

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 613 of 2010

Plaintiff: *FREDERICK ARTHUR MARTENS*
AND
First Defendant: *TANIA ANN STOKES*
AND
Second Defendant: *COMMONWEALTH OF AUSTRALIA*
AND
Third Defendant: *COMMONWEALTH DIRECTOR OF*
PUBLIC PROSECUTIONS

AMENDED STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

1. The first defendant is and was at all material times a member of the Australian Federal Police ("AFP").
2. Pursuant to section 64B of the *Australian Federal Police Act 1979* (Cth), the second defendant is jointly liable in respect of torts committed by the first defendant in the performance or purported performance of her duties as a member of the AFP.

The Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea

3. In or about October 2003, the Australian Government announced a \$20 million package of measures to combat human trafficking and child-sex tourism engaged in by Australians overseas.

Particulars

Australian Federal Police Annual Report 2003-2004.

4. In or about December 2003, the Enhanced Cooperation Program between Australia and Papua New Guinea ("PNG") was announced at the Australia-PNG Ministerial Forum.

STATEMENT OF CLAIM
Filed on Behalf of the Plaintiff

Form 16 Rules 22, 146

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5. On or about 30 June 2004, the Joint Agreement on Enhanced Cooperation between Australia and PNG was entered into between Australia and PNG ("**the Joint Agreement**").
6. The Joint Agreement came into force on 13 August 2004.
7. The Joint Agreement provided for the deployment of members of the AFP to PNG to assist, *inter alia*, in maintaining law and order in PNG.
8. By reason of the matters pleaded at paragraphs [3] to [7] above, from around 2003 onwards, the first and third defendants felt under pressure by the AFP and the second defendant to secure the successful prosecution of Australian citizens in PNG engaged in child sex offences.

The arrest of the plaintiff

9. On or about 24 August 2004, the first defendant arrested the plaintiff.
10. On or about 24 August 2004, the first defendant charged the plaintiff with the following offences:
 - (a) "*That between 10 September 2001 and 16 September 2001, in Port Moresby, Papua New Guinea, Frederick Arthur MARTENS did engage in sexual intercourse with a person who was under 16 years of age, namely Grace NABAIMU, contrary to section 50BA of the Crimes Act 1914*" ("**the Nabaimu Charge**"); and
 - (b) "*That on a date in mid to late 1996, in Port Moresby, Papua New Guinea, Frederick Arthur MARTENS did engage in sexual intercourse with a person who was under 16 years of age, namely Daphne MUSA, contrary to section 50BA of the Crimes Act 1914*" ("**the Musa Charge**").

THE NABAIMU CHARGE

11. In or about November 2003, a member of the AFP requested the Royal Papua New Guinea Constabulary ("**the PNG Police**") obtain a statement from Grace Nabaimu as to her alleged involvement with the plaintiff.

Particulars

Evidence of Kally Pamuan of the PNG Police at the trial of the Nabaimu Charge on 25 October 2006 – transcript page 231, lines 9 to 14.

The December 2003 Statement

12. On or about 1 December 2003, Grace Nabaimu made a statement to Kally Pamuan of the PNG Police in which she alleged that:

- (a) the plaintiff flew her in his aircraft from Morehead to Port Moresby in the term two school holiday of 2001;
- (b) she had passport photographs taken in Port Moresby at that time;
- (c) the plaintiff flew her back from Port Moresby to Morehead the day after her passport photographs were taken;
- (d) the plaintiff again flew her in his aircraft from Morehead to Port Moresby in September 2001 before PNG's Independence Day on 16 September 2001;
- (e) on arrival in Port Moresby, the plaintiff took her to his daughter Caroline's house at Waigani where they had dinner before the plaintiff took her to a party along with Caroline;
- (f) following the party, the plaintiff took her to a house in Korobosea;
- (g) at this house she watched television;
- (h) the plaintiff told her to turn off the television and said she was going to be his wife;
- (i) the plaintiff overpowered her as she was walking towards one of the rooms at the Korobosea house;
- (j) the plaintiff carried her to a bed;
- (k) the plaintiff threw her on the bed, removed her trousers, unzipped his trousers and had vaginal sex with her.

("The December 2003 Statement")

Particulars

Statement of Grace Nabaimu dated 1 December 2003.

13. Prior to making the December 2003 Statement, Grace Nabaimu had not made any complaint to either the PNG Police or the AFP in respect of the conduct of the plaintiff.

14. The PNG Police provided the AFP with a copy of the December 2003 Statement.

Particulars

Evidence of Kally Pamuan of the PNG Police at the trial of the Nabaimu Charge on 25 October 2006 – transcript page 231, lines 19 to 27.

The April 2004 Statement

15. On or about 29 April 2004, the first defendant requested Grace Nabaimu provide her with a further statement in relation to the alleged conduct of the plaintiff.
16. On or about 29 April 2004, Grace Nabaimu made a statement to the first defendant in which she alleged that:
 - (a) she flew from Morehead to Port Moresby with the plaintiff in his aircraft in the term one school holidays in around March 2001;
 - (b) the day after arriving in Port Moresby, she had passport photographs taken and she filled out some forms for a visa;
 - (c) the next day, the plaintiff flew her back from Port Moresby to Morehead in his aircraft, stopping in Daru to drop off a pastor;
 - (d) she flew again from Morehead to Port Moresby with the plaintiff in his aircraft on a date between 10 and 16 September 2001;
 - (e) on arrival in Port Moresby, the plaintiff took her directly to his house in Korobosea;
 - (f) on arrival at the house in Korobosea, the plaintiff took her to a club where they stayed for about one and a half to two hours before returning to Korobosea;
 - (g) on returning to the house in Korobosea, she asked where she would sleep and was shown a bed and told she would sleep there;
 - (h) the plaintiff got into that bed;
 - (i) she sat on a chair in the dining room until the plaintiff asked her whether she was going to sit there or go to sleep;
 - (j) she then lay on the bed and went to sleep;
 - (k) while she was asleep, the plaintiff grabbed her, pulled the zipper of his trousers down, took her clothes off and put his penis in her vagina;

- (l) while doing grade 9 schooling in Daru, she gave a statement to Kally Pamuan of the PNG Police, all the contents of which were true.

(“the April 2004 Statement”)

Particulars

Statement of Grace Nabaimu dated 29 April 2004.

