped working for UTRI in early 2015 around January or February to take a job at a bank. She did not see the 2015 application for the TVET grant. But, the list of students was compiled by her and her initials were on each page inside the official UTRI stamp.
170. After she left, and some time in 2015, Mrs Lavulavu and Mele Tovi each contacted her asking about the work that she had done. She went back to UTRI and showed her colleagues Loleni and Unisi and other staff how to file documents and where to put them.
171. There were no other meetings in UTRI.
172. Mr. Lavulavu contacted her, she did not remember which year but it was during the course of the investigation into UTRI.
173. He asked her to meet them at the Lavu residence in Sopa.

174. She went and there was there Mele Tovi, Mr and Mrs Lavulavu and herself, no one else.
175. She was told not to give a statement to anyone. If anyone asked her she was to refer it to the Lavulavu lawyer, a man called 'Ofa Pouono. She was asked not to talk to the police, but she said that if the police asked her then she would tell them what she had done.
176. Mrs Lavulavu used Messenger to get in touch and Mr. Lavulavu and Mele Tovi telephoned her.
177. Mr. Lavulavu telephoned her on her mobile phone.

Cross examination

178. She agreed that she had worked on these student lists for the TVET grant in her office on her computer. A few other people helped her with these lists.
179. Akanesi she recalled did help her with the lists, she knew for a fact she was at UTRI at some time with her, because Akanesi had trained her.
180. Loleni was another who had worked with her on the lists, though she could not remember for sure which year that was, though she thought that was probably 2014.
181. Both Akanesi and Mele Tovi had helped her with these lists.
182. As for the issuing of receipts, they were told to do this before 31st March.
183. She did not know that these lists were used for the TVET grant applications nor know when the applications were submitted to MET.
184. She confirmed that the lists were compiled from the application forms.
185. While she agreed that some students did later provide the missing information from the forms that was only a few.
186. Asked about the figure who attended in 2013 she agreed that 61 was an approximation.
187. She had not looked in the class rooms.

188. She explained there were 9 class rooms used. She approximated that some classes had 10-20 students in, others less than 10. The band class had somewhere in the order of 2-50 students.
189. She agreed with defence that Kitione Palavi also taught band. Mele Tovi also a teacher.
190. Lopeti Filo taught hospitability, Loiti Teu taught tourism and hospitality. Trevor Woods taught building and construction, Lupe 'Ilaiu taught culture, Muna Nasilai taught tourism customer service. Teka Taukolo taught IT, Afui Nusi she could not recall what she taught.
191. She also recalled Luseane Sikuea was a teacher there.
192. Of semester 1 2013 she thought 61 attended. The other names she never heard being called out in roll call, she was not familiar with their names and was sure they did not attend.
193. The 2015 application she did not see as she had left UTRI by then though they had got her to sign the list of student names at the bottom of each page.
194. She recalled Sefita Leha from the auditor's team though she herself was not questioned by them.
195. The 2014 application's top section; Year, Education System, Name TVET institution, Roll per TVET program; these were filled out by her, the name 'Akosita Lavulavu and the name of the college she had been directed to fill out by Mrs. 'Akosita Lavulavu but the signature was 'Akosita Lavulavu's.
196. Mrs. Lavulavu had directed her to fill out the form and then signed it off.
197. The meeting she had attended at the Lavu residence had lasted from about 1100 hrs to 17/1800 hrs. Mr. Lavulavu told her that Mele Tovi and some other staff such as Muna and Frank had been going through the student lists of both 2013 and 2014 and going to students named and telling them if the police contacted them they were to refer them to the Lavulavu lawyer.
198. Mr. Lavulavu had effectively told her to lie to the police. That she was to write to the Police Commissioner and withdraw her statement.

199. Mr. Lavulavu had prepared a letter for the Police Commissioner that she was asked to sign and he told her to deliver to the police, but she declined to read it or sign it.
200. Mele Tovi picked her up by car and brought her to the Lavulavu residence.

Re-examination

201. Mrs. Lavulavu told her to prepare the receipts from the student list by 31st March and she was to make sure that receipts were provided for those names by that date.
202. The student list in 2015, the pages of which she initialled, she could not say when that list had been compiled.

19 April 2021

'Emeline Latu

203. During 2014 she worked at UTRI from approximately February to June that year. She did not have a job description. She went to UTRI because of an advertisement that she would be able to continue her studies after her two year diploma at TTI in New Zealand; the Business Management course in New Zealand.
204. But when she got to UTRI to enquire she took up a role with that Institute there and then after meeting Mr. Lavulavu.
205. She was immediately employed and started working that same day. The first job she was given was to register people as students. She went to Hapai with another employee called Muna to register and recruit people.
206. That process involved registering by conducting visits and notifies town officers they would then come the next day and set up venues and areas for registering. They went village to village doing this.
207. They called a community meeting. They made presentations about UTRI showing the people the offers for interested students. At end trip to Pangai, capital Hapai a big meeting everyone called to attend, Mr and Mrs Lavulavu were there. At that meeting they spoke to people of Hapai and they swore to establish school in Hapai and teachers would be sent over. Institution would operate in Hapai and students approved and could come to Tongatapu and go on to New Zealand.

208. She convened about 10 meetings for the main villages of Hapai and registered over one thousand student names; these people providing their names, ages and phone numbers. She was told to put those names into Excel spread sheets.
209. Felisita Kivalu directed her since Mrs. Lavulavu told her that she would be under her.
210. She left in June 2014; it was her choice to leave. She could not find anything to do and so during these slow times went to help in the library. She was disappointed with Mr. Lavulavu attitude telling her who did she think she was working for, him or the librarian?
211. In relation to the names of people who signed up there were over 400 in Tongatapu she personally completed.
212. She was concerned about the payment method for students that UTRI used.
213. The loan and repayment most students did not commit to; they did not pay. She hardly saw any parent come to pay.
214. Two names of registered people she knew personally. Her sister and cousin; Siaola Latu and Valenitina Fotu respectively. Her sister left UTRI when she did.
215. Yes she was concerned at the practices of UTRI the method of loan repayment, yet she did not see any repayments made.
216. She saw that UTRI was being given grants but could not even provide water for the students.
217. As far as she knew there were three class rooms being used.

Cross examination

218. She named three teachers she knew of at the time Luke Puamau, Lusami and Lopeti Filo.
219. She was asked if she thought that the recruitment process was genuine, she stated that she thought it was "for the registration form was okay".

220. In relation to that answer I formed the view that she was answering that the manner of recruiting was genuine and she was not speaking about the end result as to whether they had genuinely those people on their books, as it were.

Re-examination

221. Of the thousand she registered she thought only about 20 attended 1st semester 2014.
222. She thought those involved in the recruiting were honest.

Manu 'Akau'ola

223. He worked as head of accounts in MET. Six years in that post. He attended the meeting between Auditor General and Mr. Lavulavu 16th May 2017. Mr. Lavulavu offered to re-pay any overpayment.

Cross-examination

224. A figure was stated to them by auditor general, that figure questioned by Mr. Lavulavu saying it was too much. Mr. Lavulavu even went as far as suggesting an independent audit could be completed by himself.

Mosese 'Elone

225. He authorised payment based on the applications received. He worked on the grant applications from UTRI from 2013 to 2015 inclusive.
226. For him it was simply a question of checking the list of students added up to the figure on the application form and count that the receipts tallied in the same way. That is what "verified" and "checked" on the form he completed referred to.⁵
227. Then the application was passed to CEO for it to be paid. While there was no rule that he knew of that payment of school fees had to be in cash, that was the way that it had always been done with every college he knew of all over Tonga. It was what he did when he was at school.

⁵ Exhibit 1 page 14.

228. On his form he noted for each application that the number of students was correct as of the relevant cut-off date. So, for the grant application 1st Semester 2013, that was 31st March 2013. For an application for 2nd semester, 31st August for the year in question.

Cross-examination

229. He did not see the enrolment forms as that was not part of his job. He did participate in the inspection of the school, but was not one of the inspectors as such.
230. He was aware that construction work was going on at the school as part of the renovations they were undertaking. That was in relation to the big hall and the theatre.
231. He confirmed that there had been no audit report in 2013 or 2014 and only the one in 2015 had taken place.
232. He had never come across fees paid in any way other than Pa'anga. He was aware of scholarships being provided by other Institutions, for example the Catholic school.

Re-examination

233. The receipts from UTRI showed a value of money had been paid.
234. Exhibit 9 are the applications and the receipt files, exhibit 9 file 7 page 3 was an example of that.
235. An example of the financial workings of a scholarship are these :a person can be funded by a company and a company pays their fees; effectively another person paying their fees.

Fa'alupenga Huni

236. She is 45 years old and for a time worked at UTRI that was from approximately April 2011 to September 2014 when she left to go to teacher training school.
237. In 2013 she was based in the Admin office. She worked dealing with phone calls and on the student records. She worked with Mele Tovi and Muna. There were other staff members but she did not work closely with them.

238. She registered students. The registration forms were given to her and she completed them and other information could be provided later by the student, for example their photographs.
239. If the student was not present then the form could not be filled out, no information was entered without a student. A person would come to her and provide information, but they would not have ID with them. Yet they would provide details and sign the form promising to provide the information later.
240. So there was no way of knowing the information was correct; save if they returned with birth certificate and a photograph. If they did not do that there was no means of establishing if the information provided was accurate.
241. The student list for 2013 she had worked on while at UTRI. She had assisted in recruiting and interviewing and also the inputting of names so as to compile the list. She would go out to invite people to enrol, she would introduce herself to people she ran into and give them information about the school.
242. She heard a lot of times other members of staff at UTRI tell people that they could go on to study in New Zealand through attending UTRI.
243. As far as she knew only one student had gone onto study in New Zealand.
244. Her opinion was that there was a high level of interest in the school at this time and its popularity was increasing; this in part down to the invitations extended to those she described as “dropped out students”.
245. Miss Huni was given time to go through the whole of the 2013 list; she could identify one name that she had recruited. That was Hepeti Militoni. Though his application form was incomplete
246. She recognised two members of her family, her sister and cousin. Her sister had left the college when Miss Huni had but her cousin had stayed on.
247. She knew there had been an inspection of the school but did not know what had taken place in relation to it.

Cross-examination

248. There was no cross-examination of this witness.
249. On Monday 19th May after hearing from Counsel in Chambers case I adjourned to Monday 26th May. I had allowed time for the defence to have all aspects of their case prepared as fully as possible; with time taken to ensure there were proofs evidence and witnesses statements and all signed.
250. The case was called back in on Thursday 22nd for mention. Defence assured me all was now going well.
251. On the morning, 26th May, when I came into court at 1033 hrs I was told that Mr. Lavulavu would be representing himself.
252. I saw Mr Edwards in Chambers with Mr Lutui and from my team Peli. Mr Edwards explained to me what amounted to a breakdown in their relationship; he and Mr. Lavulavu.
253. On going back to court he confirmed that he had been sacked and Mr. Lavulavu would represent himself, Mr. Edwards would continue to represent Mrs. Lavulavu.
254. Mr. Lavulavu was therefore given half an hour to read through document self represented defendants as a matter of complete fairness.

Florence Lasike

255. Sworn at 1107 hrs.
256. 26 years, works currently at Public Service Commission (PSE) Office, three years there. Records management officer grade 3.
257. Studied Queen Salote College 2007 to 2014. Her final year was Form 7 she finished in November. No further studies after 2014
258. 2015 assisted marketing a fruit business. 2016 travelled to New Zealand and returned Tonga July 2016. The University South Pacific 2017. Dropped out that year and then married 2018. Then entered PSE office 5th February 2018.

259. She is name 170 on application. Student application form UTRI. Page 580 exhibit 9 book 3. Telephone number on form hers and fathers and her father is Tevita Lasike as stated on form.
260. Her signature on form, she signed at the market at the Garcia tree. Then marketing fruits there for the family business.
261. The form is dated 21st January 2014 but on 25th January 2014, Queen Salote form 7 started. When she signed was thinking about going to UTRI but changed her mind.
262. The Student Loan⁶ contract in her name on that document and there is a signature, not her name and nor signature. She had not seen that document before.
263. When she signed form she had been with her sister Malianive, they were walking and saw the girls advertising the college. She was shown two receipts⁷ each for \$100. She had not seen these before nor had she ever paid UTRI any money.

Cross-examination on behalf of Mrs Lavulavu

264. She did not know the people at the market that had approached her. Neither had she met either defendant before.
265. She had not attended UTRI, never had been there at all.

Mr Lavulavu's cross-examination

266. She agreed she had signed the application form and had not seen either defendant at the market on that occasion.
267. No re-examination and her evidence was concluded.
268. In the light of the way in which that witness gave evidence all the parties agreed the prosecution could lead their witnesses in uncontroversial material.
269. That was explained to Mr. Lavulavu and he agreed.

Malianive Lasike

⁶ Pages 581 and rear page 582 exhibit 9 book 3,

⁷ Booklet 8 exhibit 9 page 45 and Page 156

270. She was born 28th June 1993. It was her signature on the UTRI application form⁸. In 2014 she was studying University South Pacific, and attended there the whole of that year.
271. The receipts⁹ bearing her name and an amount of dollars receipted for she had never seen before. She had never studied at UTRI.

Cross-examination on behalf of Mrs Lavulavu

272. She had given the forms back to the girls at the market. She did not tell anyone at UTRI she would not be attending.
273. There was a follow up call from the school about a week after signing, they asked her to come and register but she did not.

Mr Lavulavu's cross-examination

274. When she signed the application form neither defendant was there.
275. She recalled police asking her questions, did not know if it was a male or female officer nor their name.

Olinipa Tenisi Filiai

276. 1155 hrs sworn DOB 23rd February 1991, the stated DOB 12th January 1991 not her date of birth.
277. The application for UTRI was in her name, and had true date of birth. Her signature on the form. Dated 15th January 2013. She did not remember where she signed it.
278. Did not attend UTRI in 2015. Never attended there.
279. Original application given to witness. Went to UTRI; she worked there. She worked at drive-through restaurant. That was in 2012-2013. She worked up until round beginning 2013. The photo of her on the form is the uniform of work place but did not know exactly when taken.

⁸ Book 3 exhibit 9 page 577

⁹ Booklet 8 page 45 and page 156

280. Yes discussed this case with Lisa and Frank, don't know last names. They worked together in the restaurant drive-through, discussed case last Monday. They asked her if anyone from police recorded anything about case. She said no, not since 2016.
281. Original receipt¹⁰ provided. The stated \$200 which was never paid by her to UTRI dated 6.3.2013 or at all.
282. She had not known she was enrolling as a student when she signed the form.

Cross-examination on behalf of Mrs. Lavulavu

283. Yes recall what said in 2016. She told police worked at school. Did not study but worked as a cashier at restaurant. She was a teacher of tourism courses. Taught Tourism and Hospitality. Taught 10-20 students. Did not recall how many classes she taught but it was basically every week.
284. Only taught beginning year 2013. Taught for a while and left half way through semester.
285. Auditor's office came in 2016. So are they different to the police, witness asked?
286. Police interviewed her. No one else interviewed her.
287. Audit office did not interview her.

Mr Lavulavu's cross-examination

288. The application form was given to her by Mrs Lavulavu and she did not read it just filled it out.
289. She recalled Lopeti Filo and Loiti Teu; they were teachers of tourism and she was told she would be assisting them.
290. No re-examination.

Meleseini Po'uli

¹⁰ Copy at Exhibit 9 book 7 page 48

291. DOB 25th October 1990. She works assistant accountant Tonga fire services department.
292. Student application form for UTRI¹¹, filled under mango tree under Digicel square. She was there with my friends and two women came and advertised school. They handed her this application, they filled in and she signed. She did not know these people.
293. Salome Hakaumotu and Amelia Fifita just these two friends. They told us it is a new school and they asked us if wanted to enter saying it had different courses.
294. Did not study at UTRI. She did go to the school on a different matter, it was a seminar regarding installing mail boxes at residents given by Mr. Lavulavu. This was the year 2012 and she was a student then. This seminar advertised on radio whoever wanted to join come and take part in survey on installing mail boxes and it took two weeks. This was 2012.
295. She was shown the receipts and the original counterfoil.¹² But she had never paid any monies to UTRI nor attended there in 2015.

Cross-examination on behalf of Mrs Lavulavu

296. She did not see either Mr. or Mrs Lavulavu after she signed the form dated 2015; she did not recall if Mr. Lavulavu was a minister at the time. Afterwards she did not speak to anyone about the form, they said they would call her but did not.

No cross-examination by Mr Lavulavu

297. 1409 hrs on behalf of both defendants conceded that witnesses 6, 8 and 10 had not attended UTRI, had not signed the Student Application Forms nor receipts in their names were not paid by them.

Mile Filikitonga

[Listed as student 64 semester 2 grant application 2014].

1435 hrs sworn.

¹¹ Book 6 exhibit 9 P 231

¹² Book 9 exhibit 9 page 118 – original dated 31.3.15 for \$200

298. Her date of birth is 19.11.1995. Student application form¹³; the name hers; signature her mother's p 230 her birth certificate. Her mother submitted it to institute. Page 231 double sided. The Orientation check list, she had signed there.
299. The Student Loan contract she did not know whose signature that is. She studied at UTRI 2014. First semester. Not sure when the first semester started and ended. At UTRI. February to July. Not after July. Then she was at home.
300. Book 8, exhibit 9. Page 47 copy receipt – original shown 26.2.14 \$200 in her name. Page 108 she had not seen before.
301. The receipt pro forma is stated as being for a sum of cash received by the named person.

Cross-examination on behalf of Mrs. Lavulavu.

302. Went to school first semester, her mother went and paid her school fees.
303. All she knew was the registering, fees payments her mother handled.

Mr. Lavulavu's cross-examination

304. Her statement shown to her, she signed 10th March 2017. She agreed it showed her registered to start 2014, for her to study whole year. Not just one semester.
305. She chose to stop after the first semester.
306. Clear to her the payment had been for whole of that year.

Re-examination.

307. She did not know how much the fees for a semester were. School started in February she thought, but was not totally confident of that.

Mr Lavulavu allowed further Cross-examination

308. Heard advertising UTRI on radio it did not state the school fees. Only purpose why she entered was with the aim to continue studies to New Zealand.

¹³ Exhibit 9 Book 1 p229.

Loni Finau

1546 hrs.

Sworn 25.1.1998.

[Listed as student 64 semester 2 2014].