Inconsistencies between the December 2003 Statement and the April 2004 Statement

17. The April 2004 Statement is inconsistent with the December 2003 Statement in that, *inter alia*:
- (a) in the December 2003 Statement, Grace Nabaimu said she first flew with the plaintiff from Morehead to Port Moresby in the term two school holiday of 2001, whereas in the April 2004 Statement she said she first flew with the plaintiff from Morehead to Port Moresby in the term one school holiday in around March 2001;
 - (b) in the December 2003 Statement, Grace Nabaimu said that on arrival in Port Moresby on her second flight with the plaintiff, the plaintiff took her to his daughter Caroline’s house, whereas in the April 2004 Statement she said the plaintiff took her directly to his house in Korobosea;
 - (c) in the December 2003 Statement, Grace Nabaimu said that she had dinner at Caroline’s house in Waigani on arrival in Port Moresby, whereas in the April 2004 Statement she said the plaintiff took her to his house in Korobosea before going out to have dinner at a club;
 - (d) in the December 2003 Statement, Grace Nabaimu said that the plaintiff took her from Caroline’s house to a party which Caroline also attended before taking her to his house in Korobosea, whereas in the April 2004 Statement she said that the plaintiff took her from his house in Korobosea to a club before returning to Korobosea;
 - (e) in the December 2003 Statement, Grace Nabaimu said that on arrival at the house in Korobosea she watched television, whereas in the April 2004 Statement she said that on returning to the house in Korobosea she asked where she would sleep and then sat on a chair in the dining room; and
 - (f) in the December 2003 Statement, Grace Nabaimu said that the plaintiff told her to turn off the television before overpowering her while she was walking to one of the rooms and carrying her to the bed, whereas in the April 2004 Statement she said she got into bed with the plaintiff and went to sleep, waking when the plaintiff grabbed her while she was sleeping.

18. Before the plaintiff was charged with the Nabaimu Charge, the first defendant did not:

- (a) attempt to obtain any explanation from Grace Nabaimu as to the inconsistencies between the December 2003 Statement and the April 2004 Statement; or
- (b) make any inquiry into the existence of any flight or aircraft records which could establish the movements of the plaintiff and his aircraft within PNG in 2001 as referred to in the December 2003 Statement and the April 2004 Statement; or
- (c) make any attempts to obtain a statement from Caroline Martens in relation to the allegations made in the December 2003 Statement; or
- (d) attempt to obtain a copy of any passport application, passport photographs or visa application relating to Grace Nabaimu as referred to in the December 2003 Statement and the April 2004 Statement.

Statement of Raina Martens

19. On or about 20 May 2004, the first defendant took a statement from Raina Martens (**"the Raina Martens Statement"**) in which Raina Martens alleged that:

- (a) she had previously been in a relationship with the plaintiff and married him on 20 August 1999;
- (b) the plaintiff was the father of her son, Aaron;
- (c) her relationship with the plaintiff had ended and she was worried the plaintiff would take custody of Aaron and take him to Australia;
- (d) on a Saturday in September 2001 she was given a ride by the plaintiff in his car, along with Grace Nabaimu, and that Grace Nabaimu was dropped off by the plaintiff at Caroline Martens' house in Waigani;
- (e) in late September 2001, the plaintiff asked her to take him and Grace Nabaimu to the airport in Port Moresby;
- (f) at the airport, Grace Nabaimu told her that the plaintiff forced her to have sex with him;
- (g) Grace Nabaimu told her the plaintiff took her to Dr Mondia who gave her an injection of "depo" to ensure she did not get pregnant; and
- (h) Grace Nabaimu left Port Moresby with the plaintiff in the plaintiff's aircraft in late September 2001.

Particulars

Statement of Raina Martens dated 20 May 2004.

20. The Raina Martens Statement was inconsistent with both the December 2003 Statement and the April 2004 Statement.
21. Before the plaintiff was charged with the Nabaimu Charge, the first defendant did not:
- (a) attempt to obtain any explanation from Grace Nabaimu as to the inconsistencies between the Raina Martens Statement and the December 2003 Statement and the April 2004 Statement; or
 - (b) attempt to obtain any explanation from Raina Martens as to the inconsistencies between the Raina Martens Statement and the December 2003 Statement and the April 2004 Statement; or
 - (c) obtain any statement from Dr Mondia as to whether he had administered a “depo” injection to Grace Nabaimu as referred to in the Raina Martens Statement; or
 - (d) make any inquiry into the existence of any flight or aircraft records which could establish the movements of the plaintiff and his aircraft within PNG in 2001 as referred to in the Raina Martens Statement.

The affidavit of the first defendant dated 24 August 2004

22. On or about 24 August 2004, the first defendant swore an affidavit in which, *inter alia*, she:
- (a) stated that in January 2004, the AFP received information from the PNG Police in relation to the alleged rape of Grace Nabaimu;
 - (b) set out the allegations made by Grace Nabaimu in the April 2004 Statement, but did not set out the allegations made by Grace Nabaimu in the December 2003 Statement;
 - (c) did not refer to the Raina Martens Statement;
 - (d) did not refer to any inconsistencies between the December 2003 Statement, the April 2004 Statement and the Raina Martens Statement;
 - (e) referred to Department of Immigration, Migration and Indigenous Affairs (“**DIMIA**”) records she said showed the plaintiff was in PNG during the two

periods in which the plaintiff was alleged to have accompanied Grace Nabaimu to Port Moresby;

- (f) attached a typed record entitled "DIMIA Travel Movements" purporting to set out travel movements in the period from 9 May 1995 to 11 August 2004, but did not attach any original documents obtained from DIMIA and used in the preparation of that document;
- (g) stated that the plaintiff had fathered in excess of 16 children; and
- (h) stated that one of the plaintiff's children, Tracey Martens, was taken by the plaintiff from her mother without that mother's permission.

23. Statements made by the first defendant in her affidavit of 24 August 2004 were incorrect and/or misleading in that:

- (a) the AFP requested the PNG Police approach Grace Nabaimu and obtain a statement from her;
- (b) the DIMIA Travel Movements document annexed to the affidavit was not a complete and accurate record of travel movements as held by DIMIA in that it omitted a record showing a flight by the plaintiff from Daru in PNG to Cairns via Horn Island on 13 April 2001;
- (c) as at 24 August 2004, the plaintiff had fathered eleven children, and adopted a further five children according to the customs of PNG; and
- (d) custody of Tracey Martens was awarded to the plaintiff by order of the District Court of PNG dated 21 May 2004.

24. The period from 13 April 2001 to 25 April 2001 encompasses the term one school holidays in PNG, being the period in which Grace Nabaimu alleges the plaintiff flew her from Morehead to Port Moresby in the April 2004 Statement.

25. By reason of the matters pleaded at paragraphs [11] to [24] above, the plaintiff was wrongfully arrested by the first defendant in respect of the Nabaimu Charge.

26. By reason of the matters pleaded at paragraphs [11] to [24] above, the first defendant failed to make sufficient inquiry to be informed of the true facts before charging the plaintiff with the Nabaimu Charge.

27. By reason of the matters pleaded at paragraphs [11] to [26] above, the first defendant did not have reasonable grounds to believe the plaintiff was guilty of the Nabaimu Charge at the time that charge was laid.

28. By reason of the matters pleaded at paragraphs [11] to [27] above, the first defendant did not honestly form the view that there was a proper case for prosecution in respect of the Nabaimu Charge.
29. In the alternative to paragraph [28] above, the first defendant formed the view that there was a proper case for prosecution in respect of the Nabaimu Charge based on insufficient grounds.
30. By reason of the matters pleaded at paragraphs [11] to [28] above, the first defendant lacked reasonable and probable cause in charging the plaintiff with the Nabaimu Charge.
31. By reason of the matters pleaded at paragraphs [11] to [30] above, the first defendant prosecuted the plaintiff in respect of the Nabaimu Charge for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
32. By reason of the matters pleaded at paragraphs [11] to [31] above, in charging the plaintiff with the Nabaimu Charge, the first defendant was motivated by malice in fact.
33. By reason of the matters pleaded at paragraphs [11] to [32], the charging of the plaintiff with the Nabaimu Charge by the first defendant constituted a collateral abuse of legal process.