309. He was shown the Student Loan Contract Agreement bearing his name ¹⁴ dated 20.2.2014. He did not recognise the signature. He did indeed live in Afa, as stated. But could not recall what his phone number was at the time when asked about those stated on the form.
310. The next page of that exhibit did indeed show his birth certificate.
311. The Student Loan Contract Agreement at page 241, he did not know whose signature that was but it stated that it was in his name.
312. At page 241 the Orientation Check List document, not his signature on it though bearing his name.
313. He was at Tupou College finished there in 2013, that was up to form 4. Then went to UTRI.
314. He did study at UTRI 2014 does not recall which month. It was the beginning of that year. He was there only one semester, ended studies in April. That is month in which AFL South Pacific Cup for rugby in Australia. This was the under 16 South Pacific Cup and he attended that tour.
315. The receipt ¹⁵ dated 14.2.14 for \$200 he had not seen this before. He entered UTRI to take course in Tourism.
316. Returned from Australia in 2014 after three weeks. After returning stopped studying altogether.

Cross-examination on behalf of Mrs Lavulavu.

¹⁴ Exhibit 9 book 2. P 239

¹⁵ Book 8 page 38 exhibit 9 ;

317. He did not know who signed his form. Can not recall if father gave birth certificate to school. He did attend a lot of the classes, could not recall number of students in class more than 20 in a class he thought. He couldn't recall how many classes a week he attended.

Mr Lavulavu's cross-examination.

318. He did not know of parents paying school fees for whole year at UTRI and could not comment on this as having happened or not.

27 April 2021

Simione Tahi

1058 sworn

[Listed as student 67 on semester 2 2014 application]

319. His DOB 24.9.1986. His name was on the Student Application Form¹⁶. DOB is incorrect when stated as being 25.1.88. Phone number and address are correct. The form was signed by him. He signed in 2013 he thought and was at UTRI.

320. He signed it because he was a student at UTRI 2014 – 2015. He stated he had no clear recollections.

321. Studied in dance classes in tourism. Lopeti Filo was the teacher. Form was filled out by Sita or Mele Tovi.

322. He was shown another Student Application Form¹⁷. DOB 13.9.1986 he actually had this in his passport and has two dates of birth on his birth certificate he claimed.

323. "Work for Institute" was endorsed on page 257. He stated he only worked in dance group. P 257 is also endorsed "Floor Show", he participated in the dance group, he then said. The Dance group belonged to both defendants and what they did was tourism

¹⁶ book 1 page 183 exhibit 9.

¹⁷ Book 6 page 257 exhibit 9

activities. Page 257 dated 25.1.2014. He stated he studied in UTRI then and studied Dance and Tourism.

324. He could not recall if he was paid by UTRI. Performed in Nuku'alofa Western area in event over two days when owner Mr Ma'afu hosted dinner.
325. The two different Student Loan Contract Agreement documents¹⁸ were shown to him and the signatures, he said were both his, they were different but that was because he changed his signature over this time, so he claimed.
326. A further Student Application Form¹⁹ in this witnesses name was shown to him, it was not signed.
327. A receipt²⁰ for \$200 dated 27.3.2013 relating to Simione Tahi – the court worked from original, he stated he had seen before at school, he could not remember if given by "...Mele Tovi or 'Akosita", he said.
328. When the witness said Akosita Mr. Lavulavu jumped up and angrily shouted at the witness " 'Sita', correct it." which the witness immediately did.
329. He paid fees himself, he appealed to the principal to pay in instalments "and for me to pay 'Akosita later".
330. A receipt²¹ dated 22.7.14 for this person for \$200 shown. He stated that only one month 2014 he studied. Maybe February but couldn't recall. Beginning of the year maybe. He did not pay school fees beginning of the year.
331. His name appears all three semester student lists in question
332. A further receipt for 31.3.2015 for \$200 shown.
333. In 2015 he did study at UTRI. In 2015 wore school uniform but entered as a teacher for the dancing class, so he said. This was January or February 2015. He was a teacher and showed other students how to dance and received payment. That was from Mrs. Lavulavu.

¹⁸ Book 1 page 183 exhibit 9 and Book 6 page 257 exhibit 9

¹⁹ Book 4, page 1040 exhibit 9

²⁰ Book 7 page 177 Exhibit 9

²¹ Book 8 page 9 exhibit 9

334. Before 2013 he was a dancer at the centre at UTRI. Started there when the institute opened. At UTRI from 2012 to 2015

1205hrs

Cross-examination on behalf of Mrs. Lavulavu

335. He remembered going to perform in New Zealand as a performer; as a student. Could not recall the year.

336. Maybe 8 male and 8 female performers attended, all students.

337. Pacifika festival in Auckland was for students. A number schools performing Tongan dance. Yes it was paid for by the school.

Mr. Lavulavu's cross-examination

338. The police officer who came to him on 27th December 2016 he did not frighten him. Statement not written by officer. He had signed that statement.

339. At this point I asked for the statement and took time to look at it and the signature at the end. It was completely different to the two on the Student Loan Contract Agreements he claimed to have signed himself.

340. The statement also stated that his employment, as of 27.12.2016 was floor show Nuku'alofa, age 29 years old.

341. Police came to him at his home. Officer stated the reason for an interview.

342. In 2014 about 500 to 800 students attended UTRI. Students in the dance class were 30 or more.

343. Mr. Lavulavu put to the witness the Student Application Forms and told witness it was very important to tell the truth. The witness then stated he could not recall the exact time signed but the signature is "close to my signature".

344. Then stated this : Can not say if it is my signature on Student Loan Contract Agreement²².

Re-examination

345. 2014 only studied for one month beginning of the year.

Mele Finau

1227 hrs

346. Sworn. 19.1.1992 DOB now works as a security officer. From 2013 – 2015 floor show group at UTRI.

347. Student Application Form²³ dated 16.1.2013. Name stated is hers but not her date of birth. 19.1.1992 is the correct date of birth not 17th as stated, which is incorrect. Address correct, she did not know the phone numbers there. Did not recognise the signature on the form.

348. Student Application Form²⁴ with date of birth 20.4.90 address correct. Telephone number she did not know whose numbers they are. Signature is hers. Signed at UTRI. Mele Tovi filled it out and she signed.

349. Reason filled out and for to sign was in preparation to going to New Zealand and they had to go under the name of the institution she was told.

350. This was filled as part the preparation to travel to New Zealand and perform in Polyfest and other shows and Mrs. Lavulavu advised that VISA forms were already completed. She was told that travel under aegis of Tonga National Cultural Centre no longer applicable and that was the new arrangement they were to travel under UTRI name and that was why this form was filled out.

351. She did not study ever at UTRI.

²² book 6 p 257 exhibit 9

²³ Book 1 Page 29 exhibit 9

²⁴ Book 2, page 262 exhibit 9

352. Only reason she went there was because of the floor show.
353. Receipt²⁵ for Mele Finau for \$200 tuition fees dated 9.1.201 she had never seen this receipt before.
354. Receipt²⁶ in name Mele Finau for \$200 tuition fees dated 20.1.2014. She had never seen that receipt before either.
355. Interviewed by police and told them she was never a student or paid school fees.
356. Other students interviewed, two other names asked of her were children of maternal uncle living in New Zealand. They did come to Tonga for a holiday only for two weeks. Came for two weeks to be circumcised at hospital.
357. List of students at school. They were Pene Tuiketeki and Lolesio Tuiketeki. Both listed as being there in 2015 their names 247 and 248 of the relevant list²⁷.
358. She did not know how their names got on the student lists. She believes it might be during time of their visit to Tonga because after their hospital treatment they did come into Nuku'alofa and might have been recruited in town, but she was merely making a deduction and did not know for sure.
359. The cousin's signatures on the forms she did not recognise and did not know their phone numbers so as to say one way or another whether those on the form were correct.

Cross-examination on behalf of Mrs. Lavulavu

360. The Polyfest performance in New Zealand was the same as Pacifika, students performing there. She recalled 8 females and 8 boys.
361. Simone Tahi one of them. This was about April 2014. School paid for that trip. Floor show was not taught by Lopeti Filo; Afei taught it. Mostly their group who did travel for the show, there were also students brought to join and they taught them.

Mr. Lavulavu's cross-examination

²⁵ Book 7 page 6 exhibit 9

²⁶ Book 8 page 6 Exhibit 9

²⁷ Page 42 exhibit 1

362. The Student Loan Contract Agreement²⁸ she signed so as to travel to New Zealand and completed close to the festival, she did not recall exact month. This form given to them to sign with the reasoning they would travel under the name of the school.
363. Referred to the declaration on the Student Loan Contract Agreement; she stated that if the forms had been given to her with the purpose of reading and checking they would have understood. But she had already been told the purpose was for travelling.
364. Date of birth is incorrect. She believe the preparation for travelling and passport presented and all the details were as stated in those documents. Had she seen date of birth would have remarked, but no details like that were filled out. Forms were in fact blank and not filled out when she signed.
365. She did not recall being taught by Lopeti Filo and Loiti Teu. She did not perform with either of them.
366. 'Ailini was in her floor show group who was a student at UTRI in 2014.

Re-examination

367. Travelled to Polyfest with Mr. and Mrs. Lavulavu.

Lofa Talatala

[Listed as student number 176 2013]

368. DOB 10.11.1993. Referred to the Student Loan Contract Agreement²⁹ his signature, he did not recall when he signed it. 2013 he was not studying at UTRI. He signed it because followed what a mate had done, they were in a band, he did it because mate Taniela Taufa Ta'ofi said for him to. Filled out by Mele Tovi before he signed.
369. The UTRI band he joined. They took band classes all he remembered was they performed receptions for cruise ships.

²⁸ Book 2, page 262 Exhibit 9

²⁹ Exhibit 9 (i) book 1

370. A receipt³⁰ for \$200 11.2.2013 in name Lofa Talatala shown to him. He had not seen the receipt before, nor paid \$200 to UTRI. Never studied at UTRI. In band for 2 -3 months.
371. Reception for cruise ships arranged by band master Kitone Palavi, did not know if anyone paid for their services. Band practice was at UTRI.
372. No cross examination on behalf of Mrs. Lavulavu.

Mr. Lavulavu's cross-examination

373. Band master was Kitone Palavi, another person Manu Hifo, who assisted him.
374. Application dated 14.2.2013. He did not recall participating in the Parliament parade in March. Did not recall it being July or his playing drums at it.
375. He did recall going to Vava'u and participating. Do not recall the month but it was at beginning part 2013.
376. In 2014 he did not participate travelling Vava'u.
377. As for 2013 he did not know the number of band members; maybe 15-18.

Ilaisaane Niu

[Listed as student 155 2015 list]

378. Sworn 1500 hrs. DOB 5th September 1983 at Hofoa. In 2015 joined UTRI in the show.
379. She was shown the Student Application Form³¹.
380. Correctly states her name and DOB. She did not recognise the signature. The attached photograph is hers. Did not have any recollection of photo being taken.
381. Receipt³² 176507, dated 31.5.15 \$200 for tuition. Not a receipt she had ever seen before. Never paid \$200 to UTRI.

³⁰ Book 7 page 82 Exhibit 9

³¹ Book 6 page 209 Exhibit 9

382. Joined the floor show that is to say only joined dancing performance. This was to practice for performance in New Zealand. Can not recall numbers that went. Not a student at UTRI.
383. No cross-examination on behalf of Mrs. Lavulavu
384. No cross-examination by Mr. Lavulavu.

Toakase Tatafu

1511 hrs

[Listed as student number 213 for 2015]

385. Sworn. DOB 12.3.1975. Lives in Havelu. 2013 at UTRI school. Went there for the opportunities they had advertised, that is to say she was a Kindergarten teacher and she thought would be able to develop her skills. 2013 – 2014 at UTRI. Did not recall when stopped going there in 2014; but it was towards end of year.
386. She then returned to former employment as teacher at Kindergarten school. At UTRI when she finished she did receive a certificate in Tourism, but she had hoped to be able to continue to New Zealand at Martin Hautus School. Because did not have enough money to carry on studying she stopped.
387. Tourism certificate she got in 2014 they had a graduation ceremony. Could not recall who handed out the certificate.
388. The chance to go to Martin Hautus was spoken about by Mr. Lavulavu and an officer from the school. Do not know if someone from the Martin Hautus was there or who guest of honour was.

³² Book 9 page 129 Exhibit 9

389. The Student Application Form³³ with her name, her date of birth and her phone number. Her signature. Her only recollection is when she entered school she signed it.
390. The Student Application Form³⁴ dated 6.3.2013. Her name but date of birth not clear. It was her signature though. Someone else filled out form and she signed it afterwards.
391. The Student Loan Contract Agreement³⁵ her signature, and it was dated 24.1.2014
392. The signature for the Student Loan Contract Agreement (Book 6 page 274 Exhibit 9) compared that to the other two signatures it looks different at page 274 signature in fact was simply writing whole name. P 274 was written when first attended the school in 2013. In 2013 and 2014 did not pay school fees. No one else paid. When they first entered school told two ways to pay fees. This information came from Mr. Lavulavu; if they had Tongan handicraft or by working for UTRI that would be taken as payment. She worked for the school as well as studied. They were able to work in services in buffet dinner services. They were also able to work in tour guiding services. Also do some cleaning up of rubbish at school.
393. The Student Loan Contract Agreement³⁶ signature she did not know to whom it belonged nor had she seen that document before.
394. Of the receipt at³⁷ \$200 dated 12.3.2013 not received a receipt like that, never paid \$200 to UTRI in 2013.
395. The receipt³⁸ 903767 dated 21.2.14 receipt for \$100 for tuition fees. She had not received any receipt like that. Never paid UTRI \$100 in 2014.
396. The receipt³⁹ 11.2.2015 \$200 "Tuition". Not received a receipt like that and never paid \$200 to UTRI in 2015.

Cross-examination on behalf of Mrs. Lavulavu

³³ Book 6 page 264 Exhibit 9.

³⁴ Book 1 page 195 Exhibit 9

³⁵ Book 4 page 1088 Exhibit 9

³⁶ Book 4 page 1096 Exhibit 9

³⁷ Book 7 page 92 Exhibit 9

³⁸ Book 8 page 43 Exhibit 9

³⁹ Book 9 page 100 Exhibit 9

397. Studying in 2014 attended all her classes. That was 3 days a week. The number of students would vary up to 10 plus to 20 plus. Would not know if 200 students attended.
398. 2013 same number students in class as 2014, more in 2014. Not a student in 2015.

Mr. Lavulavu's Cross-examination

399. 2014 the graduation ceremony she could not remember if it was Lord Tu'ivakano or not who was guest speaker. As for Mr. Martin Hautus in 2013, a reception in his honour she had no recollection of.
400. Worked at UTRI, rubbish cleaning and services at buffet dinners.
401. Were the receipts the payments for your tuition? Yes, she said. They represent payment for school fees, yes she said. Those were one of the two ways, that she was able to study and work.
402. Hall in 2014 at graduation was full. She did not recall who announced names at the graduation.
403. Program for graduation 2014 became exhibit 10.
404. Her name at back at page 5. She did not recall who guest of honour was.

Re-examination

405. Regarding the receipt dated 2015 she did not receive it because not a student at UTRI then.

Pelisi Tu'akalau

1619 hrs

[Listed as student 210 on 2013 list and 368 on 2014 list.]

406. Date of birth 23.5.1993 in 2013 joined dance group at UTRI. She was introduced by Mr. Filo to dance group of Mr. Lavulavu. Thought it was March 2013. Performed

Tongan dances here in Tonga also in New Zealand tour. Two years participated and small part of a third year. 2013, 2014 and part 2015.

407. Performances at UTRI and Tongan Cultural Centre and cruise ship receptions. She did not know whether being part of dance group is being a student. She did not attend school classes though, only the dance practices.
408. 2014 just the dance practice.
409. The Student Application Form⁴⁰, DOB 3.11.88 not correct. Address is correct. Form dated 3.3.2013, signature she did not recognise.
410. The Student Application Form⁴¹ dated 25.1.2014 her name on the form. As for the signature it is hers. She did not recall when it was signed.
411. Not able to recall why signed that document. Someone else completed the rest of the document.
412. The passport⁴² attached. School had passport for the show tour to New Zealand which was in 2013 and 2014 that was why that was there.
413. The Student Loan Contract Agreement⁴³ form it is not her signature under the name stated as hers. Never seen a Student Loan Contract Agreement document before.
414. The receipt⁴⁴, original shown in court, dated 14.5.2013 for \$200, she had never seen that before or paid UTRI \$200 for tuition.
415. The receipt⁴⁵ 903622 21.1.2014 \$200 for tuition fees stated with her name, never seen that before or paid UTRI \$200 for tuition in 2014.
416. When she performed in the shows she mentioned she was paid by 'Akosita Lavulavu. For a performance paid \$20 at least.
417. No cross examination on behalf of Mrs. Lavulavu.

⁴⁰ Book 1 page 218 Exhibit 9

⁴¹ Book 5 page 1254 Exhibit 9

⁴² Next page 1255 ibid

⁴³ Page 1257 ibid

⁴⁴ Book 7 page 123 Exhibit 9

⁴⁵ Book 8, page 7 Exhibit 9

Mr. Lavulavu's cross-examination

418. The teacher Afuhia Nusi and Isi were the teachers when they practiced with about 10 plus dancers.
419. Yites they were dance practice, Afuhia teaching them dance. All she knew is learnt dancers from Afuhia. She did not know learning how to dance was part of study program. Afuhia was a teacher of dances.
420. Learnt from him in 2013-15.

Re-examination

421. When practiced dances with Afuhia she studied with the dance group. This the group that made the performances she had mentioned at the beginning her evidence, ie Tongan Cultural Centre and cruise ship receptions.

3 May 2021

Claude Tupou

422. 1026 hrs sworn
423. He is now 63 yrs. In 2015 was the acting Director of Education from March, April or May 2015. He had been in that office 7 years.
424. He was aware of the TVET program. It provided subsidises for schools per pupil, the provider applied to MET to be qualified for the program. TNQAB also had a role.
425. He followed the procedure for grant to be released, it was this: 1. Students must enrol, 2. They must pay the school fees, 3. The course must be approved TNQAB. 4. Minister Education finance officers would visit and look at documents and especially receipts and do a head count. The scrutiny from the MET point of view was of two documents: Registry documents and also the Receipts.
426. Count based on receipts then would come back and recommend CEO for approval and if approved then the money released.

427. He thought there was a manual of guidance.
428. He reiterated this: Two stages, (i) for school to be approved and if approved is it for non government and government school.
429. Then (ii) look at course and for it to be approved.
430. That was the role of TNQAB to look at quality of course and facilities.
431. MET approved for schools, TNQAB for the courses and running of the institutes.
432. The Memorandum of Cabinet⁴⁶ was a document he had seen before he was familiar with paragraph 2 (e) which set a rate of \$1200 in December 2009.
433. Then to memorandum 637, 19th July 2013⁴⁷ that amended the grant per "receipted student" to \$600.
434. 1st semester 2015 TVET grant application⁴⁸; In signing off this form for the TVET grant in 2015 as he had he had to rely on the recommendation of the officers and they relied on the receipts they look at.
435. He signed approval on 9.6.2015. Mrs Golton was the procurement officer,
436. Page 36 he signed, before him Golton and then finance Officer Mosese Elone had already both signed.
437. He relied financial officers; go to schools look at enrolment and receipts. If what they found was for example enrolment 20 people, but receipts for 18, then the 18 counted and they came back with that number.
438. He was taken to the list of students for the 2015 TVET application⁴⁹.
439. Eligible students on the form referred to those who paid the school fees.
440. 271 on the form means that \$600 each for the grant.

⁴⁶ Exhibit 1 page 4

⁴⁷ Exhibit 1 page 8.

⁴⁸ Exhibit 1 page 34

⁴⁹ Exhibit 1 pages 37 – 42

441. Exhibit 1 page 45 – 54 Auditors' Report. UTRI audited as that is the normal process. They apply quality assurance and TNQAB approve course, then Audit part of process and that is for every school.
442. It is about the responsibility and accountability. Not MET who asked for audit, it is the underlying process.
443. When he received the audit report it was a very heavy report hard to comprehend and read, he stated. He read it many times and then asked senior management team to read it, then they had to discuss way forward. It is quite a technical report.
444. They had a meeting to discuss what to do, that was the beginning following year 2017 and senior management team, the deputy director and all principals a few head officers at MET met. They agreed to accept the report.
445. Then he advised Mr. Lavulavu of that consensus and invited him for discussion. And advised audit department of their response to Mr. Lavulavu.
446. Reason asked Mr. Lavulavu as he is the head or owner of UTRI.
447. Invited him to the meeting, at the time he was in Leimatu'a Vava'u and requested him to come. They had meeting 3rd March 2017, the letter 20th February inviting him to discussion.
448. He emphasised to Mr. Lavulavu that MET accepted audit report. Main reason for meeting was to set up ways to undertake payment. That was the re-payment of the \$500,000 plus; the grants for the three semesters in question.
449. That was figure from the audit report. The meeting was professional, he agreed for the repayment but he wanted to pay less than the \$500,000. The reason he gave for less was because he disagreed with audit.
450. They emphasis the report meeting aim was for a schedule for UTRI to repay \$500,000 Mr. Lavulavu agreed but stated the sum; that figure should be reviewed.
451. Down to something like \$300,000 Mr. Tupou thought. Mr, Lavulavu just gave that figure and did not give a reason.

452. It transpired that Mr. Tupou did not have a note to that effect, but that was his recollection.
453. Meeting with auditor General 16th May 2017⁵⁰, at Mr. Lavulavu's request Auditor General was present. In that meeting they confirmed they were bound by the findings of the audit report; they took it very seriously, report received October 2016 set out chronology, Mr. Lavulavu disagreed with the \$500,000 figure and stated he wanted independent audit and to wait for Ombudsman and police investigation.
454. Mr. Tangi, the Auditor General, informed the meeting that the work they had done was according to their audit procedures.
455. Their work is mandated, was how Mr Tupou described it. All the information available they had looked at. Report for MET, copy to Ministry Finance and Police and Auditor General. Auditor General stated that audit scope had to be increased because of serious nature of their findings. Audit General made the point that UTRI did not have a record system to prove 'in kind' payment system.
456. There is no cabinet decision that allows this form of payment. Cabinet decision only allows school fees; the reciprocated monetary receipt. Which means; pay in cash. This has been procedure probably more than a century for schools in Tonga.
457. Therefore at MET discretion to approve school. MET has never since approved that as a form of payment. It is not legal tender, only money is accepted. Chair concluded MET will check if has authority to approve those payments.
458. Government prints money. Provision of currency into school to pay for services and facilities.
459. Independent audit throughout always mentioned independent report because he does not agree with report. They concluded that was not for us, they were only concerned with receipts.

1145hrs

Cross examination on behalf of Mrs. Lavulavu

⁵⁰ Exhibit 1 page 55

460. TVET a program undertaken by both public and private schools.
461. Public schools are government sponsored. Private eg owned; like Mr. Lavulavu's. TVET different courses. TVET not mainstream, they deal with technical courses.
462. Ownership structure and programs different. Courses to be approved by TNQAB. Example of a TVET schools providing courses in cooking and carpentry, IT and internet.
463. Schools regulated by Education Act. Fees to be paid into general revenue as per s.96 of the Act.
464. These courses provide skill for work force. They have been around for a long time, from 60s and 70s. Elements of TVET had already existed for a long time. This is now a new program and been around for 30 years. At one stage this idea of TVET came from New Zealand.
465. S.134 of the Act creates power for regulations to be made. Mr. Tupou made point he was the wrong person to ask about all this; stating he is not legally qualified. The cabinet decisions are clear what to expect. All guidance relates to currency.
466. He did not know 100% what the rules were, from experience officers from Ministry meet and explain, and they are very clear about the process.
467. He agreed there should have been guidance.
468. Grants were there to assist TVET schools. A TVET Grant Application form was put to him⁵¹. He could not explain why the form is blank at that back.
469. He noted that on those successive pages they were signed by him that day.
470. He repeated what he had already stated: the process and the people in finance worked on the form and when ready for the CEO sign.
471. All checks already done. At time they thought it was valid application and approved it.

⁵¹ Exhibit 1 page 34

472. 2015 Mr. Lavulavu made Minister but which portfolio he could not recall. Infrastructure minister. Big photo of himself opposite fire station.
473. Not aware if school closed or not. Aware not operating at the moment.
474. Contacted re grant 2013, 2014 and 2015 that was because of audit report. The report was clear. He did not know of a second audit. Their understanding of process was cabinet decision guided on the TVET and procedures and TNQAB, then provider applied and then the audit.
475. They were regulated by government. He was not sure what Act says about fees.
476. S 134 (d), he did not know, it has always been cash. If he, Mr. Lavulavu, disagrees, then he can put it before the trial judge to decide.
477. As for TNQAB he had no idea if they have jurisdiction as to how school fees to be paid.
478. Never comes across TNQAB being allowed to authorise payments schemes. They do not have power to approve school fees.
479. Systems need to be accountable because these were public funds. He could only say so much.

Mr .Lavulavu's cross-examination

1219 hrs

480. Police statement was written in Tongan. He did not write it; the officer wrote it and he signed. He was clear he stuck to contents, they remain same; witness taken through statement and says he maintains what he has stated.
481. He did not recall mention of a guidance manual (for TVET grants) nor does he have a copy.
482. He couldn't recall if there was a TVET manual when he was in MET.
483. Cabinet decision; guidance alright. He was referred to Cabinet decision 1182 F

484. The minute for March 2016 meeting had no note of amount Mr. Lavulavu did accept would repay. He agreed sum of money to be refunded, but he stated the figures needed to be reviewed. He did not agree report and did not revise numbers.
485. Mr. Lavulavu mentioned an independent audit. Minute was made and copy supplied to Mr. Lavulavu. Soane Selui wrote minute for both meetings, March and May 2017.
486. No fixed number for repayment was agreed.
487. Never received correspondence with a stated figure offered for re-payment.
488. TNQAB assess the course re TVET grant.
489. As for the other audit reports he couldn't speak about those as he was not in post at that time.
490. He did not file the complainant to police. He did not know who files complaint to police. He did not leak this police.
491. He did recall Mr. Lavulavu mentioning arbitration.

Pauline Moa

1457hrs

492. Deputy director TNQAB, 12 years in TNQAB original member from inception.
493. Tonga National Qualification and Accreditation Board.
494. They registered institutions and accredit the program of studies.
495. Registration criteria, legally established and quality management governance and management. Ensure the name institute to reflect their aims also establish a Fee Protection Scheme.
496. They would accredit program for a submitted program of studies that meets the criteria.
497. From 2010 started working with UTRI. Firstly getting them to register. They were registered after 2009, then renewed registration; registered one year and had to be renewed. Provisional then came full registration.

498. Assess legally established by Ministry and assess quality management system and governance management.
499. QMS criteria for development of program of study, policy staff recruitment and development and policy student entry and for learning resource, guidance and support for students. They can have within that other stated procedures they feel relevant for their school.
500. Governance systems of practice and to protect student fees. That is if institute fails how cope with students' studies in a future venue.
501. They did support visits and UTRI had to submit documents and they had to take those back and help them with those documents.
502. She did this at the beginning and then other officers came and helped.
503. She did that 2010 – 2012, then another officer from TNQAB. Mrs. Lavulavu was the one mostly involved and responded to their queries. Lines of contact went through her.
504. Monitored to make sure maintained quality, action plan was provided to UTRI, structure for maintaining the QMS, Miss Moa did this at least once.
505. This was from registration to accreditation, but before finished they closed down.
506. UTRI was not accredited with any programs, only registration, they were never accredited.
507. They left campus 2017 at that stage they were still working with them in 2016 on their accreditation.
508. In a nutshell TNQAB were there to register providers and accredit their programs.
509. Different officers involved in action plans. Someone else monitored them.
510. She did follow up some issues. Exhibit 11 update on the implementation of the TNQAB. Exhibit 11; page 6.

511. Teaching and Learning practices – assessment material deficiencies were common in UTRI, that is the teacher assessment of the pupil's work. These were fundamental failings.
512. Page 9 an example where UTRI needed to have a record. No records in relation to student achievement. No records, so TNQAB were not able to verify.
513. TNQAB were also concerned about staff not having high enough qualifications and more staff on paper than they met at school.
514. UTRI had first been a University.
515. Then 2009 TNQAB interaction started. In relation to fees just involved in student protection fees as per the document and they did nothing else.
516. In exhibit 11, the TNQAB monitoring of activities at UTRI document was created by her.

Cross-examination on behalf of Mrs. Lavulavu.

1533hrs

517. Exhibit 12 Certificate of incorporation into Intellectual Property and Company Registration Unit.
518. Exhibit 13 TNQAB Guidelines for Programme Accreditation.
519. The QMS submitted by the institution.
520. Exhibit 14, Registration Application Form necessary for registration. Of note is that it has never been approved and bears no official stamp on the last page.
521. Exhibit 15 The QMS manual for 2013 page 33 9.1.4 the payment options. This was outside TNQAB remit and was a matter for the institute and not something they approved at TNQAB
522. Not for TNQAB to decide their fees scheme.
523. Of note 10.6 page 34; less than 5% students paid fees.

524. Music course, not band, they could have delivered the course, they did not get application for the program.

525. They gave them a computer course and that was only course accredited. Hospitality and Tourism they were not seeking to accredit. They could teach it, but not accredited.

Mr. Lavulavu's cross-examination

1552hrs

526. Puts a variety of certificates and memorandum of Cabinet. But they were not within Miss Moa's knowledge and she could not comment.

527. Re-examination

528. In terms of the statement as to payment methods Miss Moa said that at that point they would not intervene because course is not accredited by them.

4 April 2021

Mosese Hungalu

1113hrs

529. OIC based in Eua. In serious crime unit. Had been there for 10 years. Financial crime and money laundering all his field of expertise. In charge tracking down financial evidence relating to this case.

530. Exhibit 1 page 59 – 62 his flow charts he compiled.

531. Exhibit 1 Tab 15 likewise he compiled.

532. Letter applying for a loan from Tonga Development Bank⁵² seized residential address Mr. and Mrs. Lavulavu, recovered during search warrant cf Exhibit 18 p 68 entry 24 ibid.

533. Page 56 and 57 ibid.

⁵² Exhibit 18 page 54

534. Two bank accounts they found page 21 and 41 exhibit 18. Seized out of search warrants page 95 to p 106
535. Exercise, bank account 2000778155 UTRI bank account, prosecution go through the exercise of comparing the receipts created to the deposits with this officer.
536. The other account the same exercise of exhibit 18 bank account 2000911715 UTRI bank account. Both accounts in the name of both defendants. The opening of this account signed for by both defendants 17.6.2012.
537. Another bank account for Mrs. Lavulavu and her father, account 2000638284. BSP there is cross transfer between all these accounts.

Cross-examination on behalf of Mrs. Lavulavu

538. Carried out search regarding documents from UTRI as part of team.
539. Warrant 5207⁵³ put to officer concerns the seizure of documents from Auditor General. 21st Dec 2016, then seized documents as listed Hand Over list from Auditor General Office 28.11.2016.
540. To his recollection these documents were handed directly to them by Auditor General. He didn't get permission from UTRI, he received this from Auditor General Office.
541. Affidavit of this officer dated 21.12.2016.

End of prosecution case.

Defence case

12 May 2021

Mrs. Lavulavu

542. She is 36 years old and the Minister for Infrastructure and Tourism.

⁵³ Exhibit 20.

543. She was elected in July 2016; she spent two months prior to that in Vava'u as the law required residence before she became a candidate for that ward.
544. Qualifications include Master business Administration University South Pacific, attended 2011 -2012.
545. BA University Hawaii; Brigham Young. 2004 – 2007. Cert ABTC Training and Assessment in Tonga.
546. She worked at UTRI from 2010 to 2016 resigning in 2016 because parliamentary candidate.
547. At UTRI she was the Director. She had responsibility to report UTRI Board. She worked on developing syllabus or program for school; staff development, and putting in place manual and policy and procedure, budgets, and the twinning programme for schools abroad.
548. The lists of courses established and set up by herself and Admin and staff is at Exhibit 16, p 13.
549. These courses were already in place in 2010 when she started.
550. Courses were updated to suit Tourism and Hospitality industry at that time. They met with industry and they proposed an updated program; accordingly students able to be employed in that industry. Designed as per industry needs. Different to program offered abroad. But they designed it to match the need they told them of.
551. Her responsibilities included: the building, maintenance and construction course; also that school procedure and policies were maintained. She taught an IT class covering basic Word and Excel, software and hardware uses.
552. She thought they had 100 computers at time, projectors from abroad these were purchased with TVET grant 2011/2012. She could not recall exactly when that had been awarded.
553. Computers would break down. They had one room for IT class. 4 of them were teachers in IT: teachers Decard Taukolo, Pesi Fotofili, she couldn't remember the fourth.

554. Mr Trevor Woods, Mr. Lavulavu and Ropert and 'Akilisi Fakaholo were all on the Directors' Board.
555. Board approved annual budget and approved programs put to the Board; also put forward the QMS for approval. She would also approve staff for working at UTRI.
556. Trevor Wood quality assurance officer. He made sure UTRI followed QMS.
557. She worked close with Lupe Ilaiu to follow the procedures, Miss Ilaiu also taught.
558. Akilisi Fakaholo responsible school finances.
559. Private Audit of finances carried by a firm she thought were called Papatoe (not sure name company she said) they were responsible for the private audit, man called Lomu Sika carried out the audit.
560. 2-4 times a year Board met, it depended on the year. They discussed financial matters, progress of the program taught, also the registration with TNQAB and their programme accreditation and also TVET grant.
561. In 2014 around May left the Board because she went to Vava'u for election 2014 which was in November that year.
562. 2014-2016 elected as a Representative.
563. Appointed Minister December 2014 Minister Infrastructure and Tourism.
564. For UTRI to get TVET grant had to work with both TNQAB, and MET. They had to be registered as a legal entity⁵⁴. Also a requirement for Cabinet to register them.
565. Once registered they became eligible and applied every year they could.
566. 2013 not registered second half nor first half 2014. She said not easy to be registered.
567. For the courses they offered they charged students fees of \$100 per semester, \$200 per academic year.

⁵⁴ Exhibit 14 p 2

568. She complained that MET never provided guidance on how to apply for TVET grant, not given any written guidance.
569. She stated that in 2011 about 200 plus students, 237 maybe in the college.
570. 2012 semester 1, there were 260 and something. Semester 2, 2012 about same amount she said.
571. About 15-20 Teachers at the school at the time, that is to say from 2011 to 2015.
572. The court did not enquire how she recalled these numbers.
573. She went on to list them and remembered most of their names : Mele Tovi, Fakaholo, Lupe, herself, Tevita Kola, Pesi Fotofili, Alisi Vaiangina, Palavi, Mosi, Filo, Kiteo, Pola first name, Sikuea, Kato can't recall last name, Woods, Mr. Sulusulu
574. Woods died, Teu also no longer with us.
575. Salaries \$190,000 for academic year. Though she did not say how that was divided.
576. For the electric, telephone, internet, rental premises, resources, stationery and other things needed, training facility on premises she maintained that cost \$100,000 per annum.
577. They used the buildings in Tofoa School. That is Tonga National Centre and temporary home for Parliament at this time.
578. School occupied 8 or 9 even 10 buildings.
579. Nine were used as class rooms. Administration occupied one room, in fact a big room, she added.
580. Turning to the applications themselves :
581. Exhibit 1, p 13 was her signature on the 2013 grant application. That had been submitted to MET with student enrolment list.
582. She claimed MET representative would visit the school, then carry out a head count in class rooms. Lupe Golton and Moses Elone would do this, so she said.

583. Lupe Golton went to all class rooms, Mrs. Lavulavu said.
584. Moses Elone in the office. Then they would both then go back to their office.
585. She said there were audits done in earlier years, for example 2012 and 2013, 2014 by Sefita Leha. But they had never given any written document.
586. Mrs. Lavulavu stated the tuition scheme alternative payments, were in place before she joined UTRI.
587. Her school not like any other school, so she said. High school "drop outs" and those who wanted second chance education were their targets.
588. She was forthright when she stated it was important people were given the chance to study.
589. This was one of the reasons that students and people could not go to school was because of tuition fees.
590. Exhibit 16 p 66 sets out the alternative fees they offered.
591. She claimed they had discussed with TNQAB and made it known to them and that stated in QMS the alternative fee scheme. MET knew of it, she said this : "Everyone in Tonga knew, and it was widely advertised."
592. On Mrs Lavulavu's behalf this next piece of evidence was adduced:
593. Exhibit 25 Grants Administration Manual 2016. About February 2016 she stated she became aware of it.
594. In 2016 introduced to them, they did not sign on this manual she stated. It was an agreement schools required to accept at the time they did not agree on this document, the other schools did not sign it, she said.
595. The court's attention was not directed to any part of the manual they were asked to sign or what the signing off could relate to.
596. She stated they were only introduced at this time and asked by MET to sign and back date, MET informed them and no further grants until signed.