December 2004 Committal Hearing

34. On a date between 24 August 2004 and 13 December 2004, the third defendant made a decision to prosecute the plaintiff in respect of the Nabaimu Charge.
35. On or about 13 December 2004, the plaintiff appeared at a committal hearing in respect of the Nabaimu Charge at the Cairns Local Court before Magistrate Black (**"the December 2004 Committal Hearing"**).
36. At the December 2004 Committal Hearing, Grace Nabaimu gave evidence that:
 - (a) passport photographs were taken of her on her first trip to Port Moresby with the plaintiff in March 2011;
 - (b) the second trip to Port Moresby with the plaintiff occurred after her birthday, which is on 10 September, and before PNG's Independence Day, which is on 16 September;
 - (c) on the second trip to Port Moresby with the plaintiff, she went to the plaintiff's house at Korobosea on arrival in Port Moresby and had a shower there;

- (d) Caroline Martens was not living at the house at Korobosea and did not attend a party with her and the plaintiff;
- (e) she did not see Caroline Martens on her second trip to Port Moresby, but met Caroline on her first trip to Port Moresby in March 2001 at which time Caroline Martens was pregnant;
- (f) there was electricity at the plaintiff's house at Korobosea during some of the night she stayed at that house;
- (g) she told her aunt, Bami, about the alleged rape about a year after the event;
- (h) she did not tell anyone other than Bami about the alleged rape; and
- (i) she was approached by the PNG Police to give a statement regarding the conduct of the plaintiff without having made any complaint to the PNG Police or the AFP about the plaintiff.

Particulars

Transcript of the December 2004 Committal Hearing at:

- page 66, lines 52 to 57;
- page 57, line 1 and lines 15 to 18;
- page 70, lines 8 to 9;
- page 77, lines 37 to 57;
- page 83, lines 47 to 57;
- page 85, lines 51 to 54;
- page 86, lines 4 to 51;
- page 90, lines 30 to 44;
- page 91, lines 1 to 7 and lines 29 to 37; and
- page 110, lines 41 to 43.

37. Evidence given by Grace Nabaimu at the December 2004 Committal Hearing was inconsistent with the December 2003 Statement and the Raina Martens Statement.

December 2004 bail application

38. On or about 15 December 2004, the plaintiff applied for a variation of his bail conditions to enable him to travel to PNG to obtain evidence to defend himself against the Nabaimu Charge and to attend to his business and taxation affairs in PNG.

Particulars

Application for variation of bail conditions made before Magistrate Black at the Cairns Local Court on 15 December 2004.

39. The first and third defendants opposed the plaintiff's application for a variation of his bail conditions to enable him to travel to PNG.
40. A variation of the plaintiff's bail conditions to enable him to travel to PNG was refused.
41. In opposing the plaintiff's application for a variation of his bail conditions the first and third defendants deprived the plaintiff of the opportunity to gather evidence to defend himself against the Nabaimu Charge.

29 December 2004 Letter

42. On or about 14 December 2004, the plaintiff's solicitor provided the third defendant with:
 - (a) copies of flight records maintained by the plaintiff showing his movements in the period from March 2001 to September 2001;
 - (b) a copy of the passport of Grace Nabaimu issued on 24 August 2001;
 - (c) a copy of a receipt for payment for passport photographs dated 11 August 2001; and
 - (d) a copy of an envelope containing passport photographs and negatives for passport photographs of Grace Nabaimu.

Particulars

Meeting between John Magoffin of The Law Office and Andrew Lloyd of the third defendant on or about 14 December 2004.

43. On or about 29 December 2004, the plaintiff's solicitor sent a letter to the third defendant ("**the 29 December 2004 Letter**") stating, *inter alia*:
 - (a) the flight records provided to the third defendant establish that evidence given by witnesses at the December 2004 Committal Hearing was wrong in stating that the plaintiff transported Grace Nabaimu to Port Moresby in March 2001 and September 2001;
 - (b) the passport application for Grace Nabaimu must have been made in August 2001 as the passport was issued on 24 August 2001;

- (c) passport photographs were taken of Grace Nabaimu in Port Moresby on 11 August 2001;
- (d) the flight records provided to the third defendant establish that the plaintiff did not fly into or out of Port Moresby between 7 September 2001 and 16 September 2001;
- (e) the flight records provided to the third defendant establish that the plaintiff flew to Port Moresby on 10 August 2001;
- (f) the evidence of Raina Martens that she saw Grace Nabaimu depart from Port Moresby airport with the plaintiff in September 2001 is contradicted by the evidence of Grace Nabaimu and the flight records provided to the third defendant;
- (g) that original flight records are kept by the plaintiff and are available for inspection by the third defendant;
- (h) the veracity of the flight records provided to the third defendant can be confirmed through the equivalent to the Civil Aviation Authority in PNG;
- (i) the original of the envelope and receipt for payment for the passport photographs are available for inspection by the third defendant;
- (j) an application form would have been completed for the issue of Grace Nabaimu's passport which should be able to be obtained from the appropriate authorities in PNG; and
- (k) that enquiries could be made at the store which provided the passport photographs and the receipt to establish whether they have records of the transaction on 11 August 2001.

Particulars

Letter from The Law Office to the third defendant dated 29 December 2004.

44. The first defendant was informed of the contents of the 29 December 2004 Letter.

Particulars

Evidence of the first defendant at the committal hearing in respect of the Nabaimu Charge on 29 April 2005 – transcript page 299, lines 30 to 32.

45. After receipt of the 29 December 2004 Letter, the first and third defendants failed to:

- (a) arrange for any forensic examination of the flight records maintained by the plaintiff to establish their veracity or otherwise; or
 - (b) obtain records maintained by the Civil Aviation Authority in PNG as to the plaintiff's flight movements; or
 - (c) undertake an inspection of the original envelope and receipt for payment for the passport photographs; or
 - (d) arrange for any forensic examination of the envelope and receipt to establish their veracity or otherwise; or
 - (e) obtain the passport application completed by Grace Nabaimu from the appropriate authorities in PNG.
46. After receipt of the 29 December 2004 Letter, the first and third defendants continued in their prosecution of the Nabaimu Charge.
47. By reason of the matters pleaded at paragraphs [11] to [45] above, the first and third defendants failed to make sufficient inquiry to be informed of the true facts after receipt of the 29 December 2004 Letter.
48. By reason of the matters pleaded at paragraphs [11] to [47] above, after receipt of the 29 December 2004 Letter, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Nabaimu Charge.
49. By reason of the matters pleaded at paragraphs [11] to [48] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the receipt of the 29 December 2004 Letter.
50. In the alternative to paragraph [49] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the receipt of the 29 December 2004 Letter based on insufficient grounds.
51. By reason of the matters pleaded at paragraphs [11] to [50] above, after receipt of the 29 December 2004 Letter, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Nabaimu Charge.
52. By reason of the matters pleaded at paragraphs [11] to [51] above, the first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge after the receipt of the 29 December 2004 Letter for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.