597. Exhibit 25 is a draft document.
598. Regarding the 2013 recruitment and enrolment in 1st semester 2013 she said she played no role in this, leaving it entirely to the Admin staff.
599. Likewise no involvement 2014 or 2015 recruitment and enrolment.
600. The student list of enrolled students for 2013 she stated that she had no role in compiling.
601. That application form Muna Nasilai was hand writing was at top of page and in the box stating the number of students for the grant. All the rest was Muna's hand writing and save where Mrs. Lavulavu had signed.
602. The TVET grants application was handed to her with the list of names and she signed off as she trusted in the staff that were working on it. She did not doubt that it was correct.
603. P 14 Exhibit I MET document. That list given by Muna Nasilai.
604. P 19 2nd application for the TVET grant. Felisita wrote out the top. She signed the page. Information as to numbers students this was true and correct provided to her by her staff.
605. P 21 student enrolment list at pages 21-28. She said she had no role in the compiling of that list.
606. P 34 relates to the third application, she did not know of this application form. Her name there maybe because states Director at the side. Mele Tovi's signature under her name and under declaration.
607. She explained in 2015 her husband was a Minister and they travelled a lot and attended Ministers' conference in Tahiti and she was not there when the form was submitted. She did not give any instructions in relation to this application.
608. As for the attached list of students she did not play any role in that list.
609. In 2015 she spent very little time at school. Asked about teaching classes she replied they had teachers there teaching, she did not teach at all 2015.

610. In 2014 there was an increase in students because in that year they had made known partnership Martin Hautus and it created a lot interested.
611. Graduation ceremonies held by the school twice 2012 December and 2014 November/December.
612. School awarded certificates tourism and hospitability to graduate, the “drop outs” could take up to two or three years to complete a course, others a year or two or three semesters, dependent on their progress.
613. As for the meeting with Miss Kivalu at her residence in 2017, she was not at this meeting, was all she had to say.
614. Turning instead to the UTRI finances – before TVET grant the school was financed by money from Mr. Lavulavu. He raised funds. For example the quarry business and also farm business selling crops.
615. Tonga Development Bank loan was needed for teacher’s salaries and other expenses at time.
616. The Court turned to the relevant document in Exhibit 18 as this evidence was given and noticed the withdrawals were all for whole sums of money.
617. She went on to say the finances were cash basis, even teachers salaries in cash, all expenses were in cash.
618. Of exhibit 9, books 7, 8, 9 she had no knowledge receipts issued to students.
619. She played no part in the issuing receipts to students. That issuing of receipts was already in place in 2010 and was just the procedure, well before she came in actually.
620. Cabinet decision 1182 2009; she was not in Cabinet for decision 688 she had never seen it. “Sorry” she said.
621. 637 of 2013 she had never seen.
622. Exhibit 18 page 21. Deposits July 2012 believe it was monies from Mr. Lavulavu; August 2012 likewise. Page 23 probably his deposits as well. All money other than TVET from Mr. Lavulavu.

623. Referring to page 41 she stated other than TVET money all came from Mr. Lavulavu.

624. Mr. Lavulavu no cross examination

Cross examination prosecution

1223 hrs

625. Election 2016 was July. Appointed minister Infrastructure in 2019.

626. 2016 – 2019 people's representative in Parliament but not Minister.

627. 2010 to June 2016 worked in UTRI. She was reporting to UTRI board who ran the school, the Board. UTRI she managed on a daily basis. 2010 to 2016, as Director.

628. Dealt school finances, budget annual, update Board on the status finances at the time.

629. Before 2010 UTRI was already run by Mr. Lavulavu. She married him in 2009.

630. Computers purchased with grant money, though she did not remember when that was.

631. From 2011/2012 they had purchased computers, then every year purchase more or had them repaired.

632. TVET grant money also used resources, grant salaries and minor renovations.

633. Fixing up class rooms; including the place for training facility which needed to be renovated.

634. MET told them to use grant on these: resources, salaries and renovations, 2011/12/13.

635. Not told anything else in relation to the TVET grant by MET.

636. Trevor Woods, Quality Assurance officer; responsibility; made sure school operating as per QMS, and any other procedures and policies he followed.

637. In relation to the QMS statement of the flexible payment scheme, she knew that Trevor Woods looked after alternative payment methods, "That is basically it." was what she said as to that.

638. Only what written in QMS as to alternative payment methods were how that was managed, nothing else.
639. If for example a pig had been given that was supposed to be recorded, by Admin and Trevor Woods in charge of that and it should have been recorded in the Admin office.
640. Examples of this had been provided in one of the audits, 2013 and 2014 and the hours worked by the students in order for them to pay for their tuition, she stated.
641. The Board meetings included discussions of TVET grant and reporting to the board when due. She would inform them what the grant was used for.
642. Salaries and resources, renovations were funded this way.
643. Grant used to pay off the debts incurred in the running of the school.
644. She stated that she had never seen the Cabinet decision 1182 for 2009.
645. She was taken to the bank statement for the UTRI BSP account 2000911715⁵⁵ and shown an example of a TVET grant paid into her account, for the grant, the subject of count 3; 1st Semester 2015.
646. \$162,600.00 paid in 29.6.2015. She did not know what the money had been spent on and had no records of it, she said.
647. That document showed that in two months after receipt of that sum, cheques had been raised for \$1,000.00; \$10,000.00; \$20,000.00, \$20,000.00; \$10,000.00; \$80,000.00 ; \$10,000.00; \$2,000.00; \$6,000.00 until on 28.8.2015 there was merely \$3,580.00 of the grant left.
648. She admitted that she had written those cheques. Albeit that each was for a round sum, she stated that it was for payments for salaries and resources.
649. She added that she was not at the school at that time.
650. She continued that 2nd half 2013 and first half 2014 not registered during that time with TNQAB.

⁵⁵ Exhibit 18, page 43

651. Again she said they were never given rules or guidance for the TVET grant.
652. They were given oral guidance for TVET grant not given specific directions on how to register for grant.
653. She stated it was her understanding that the now dead Miss Golton from MET had come to the college and done a head count in the class rooms and that was the "count" that MET had performed.
654. Of the lists of students submitted with the grant applications she stated that they also had to be submitted to TNQAB.
655. Of Miss Kivalu's evidence she stated that Miss Kivalu was lying when she had said that Mrs. Lavulavu had instructed her to initial the student enrolment lists, that she was lying in saying she had instructed her to compile the lists of students from the recruited students and was lying when she said she had been instructed to write out the receipts.
656. She went to comment that although Miss Kivalu was getting nothing out of the grants being paid; and they were always paid into accounts controlled only by both Mr. and Mrs. Lavulavu; yet she could not think of a reason why Miss Kivalu would make any of this up against her.
657. She said of the process that the lists were given to her, then forwarded to MET by the Admin department. She relied too much on her staff she said as her reason why she had signed it off without checking anything, even despite the words of the declaration she was signing were that she "...conscientiously believing to be true and correct in every particular."
658. She had no answer as to how she could sign a declaration to that effect and not have made a single check herself, when plainly those words demanded she took responsibility.
659. She was asked to consider that even a cursory glance at the lists of enrolled students would show they could not possibly be correct; for example in the 2013 list, that on page 2 there was apparently a student with a date of birth 2.10.33.

660. Of the meeting at their residence in Sopa when Miss Kivalu went to their home she said she was not there.
661. She did not remember contacting Miss Kivalu.
662. She did recall that there was a meeting.
663. She did not remember telephoning Miss Kivalu.
664. She did not speak to Miss Kivalu about the investigation at all, she stated.
665. Did not recall a discussion with her husband about the Sopa meeting.
666. For all she knew she could have been in Vava'u. She was not sure where she was, would know of any meeting had she been at home.
667. Then she agreed there was a meeting and that her husband had been there.
668. She said she did not know why Miss Kivalu was asked to attend a meeting by her husband.
669. She accepted the evidence of the Hapai recruitment was accurate and she spoke at the capital event. No other similar events had she attended.
670. In regard to 'Olinipa Tenisi Filiai she stated never had given her a form to sign and she could not recall giving her anything to sign.
671. Regarding Simone Tahī she accepts his documents were forged.
672. As for Mele Finau Student application enrolment form and the forging of those documents she stated: she had no idea what was going on.
673. Of signing off the declaration she stated she had staff, trusted they would give her the correct information. She even went as far as to say : "Not my responsibility to check". Though she accepted that the declaration is not worded so as to invite a representation of truth based on the checks of others.

674. She still maintained that those witnesses from the dance group who had said they were not students at UTRI, were in fact students at UTRI, in the teeth of those witnesses' evidence.
675. She went on to say that Lupe conducted head counts at UTRI.
676. She conceded that she had not told her lawyers of this part of her case; that Lupe had conducted head counts.
677. When she was asked about the receipts how they stated fees had been paid which had never been paid she replied "What if it was a mistake?"
678. The 2014 application she now accepted was inaccurate.
679. Mele Tovi made the 2015 application.
680. Knew of the 2015 application; but appeared to prevaricate next saying she was not aware of this application or when it was submitted.
681. She accepted that every semester they applied for the TVET grant.
682. She said not aware when 2015 application was submitted. Then said she knew of the application for this grant for 1st semester 2015. There had been applications in 2013, 2014 and 2015.
683. She denied that she knew the three applications in question were inaccurate but accepted that now she realised this was a fact.
684. She was asked to consider the program for the 2014 Graduation and why Toakase Tatafu's name appeared in the list for 2015 graduation when her evidence was she graduated in 2014. She accepted she was the Director of UTRI at that time.
685. Tonga Development Bank loan was for teacher's salaries and other expenses. \$190-200,000 spent on salaries. Needed loan for salaries because school did not have sufficient funds at the time.
686. She concluded by stating she had not deliberately and falsely obtained money.
687. There was no re-examination.

13 May 2021

Lopeti Filo

1014 hrs

Sworn

688. 45 years old. Skills for Tourism Planner coach for Tonga skills.
689. Tonga Skills government of Australia funded program, with Tonga training communities. For last 5 years. Under department of foreign affairs and trade. Run by Tonga skills. Managing funds Government of Australia for almost 3 years.
690. Diploma culinary arts London Institute corresponded from New Zealand.
691. London Institute Technology. Cert 4 Training assessment and evaluation. Australia funded. International trainer and assessor coach, to teach around Pacific region. TVET level and adult leaning.
692. Certificates from TAFE from New South Wales; conducted courses, including, sales, marketing, tour guiding restaurant service.
693. Teaching in 1998 tourism. Ahopanilolo 1998 to 2005.
694. Cookery practical, restaurant services, housekeeping, food safety, basic book keeping.
695. Started at UTRI beginning 2011, around January in one of the biggest buildings on North side at Tonga Cultural Centre.
696. 40 hours a week. Also extra curricula, eg cruise ships days. About same 40 pupils in classes.
697. Paid a week: \$250 per week. Paid until 2012 raise in 2013 had raise \$300.
698. By time left up to \$600 a week.
699. Paid in cash. Mele Tovi paid him. Pay slip, did not know exactly where records kept.

700. Taught hospitality, restaurant services and bar service.
701. Never taught bridging class, remember it. They accepted less fortunate kids looking for something to learn. Some away from high school for some many years.
702. Two roll calls mornings and afternoon in books. Wrote out books. Roll calls recoded weekly, submit short report to office.
703. Total attendance of kids. Hand written report.
704. I kept roll call books. Written report handed to Mele Tovi.
705. Basic and level 1 certificate. Customer service related. Basic skills, like holding a tray and how to approach a table, and advancing pathway 1 – 3 until more advanced.
706. Program for people with work skills.
707. Focused hospitality and tourism.
708. TNQAB came to check, they tried to have program accredited and it was part of their task to check our course, roll call and lesson plan Fositina and Pauoli, who he thought still worked there.
709. Dance troop; they were students and took part in performances. Brass band as well. Almost 80 in his class. But that group spilt into group one and two.
710. How many teachers at school, more than 20 he thought.
711. He joined team around villages for recruitment.
712. Himself, Mele Tovi, Sateki, Pesi, Penga, Alisi, Nesi, Mr. Lavulavu said work towards affiliation with Martin Hautus, 2013 he remembered a representative came and former PM and came together to launch partnership and UTRI and Martin Hautus.
713. Presenter programs for recruitment with Power points.
714. USP there with us on that day recruitment.
715. But he never recruited anyone and afterwards just sat there and drank kava, was how he put it.

716. Girls dealt with the forms. They got their expenses and a barbecue.
717. 2013 around 40 students my class only. About 200 at college that year.
718. 2nd semester 2014 nearly 80, 400 at college give or take.
719. Graduation co master of ceremony 2014 with Mele Tovi.
720. 1st semester 2015 about 60. Students 200-300 students. Remember numbers from his classes
721. He said he could recall the numbers because he took roll call.
722. 2013 he hardly saw Mr. Lavulavu, he would come and go. He did not see Mrs. Lavulavu much either.
723. Never ever saw them at recruitment.
724. He was not aware of UTRI applying for the TVET grants for the Hospitality and Tourism course that he ran.
725. He stressed the role of QMS, five skills to assist students, the different payment methods.
726. He annotated exhibit 2, 6 and 6 b with those names he said were in fact students he taught.

Cross-examination by Mr. Lavulavu.

1109 hrs

727. Mrs. Lavulavu did not recruit or involved in TVET applications. Mr. Lavulavu and Mrs. Lavulavu never instructed him to break the law.
728. Neither Mr. nor Mrs. Lavulavu involved in recruitment.
729. TNQAB was what they were concerned with.
730. TNQAB did not find things wrong but if they found things missing they told them this.

731. Heard Audit report team at the Admin office when he was there. Mele Tovi said “yes” to taking the papers.

732. The Graduation in 2014. This was something the former Prime Minister attended.

Prosecution cross examination.

733. The Hospitality course taught by him and Loiti Teu; they split the classes.

734. Nishsi helped too and was there for a few months.

735. He stated there were graduations in 2011, 2012, 2013, 2014.

Muna Nasilai

1353 hrs sworn.

736. 29 years old, she is a clerk at the Ministry for Infrastructure.

737. She appeared to speak English. When I invited her to answer in English she refused. This was even before I found out what she taught at UTRI.

738. Of her college fees at ‘Atenisi Tonga, she claimed she paid cash and also paid by commodity exchange. She had been a teacher at UTRI for 5 years since 2012.

739. First she was an English teacher. She earned \$300 per week.

740. She was one of the recruiters. She claimed firstly she created an advertisement for the radio as well as newspaper. Then went around villages and areas where public are were to promote UTRI

741. Enrolment involved filling out of the enrolment forms. Forms were often incomplete, first they divided into groups and then conducted recruiting processes. They would separately take care of relevant students to their individual groups. Following up registrations in accordance with policy.

742. Mr. Lavulavu no role in the recruitment.

743. In fact either Mr. or Mrs. Lavulavu played any role. The enrolment forms were put together and taken to Mele Tovi.
744. She filled out the number of people attending the course for the TVET grant application⁵⁶. She took the figure from official list of students. The list of names they prepared and taken to Mele Tovi. Trevor Woods and Mele Tovi they confirmed list of students.
745. It was Miss Nasilai who responsible for asking 'Akosita Lavulavu to sign; she gave them to her to sign.
746. The other two applications she stated she was not involved in.
747. She said they met to discuss being approached by police in relation to complaint filed by Felisita Kivalu.
748. Why had she said a complaint had been lodged by Felisita Kivalu; she stated she was complaining to Mr. Lavulavu in relation to her being approached by the police who were harassing her.
749. She said she meant she was forwarding a concern to Mr. Lavulavu that the police have been harassing her, Miss Kivalu, and dealing with her in a way she was not comfortable with and she was seeking assistance from Mr. Lavulavu; so Miss Nasilai stated
750. Asked if Mr. Lavulavu had her mobile phone number? She needed the question translated and explained three times then stated he did. When asked she stated the last time he had called her was about three weeks ago.
751. She then went on to give evidence that at the Sopus meeting at the Lavulavu residence other things took place, they discussed recruiting jobs and divide themselves into groups and confirmed and who had recruited which students.
752. More generally she stated she was not involved in the receipting of the fees.
753. She stated that even before she joined UTRI the various ways of repayment were already in use by the school; repayment by cash, loan, commodity exchange, and study and work and scholarship.

⁵⁶ Exhibit 1 page 13.

754. She also said that Lupe Golton came to school. Mr. 'Elone would stay in office and Miss Golton did a head count.
755. They would come and check and look into way school was run, method payment tuition. They would ask if this was the method for payment for school and was commonly used and informed that this is the QMS of the school that was accepted by the Board.
756. Then she claimed with that they were satisfied and continued their audit work.
757. Last time saw auditors at school was 2016, saw Mrs Popua at the school. She stated they yelled out from vehicle; she was inside the office she was calling out saying they were taking the records and they would bring it back and return them next day. They said that to Mele Tovi she was present and so was Unisi.

Mr. Lavulavu's cross-examination

758. She repeated that she had been at UTRI from 2012.
759. She stated there was an audit done by a private company by a man called Lomu Sika, that he compiled reports in 2012 and 2013.
760. In 2012 there was a government audit. Lupe Golton and Moses Elone did that.
761. 2012 MET visited, she could not recall names of those people from MET.
762. Again she stated she did not know who worked for MET, when she claimed they came to check UTRI again in 2013.
763. Of the Sopus meeting in answer to Mr. Lavulavu's question she stated that he had not told Miss Kivalu to lie.
764. That what he had in fact said was if anyone not comfortable being pushed around by police or made to feel; scared that they can talk to school's legal representative.
765. 'Akosita Lavulavu was not at the Sopus meeting at all.
766. I noticed that the witness looked very uneasy at this point. She was hardly ever addressing her answers to me and often casting her eyes to the ground when answering.

767. She stated from 2012 to 2016 nothing illegal had happened at UTRI.
768. In answer to Mr. Lavulavu's direct questions she stated he had never instructed her to do anything illegal or dishonest; neither him nor Mrs. Lavulavu.
769. She marked up Exhibit 2 (NM), 6a (NM) and 6b (NM) to show those people, so she claimed, were students at UTRI yet had gone uncounted.
770. The names she marked were students she taught and were in her class. That is what she said.

Crown's cross examination.

771. Her attention was pointed to this; that her marked list of named students in classes included Tuakalau Pelisi⁵⁷.
772. That witnesses' very own evidence was that she did not attend any UTRI classes. Miss Nasilai answered in these careful terms: "My *recollection* was she was in my classes."
773. She then confirmed she was a clerk in Ministry Infrastructure since 2019; the same year that 'Akosita Lavulavu took over that department.
774. She stated that the Tourism and Hospitality course was registered by TNQAB.
775. When asked she admitted she went to Vava'u in 2014 to run the UTRI college there. March, April and May.
776. There she did the same; recruiting students, gathered all their applications and commenced with the orientation.
777. She claimed she taught there. She agreed she went back to Vava'u August and September that year.
778. When she was challenged about her error over the evidence that Golton and Elone not from Audit but from MET all she could muster was saying: I don't know.
779. She accepted that Mele Tovi had said that the auditors were allowed to take away the records from UTRI.

⁵⁷ Exhibit 2; page 19

Miss Mele Lupe Ilaiu

780. Executive secretary to Minister for Finances, and other department including statistics.
781. BA Political Science. Canberra.
782. Executive leadership certificate Harvard. Japan language for junior diplomats Policy adviser for Prime Minister.
783. She was at UTRI 2011 to 2013, teaching English and Communications and Tongan Studies, Dancing and Music and Tourism trainer. Also was Deputy Director Administration and member of UTRI Board.
784. On the Board they received reports on the administration of the services school, status administration and its compliance.
785. She averaged 2 hours teaching a day, 10 hrs a week. Each classes 30-40 students.
786. She gave a brief over-view of the administrative workings that she knew of, mentioning the Tuition scheme; the importance of the Education Act and that their Quality Manual guided UTRI.
787. She mentioned the college gave students gave options to pay. She stated they were obliged to provide to both TNQAB and MET the QMS. According to that document other options for payment available; for example payment by commodity and the loan scheme.
788. She was asked about the receipting for fees. She stated that when not teaching in reception area at her desk couldn't help but see students come in to fill their school fees and new students fill in their enrolment. No date was provided in relation to this.
789. She went on to say she worked assisting UTRI with media relations and customer service; she would organise radio and TV panel programs and go to studio and discuss these things and giving information to parents. They did not hide it, it was part of their policy she said.

790. Of the TVET grants she stated when she worked Prime Minister's and was acting chief secretary to cabinet and she would sign those Cabinet Decisions.
791. UTRI eligible she said. She then stated this: "I am fully aware those grants were provided 2 or 3 or 4 years after [the applications were made],..." and that they were reimbursements.
792. She claimed that when MET staff attended they did head counts of attendees.
793. She stated that in each class there was a roll call. A process where she would mark names and then that pass the roll call to the Admin department.

Cross examination by Mr. Lavulavu

794. Of UTRI and the conduct of the management of the institute she said that as a "long term public servant" she would know if anything untoward had taken place there.
795. Again this witness was asked a series of very direct questions as to whether she had seen Mr. Lavulavu do anything illegal. She said she had not.
796. She then stated that the QMS manual was approved by both MET and TNQAB.

Cross examined by prosecution

797. She was in Prime Minister's office and acting secretary 1997 started in PM's office 2006 ended working there.
798. She was well aware of the Cabinet Decisions she said; but when asked about the detail of one such decisions she stated she was unaware of the relevance of "receipted students".
799. She worked on the Fee protection scheme for UTRI. She helped draft student loan document. An example was shown to her.⁵⁸
800. 2013 tuition fees for a semester for memory were \$100 per semester on that document at A2 it stated: fees were \$400 reduced by 50% stated.

⁵⁸ Exhibit 9 book 4 page 864.

801. Her attention was directed to where at A4 of the form it stated the loan agreement was for \$ 670.
802. She responded by saying that she did not recall that, her expectation was not that loan would be for as much as \$670.
803. Also she would not expect a student loan agreement signed without guarantor; just as this was missing on that document.
804. Fee payment scheme; her expectation was if a commodity was brought, then student jointly with institute's representative work out value of commodity and that would go in receipt.
805. She stated she would presume the receipt indicate that value of the commodity.
806. She stated that Mr. Lavulavu was the Managing Authority of the school under the Education Act.
807. This is a question of fact and requires the proof that such a person or body was registered with the Minister under section 27 of the Act. Whether the status of the Managing Authority is relevant in this case or not, no proof has been provided as to whether any person or body was so registered under that section.
808. She was asked about the Board meetings. The Director would attend if the discussions touched upon her role.
809. Yes discussions included TVET grants and their status each year and what needed to complete the application. What else needed to be submitted to complete exercise. Board approve what was submitted to MET.
810. List of students provided to Board and tuition amount was discussed; those who have paid their fees and those who have not.
811. List should be reconciled with the tuition she said.
812. She clarified what she meant, saying, yes, the list of enrolled students must match the receipts.

813. She was shown the first TVET grant we are concerned with in Count 1⁵⁹, she had never seen that document before.

814. There was no re-examination.

19 May 2021

815. Employment contract for Miss Nasilai Exhibit 26.

816. Medical person's identity still awaited regarding the author of Miss Nasilai's 'sick note'.

'Etuete Taukolo

817. 1027 sworn – 37. Teacher IT and graphic design. Website design. 2013-2014. People I taught. He provided annotated exhibits 2, 6 (a) and 6 (b), people he said he taught.

818. Mr. Lavulavu cross examination.

819. None

'Alisi To'aho – at home nowadays.

820. Teacher; office management and accounting, maths. 2012-2014.

821. She provided annotated exhibits 2, 6 (a) and 6 (b), people she said she taught.

822. Students she taught, she also recruited them to school.

823. Mr. Lavulavu cross examination.

824. None.

Cross-examination by Mr. Lutui.

825. 2nd semester half way through around October. Taught and recruited. Recruited them and taught.

826. 1039 case for first defendant closed.

⁵⁹ Exhibit 1 page 13

Mr. Lavulavu opening statement.

1406 hrs. 19.5.2021

827. He opened his case addressing what he said were the elements for all three counts
1. He must be correct defendant
 2. There must false representation
 3. Knew of the falsity
 4. Money was obtained.
828. He did not accept any of these elements proved. For charge to be sustained; must be proved false intent or false rep. In this case, must be shown he participated in the preparation of application form, filling out the forms, signing them and delivery and so forth.
829. First defendant signed on basis information supplied by staff.
830. 19th Nov 2013 he was not involved nor attended or even participated in filling out the forms, so he did not know what given in support of the application. This is a criminal case and must be proven.
831. No evidence proved participated in TVET application.
832. Count 2; at that time left UTRI to run for Vava'u election, he left before the application was signed.
833. 3rd Count 9th June 2015 already government minister. He worked full time for Government and overseas.
834. He claimed that in the UTRI bank statements it demonstrated more than \$700,000 deposited into those accounts which was not TVET money , all he withdrew \$50,000
835. That \$50,000 for reimbursement for money deposited into account. Put more in than out, he said.

Mr. Lavulavu in-chief

1415 hrs he was sworn.

836. He is aged 62, lives in Vava'u and Sopo. He has a degree psychology 1985 BA in Education. Hawaii.
837. Occupation, a farmer by trade. Also involved in business, politician, founder, President and Managing Authority 2003 off and on to UTR up to 2016.
838. Managing Authority has a specific definition under the Education Act as a person or body registered by the Minister under Section 27 of the Act.
839. It may be that Mr. Lavulavu is so registered.
840. Before 2003 he had a vision to establish a school for the "drop outs" in the Kingdom, so he described under privileged children. Especially those that can not afford tuition and could not attend further education. He named the co-founders, explained he established the incorporation of the college and its name. He stated that the late King approved of his idea after meeting him. In 2003/2004 went to MET to meet Mr. Broomfield and the CEO and they told them what to do, they established as incorporated school and discussed how to run it. Now King was then PM and told him the school would be funded by his own Kava plantation; his main income.
841. He referred to the Education Act 1974; that he told Mr Broomfield of the flexible tuition scheme which was his experience in Hawaii when studying; school loan: 4 hrs work and 4 hrs study.
842. He explained how the barter system originated and that Mr. Broomfield said it would be fine. Mr. Lavulavu said would fund school himself and reimburse himself later. He approved me to be Managing Authority for UTRI, from 2003 to now.
843. They had to re-register in in March 2010.
844. He said it was a strong theme to his political campaigns that he would offer this education system for those that her dropped out, as he put it.

845. He produced a Cabinet decision to provide \$50,000 to UTRI for teachers' salaries⁶⁰.
846. He said it was the King gave name "Royal" to UTRI.
847. 2009/2010 political reform in Tonga, mission approved but had not happened, many changes here in Tonga.
848. Political change in Tonga in last decade had not improved the lot for under privileged children and the flexible tuition scheme was introduced; from 2003, was approved 2010 by MET and the CEO. TNQAB in 2010 and approved UTRI that year and up to 2017.
849. His position in UTRI always part time with other business commitments.
850. 2013/2015 TVET applications not involved at all he said. In 2012-2013 there was an audit as TNQAB and MET requirement.
851. The audit report for 2012 was adduced⁶¹. He claimed page 5 demonstrated the cost of running a school 2012 and 2013, in fact it referred to 2011 and 2012.
852. He produced a copy of what purported to be a certificate from the Auditor General dated 30th August 2014, stating the Auditor General had "...satisfied [himself] that \$166,800.00 being an amount equal to the total of all payments (sic) made to the aforementioned institution as Government recurrent grant during the year ended 30th August 2012."
853. He stated that in 2011, 2012, 2013 & 2014 he had never received audit reports.
854. The only one he had received was in 2016 and that was all wrong.
855. He stated that nothing about that report was accepted. In relation to Claude Tupou, he had provided no directions no rules, nothing.
856. He criticised TNQAB for not providing guidance.
857. He produced a copy of a letter purporting to be from the Ombudsman, dated 13th October 2017, to Mr Sefita Tangi, the Auditor General⁶².

⁶⁰ Exhibit 27

⁶¹ Exhibit 28 (a)

858. Technically this is hearsay and a copy, the contents not proved, but allowing Mr. Lavulavu all possible consideration to put his case, I take from the document what is therein stated :
859. In that letter there are criticisms levelled at aspects of the process involved in the audit of UTRI.
860. It is right to say that the Ombudsman did find there were short comings; that Mr. Lavulavu should have been given a chance to comment on a draft report and that the report should not have been circulated as widely as had been done.
861. It found that there should have been proper procedure for the uplifting of the documents from UTRI.
862. On that last point we do not know what the Ombudsman was told.
863. The Ombudsman discounted that Miss Mafi had acted in any way incorrectly in exercising her duties during the audit.
864. Mr. Tangi never responded to the Ombudsman's letter.
865. Mr. Lavulavu agreed that he had attended the two meetings, March and May 2017 and accepted and that in principle he needed to refund an overpayment, but he did not ever agree how much.
866. He asked for an independent audit and was told they, TOAG, would look into it.
867. He recalled UTRI for better facilities than the audit showed.
868. Only became aware of 2013 TVET grant in 2016. Despite signing off the Audit 28 b that UTRI received TVET \$306,000.
869. Not involved with grant in 2013-2015.
870. Turning to the meeting at Sopus in 2017, he listed 7 people being there including himself, Mele Tovi, Felisita Kivalu and Muna Nasilai; but not Mrs. Lavulavu nor Frank. It lasted an hour and half, 1100 to about 1230.

⁶² Exhibit 34.

871. Did not tell Miss Kivalu to lie to police, she did complain about harassment by Officer Kama. He instructed them their rights and they could tell Ofa Pouono the UTRI lawyer. she did not have to make a statement to the police.
872. He never told her to lie.
873. Officer Kama wanted her to lie. Mr. Lavulavu typed up a one page complaint to the Police Commissioner for Miss Kivalu to sign; she read it agreed with it and signed it.
874. He also harassed Lopeti Filo.
875. He went back and repeated the four elements he had mentioned at the start.
876. Exhibit 1 page 59 and agreed fact \$50,000 into his account from TVET grant.
877. Put in more money than withdrew, he had been funding this school up to now.
878. Where is his benefit, school took money from him, not him from the school.
879. That why he says: where is the dishonesty?
880. Exhibit 35 summary deposits – nb not agreed \$741,017.56 from family and him, can resubmit tomorrow the date to make easier.
881. TVET reimbursement system, sometime 2 years late and institute have to take a loan to run school.
882. Exhibit 28 b 2013 audit. When Minister Finance 2013 will call him to come. Chairman TDI board.
883. Mrs Lavulavu money into our accounts was a reimbursement. Again he submitted \$50,000 he had compared to \$700,000 he had put in.
884. TVET grant was “peanuts” compared to amount he put in for his mission. Even late King supported UTRI. Good for youth of Tonga.
885. One of the problems in Kingdom unstable government, too many changes in leadership and how they forgot things and that was what happened here. After trying to work with

MET 2015 and 2016 try to resolve issue of overpayment, then they charged him in 2018. It is why he was here today, he said.

Prosecution cross-examination.

886. He maintained the TVET grant was a reimbursement system.
887. He claimed he did not know about UTRI making the TVET grant applications from 2013-2015. He did not accept \$50,000 came into one of his bank account.
888. Page 3 numbers 14 agreed facts signed and dated 19th March 2021 on behalf of Mr. Lavulavu's by his then lawyer he now disputed.
889. He had not benefitted from the TVET grant, he put in more money than took out of the college and deserved to be reimbursed. He did not sign these agreed facts and claimed he could now dispute them. He accepted they were facts signed by his lawyer at the time.
890. Cabinet Decision 688, 4th August 2010⁶³ he claimed he was unaware of.
891. He stated that receiving money from the grant was not receiving a benefit. Not allowed to go to individual but to a legal entity; he claimed.
892. He stressed he did not benefit.
893. He accepted that from 2003 to 2016 he was founder, president, managing authority of UTRI one of his roles was make sure UTRI got funds. That included any funds.
894. He distinguished between day-to-day management of the college, which he stated he was not involved in during the relevant period, but was there to stay focused on the college's core objectives.
895. Funds from his other businesses and my farming went into UTRI. He could not explain why there was no mention of any such funds from him at all paid into UTRI in the audit reports, exhibits 28 (a) and 28 (b).

⁶³ Exhibit 1. Page 7

896. He said he did not know why the government had given UTRI \$200,000⁶⁴ in 2013 over and above the TVET grant of \$306,000 they received.
897. He accepted from 2003 to 2016 Chairman of the Board and they did discuss the TVET grants.
898. He stated he was not in any Board meetings in 2013 – 2015.
899. He was not involved in UTRI 2013. Telling the truth, not there. They would choose somebody to replace him at meetings. He stated he would merely “come and go”.
900. Of the trip to New Zealand in 2013 he attended he claimed it did not have to be approved by the Board.
901. He denied that Mele Tovi had been given any document by him concerning how the TVET grant should be used.
902. When he was asked if he took a salary for his work at the school he was just about to answer when he seemingly changed what he was about to say and stated that he had a salary of zero. Then he stated this: “It is a joy from my heart to the youth and that is my salary.”

20 May 2021

903. Miss Kivalu took part in the preparation student list, but it was not true that both defendants had told her, as she claimed, that all people recruited were to be put on enrolled list. When asked what she had to gain from lying he replied that she gained immunity; she did not tell the truth.
904. He answered questions about the meeting at Sopu stating that Miss Kivalu’s version not correct. Did not ask her to lie; she complained and expressed frustration and concern. He stated that he wrote to the Police Commissioner complaining about the harassment she had suffered⁶⁵.

⁶⁴ Exhibit 28 (b) p 5; audit report for UTRI for year ending 31 December 2013.

⁶⁵ CF exhibit 37.

905. She and other members of staff came to him and asked for advice. She was invited, she did not call the meeting. He had not invited her, he wanted to direct them and have a right to call a lawyer.
906. The \$200,000 in 2013 he said was from the government for the buildings; it was pointed out that the audit stated that rental of the premises that year was \$36,000 and the maintenance of the properties was \$45,764. But that would still leave \$118,236 over so did not tally. But he had no other explanation.
907. Asked about the audit that stated he government owed UTRI \$3,7000,000 in 2012 he also stated it was for the buildings.
908. He went on to say there were no Board meetings he attended in 2013, 2014 and 2015 though he did sign off the audit for 2013 on behalf of the Board of Directors as "Chairman" because he was the managing authority.
909. In 2014 mostly he was in Vava'u.
910. Was at Hapai, not attending there for recruitment. Just a coincidence.
911. Back to Miss Kivalu he advised her, he wrote letter. He advised her to complain. He did type the letter in front of her, which she read and she said that is fine and she signed, he did not know if they filed it. That was all he remembered, he said.
912. About 'Emeline Latu's evidence that it was he himself in 2014 offered her a job, he replied he did not know her that much and that he did not give her a job.
913. He did not have a true role in running the college.
914. He stated that she was not a perfect witness.
915. He accepted there had been an over payment. But he had never approved audit report. What Mele Tovi expressed at the Sopu was there had been a mistake and accordingly he went to the meeting with that sentiment.
916. He did attend the **Tahu** dance group in 2014 in New Zealand. Because he still was the founder and President.

917. That mission of the school he had to support. He was not involved in day to day activities, but conceded did have an interest in UTRI.
918. He was asked about the audit report for 2013 that stated school fees: \$200 p/a⁶⁶ when the loan was stated to be for \$670 and how that could be reconciled, but that was a mistake from using the same fee, that should be fee for degree level.
919. Ledger cards were promised to be implemented after the 2012 audit⁶⁷ after the audit found that "The records of students who work and study are not properly kept" and the Management's response⁶⁸ was that the Finance team "...now used a ledger card to manually record details of students (sic) tuition scheme..." ; but Government audit in June 2016 for 2013 onwards never found anything of the sort. For this Mr. Lavulavu offered no explanation.
920. The table he had prepared of funds from himself into UTRI⁶⁹ he did not think was inaccurate, though he accepted some money came from other sources for example Tourism Authority eg \$600 in 2014
921. Of agreed fact 14 and the \$50,000 that went into his personal account from the TVET grant he claimed it was not for his benefit, it was a reimbursement.
922. No involvement with TVET grant; that it did pay off a TDB loan for UTRI and then the balance paid to his wife's account he did not recall..
923. The letter he sent to the Minister for Education in 2014 concerned how he wanted the TVET grant that year to be paid , the TDB account for UTRI that he signed off he claimed it was MET that he written the letter to themselves and he had signed it.
924. He could not explain how MET knew about the loan to UTRI or how they knew the account number. But he stuck to his answer.
925. About the forged receipts, he refused to accept that was wrong in itself to do such a thing.

⁶⁶ Exhibit 28 b page 9 item 6

⁶⁷ Exhibit 28 (a) pages 4-5

⁶⁸ Ibid

⁶⁹ Exhibit 35

926. In any event, he did not accept they were forgeries, stating he was not there at the time.
927. Not aware of the attached list for students, 255, not aware false.
928. Not aware TVET 2014. 416 students; not aware.
929. Not aware 2015 application. Did not know it was false.

Re-examination

930. Mr. Lavulavu made this statement from the witness box regarding Mele Tovi in her evidence that she had been given a document. He asked what was that document ? He stated it was very unfair that he was without it. Concerned that did not see the document produced by prosecution.
931. He was reminded that she had stated it was a document was said to be a policy paper from MET concerning what the TVET grant should have been used for.

Dr Aisake Eke

932. Sworn 1436; 60 years old.
933. Doctorate in in Business Administration. Australian Accounting profession. CEO Ministry Finance 16 years.
934. From February 2014 to February 2017 he was the Minister Finance.
935. Cabinet Decision 1182 dated 22 December 2009⁷⁰, effectively were the rules for processing of TVET grants for Tongan schools.
936. The decision who was eligible to be approved by TNQAB. TNQAB had to go to Cabinet for who eligible.
937. Function was accreditation. QMS sets out how run and conduct themselves, standard documents.