53. By reason of the matters pleaded at paragraphs [11] to [52] above, in continuing to prosecute the Nabaimu Charge after receipt of the 29 December 2004 Letter, the first and third defendants were motivated by malice in fact.
54. By reason of the matters pleaded at paragraphs [11] to [53] above, the third defendant's continued prosecution of the Nabaimu Charge after receipt of the 29 December 2004 Letter was not in good faith.
55. By reason of the matters pleaded at paragraphs [11] to [54], the continuation of the prosecution of the Nabaimu Charge by the first and third defendants after receipt of the 29 December 2004 Letter constituted a collateral abuse of legal process.

April 2005 Committal Hearing

56. On or about 29 April 2005, the committal hearing in respect of the Nabaimu Charge continued at the Cairns Local Court before Magistrate Black ("**the April 2005 Committal Hearing**").
57. At the April 2005 Committal Hearing, the first defendant gave evidence that:
- (a) she had been provided with a copy of the 29 December 2004 Letter;
 - (b) members of the AFP had made enquiries with the Civil Aviation Authority in PNG in relation to flight records showing the plaintiff's movements in PNG in 2001;
 - (c) she had been told that every avenue had been explored by the AFP in locating flight records from the Civil Aviation Authority in PNG showing the plaintiff's movements in PNG in 2001;
 - (d) she did not know what enquiries were in fact made with the Civil Aviation Authority in PNG;
 - (e) she would make further enquiries as to the availability of flight records from the Civil Aviation Authority in PNG;
 - (f) she had possession of the flight records maintained by the plaintiff;
 - (g) no forensic examination had been carried out on the flight records maintained by the plaintiff;
 - (h) the plaintiff's flight records stated that he was not in Port Moresby between 10 September 2001 and 16 September 2001;
 - (i) she had not made any enquiries as to the existence of refuelling records in relation to the plaintiff's aircraft;

- (j) she had not been able to locate a passport application for Grace Nabaimu;
- (k) she had seen a receipt for payment for passport photographs dated 11 August 2001;
- (l) she had seen a copy of the envelope in which the passport photographs and negatives were provided by Chem Care Pharmacy dated 11 August 2001;
- (m) she would make enquiries with the Morehead School as to the existence of any attendance register showing the dates on which Grace Nabaimu attended school; and
- (n) she objected to the plaintiff being permitted to travel to PNG whilst on bail to obtain information to defend himself against the Nabaimu Charge.

Particulars

Transcript of the April 2005 Committal Hearing at:

- page 287, lines 15 to 47;
- page 288, lines 1 to 42 and lines 54 to 57;
- page 289, lines 9 to 10;
- page 292, lines 38 to 40;
- page 293, lines 49 to 51;
- page 294, lines 24 to 25;
- page 296, lines 3 to 21;
- page 299, lines 30 to 32;
- page 300, lines 17 to 19;
- page 302, lines 28 to 45;
- page 304, lines 15 to 16; and
- page 322, lines 20 to 23.

58. The first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge following the April 2005 Committal Hearing.

April 2005 bail variation

59. On or about 29 April 2005, orders were made by consent varying the plaintiff's bail conditions to allow international travel with the consent in writing of the AFP.

Particulars

Transcript of the April 2005 Committal Hearing at page 339, lines 1 to 34.

60. On or about 4 May 2005, the plaintiff wrote to the first defendant requesting the consent of the AFP to the plaintiff travelling to PNG.

Particulars

Letter from The Law Office to the first defendant dated 4 May 2004.

61. On or about 6 May 2005, the AFP refused to grant the plaintiff permission to travel to PNG.

Particulars

Facsimile from the AFP to the plaintiff's solicitor dated 6 May 2005.

62. In refusing to grant the plaintiff permission to travel to PNG, the first and third defendants deprived the plaintiff of the opportunity to gather evidence to defend himself against the Nabaimu Charge.

May 2005 letter

63. On or about 4 May 2005, the plaintiff requested the first defendant conduct further investigations as follows:

- (a) that a statement be taken from Caroline Martens regarding whether she was residing at Korobosea in September to October 2001;
- (b) that a statement be taken from Ian Proctor regarding whether Grace Nabaimu stayed at his premises in August, September or October 2001;
- (c) that a statement be taken from Raina Martens as to whether she, or any member of her family, was living in one of the units at Korobosea at the time Grace Nabaimu alleges she was raped by the plaintiff;
- (d) as to the existence of school records identifying whether Grace Nabaimu travelled to Port Moresby in March, August or September 2001; and
- (e) as to the existence of fuel records at the Mobil depot at Daru or the Shell depot at Port Moresby for the refuelling of the plaintiff's aircraft in August and September 2001.

Particulars

Letter from The Law Office to the first defendant dated 4 May 2005.

64. On or about 27 May 2005, the first defendant swore an affidavit in which she stated, *inter alia* that on 21 April 2005 she was informed by Moses Ibsagi of the PNG Police

that the PNG Immigration Department advised that most of their records were stolen from their office in 2004 and, as such, there was no record of a passport application in the name of Grace Nabaimu.

Particulars

Affidavit of the first defendant dated 27 May 2005.

65. The first defendant did not make any enquiries of the PNG Immigration Department herself as to the availability of any passport application in the name of Grace Nabaimu.
66. On or about 6 June 2005, Moses Ibsagi of the PNG Police swore an affidavit in which he stated, *inter alia*, that members of the AFP had located Grace Nabaimu's passport application at some time between January 2004 and May 2004 and had retained possession of it and that he advised the first defendant of this on or about 13 May 2004.

Particulars

Affidavit of Moses Ibsagi dated 6 June 2005.

August 2005 Committal Hearing

67. On 30 August 2005, the committal hearing in respect of the Nabaimu Charge continued at the Cairns Local Court before Magistrate Black ("**the August 2005 Committal Hearing**").
68. The plaintiff requested Raina Martens be called by the third defendant to give evidence at the August 2005 Committal Hearing and the third defendant declined this request.

Particulars

Transcript of the August 2005 Committal Hearing at page 352, lines 37 to 43.

69. At the August 2005 Committal Hearing, the first defendant gave evidence, *inter alia*, that:
 - (a) no attendance records were kept by Morehead School; and
 - (b) further enquiries had been made with the Civil Aviation Authority in PNG as to flight records and no such records were located.

Particulars

Transcript of the August 2005 Committal Hearing at page 353, lines 23 to 36 and lines 46 to 51.

70. The first defendant did not make her own enquiries with the Civil Aviation Authority in PNG as to the existence of flight records.
71. The first defendant did not make her own enquiries with the Morehead School as to the existence of attendance records.
72. Between March 2001 and August 2005, the Civil Aviation Authority in PNG held and maintained records as to all flights taken by the plaintiff in PNG in the period from March 2001 to September 2001.

Particulars

Aerocharge invoices issued by the Civil Aviation Authority in PNG in relation to aircraft registration number P2RHO.