⁷⁰ Exhibit 1 page 4

938. What happened was there were late payments of TVET grant; he called an enquiry with all stakeholders and all involved and auditor office, to establish current situation and why paid two years late.
939. Heard from some service providers there was real financial hardship.
940. He knew of under payments and over payments.
941. Do not know any institutions prosecuted for overpayments.
942. If the roll calls higher, then lower and deduct for the 2nd Semester.
943. 2016 came across Government document calling for the improvement of subsidies but this manual was not approved.
944. No guidance manual approved in his time, just the Cabinet Decision 1182.
945. When the audit came annually, they should follow 1182.
946. Audit is to check the reality, by talking with the other parties.
947. Supposed to audit then release money, but they were very busy. An assumption they did it annually. Problem was lack of coordination.
948. Of TNQAB:
949. He claimed that the charging of fees was up to a private college.
950. Barter instead of fees he stated was used "world wide".

Cross-examination for Crown

951. He claimed that for example in a receipt book had a student brought a pig by way of payment then recording a sum of money received was a legitimate as it expressed its value, despite and contrary to the pro forma words on the receipt.
952. He could not recall if UTRI was one of those colleges facing hardship.

Cross examination on behalf of Mrs Lavulavu

953. Over payments, because student numbers were estimates in March and reconcile in September. Churches schools were an example of that and the others, because way the process worked. Did not know how much over payments were by.

Sione Tualau

954. 82 this year. Graduate chemistry and maths. Masters. Taught Tonga College, for 3 years: Tonga High and Tonga College. Then Liahona High School. Worked there 1971-1996.
955. Retired 1996, then decided never to be involved education again. It is a 24 hour a day job, then founder of UTRI came to my home. Founder was here to help run a school.
956. Wife persuaded him to talk to the Founder. Mr. Lavulavu is the founder. When they talked he expressed thought and knew what he was talking about. An institution for those that dropped out and those that could not afford college.
957. Last King agreed that this is what this country needed college for dropped out students. 2003 to 2008 involved with UTRI.
958. Mr. Lavulavu was the authority in charge of the school. Not to run daily operation, but to see how the school could be funded and the teachers paid. Sometimes in trouble getting teachers' salaries. He ran businesses and a restaurant, Sia Leka. Sometimes a delay in paying teachers.
959. School was registered. Mr. Tualau received no salary like other teachers did, some times needed cash and asked Mr. Lavulavu , for example for cash for his car. He had no salary or contract.
960. He was the curriculum director and provided instructions, ensured that teachers follow syllabus. Operated for those wanting to go to University.
961. Remember the vision of UTRI. Did not require students with cash, as long as willing go to school and study, they provided the opportunity. He particularly recalled a blind teenager who wanted to learn to play Ukulele.

962. When asked in chief whether Mr. Lavulavu received a salary he replied he did not see any records as to Mr. Lavulavu's salary.
963. He saw no dishonesty during his time.
964. No cross examination by any party.

Tu'amelie Faaitu'a Kemoe'atu.

965. 67 years old. BA science and Maths and Physics University South Pacific. Educational Management.
966. In MET something like 30 years and teaching mostly at High School. Deputy Principal and Principal. Head office MET. 1982 up to 2011. Deputy Principal Vava'u. High school, then Tonga College Principal. 2003 – 2005.
967. He talked of how a QMS works as far as he was aware.
968. QMS allows colleges to set fees. Barter system allowed.

Cross-examined by prosecution

969. He stated that letter sent out in his name on 26th May 2010 setting out the conditions for applying for the TVET grant would have gone to all directors of all colleges.
970. Close of Mr. Lavulavu's case

Rulings :

Bad character.

971. It seemed perfectly clear to me that Mr. Lavulavu during his case had cast imputations on the character of many of the prosecution witnesses, for example Miss Kivalu called a liar, so as to raise the possibility of an application under section 121(1) (f) (ii) Evidence Act and, subject to hearing submissions on that, he could potentially be asked questions about whether he had any previous convictions and that evidence could go before the court.

972. But, because Mr. Lavulavu was representing himself I conclude this would not be fair.
973. He wanted to put his case fully and robustly, which is what he did; and concentrating on the central issues in this case, is more important than what might turn into a satellite issue with potential for straying from the case that Mr. Lavulavu faced at the start, which could leave him feeling prejudiced.
974. Accordingly neither of court's motion nor will I allow an application from the Crown, were that to be their intention.
975. The re-calling of witnesses.
976. Several times during the trial Mr. Lavulavu applied for witnesses to be recalled. Once midway through the trial and again after his last witness had given evidence as part of this case.
977. On both occasions Mr. Lavulavu was not able to direct me any question in relation to his case that had not already been asked.
978. The leading authority is the case of *R v Sullivan* [1923] 1 K.B. 47 (1922) and the passage in the current edition of Archbold at 8-303.
979. The basic point is that a Judge has power to recall any witness at any stage of the trial, even up until prior to the conclusion of the summing up.
980. But, the guidance states that it would be "highly irregular" for a witness to be recalled just to give the same evidence again.
981. For each witness that Mr. Lavulavu has identified, Miss Kivalu, Miss Mafi and Mr. Tangi, whilst he did not accept their evidence, he would effectively only be putting to them matters they had all, already been asked.
982. Once exception could possibly have been Miss Kivalu; that other people had been at the meeting, or that he had not asked to lie.
983. None of that had been put.
984. It is important to understand that at that time during the trial Mr. Lavulavu was represented. That he took assiduous notes and followed the evidence carefully at all

times and that, seemingly, when there was anything that came out of the evidence that was not already the subject of discussions between himself and Mr. Edwards he gave him instructions to pursue a point.

985. I therefore consider those points carefully along side the evidence that was called to support the joint Mr. and Mrs. Lavulavu case; Miss Nasilai.
986. Mrs. Lavulavu had called her own witness on these points, Miss Nasilai.
987. Having heard her evidence, especially finding out that she deliberately misled the court as to her employment; that she stated to me under oath she was a clerk in the Ministry of Infrastructure; when in fact she is Mrs. Lavulavu's Personal Assistant; I have balanced that part of the case advanced on behalf of the defendants, and their claims about the Sopus meeting and the defendants' rights to a fair trial against the need to maintain a proper trial process and avoid ad hoc complaints that appear vexatious.
988. Further, there were contradictions within Mr. Lavulavu's account of the Sopus meeting that he could not explain; for example why Miss Kivalu had been brought to the Lavulavu residence that Saturday if it was Miss Kivalu asking for help from Mr. Lavulavu; as he claimed?
989. He did not explain those contradictions and had no answer for them.
990. I have carefully balanced how the case was being advanced at the time on behalf of Mr. Lavulavu with the fair trial principals and the evidence he has been calling in support of his position to consider whether recalling Miss Kivalu would be fair, just or sensibly provide any new evidence or dimension to his case.
991. Given all the above, I did not see there was a proper need. So I declined to do so.
992. Ruling on lawfulness of the obtaining of the UTRI records.
993. The evidence was that the relevant documents were given to the Auditor General's team by Mrs Lavulavu herself. That was the evidence of Miss Mafi⁷¹, who was team leader for Audit Office field work.

⁷¹ Cross examination by Mr Edwards 1331 hrs et seq 13.4.2021

994. There was also evidence that Miss Tovi had allowed the documents to be taken, that was from Lopeti Filo and from Miss Nasilai; two defence witnesses.
995. From all quarters the evidence was only that staff of UTRI had allowed the Audit to take the documents.
996. Therefore those documents had freely been given to the Audit team and no one can blame them for taking them.
997. Once they were in the hands of Audit Office having been freely given to them, then the staff in the Audit office were able to do what they liked with them, within reasonable parameters; plainly that would include the compliance with a court warrant for those documents to be handed to the police pursuant to the warrant 5207⁷².
998. There was nothing unlawful in anything that either the Audit Office or the police did in taking possession of the evidence from UTRI.

Submission of no case to answer:

999. I invited both Mr Edwards on behalf of Mrs Lavulavu and Mr Lavulavu himself, as he now represents himself, to make, if they wanted, submissions of no case to answer at the close of the prosecution case, which they both did Friday last; therefore I now turn to consider if there is sufficient evidence against each defendant in relation to each count on the indictment.
1000. What do the prosecution have to prove?
1. That a defendant made a statement. This can be directly or through the agency of another, that is to say, on his or her behalf.
 2. It was in fact false to some degree, arguable more than just de minimis, though any falsity can be enough.
 3. Either defendant knew it was or may be untrue.
 4. It caused the payment from the Ministry.

⁷² Exhibit 20

5. The conduct was dishonest.

1001. Neither the prosecution nor defence have submitted that dishonesty is a necessary ingredient; but it seems to me that the prosecution are required to prove this further element and it is implicit in the allegation.

That a defendant made a statement

1002. The prosecution case is that the forms were in the first defendant's name and accordingly she applied for all the grants.

1003. That when it comes to the second defendant, he was working along side the first defendant and they had effectively applied together.

1004. Therefore that she was an agent for him in their joint application for the grants.

1005. The doctrine of agency is a long established legal principle. It can apply in different circumstances; but amounts to what Professor Ormerod in 11th edition Smith & Hogan⁷³ at Chapter 19, gave examples of as being ;

“An example of a deception as to the intention of another is an agent, D, obtaining property for his principal, X, by representing to V that X intends to render services, knowing that X has no such intention.”

1006. The case of *Cawley* (1999) 29 April, No 9805371/W3. Provides a further example, this in the case of procuring the execution of a valuable security, what was in the United Kingdom section 20 Theft Act 1968:

“The offence is committed by D who procures V to write a cheque payable to D, or endorse a cheque making it payable in D's favour. Similarly, V might act through an agent as where a building society cashier signs documents on behalf and under the direct authority of an elderly customer.”

1007. The defendants at the time of the indictment period were the owners and ran UTRI; a private education institution. They were husband and wife, they attended together

⁷³ Published 2005

events to promote the institute and encourage enrolment of prospective students, for example in Hapai in 2014⁷⁴.

1008. In the agreed facts it is accepted that they were Director and Principal of the institute.

1009. They also held Bank South Pacific (BSP) bank accounts in the name of UTRI which they were both co-signatories for when opening those accounts⁷⁵.

1010. Two such bank accounts were opened in 2010 and 2012; accounts they both controlled.

1011. A transaction enquiry for account 152111⁷⁶, shows that is an account in the name of UTRI and also E S Lavulavu and A Lavulavu.

1012. It is also of note that Mr. Lavulavu attended the meeting with Mr. Tupou and the Auditor General in 2017 in his capacity as Director of UTRI. Those meetings came about because of the concern that Auditor General had in relation to the TVET grant paid by MET to UTRI.

1013. Therefore I have no doubt that they were both involved in the running of the school and jointly ran it and were in charge during the time we are concerned with.

1014. It follows that albeit only Mrs Lavulavu's name appears on each of the relevant TVET applications; Mr Lavulavu's name does not have to be on any of the application forms for the prosecution to establish that the TVET grants were effectively jointly made by both defendants; the monies were clearly being applied for under Mr. Lavulavu's direction as the student lists and receipts were being made up under the joint direction of both defendants, as Miss Kivalu's⁷⁷ evidence made clear. Further the grants were paid into the bank accounts that were controlled by both defendants, eg 29th May 2014 \$146,400 transferred into BSP account 2000911715⁷⁸. Also, that he wrote to MET in 2014 to expedite payment on that occasion and furnished them with the relevant bank details of where the money was to be paid. These are some of the strands to the Crowns case; each important and of note; but taken together they form a powerful case.

⁷⁴ See evidence of 'Emeline Latu on 19.4.2021; 1020 hrs et seq.

⁷⁵ Exhibit 18 page 21 – 40 and page 41 - 50

⁷⁶ Exhibit 18 page 52

⁷⁷ 16.4.2021; 1133 hrs et seq.

⁷⁸ Exhibit 18 page 42

It was in fact false to some degree.

1015. The agreed facts that relate to the list of students enrolled for the three semesters in question proves falsity of the applications as to the numbers enrolled.

1016. In fact, by virtue of the agreed facts that all parties signed, dated 30.4.2021, it is accepted the numbers were false in relation to each claim the subject of each count of the indictment.

1017. The effect of the agreed facts are this :

For the grant application in count 1, the 255 named were overstated by at least 29.

For the grant application in count 2, the 416 named were overstated by at least 55.

For the grant application in count 3, the 271 named were overstated by at least 42.

1018. It is to be noted that the Crown need only demonstrate some falsity.

1019. Their arguments as to the extent of the falsity in fact extends beyond simply the numbers in the agreed facts; but at this stage, that need not be considered.

Either defendant knew it was or may be untrue.

1020. The evidence of Miss Kivalu, who worked in the Admin department of UTRI was clear. She stated that the number of people on the list that was submitted for the grants did not accurately reflect the number of students and that she was ordered by both Mr. and Mrs. Lavulavu to compile those lists from the names given to the recruiters.

1021. Miss Kivalu's evidence was of the meeting with both defendants she was asked to attend and Mele Tovi drove her to.

1022. This was after she left UTRI and after the police investigation into the grants had commenced.

1023. She gave evidence how she was at the home of both defendants from about 1100 hrs to 1700/1800 hrs one Saturday.

1024. That what she was asked to do was effectively lie to the Police Commissioner by Mr. Lavulavu and withdraw her original police statement.

1025. A statement that had been typed up, seemingly by Mr. Lavulavu before she got there was handed to her to sign. She never read it, but declined to sign it.

1026. None of this was ever challenged on behalf of either defendant.

1027. Taking this together it follows that I can infer that both defendants knew of the falsity.

1028. It is evidence I can also consider when I later turn to the question of dishonesty.

It caused the payment from the Ministry.

1029. There could not be clearer evidence than there is on this point. The forms were submitted to the Ministry of Education (MET) on behalf of both defendants for the payments to be made and that is precisely what happened.

1030. The 3 forms⁷⁹ in question are MET forms for the purpose of the TVET grant. They have a declaration of truth on them, each of which bears the name 'Akosita Lavulavu and a signature apparently hers.

1031. The forms were filled out by UTRI staff working under the direction of Mr and Mrs Lavulavu and then attached to them were the list of names said to be students who attended UTRI for the semester in question.

1032. In tandem were created the receipts⁸⁰ and the book of counterfoils to those receipts so that for each name from the lists entitled "Student Enrolment" there was a receipt counterfoil for a stated sum of cash paid to UTRI.

1033. The evidence of Mosese 'Elone⁸¹ who worked for MET and on all the TVET grant applications forms in question, was that this was the precisely what he was to check, the forms, the list and the receipt books, and what induced MET to believe they were true applications for grants for the sum made up of the stated student numbers.

⁷⁹ Exhibit 1 page 13-14; 19-20; 34 & 36

⁸⁰ Blank receipts for the "cash receipt" books in question exhibits 24 (a) , (b) and (c).

⁸¹ 19.4.2021, 1207 hrs et seq

The conduct was dishonest.

1034. That this was a dishonest practice is implicit in the evidence of Miss Kivalu as analysed above.

1035. Dishonesty can also be inferred from these facts: that within each application there were names that could not be traced, that related to students who did not really attend, or their details had been taken from other events or documents.

1036. This was the finding of Miss Mafi when she did her fieldwork for the Audit and is detailed in her work sheets⁸².

1037. Dishonesty can further be inferred in that for the 2014 and 2015 applications the receipts that those in MET had been induced to rely on were stated as being for sums of money received from named individuals; despite the fact that there were 'payments in kind' allegedly being provided by those people so as to replace cash.

1038. Across the indictment period the evidence is this : a person named on the receipts for 2013, 2014 and 2015 in some cases did not exist, if they did exist did not attend, if they did attend had not paid that amount of money at all.

1039. Therefore an "Enrolment List" relates to the recognised practice of a named individual paying their student fees and that person attending for the semester in question; receipts that were generated for proof of student numbers and checked as part of the MET "count" to substantiate the student numbers the defendants submitted for the TVET grant were false, in that no such cash had been paid.

1040. The prosecution argue that because it was so obviously false I can infer dishonesty.

1041. It is clear those named people were not really paying those sums of money.

1042. Even within their own QMS manual⁸³, dated April 2013, it is stated that "Less than 5% of our student body pay fees in cash..."

1043. On the arguments, as analysed above and in relation to each defendant and every count they both face there is a case made out to the required standard; that is to say there is

⁸² Exhibit 4(a) and it's translation 4 (b).

⁸³ Exhibit 15 page 34.

some evidence that a reasonable Jury if they accepted it, properly directed on the law, could convict.

1044. Therefore I find there is a case to answer against both Mr and Mrs Lavulavu on all three counts.

1045. So this case must proceed to the next stage.

Application to recuse myself

1046. I have received correspondence from Mr. Lavulavu dated 10th May 2021, which was served after my ruling yesterday on the submissions of no case to answer.

1047. In it he wrote: The relief sought...: 1. That Justice Cooper be recused and the proceedings stopped; and 2. That another Justice be assigned the case immediately.”

1048. He has listed 4 points that proceed that which he states cast doubt in his mind as to the fairness of the proceedings.

1049. Therefore I turn my mind to whether there has been any bias or prejudice or whether there has been the *appearance* of either bias or prejudice so as to warrant that I recuse myself.

1050. Dealing with the four points as raised:

- i. That I do not accept there is any direct legislation that covers exactly how payment of fees should be administered for TVET institutions. This is common ground, as I understand it. I have therefore received evidence of what the custom in Tonga has been, pursuant to section 5 (b) Evidence Act. That evidence has come from a number of sources; principally Moses ‘Elone⁸⁴ who worked in MET and stated that was that cash payments for school fees was the only system he had encountered anywhere in Tonga and had been the case since when he was a child. Also from Claude Tupou⁸⁵. I accept that Mr. Tupou did not use the expression “100 years”, what he actually said was “for over a century” this payment of fees, only by cash, had taken place and nothing else in Tonga.

⁸⁴ 19.4.2021; 1207 hrs et seq

⁸⁵ 3.5.2021; 1024 hrs et seq

- ii. That I do not accept that the Tonga National Qualification and Accreditation Act give the Board authority to assess and approve fees. The Act does give the "Board" those powers; the definition of "Board" 'means the Tonga National Qualifications and Accreditation Board', it has nothing to do with the power of a college to set fees. That is under the control of MET; which is the evidence given by Mr. Claude Tupou.
- iii. That I do not accept the witness "provided in the court room, which is contrary to the written witness statements, so again, another example of selective noting...". This point is slightly harder for me to grasp. But as far as I can understand it relates to a complaint that I prefer some witness's evidence over others. That is the trial process, an assessment of who and what is credible and what is not. That is how I approach every trial and all Judges and Juries likewise.
- iv. That I ruled out "...the witness statements of those that supported the defendants". The only evidence I have ruled inadmissible was a letter in the name of the first defendant, Mrs Akosita Lavulavu, and supporting documents addressed to Tonga Development Bank⁸⁶ dated 16th September 2014. This document stated that the TVET grant that UTRI had been awarded was for \$1,200 per student, when in fact at that time it was known to both defendants to be \$600. But, because I heard no evidence that this document was what caused the Tonga Development Bank to then loan Mrs Lavulavu \$186,507.71 nine weeks later on 18th November that year, I decided that its prejudicial effect outweighed its probative value and so I ruled out that evidence.