Affidavit of Bradley Shallies of the AFP dated 18 May 2009.

73. At the August 2005 Committal Hearing, Moses Ibsagi gave evidence, *inter alia*, that an application for a passport in the name of Grace Nabaimu was located and retained by members of the AFP.

Particulars

Transcript of the August 2005 Committal Hearing at page 409, lines 1 to 25.

74. No evidence was given by the first defendant or any other members of the AFP at the August 2005 Committal Hearing or at any time thereafter to refute the evidence of Moses Ibsagi.
75. The first and third defendants did not produce any passport application in the name of Grace Nabaimu at the August 2005 Committal Hearing or at any time thereafter.
76. At the August 2005 Committal Hearing, Ian Proctor gave evidence, *inter alia*, that:
 - (a) the plaintiff and Grace Nabaimu stayed at his house in August 2001;
 - (b) on that occasion Grace Nabaimu stayed the night at his house in the lounge room with several other women and the plaintiff slept in a separate room;
 - (c) the house was unstable and would shake when people moved around;

- (d) he did not hear any movement in the house on the night Grace Nabaimu and the plaintiff stayed; and
- (e) the plaintiff had had a volatile relationship with Raina Martens.

Particulars

Transcript of the August 2005 Committal Hearing at:

- page 441, lines 1 to 57;
- page 442, lines 1 to 48;
- page 443, lines 1 to 30 and lines 48 to 57;
- page 444, lines 1 to 8;
- page 445, lines 1 to 2;
- page 448, lines 14 to 24; and
- page 449, lines 8 to 15.

77. The evidence given by Ian Proctor at the August 2005 Committal Hearing was inconsistent with the December 2003 Statement and the April 2004 Statement.
78. The first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge following the August 2005 Committal Hearing.
79. The August 2005 Committal Hearing was adjourned until 8 September 2005.
80. By reason of the matters pleaded at paragraphs [11] to [78] above, the first and third defendants failed to make sufficient inquiry to be informed of the true facts after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing.
81. By reason of the matters pleaded at paragraphs [11] to [80] above, after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Nabaimu Charge.
82. By reason of the matters pleaded at paragraphs [11] to [81] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing.
83. In the alternative to paragraph [82] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing based on insufficient grounds.

84. By reason of the matters pleaded at paragraphs [11] to [83] above, after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Nabaimu Charge.
85. By reason of the matters pleaded at paragraphs [11] to [84] above, the first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
86. By reason of the matters pleaded at paragraphs [11] to [85] above, in continuing to prosecute the Nabaimu Charge after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing, the first and third defendants were motivated by malice in fact.
87. By reason of the matters pleaded at paragraphs [11] to [86] above, the third defendant's continued prosecution of the Nabaimu Charge after the April 2005 Committal Hearing and/or the August 2005 Committal Hearing was not in good faith.
88. By reason of the matters pleaded at paragraphs [11] to [87], the continuation of the prosecution of the Nabaimu Charge by the first and third defendants after receipt of the April 2005 Committal Hearing and/or the August 2005 Committal Hearing constituted a collateral abuse of legal process.

September 2005 Committal Hearing

89. On 8 September 2005, the committal hearing in respect of the Nabaimu Charge continued at the Cairns Local Court before Magistrate Black (**"the September 2005 Committal Hearing"**).
90. At the September 2005 Committal Hearing, Caroline Martens gave evidence, *inter alia*, that:
- (a) she gave birth to her daughter on 25 September 2001;
 - (b) in August 2001 she moved into the plaintiff's unit at Korobosea;
 - (c) in August 2001, the plaintiff's unit at Korobosea did not have water;
 - (d) in August 2001, the plaintiff's unit at Korobosea did not have any power;
 - (e) she met Grace Nabaimu in Port Moresby in August 2001;

- (f) Grace Nabaimu told her that she flew into Port Moresby on Friday and had stayed the night at Ian Proctor's house; and
- (g) Grace Nabaimu stayed the night with her at the plaintiff's house at Korobosea.

Particulars

Transcript of the September 2005 Committal Hearing at:

- page 483, lines 14 to 17;
- page 484, lines 46 to 53;
- page 487, lines 35 to 36;
- page 497, lines 44 to 57;
- page 498, lines 5 to 57;
- page 502, lines 23 to 57;
- page 503, lines 1 to 57; and
- page 504, lines 1 to 43.

91. The evidence given by Caroline Martens at the September 2005 Committal Hearing was inconsistent with the December 2003 Statement and the April 2004 Statement.
92. After the September 2005 Committal Hearing, the first defendant did not make any enquiries with utility providers in PNG as to the availability of water or power at the plaintiff's unit at Korobosea in August 2001.
93. The first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge following the September 2005 Committal Hearing.
94. By reason of the matters pleaded at paragraphs [11] to [92] above, after the September 2005 Committal Hearing, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Nabaimu Charge.
95. By reason of the matters pleaded at paragraphs [11] to [94] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the September 2005 Committal Hearing.
96. In the alternative to paragraph [95] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Nabaimu Charge after the September 2005 Committal Hearing based on insufficient grounds.
97. By reason of the matters pleaded at paragraphs [11] to [96] above, after the September 2005 Committal Hearing, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Nabaimu Charge.

98. By reason of the matters pleaded at paragraphs [11] to [97] above, the first and third defendants continued to prosecute the plaintiff in respect of the Nabaimu Charge after the September 2005 Committal Hearing for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.

99. By reason of the matters pleaded at paragraphs [11] to [98] above, in continuing to prosecute the Nabaimu Charge after the September 2005 Committal Hearing, the first and third defendants were motivated by malice in fact.

100. By reason of the matters pleaded at paragraphs [11] to [99] above, the third defendant's continued prosecution of the Nabaimu Charge after the September 2005 Committal Hearing was not in good faith.

101. By reason of the matters pleaded at paragraphs [11] to [100], the continuation of the prosecution of the Nabaimu Charge by the first and third defendants after the September 2005 Committal Hearing constituted a collateral abuse of legal process.

Trial in relation to the Nabaimu Charge

102. Between 23 and 30 October 2006, the trial of the Nabaimu Charge took place at the Cairns Local Court ("**the Nabaimu Trial**").

103. At the Nabaimu Trial, the third defendant suggested to the plaintiff that his pilot's log was a forgery.

Particulars

Transcript of the Nabaimu Trial at pages 343 to 346.

104. At the Nabaimu Trial, the third defendant did not call any evidence from any expert as to the legitimacy or otherwise of entries in the plaintiff's pilot's log.

105. The third defendant did not have any proper basis for the allegation made at the Nabaimu Trial that the plaintiff's pilot's log was a forgery.

106. On or about 30 October 2006, the plaintiff was found guilty of the Nabaimu Charge.

107. The plaintiff was sentenced to five years and six months' imprisonment with a non-parole period of three years.

108. On or about 30 October 2006, the plaintiff was committed to prison.

109. By reason of the matters pleaded at paragraphs [11] to [105] above, the imprisonment of the plaintiff was a false imprisonment.

School attendance records

110. On or about 8 September 2009, Grace Nabaimu swore an affidavit annexing records of attendance of the Morehead Primary School for the year 2001.

Particulars

Affidavit of Grace Nabaimu dated 8 September 2009.

111. The school attendance records annexed to the affidavit of Grace Nabaimu dated 8 September 2009 on their face show that Grace Nabaimu attended Morehead Primary School on 10, 11, 12, 13 and 14 September 2001.

Acquittal of the plaintiff

112. On or about 9 April 2009, the Commonwealth Attorney General referred the plaintiff's conviction in respect of the Nabaimu Charge for further appeal to the Court of Appeal under section 672A of the *Criminal Code* 1899 (Qld).
113. On or about 13 November 2009, the Court of Appeal made orders allowing the plaintiff's appeal and made orders that the plaintiff's conviction in respect of the Nabaimu Charge is quashed and the order for imprisonment set aside.
114. On or about 26 May 2009, the plaintiff was released from prison.

Damages

115. The prosecution of the plaintiff in respect of the Nabaimu Charge carried an imputation that was necessarily and naturally defamatory to the plaintiff in that it involved allegations of a criminal nature against the plaintiff in relation to sexual intercourse with a child.
116. The plaintiff suffered damage to his reputation as a result of the Nabaimu Charge.
117. The prosecution of the plaintiff in respect of the Nabaimu Charge and/or the continuance of the prosecution of the plaintiff in respect of the Nabaimu Charge following the receipt of the December 2004 Letter and/or the April 2005 Committal Hearing and/or the August 2005 Committal Hearing and/or the September 2005 Committal Hearing caused pecuniary loss to the plaintiff as follows:
- (a) The plaintiff incurred legal costs in defending the Nabaimu Charge.

- (b) In August 2004, the plaintiff operated an aircraft charter business in PNG through his company, Airwest Limited.
- (c) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to manage the aircraft charter business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Airwest Limited.
- (d) In August 2004, the plaintiff operated an earthmoving business in PNG through his company, Islands Field Service Limited and Kundu Consultants Limited.
- (e) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to manage the earthmoving business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Islands Field Service Limited and Kundu Consultants Limited.
- (f) In August 2004, the plaintiff operated a security services business in Port Moresby through his company, Phantom Security Services Limited.
- (g) As at August 2004, Phantom Security Services Limited was in negotiations to sell the security services business.
- (h) Following the plaintiff's arrest in respect of the Nabaimu Charge, Phantom Security Services Limited was unable to complete the sale of its business.
- (i) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to manage the security services business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Phantom Security Services.
- (j) In August 2004, the plaintiff operated an engineering and construction business through his company, Kundu Consultants Limited.
- (k) As at August 2004, Kundu Consultants Limited was involved in construction works to the value of approximately 14 million kina.
- (l) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to manage the engineering and construction business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Kundu Consultants Limited.
- (m) As at August 2004, the plaintiff's company, Pioneer Health Services Limited, had obtained an order in the Supreme Court at Port Moresby for the payment to it of approximately 5.3 million kina including interest from the Fly River Provincial Government.

(n) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to recover this judgment amount and the judgment amount was misappropriated by the plaintiff's business partner.

(o) As at August 2004, the plaintiff operated a business providing portable commercial freezers, generators, fishing nets, outboard motors, dinghies and eskies to PNG locals to catch and store fish for the plaintiff to sell.

(p) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to manage his fishing business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by the plaintiff.

(q) As at August 2004, the plaintiff was the registered proprietor of four aircraft, as follows:

- (i) a Piper Chieftain PA 31.350T aircraft, registration number VHAFW;
- (ii) a Cessna 206U aircraft, registration number P2KAS;
- (iii) a Cessna 182 aircraft, registration number P2RHO; and
- (iv) a Bell helicopter 47G 3B2, registration number VHMIK.

The plaintiff also leased a Cessna 206 aircraft, registration number P2SER with an option to purchase.

(**"the Aircraft"**)

(r) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to maintain the Aircraft.

(s) The Aircraft fell into disrepair and lost value as follows:

- (i) the Piper Chieftain aircraft suffered corrosion damage as a result of a lack of maintenance and will cost approximately \$500,000 to repair;
- (ii) the Cessna 206U aircraft and the Cessna 182 aircraft were broken into in PNG, had equipment stolen and were stripped for parts without the plaintiff's authority; and
- (iii) the Bell helicopter suffered corrosion damage as a result of a lack of maintenance and is unable to be repaired.

(t) As at August 2004, the plaintiff was the registered proprietor of ten ships in PNG, as follows:

- (i) the shipping vessel MV Pacori;
- (ii) the shipping vessel MV Bakaup;
- (ii) the shipping vessel Buka Princess;
- (iv) the shipping vessel Western Flyer;

- (v) the marine vessel Buka 1;
 - (vi) the marine vessel Buka 2;
 - (vii) the marine vessel Buka 3;
 - (viii) the marine vessel Buka 4;
 - (ix) the marine vessel Buka 5; and
 - (x) the marine vessel Buka 6.
- (u) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to maintain these ships and ensure they were securely moored.
- (v) The ships were sunk, lost or stolen with the exception of the MV Bakaup which has suffered significant corrosion damage due to a lack of maintenance and is likely unable to be repaired.
- (w) As at August 2004, the plaintiff and/or his company, Pioneer Health Services Limited, was the registered proprietor of real property in PNG as follows:
- (i) a 22 hectare farm including land and improvements at 17 Mile, Goldie River, Central Province;
 - (ii) land and improvements at section 96, allotment 9, Moonbi Street, Korobosea, National Capital District;
 - (iii) land and improvements at section 481, allotment 14, Rainbow Estate, National Capital District;
 - (iv) a 10 hectare area of land at Tapila, Western Province including a marine base.
- The plaintiff also held a lease in respect of:
- (i) land and improvements at 8 Mile, National Capital District; and
 - (ii) an office complex at Hohola, Port Moresby, National Capital District.
- (x) Following his arrest in respect of the Nabaimu Charge, the plaintiff's rights in respect of the real property were lost through squatters claiming adverse possession of the properties under PNG laws.
- (y) As at August 2004, the plaintiff was the registered proprietor of the land and improvements at 6 Sussex Street, Trinity Park, Cairns ("**the Cairns Property**").
- (z) Following his arrest in respect of the Nabaimu Charge, the plaintiff was unable to travel to PNG to access funds required to pay the mortgage in respect of the Cairns Property.
- (aa) The Cairns Property was sold by mortgagee sale in around late 2005.