1051. I next turn to what the criteria a court must address in considering this application. The authority in *Muir v Commissioner of Inland Revenue* [2007] NZCA 334 sets it out plainly and helpfully at [74] :

First, a Judge should not decide a case on purely personal considerations. Secondly, there should not reasonably be room for perception that the Judge will decide the case on anything but the evidence in front of him or her. Thirdly, a Judge must be in a position to consider all potentially relevant arguments. Fourthly, there may conceivably be a series of events or rulings which reasonably warrant an inference that the challenged Judge's perception is warped in some way.

⁸⁶ Exhibit 18 pages 54 - 61

1052.(i) In this case I have no personal considerations. I have been in Tonga for only a few weeks having arrived from London 10,000 miles away; and have no view on either defendant one way or another. (ii) I am deciding the case wholly on the evidence and no extraneous factor has influenced me nor could be said to, nor could reasonably be suggested to appear that way. (iii) At all times I have remained able to consider all potential conflicting arguments. Because Mr. Lavulavu has chosen to represent himself, of my own volition I paused at conclusion of prosecution case to invite the submissions of no case to answer as a matter of fairness to the second defendant and the court transcript will bear this out. Time has been allowed throughout the trial process to ensure that Mr. Lavulavu was fully prepared with adjournments sometimes of several days for that purpose. The ruling on the inadmissibility of the material referred to above was of my own motion and did not come about out of any application. (iv) lastly that there may be series of rulings that would give the impression my perception was warped; I refer to my last answer, above, which demonstrates how that could not possibly be so.

1053. So, in considering the complaints, the guiding law and the structured and careful approach any Judge must take in considering an application of this kind, I conclude that the evidence suggests that Mr. Lavulavu's four complaints are without any foundation and the evidence during the trial amply demonstrates that.

1054. That aside, there has been nothing in my conduct of the case or approach to the evidence or dealing with the parties to trigger any proper founded concern so as to raise any single of those four grounds as a potential cause for concern, let alone a real complaint.

1055. Accordingly I find that it would be wrong in law to recuse myself and reject the application.

1056. The trial will therefore proceed.

1057. End of rulings.

Submissions :

1058. All submissions were carefully considered, this is a distillation of the key submissions as I see them:

On behalf of Mrs Lavulavu the following points were raised:

- UTRI was funded by Mr. Lavulavu.
- That the student list was given to Mrs. Lavulavu as true and correct.
- She took no part in the enrolment.
- That MET verified the process that UTRI undertook in making the grant application.
- That the school benefitted from the grants.
- Under the heading False Representation the argument advanced appears not to match the title, but rather be one as to Knowledge; stating that Mrs. Lavulavu did not know of any false or dishonest submissions on the numbers or forgery of the receipts.
- That Miss Kivalu is an inaccurate witness, since she stated that she started employment in April 2013 but the list was compiled by end of March 2013.
- That there is a weight of evidence from witnesses such as Muna Nasilai and Mele Tovi that out weights the prosecution witnesses evidence.
- A point is made that that Miss Kivalu did not identify which receipts she wrote out.
- Further, her account of falsity is not corroborated.
- Another submission is that the falsity of the number of students may not be as high as the prosecution have said.
- That Miss Latu believed the enrolment forms were genuine.
- That Miss Kivalu left UTRI in January or February 2015 so was not there for the full work done on the TVET grant application for that semester.

- I was then directed to *R v Jogee* [2016] UKSC8.
- I was also directed *A-G re Robert Burton (a pseudonym)* [2021] NSWCCA 87. My attention was directed paragraphs 63 – 78.

On behalf of the second defendant he raised the following points:

- Firstly he adopted all the arguments as advanced by the first defendant.
- Then that there was no evidence that he assisted or encouraged with regard to the false receipts or student lists.
- Criticism is raised of Miss Kivalu and her evidence and that Mr. Lavulavu's case has been supported by Miss Tovi and Miss Nasilai and their evidence contradicts Miss Kivalu's.
- That he had not been allowed to recall Felisita Kivalu, Pua Mafi, Mosese Elone, Mele Tovi.
- That Mr. Lavulavu resigned from UTRI in 2015.
- That Dr Eke had given evidence that non government schools were allowed to set their own fee system and that it was acceptable to write a cash receipt because of the value of the item tendered.

Verdict

1059. The elements the prosecution have to prove beyond a reasonable doubt are :

- i. That a defendant made a statement. This can be directly or through the agency of another, that is to say, on his or her behalf.
- ii. It was in fact false to some degree, arguable more than just *de minimis*, though any falsity can be enough.
- iii. Either defendant knew it was or may be untrue.
- iv. It caused the payment from the Ministry.
- v. The conduct was dishonest.

1060. How do I judge this case? I judge each count separately and each defendant separately. Not all matters need to be resolved, only those that have a direct bearing on whether the prosecution have proved its case so that I am sure in respect of any count against either defendant.
1061. In the final analysis the substantial issues before me are these; were there really the stated number of students attending UTRI for the Tourism and Hospitality Course for each of the three semesters as submitted in the three applications for TVET grants in 2013, 2014 and 2015? If the numbers were incorrect, did the defendants know that and if so was it dishonest?
1062. Plainly the applications for the grants in question were made. This was done in the name of 'Akosita Lavulavu. She was the Director and Mr. Lavulavu the President of UTRI at all relevant times.
1063. Claims that Mr. Lavulavu was not as responsible for the applications as his wife are just silly. Likewise, if it is true that another signed the application in count 3, it still plainly was done on behalf of both these defendants.
1064. They were in this together, just as they ran the school together.
1065. What happened to the money on receipt and that they disposed of it makes this glaringly obvious.
1066. That the statement was false. That is accepted by the first level of scrutiny of the evidence, just as the numbers of stated students was incorrect; as accepted on the agreed facts by both defendants.
1067. I will analyse, later, what I find the true extent of the falsity was.
1068. It obviously caused MET to pay the grants, that is clear from the bank statements and paper trail and the evidence of the witnesses; I do not think that this has been seriously denied by either defendant, nor could it be.

1069. What really needs to be carefully considered at this stage are these three elements (i) that the statements were false, (ii) that they knew they were or maybe untrue, and (iii) that it was dishonest.

Were the statements false?

1070. To answer the first part, was the statement false, necessarily means analysing the TVET grant process and means answering this: for the purpose of the TVET grant application what is the meaning of "student"?

1071. Student means a fee paying student. This has always been the case in Tonga and I have already made reference to it.

1072. The fee, in cash, would be paid per student per semester and, as such, a receipt is generated for each student.

1073. I know that there were witnesses, like Miss Nasilai who claimed they paid by other means. There was never any proof of that provided by them to establish those claims and accordingly I discount their evidence as baseless.

1074. Next, the course had to be one that was accredited by TNQAB. It is noteworthy that the UTRI course in Tourism and Hospitality was *never* accredited by TNQAB.

1075. UTRI was registered with TNQAB; their IT course was accredited, but their Tourism and Hospitality course was not. That was the clear evidence of Miss Moa from TNQAB and this was never challenged by the defendants.

1076. But, because the prosecution did not put their case on this basis, I do not judge it on that, I judge it on whether there was a misrepresentation to MET as to the numbers of students attending.

1077. It is clear that this is what MET checked. That was the evidence first of the Auditor General, Mr. Tangi; that was then corroborated by the evidence of Mr. Moses 'Elone from MET.

1078. His count was a count of the list of enrolled students and the receipts.

1079. Time and again on behalf of the defendants it was put, or asserted by them and their witnesses, that the “count” that MET performed was a head count in the class rooms.

1080. That simply is not true.

1081. On behalf of the defendants, witnesses came forward to say the now dead Miss Golton did that head count.

1082. I come back to what Mr. ‘Elone stated was the process; and his evidence could not be clearer, it did not involve a head count in the class rooms, it was a paper tally.

The central issue

1083. In the case of UTRI there were generated receipt book counterfoils for each name on the student enrolment list that accompanied the TVET grant applications submitted.

1084. I conclude that these were false receipts, and do so by analysing a number of the strands of the evidence.

1085. Miss Kivalu was clear that the creating of the enrolment list and the receipts was done at the order of both defendants. By “order” she implied that it arose not out of administrative processes or true accounting, but to mislead.

1086. There was the evidence of live witnesses too.

1087. Pelisi Tu’akalau; the loan application form had been forged to make it appear it was his signature.

1088. Toakase Tatafu his signature forged on the loan contract application. The receipts for 2013, 2014 and 2015 in his name were false as he had never paid money to UTRI.

1089. Ilaisaane Niu the receipt for 2015 school fees was false as she had never paid that money; her signature was forged on the student loan application.

1090. Lofa Talatala the receipt for 2013 fees was false, never paid that money to UTRI.

1091. Mele Finau, she was never at the college as a student and her name had been forged on the loan application form.

1092. There was also the evidence of Simone Tahi. His evidence fell into a special category in this case. He was one of the witnesses who came to court to lie for the defendants.
1093. That I have no doubt about. First he claimed to have two different dates of birth, then to have two very different signatures, so as to explain the signatures on the student application forms.
1094. By the end of his evidence he conceded that the signatures merely resembled his; something quite different to their being his.
1095. There was the telling part of his evidence when he was asked in chief by the prosecution Counsel if he had ever seen a receipt counterfoil before for \$200 issued in 2013⁸⁷. He stated that Mele Tovi or Akosita had handed it to him.
1096. At which Mr. Lavulavu jumped up and screamed at the witness that it had been “Sita” and not ‘Akosita and to “change it”. Which the witness immediately did.
1097. This I shall return to in due course.
1098. There was the audit report itself; which concluded that the vast majority of the alleged students were not really enrolled.
1099. There is the evidence from Claude Tupou of Mr. Lavulavu’s answers at the meeting held with the Auditor General on 3rd March 2017 where he agreed to pay back some of the money from the TVET grants, \$300,000 worth, was his recollection. That is to say that Mr. Lavulavu had accepted there was an overpayment (as he did in his evidence before me), that could only be because the student numbers were incorrect.
1100. Miss Mafi’s evidence concerning the field work that the audit team did turned up names of students at other colleges, or that 80% of the phone numbers on the student application forms not providing contact to anyone; incomplete forms.
1101. But most significantly this; that in their own QMS; their quality manual, it is stated that less than 5% of the students pay fees.
1102. Given that the receipts were all for sums of cash allegedly received, as clear from the original counterfoils, or the copies⁸⁸ adduced, or, significantly exhibits 24 (a), (b) & (c)

⁸⁷ Book 7 Exhibit 9 page 177

which showed the receipt books were “cash receipt” books and the original pro forma receipts were for recording sums of cash received; and, that there never was an entry for payment in kind but always cash received; it is undeniable that those receipts were false.

1103. The deceit must be operative.

1104. That is to say it must be proved that the false claim directly caused the property to be obtained; the grants.

1105. The Crown argue the numbers of students stated in the enrolment list was not true; but, more fundamentally, there had not been fees paid, yet the defendants knew that they needed to show proof of fees for the grant applications to succeed.

1106. If one considers that argument, two points are obvious (i) why else would receipts have been generated by UTRI if there was no purpose in doing so when cash had not really been paid? and (ii) had payment in kind been a legitimate way of settling student fees, why was that not precisely stated on the receipt? In fact, never a single one.

1107. That is putting aside the evidence of the witnesses who time after time simply stated their names had been forged on documents and that no money had ever been paid.

1108. It is against all of this that Miss Mele Lupe Ilaiu’s evidence stands. Because, albeit called on behalf of Mrs. Lavulavu as her witness, as a member of the UTRI Board she knew its workings and their discussions.

1109. It must be noted that Mrs. Lavulavu’s role in UTRI included the budgets and that she was also on the Board and discussed the financial matters with the other Board members.

1110. In Cross-examination by the Crown Miss Ilaiu’s answers shone a light on exactly what was known by the Board, that is, both these defendants, and the other Board members; knew that the enrolment lists must reconcile with the receipts for the purpose of TVET grant applications.

⁸⁸ Exhibit 9 books 7,8 & 9.

1111. The correct and logical analysis of this is a confirmation of the evidence of Mr. Tangi and Moses 'Elone, it corroborates theirs; that the count that MET made as to eligibility of UTRI for the grant was of the student enrolment list *and the receipts*⁸⁹.
1112. Which means that the Board members, including these defendants, knew what MET were looking for when they assessed a TVET grant application to check it complied with requirements.
1113. Allied to these important strands of the evidence is this; that the Cabinet Decision that guided how the TVET grant was to be administered, CD1182, 22nd December 2009, was amended by CD 637 , 19th July 2013, so the guiding factor became "...\$600 be paid in respect of each *receipted student*...".
1114. Of course, this was exactly 4 months before the first 1st grant application we are concerned with was made.
1115. That is to say, just as Miss Ilaiu's evidence corroborates what both Mr. Tangi and Mr Elone said was the process, so does this; student meant "receipted student".
1116. It has been suggested that these defendants in some way did not know what an application involved, or that there was no or insufficient guidance.
1117. Firstly, from piecing together the evidence it is quite clear they knew; in any event, it matters not. The point is, as a matter of law, the question is what did they do? And, did it influence MET so as to cause the grants to be awarded? That is to say were the deceptions operative?
1118. The answer is: yes. And, on each occasion, in each count, the consequence was they received the grant money because of inaccurate paperwork deliberately made up submitted to that end.
1119. Looking at the TVET grant applications for semester 1 2013, semester 2 2014 and semester 1 2015⁹⁰, reading those in conjunction with the receipts for those terms in exhibit 9; books 7, 8 & 9 and bearing in mind UTRI's stated policy that less than 5% of

⁸⁹ 19.4.2021 at 1406 hrs et seq

⁹⁰ Exhibit 1, pages 13-18; 19-28 & 34- 43.

students actually paid fees, then it is a stark fact that 95% of the claim for the TVET grants were false.

1120. How can this also be justified when not every named 'student' was called and no QMS manual for 2015 was in evidence?

1121. Firstly I can infer that the 2014 QMS manual⁹¹ was the guidance for 2015 as it had been for 2014 and the same policy was stated for 2013⁹².

1122. It can also be approached in two other ways; taking the evidence of the live witnesses Toakase Tatafu and Simione Tahi that it was not their signatures on the receipts for 2015 said to be for cash from them, along with knowing that 42 agreed facts names whom did not attend UTRI at all for that semester, so their receipts were also forgeries, provides evidence of fraud in the receipts for 2015 grant application.

1123. The prosecution do not have to call every single named person either.

1124. Firstly, as we know, many could not be traced at all, so their very existence is in doubt. 80% of the phone numbers for supposed students the audit team tried did not work.

1125. In terms of the falsity, this is the prosecution being required to prove a negative assertion; students did not exist and or pay the fees.

1126. How evidence of that kind can be properly received requires careful consideration.

1127. Professor Ormerod in Smith and Hogan⁹³ stated this (my emphasis):

"For any deception it must be proved that D made a false statement. If his statement was true he cannot be guilty of the offence (though he may now be guilty of an attempt), even though he believed it to be false and was dishonest. Where this rule requires the prosecution to prove a negative, **there may be an onus on D if it is within his knowledge, not to prove anything, but at least to introduce some evidence of the affirmative fact that, if it exists, will establish the truth of the statement.** For example, in *Mandry and Wooster*,⁹⁴ street traders selling scent for 25

⁹¹ Exhibit 16

⁹² Exhibit 15

⁹³ 11th edition 2005, Chapter 19.

⁹⁴ [1973] 3 All ER 996.

pence said, 'You can go down the road and buy it for 2 guineas in the big stores'. The police checked on certain stores but it was admitted in cross-examination that they had not been to Selfridges. It was held that it was not improper for the judge to point out that it was impossible for the police to go to every shop in London and that 'if the defence knew of their own knowledge of anywhere it could be bought at that price . . . they were perfectly entitled to call evidence'. Since no evidence was called to show that the perfume was on sale at Selfridges or anywhere else, the convictions were upheld.

1128. Bringing the separate threads of evidence together; evidence from live witnesses, agreed facts, guiding case law and that in the UTRI's QMS 2013 and 2014; I can safely infer that was same practice in 2015.

1129. All years, and so all counts, 95 % incorrect as to the students numbers receipted.

1130. 95% of each claim was fraudulent.

1131. I mention in passing once more, that given that TNQAB had not accredited the Tourism and Hospitality course, UTRI were in fact not allowed to apply for a single penny of the grant; but the prosecution case was never put on that basis, so, despite my statutory powers regarding the form of an indictment, I will not interfere; as a matter of complete fairness to the defendants.

1132. It is interesting that the audit found the true number of students at UTRI (students who attended and paid their fees) for the relevant semesters we are concerned with were 6 for 2013; 9 for 2014 and 4 for 2015; that they stated the overpayment was \$553,800.00

1133. If one takes 5% of the claimed students figures for the terms that the defendants submitted to MET one would get the following: 13 for 2013, 20 for 2014 and 13 for 2015.

1134. Or, putting the same consideration in a different way, of the \$565,200.00 obtained over the three semesters; I can be sure that \$536,940.00 was fraudulently obtained.

1135. The difference between the audit figure and my finding is \$16,860.00, in favour of the defendants.

1136. I am quite sure that it was both who were responsible for the applications. The UTRI staff all worked for them and the evidence of such witnesses as Miss Kivalu and 'Emeline Latu makes that clear. He was the President and she the Director.

Did either know that the numbers were or maybe untrue?

1137. There was evidence from Miss Kivalu as to this. But it is also supported by surrounding aspects of the case. For example evidence that the roll call the audit was given was not the same as the documents that Lopeti Filo described.

1138. It is to be noted that Mrs. Lavulavu was there for the audit team's visit, that was the evidence of Miss Mafi. I conclude that Mrs. Lavulavu had a hand in matters such as the hidden roll call documentation.

1139. Having seen how both defendants were in this together for all other aspects of the case, I have no doubt that Mr. Lavulavu knew also. It also was the evidence of Miss Kivalu, after all.

Was it dishonest?

1140. I am guided by Archbold at chapter 17 paragraph 55. The test in Ghosh has been modified. I do not intend to repeat what is written in that paragraph as to the development and the rationale, save to say what the correct test now is :

- (a) what was the defendant's actual state of knowledge or belief as to the facts; and
- (b) was his conduct dishonest by the standards of ordinary people?

1141. I have been persuaded on the evidence that both knew of the deliberate inaccuracy of the claims; that is the falsity of the student lists and, most importantly, the receipts.

1142. Is ordering staff to falsifying receipts for sums of cash never paid to show to a representative of the Ministry of Education to obtain grant money dishonest by the standards of ordinary people?

1143. Yes it is, one can have no doubt about that.

1144. With all this in mind, those key submissions on behalf of both defendants must be answered in this way.

Consideration of the key submissions

1145. On behalf of Mrs Lavulavu:

1146. *UTRI was funded by Mr. Lavulavu.* This was the basis for the submission by Mr. Lavulavu that the grant money was to be used for a reimbursement. I shall return to that latter point.

1147. It is of note that no single audit or any document the defence produced convincingly supports the contention that Mr. Lavulavu funded UTRI.

1148. *That the student list was given to Mrs. Lavulavu as true and correct.* That was not the evidence of Miss Kivalu; nor a position that can seriously be maintained given, for example, the agreed facts as to the student numbers.

1149. *Mrs. Lavulavu took no part in the enrolment.* Given both their appearances at the feast to celebrate the month long Hapai recruitment in 2014, a big meeting where they spoke and promised the people of Hapai they would build a school there and enable students' dreams to study in New Zealand⁹⁵; or Miss Kivalu's evidence was that the order for the student lists to be concocted from the recruitment came from her and further she ordered the receipts to be compiled from that false student list, that can not be sensibly advanced.

1150. *That MET verified the process that UTRI undertook in making the grant application.* They did nothing of the sort; they were deceived by the false list and false receipts.

1151. *That the school benefitted from the grants.* There was not a single document adduced in evidence by these defendants to support this.

1152. *Under the heading False Representation the argument advanced appears not to match the title, but rather be one as to Knowledge; stating that Mrs. Lavulavu did not know of any false or dishonest submissions on the numbers or forgery of the receipts.* We have considered that, above.

1153. *That Miss Kivalu is an inaccurate witness, since she stated that she started employment in April 2013 but the list was compiled by end of March 2013.* Even if that is correct,

⁹⁵ Evidence of Miss Iatu; 19.4.2021 1020 hrs et seq.

that the list was compiled by end of March, it is not correct to say she stated categorically she started in April that year. That mis-states what her evidence was; she said she started “about April 2013...”

1154. In any event her initials are within the UTRI stamp endorsing that list. From several points of view that defence argument can not be sensibly sustained.

1155. *That the correct way to define the role of Mr. Lavulavu, as alleged, is that he aided, abetted or procured the alleged offences.* That is not how the Crown ever put their case. The doctrine of agency logically and correctly, as a matter of law, summarises and encapsulates their case.

1156. Just as they both ran the college, they are jointly responsible for the false representations the staff made on their behalf and at their order; in it together, is how the Crown put their case.

1157. *That there is a weight of evidence from witnesses such as Muna Nasilai and Mele Tovi that out weights the prosecution witnesses' evidence.*

1158. That is not so. Simply put, Miss Nasilai perjured herself. Miss Tovi was forced to admit some truths but sought to spin them in a dishonest way; for example that people who had been lectured to in outside organisations by UTRI staff were legitimate students of UTRI. Or, that she was unaware of the audit in 2016.

1159. Likewise, that both these witnesses gave evidence that Miss Golton had done a head count in the class rooms (quite contrary to what Mr. Elone stated was the true position) I find to be a lie on both their parts.

1160. Other witnesses were called on behalf of the second defendant to say, for example, that writing a receipt stating \$200 had been received in cash, was a truthful statement if that person had brought, for example, a pig, because it was a statement of the bartered good's worth.

1161. This is so plainly a dishonest position to take that no possible credence can be given to those answers or such a witness's evidence.

1162. *A point is made that that Miss Kivalu did not identify which receipts she wrote out.*

1163. *Further, her account of falsity is not corroborated.*

1164. Her evidence was that she created the receipts based on the lists and that she was told the students had paid their fees with the loans.

1165. I see no point to the defence submissions that she did not identify any particular receipts that she had written. It must be true that the receipts were false, after all, the acceptance of the agreed facts as to the student lists containing inflated numbers demonstrates this.

1166. There was also the evidence of the live witnesses as to how, time after time, the receipts were false.

1167. If the defence had a point they wanted to explore, they were free to do so in cross examination. I see nothing turns on this.

1168. As to the assertion that her evidence was not corroborated, firstly it does not as a matter of law have to be, in any event from my observations above it demonstrates how that can no possibly be seriously submitted, since in several ways it was corroborated.

1169. *Another submission is that the falsity of the number of students may not be as high as the prosecution have said.*

1170. This is an argument that deflects from the real issue, which is the falsity of the receipts.

1171. That other witnesses have been called by the defence to bolster the student numbers is largely irrelevant. If the whole of prosecution case on student numbers was disproved (and I stress now, that it has not been) that would not matter in the light of the forged receipts and the defendants' hand in that. That is the operative deceit.

1172. *That Miss Latu believed the enrolment forms were genuine.* It is right that she thought that; but to suggest that she did not corroborate Miss Kivalu is not correct. Miss Latu had real worries about the payment of the fees at UTRI. She literally stated she was concerned about those practices. She pointed to the loan and repayment scheme and stated that most students did not repay.

1173. If students did not pay, there ought not to have been receipts for them made out, therefore that corroborates what Miss Kivalu stated about the receipts being bogus.

1174. *That Miss Kivalu left UTRI in January or February 2015 so was not there for the full work done on the TVET grant application for that semester.*

1175. Plainly we know there was falsity in that application given the agreed facts as to student numbers that semester and also the live evidence.

1176. Further, the prosecution had by that stage proved a clear course of conduct that both defendants had embarked upon and had, by then, endured for two years. That is a significant strand to the Crown's case and one that was in no way rebutted by any evidence the defence presented.

1177. I was then directed to *R v Jogee* [2016] UKSC8. That case is about joint enterprise and what must be within the reasonable contemplation of a secondary party. I do not think it serves to assist here.

1178. *I was also directed A-G re Robert Burton (a pseudonym) [2021] NSWCCA 87. My attention was directed paragraphs 63 – 78. I did ask Mr. Edwards if this case decided anything beyond that which I had stated, very clearly, from the outset of the trial; that the fraud had to be demonstrated to be operative?*

1179. I do not believe this case does, having carefully read it.

1180. On behalf of the second defendant the following points were advanced, Mr. Lavulavu having also adopted the submissions of the first defendant :

1181. *That there was no evidence that he assisted or encouraged with regard to the false receipts or student lists.*

1182. Quite apart from the clear evidence that is what he did; from, for example, Miss Kivalu; it defies all logic and sense that, on a frolic of their own, staff members like Miss Kivalu put together false lists of students or false receipts for the application of a grant that they stood to gain nothing from, in fact that Miss Kivalu did not know about at that stage, April 2013.

1183. It also ignores the coincidence of names of people being entered as enrolled students from organisations and events that Mr. Lavulavu was personally connected with; for example the Tonga Post survey, when he was once the Director of Tonga Post; or

attending a course at the Ministry of Infrastructure, when he had been the Minister with that portfolio or courses run at Uata shipping, when Uata shipping's Dr Tu'i Uata is listed as being on the UTRI advisory Board in 2014.

1184. *Criticism is raised of Miss Kivalu and her evidence and that Mr. Lavulavu's case has been supported by Miss Tovi and Miss Nasilai and their evidence contradicts Miss Kivalu's.*

1185. Their evidence certainly does contradict Miss Kivalu's. Without a doubt Miss Nasilai was paid off to do so and advancing her testimony to support his argument does exactly the opposite; it actually tends to generally support the prosecution case, given how dishonest she was.

1186. *That he had not been allowed to recall Felicita Kivalu, Pua Mafi, Mosese Elone, Mele Tovi.* I have considered in my ruling.

1187. Save to say that this time Mele Tovi's name has been added this time, but no reasons were given why nor were any advanced at the oral hearing.

1188. *That Mr. Lavulavu resigned from UTRI in 2015.*

1189. It is significant that all the letters of complaint written on behalf of UTRI in late 2016 - early 2017 to the Auditor General⁹⁶, to Claude Tupou CEO of MET⁹⁷, to the Ombudsman⁹⁸ and in November 2017 to the Police Commissioner⁹⁹, were (i) all written by Mr. Lavulavu himself.

1190. And, (ii) it is noteworthy that never in any of that correspondence did he state he had left the college in 2015 and had no involvement in UTRI.

1191. It is telling that Mr. Lavulavu never cross-examined his wife at all, let alone to put to her that he somehow did not have knowledge of what she was doing at the college.

1192. It follows this claim he has made at trial must be a recent fabrication.

⁹⁶ Exhibit 30

⁹⁷ Exhibit 31

⁹⁸ Exhibit 32

⁹⁹ Exhibit 37

1193. In his evidence he went even further, stating he had no involvement with the work of the Board at UTRI and the relevant time and nothing to do with the grant applications for all three years in question.

1194. He said things in his evidence which were palpably untrue. A letter sent to the Minister for Education 1st October 2014, signed by Mr. Lavulavu and plainly written by him, requesting the payment of the TVET grant into the an account at Tonga Development Bank, where the account details were set out, he claimed was written by MET and he merely signed it.

1195. Why MET would write a letter to be sent to themselves, and know of the UTRI bank details, least of all that their account was held at TDB and then ask him to sign it, is so preposterous as to make it clear that Mr. Lavulavu will lie about anything to make his account fit the facts and he does so shamelessly.

1196. *That Mr. Lavulavu was being reimbursed by the grant.*

1197. He provided no paper trail or any single piece of documentary evidence to support this; the weight of the evidence suggests that the two defendants used the monies freely for themselves.

1198. The grant had clearly defined specific purposes and only those uses : 50% to supplement teachers' salaries, the rest to improve teaching and minor renovations¹⁰⁰, never was it to be a reimbursement system.

1199. *That Dr Eke had given evidence that non government schools were allowed to set their own fee system and that it was acceptable to write a cash receipt because of the value of the bartered item tendered.*

1200. Dr. Eke provided no proof as to the former claim and when he made the latter, all his credibility was gone, it then being so obvious he was not desirous of telling the truth.

1201. I turn away from the submissions to the defence case generally:

¹⁰⁰ Cabinet Decision 1182 22nd December 2009; exhibit 1 page 4.

1202. Turning to Mrs. Lavulavu's evidence that she trusted her staff so did no checks on the numbers enrolled for the Hospitality and Tourism course for those semesters I discount as a lie.
1203. The point of the declaration she signed was it demanded that whomsoever signed was responsible for the truth of the statement.
1204. To claim otherwise, as she did, I am afraid only makes it plain she can not be believed on her word.
1205. I am quite sure that she not only knew the numbers were false but she and her husband had ordered the concoction of the enrolment lists and the corresponding receipts.
1206. What follows does them no credit at all; rather than admit their part they then together started an orchestrated attempt to lie their way out of the situation that was their own making in the first place.
1207. But the truth does out.
1208. I consider it totally untrue that Mrs Lavulavu was not at the Sopa meeting when Miss Kivalu was brought there by Mele Tovi.
1209. I am quite sure Mr. Lavulavu contacted Miss Kivalu to pressure her to attend that Saturday.
1210. Miss Nasilai and Simione Tahī, were examples of witnesses determined to lie to the court for both Mr and Mrs Lavulavu.
1211. That speaks ill of them and worse of the characters of the defendants.
1212. Muna Nasilai were plainly instrumental in the dishonest bidding of both defendants in the recruitments; the enrolment lists, and the receipts, she appears to be as culpable as these defendants from what I have seen.
1213. I am quite sure she was bought off by Mrs Lavulavu (and her husband) and given a job in the Ministry of Infrastructure where Mrs Lavulavu had become a Minister in October 2019.

1214. That Miss Nasilai pretended to be ill so that she could not come to court to produce her work contract with that Ministry, as I had ordered her to do, demonstrates the lengths she will go to hide the deceit of these defendants; her own too.
1215. That she was in fact Mrs. Lavulavu's Personal Assistant means that the court was deliberately misled when she was identified during the trial and on oath, as being a "clerk" in the Ministry for Infrastructure, when Mr Edwards called her.
1216. That deceit strikes at the heart of this case because Miss Nasilai was called as a witness of truth on key issues the defence have gone on to rely on. But steps were taken to disguise her association and connection to the first defendant.
1217. It is a particularly egregious aspect of this case that both defendants have tried to corrupt the trial process by buying off at least one witnesses.
1218. That Miss Nasilai was lying on behalf of the defendants was clear when she gave her evidence of Miss Golton and Mr Elone working for the *audit*.
1219. This was a mistake that Mr. Lavulavu made in his questioning of her and was perpetuated by Miss Nasilai in her answer when she agreed with this, but went on to say she did not know the names of the people from MET who had come to check.
1220. Of course, they were really Miss Golton and Mr Elone.
1221. The corollary of this is that plainly both Mr. Lavulavu and Miss Nasilai had rehearsed what she was to say in answer to questions put to her by him; he had made an error in what he taught her so she repeated that same incorrect version to me in court.
1222. No doubt this attempt to assist the defendants by perjuring herself is how and why she was 'rewarded' with a job by Mrs Lavulavu.
1223. Nor ever forgetting the attempt to pressure Miss Kivalu to change her evidence after Mele Tovi brought her to the Lavulavu's residence that Saturday to discuss with her the police investigation and Mr. Lavulavu tried to force her to withdraw her statement.
1224. On assessing all the evidence I now have no hesitation in believing her account; that she was presented by Mr. Lavulavu with an already typed up statement for her to sign to then be given to the then Police Commissioner; effectively for her to lie to the police.

1225. Bravely she refused.

1226. In relation to these lies I direct myself⁴⁰¹ in this way :

A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that:

- 1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake;
- 2) it relates to a significant issue;
- 3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt.

1227. After analysing those untruths in line with that direction, I find those steps to corrupt the trial process that both defendants undertook are capable of being received as evidence that corroborates the other evidence going to each of these key elements of the offence; falsity, knowledge and dishonesty.

1228. The conduct of these defendants would be disgraceful in anyone, but for a member of Cabinet, and a man, who used his political connections and position to facilitate these frauds, goes beyond just criminally reprehensible.

1229. This is an example of the worst sort of dishonesty; people who should be working earnestly for constituents but use their position, connections and influence to steal from a fund for the education of children of this Kingdom and then in front of me in court, twist the evidence and lean on witnesses to try extricate themselves.

1230. That Lopeti Filo, the man who taught the Hospitality and Tourism had never heard of the TVET grant, for his very own course, is telling.

1231. Both these defendants plainly plundered those funds; there can be no doubt that it did not go on the school or the teachers.

⁴⁰¹ Archbold 4-461 and the UK Bench Book for the Crown Court, The Compendium published 17th December 2020

1232. As 'Emeline Latu, who worked at UTRI observed¹⁰²; how could there be a grant when she knew that basic resources like water was not properly provided for the children?
1233. Even their own audit for 2013 found the toilets were unhygienic and desks and tables broken.
1234. Roll calls were taken by teachers like Lopeti Filo, but when the audit team came, they had mysteriously vanished.
1235. The repeated evidence that Mr. Lavulavu demanded another audit be carried out after the Auditor General had completed one; yet Mr. Lavulavu certainly did not implement one himself is stark. Why didn't he?
1236. That the money never went into properly isolated grant bank account run by the school, but instead into accounts controlled by these defendants.
1237. Claims that the Tourism and Hospitality course was accredited and producing the form for that application to TNQAB¹⁰³, when that application was never in fact granted and remains blank to this day where the official stamp should go.
1238. Or, the claim that TNQAB knew all about the payment in kind system and had approved it; when Miss Pauline Moa's evidence was that was outside their remit; given it applied to a course not accredited that statement in the QMS regarding fees was entirely hypothetical as far as TNQAB were concerned.
1239. Or that their own audit in 2013 pointed out many errors and failures: "no financial policies, no regular reconciliations of key accounts being done"; "Records on students who work and study are not properly kept."; "The draft financial statements did not have any accounting policies, statement of movements in equity, and statement of cash flows."¹⁰⁴
1240. Both audits, 2012 and 2013 made the exact same urgent warning "We draw attention to the fact that the Institute continued to operate majority of its transactions mainly on cash basis... We strongly recommend that cash transactions be minimised or completely

¹⁰² 19.4.2021; 1020 hrs et seq

¹⁰³ Exhibit 14.

¹⁰⁴ Exhibit 28 (a) pages 2, 4 & 6

stopped and process all transactions through the bank which would certainly improve control over the institute's internal control and cash flow management.”

1241. The complaint in the 2012 audit, repeated again in the 2013 audit and the evidence of both defendants before me was that they continued to operate in cash only throughout all the years the college was open.

1242. One can infer why that was; it was to help try and hide dishonest transactions.

1243. Or TNQAB's concerns about UTRI set out in their letter to Mrs Lavulavu 19th June 2014, complaining that UTRI had not even demonstrated such basic processes as teachers with sufficient qualifications to teach (“Please provide evidence that all staff teaching the programme have a qualification higher than the programme being taught.”) to courses seemingly not being taught at all (“UTRI needs to produce satisfactory evidence that learning has taken place as appropriate to an education and training provider.”)¹⁰⁵.

1244. I pause.

1245. It is remarkable how both defendants claimed innocence, sometimes in the teeth of the evidence or with little or no logical basis; yet played out with unending vigour only in an attempt to obfuscate; to muddy the waters.

1246. From all I have set out above, and from their behaviour in court and the shifty prevarication of their defences it follows that their conduct, at the material time, was dishonest and continues so to this day. This was not some accounting error, but a systematic fraud.

1247. To look at this all from the opposite perspective; the TVET grants were for the teachers and facilities and, ultimately, the students' benefit.

1248. One would expect any responsibly, diligently run school which made such applications at every stage of the submission; the list of names, the receipts and the filled out forms compiled, initialled and signed off proudly by those in charge.

¹⁰⁵ Exhibit 11 pages 2-3 & 5

1249. Here, the lists were compiled by others, they were initialled by people in the Admin office, most of the forms filled out by staff too.

1250. One can not but conclude, from the start, these defendants put others into the process to try and shield themselves should this moment ever arrive; so they could claim ignorance.

1251. They do so now, before me, but it is a sham.

1252. What they did and how they did it has been revealed through the trial process and the careful analysis of the witnesses and evidence.

1253. On a logical and proper analysis of the admissible evidence I find the indictment is a true bill as against both defendants on all counts

1254. They are both guilty on all counts.

NUKU'ALOFA
4 June 2021



N. J. Cooper
JUDGE