(bb) As at August 2004, the plaintiff owned the following excavation, engineering, fishing and farming equipment in PNG:

- (i) a Komatsu D65E dozer with a A&T blade, rear rippers and rops cab;
- (ii) a Komatsu D65E dozer with a bull tilt blade, rear rippers and rops cab;
- (iii) a Komatsu D155 dozer with a bull tilt blade, rear rippers and rops cab;
- (iv) a Komatsu D45 dozer with tilt blade and rippers;
- (v) a Komatsu JV100A smooth drum vibrating roller with a rops canopy;
- (vi) a Mitsubishi 200 excavator (20 tonne) with 3 buckets, being 450mm, 600mm and 900mm;
- (vii) a Komatsu P.C. 300 excavator (30 tonne) with 3 buckets, being 450mm, 600mm and 900mm;
- (viii) a JCB 3CX 4x4 backhoe/loader, side shift with rops cab 4 in 1 bucket, forks, and 4 buckets;
- (ix) a Ford 550 4x4 backhoe/loader side shift with rops cab 4 in 1 bucket, forks and 3 buckets;
- (x) a Cat grader 12ft blade, tilt with rear rippers and spare wheel and carrier;
- (xi) a Komatsu grader 14ft blade, title with rear rippers and spare wheel and carrier;
- (xii) a Cat articulated I.T 18 (tool carrier) loader with 4 in 1 bucket and rear rippers;
- (xiii) 4 x Isuzu 6x6 dump trucks with fixed rock rear gate dump bodies;
- (xiv) an Isuzu 4x4 dump truck with fixed rock rear gate dump body;
- (xv) a Nissan diesel V8 (bonnet model) 10m³ dump truck with swinging tailgate;
- (xvi) a Nissan diesel V8 (bonnet model) water truck with 18,000 litre tanks and pumps;
- (xvii) a Nissan diesel V8 (cab over model) cab chassis 6x6;
- (xviii) a U.D. Nissan diesel 6x4 prime mover with hydraulics;
- (xix) a tri-axle low loader with rear ramps (trailer);
- (xx) an Isuzu 4x4 water truck with 8,000 litre tank and pumps;
- (xxi) a tandem heavy duty bobcat trailer, 6 tonne, with ramps;
- (xxii) a case bob cat with rops cab and 4 in 1 bucket;
- (xxiii) a Mazda crew cab T3500 diesel service truck;
- (xxiv) 3 x Nissan Patrol diesel 4x4 utes with tray dropside bodies;
- (xxv) a Tandano 6x4 20 tonne hyd extenda swivel crane on U.D. diesel cab chassis;
- (xxvi) a Komatsu diesel 2.5 tonne forklift on single drive wheels;
- (xxvii) an Isuzu 4x2 diesel 1.8m³ concrete mini mix agitator;
- (xxviii) a Komatsu D21 mini dozer with hyd tilt blade, rear 3.P.L and PTO and rops canopy;
- (xxix) a heavy duty towed concrete mixer, 4 wheel, self loading 1m³, diesel powered;
- (xxx) a light burn heavy duty towable concrete mixer, diesel powered;
- (xxxi) a Lincoln 500 A.S. diesel powered welder with ARC cutting/gouging gear;
- (xxxii) a 400 diesel powered welder on trailer with mig and welding gear;

- (xxxiii) 4 x diesel powered 25KVA 3 phase generators, silenced with skids and tank;
- (xxxiv) a diesel powered 10 KVA generator, 3 phase, silenced with skids and tank;
- (xxxv) 8 x Yanmar diesel 5 KVA generators, portable, single phase;
- (xxxvi) a diesel skid mounted 100mm water pump with pumping frame for water truck;
- (xxxvii) a diesel Atlas Copco 120 CFM trailer mounted compressor with rock drills and hammer;
- (xxxviii) miscellaneous workshop equipment and service logistics including hydraulic presses, 240 volt and 415 volt welders, compressors, power tools, specialist tools, etc.;
- (xxxix) 25 portable commercial freezers, generators, more than 50 fishing nets, 30 outboard motors and dinghies, 500 litre and 1000 litre eskies; and
- (xl) 11 Ford and Massey Ferguson tractors, supporting equipment and accessories.

("the Equipment")

- (cc) Following the plaintiff's arrest in respect of the Nabaimu Charge, the plaintiff was unable to maintain the Equipment and ensure the Equipment was securely stored.
- (dd) The Equipment was stolen and the plaintiff was unable to take any action to retrieve the Equipment.
- (ee) As at August 2004, the plaintiff, through his company Kundu Consultants Limited was engaged in litigation in PNG against the National Government of PNG seeking payment of approximately 17 million kina including interest plus costs in respect of the provision of barges and services (**"the Kundu Consultants Claim"**).
- (ff) Following the plaintiff's arrest in respect of the Nabaimu Charge, the plaintiff on behalf of Kundu Consultants Limited was unable to prosecute the Kundu Consultants Claim and the proceedings were dismissed for want of prosecution.
- (gg) The Kundu Consultants Claim is now statute barred by operation of PNG law.
- (hh) As at August 2004, the plaintiff was engaged in litigation in PNG against the Department of Transport and Marine seeking payment of approximately 2 million kina plus interest and costs in relation to a ship stolen from him (**"the Department of Transport Claim"**).
- (ii) Following the plaintiff's arrest in respect of the Nabaimu Charge, the plaintiff was unable to prosecute the Department of Transport Claim and the proceedings were dismissed for want of prosecution.

(jj) The Department of Transport Claim is now statute barred by operation of PNG law.

118. By reason of the matters pleaded at paragraphs [11] to [117] above, the plaintiff is entitled to an order for damages against each of the defendants.

119. By reason of the matters pleaded at paragraphs [11] to [111] above, each of the first and third defendants acted with a contumelious disregard for the rights of the plaintiff.

120. The plaintiff is entitled to an order for exemplary damages against each of the defendants.

THE MUSA CHARGE

The August 2004 Statement

121. On or about 5 August 2004, the first defendant obtained a statement from Daphne Musa (“**the August 2004 Statement**”) in which Daphne Musa alleged that:

- (a) her date of birth is 23 September 1981;
- (b) she was 17 years old in 1998;
- (c) at the end of 1996, the plaintiff stopped her in the street and told her he would shoot her dead if she did not come with him;
- (d) the plaintiff took her to lunch at Big Rooster before taking her to his boat;
- (e) the plaintiff raped her on one occasion on his boat at the end of 1996;
- (f) the boat was about 10 metres long and was painted red on the outside;
- (g) whilst on the boat, she told the plaintiff she had to go home as her family would start to look for her; and
- (h) she told her cousin sister, Susan, about the rape but no one else.

Particulars

Statement of Daphne Musa dated 5 August 2005.

122. Before making the August 2004 Statement, Daphne Musa had not made any complaint to either the PNG Police or the AFP in relation to the conduct of the plaintiff.

123. Before the plaintiff was charged with the Musa Charge, the defendant did not make any inquiry as to the existence and location of the plaintiff's boat as referred to in the August 2004 Statement at the time of the alleged rape.

The affidavit of the first defendant dated 24 August 2004

124. On or about 24 August 2004, the first defendant swore an affidavit in which, *inter alia*, she stated that:
- (a) unspecified enquiries conducted by the AFP identified a further alleged victim who was raped by the plaintiff, being Daphne Musa;
 - (b) a statement was obtained from Daphne Musa in which Daphne Musa said she met the plaintiff in late 1996 when she was 15 years old and that the plaintiff had raped her on his boat;
 - (c) the plaintiff had fathered in excess of 16 children; and
 - (d) one of the plaintiff's children, Tracey Martens, was taken by the plaintiff from her mother without that mother's permission.

Particulars

Affidavit of the first defendant dated 24 August 2004.

125. Statements made by the first defendant in her affidavit of 24 August 2004 were incorrect and/or misleading in that:
- (a) as at August 2004, the plaintiff had fathered eleven children, and adopted a further five children according to the customs of PNG; and
 - (b) custody of Tracey Martens was awarded to the plaintiff by order of the District Court of PNG dated 21 May 2004.
126. By reason of the matters pleaded at paragraphs [121] to [125] above, the plaintiff was wrongfully arrested by the first defendant in respect of the Musa Charge.
127. By reason of the matters pleaded at paragraphs [121] to [125] above, the first defendant failed to make sufficient inquiry to be informed of the true facts before charging the plaintiff with the Musa Charge.
128. By reason of the matters pleaded at paragraphs [121] to [127] above, the first defendant did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge at the time that charge was laid.

129. By reason of the matters pleaded at paragraphs [121] to [128] above, the first defendant did not honestly form the view that there was a proper case for prosecution in respect of the Musa Charge.
130. In the alternative to paragraph [129] above, the first defendant formed the view that there was a proper case for prosecution in respect of the Musa Charge based on insufficient grounds.
131. By reason of the matters pleaded at paragraphs [121] to [130] above, the first defendant lacked reasonable and probable cause in charging the plaintiff with the Musa Charge.
132. By reason of the matters pleaded at paragraphs [121] to [131] above, the first defendant prosecuted the plaintiff in respect of the Musa Charge for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
133. By reason of the matters pleaded at paragraphs [121] to [132] above, in charging the plaintiff with the Musa Charge, the first defendant was motivated by malice in fact.
134. By reason of the matters pleaded at paragraphs [121] to [133], the charging of the plaintiff with the Musa Charge by the first defendant constituted a collateral abuse of legal process.

The September 2004 Statement

135. On or about 14 September 2004, the first defendant obtained a further statement from Daphne Musa (“**the September 2004 Statement**”) in which Daphne Musa alleged that:
- (a) the contents of the August 2004 Statement were true;
 - (b) she first met the plaintiff in 1995;
 - (c) the plaintiff had sexual intercourse with her on two occasions on his boat;
 - (d) both incidents occurred in late 1995; and
 - (e) on both occasions, the plaintiff took both her and her mother to his boat.

Particulars

Statement of Daphne Musa dated 14 September 2004.

Inconsistencies between the August 2004 Statement and the September 2004 Statement

136. The August 2004 Statement is inconsistent with the September 2004 Statement in that, *inter alia*:

- (a) in the August 2004 Statement, Daphne Musa said that the plaintiff raped her on one occasion, whereas in the September 2004 Statement she said that the plaintiff raped her on two occasions;
- (b) in the August 2004 Statement, Daphne Musa said she was raped at the end of 1996, whereas in the September 2004 Statement she said she was raped in late 1995;
- (c) in the August 2004 Statement, Daphne Musa did not mention any other persons being present when she was raped and said she had to go home as her family would start to look for her, whereas in the September 2004 Statement she said her mother was present on the boat on both occasions when she was raped; and
- (d) in the August 2004 Statement, Daphne Musa said the plaintiff stopped her on the road and threatened to shoot her before taking her to his boat, whereas in the September 2004 Statement she said she went to the boat with her mother when the plaintiff came to collect them in his car.

137. After the first defendant was in receipt of the September 2004 Statement, she failed to obtain any, or any proper, explanation from Daphne Musa as to the inconsistencies between the August 2004 Statement and the September 2004 Statement.

138. By reason of the matters pleaded at paragraphs [121] to [137] above, the first defendant failed to make sufficient inquiry to be informed of the true facts after receipt of the September 2004 Statement.

139. By reason of the matters pleaded at paragraphs [121] to [138] above, the first defendant did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge after receipt of the September 2004 Statement.

140. By reason of the matters pleaded at paragraphs [121] to [139] above, the first defendant did not honestly form the view that there was a proper case to continue the prosecution of the Musa Charge after receipt of the September 2004 Statement.

141. In the alternative to paragraph [140] above, the first defendant formed the view that there was a proper case to continue the prosecution of the Musa Charge after receipt of the September 2004 Statement based on insufficient grounds.

142. By reason of the matters pleaded at paragraphs [121] to [141] above, the first defendant lacked reasonable and probable cause in continuing to prosecute the

plaintiff in respect of the Musa Charge after the receipt of the September 2004 Statement.

143. By reason of the matters pleaded at paragraphs [121] to [142] above, the first defendant continued to prosecute the plaintiff in respect of the Musa Charge after receipt of the September 2004 Statement for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
144. By reason of the matters pleaded at paragraphs [121] to [143] above, in continuing to prosecute the plaintiff in respect of the Musa Charge after the receipt of the September 2004 Statement, the first defendant was motivated by malice in fact.
145. By reason of the matters pleaded at paragraphs [121] to [144], the continuation of the prosecution of the Musa Charge by the first defendant after receipt of the September 2004 Statement constituted a collateral abuse of legal process.

December 2004 Committal Hearing

146. On a date between 24 August 2004 and 13 December 2005, the third defendant made a decision to prosecute the plaintiff in respect of the Musa Charge.
147. On or about 13 December 2004, the plaintiff appeared at a committal hearing in respect of the Musa Charge at the Cairns Local Court before Magistrate Black (“**the December 2004 Committal Hearing**”).
148. At the December 2004 Committal Hearing, the third defendant amended the Musa Charge to read “*That on a date unknown between 1 December 1995 and 30 December 1996, in Port Moresby, Papua New Guinea, Frederick Arthur MARTENS did engage in sexual intercourse with a person who was under 16 years of age, namely Daphne MUSA, contrary to section 50BA of the Crimes Act 1914*”.
149. At the December 2004 Committal Hearing, Daphne Musa gave evidence that:
- (a) the plaintiff raped her on his boat on two occasions with her mother present;
 - (b) both incidents occurred in around December 1995 or 1996;
 - (c) the second incident occurred on Christmas Day;
 - (d) she was born in 1983;
 - (e) she used to think she was born in 1981;
 - (f) she only discovered she was born in 1983 that year;

(g) both incidents occurred in December 1995; and

(h) the boat was called “Freedom”.

Particulars

Transcript of the December 2004 Committal Hearing at:

- page 6, lines 19 to 57;
- page 7, lines 1 to 57;
- page 9, lines 50 to 57;
- page 10, lines 1 to 57;
- page 11, lines 56 to 57;
- page 12, lines 1 to 6;
- page 17, lines 19 to 47;
- page 18, lines 6 to 19;
- page 19, lines 1 to 49;
- page 20, lines 35 to 57;
- page 23, lines 5 to 14;
- page 25, lines 41 to 57;
- page 26, lines 1 to 40; and
- page 38, lines 3 to 8.

150. The evidence of Daphne Musa at the December 2004 Committal Hearing was internally inconsistent and inconsistent with the August 2004 Statement and the September 2004 Statement.

151. At the December 2004 Committal Hearing, the first and third defendants were notified by the plaintiff that the vessel M.V. “Freedom” was stolen in 1993 and not recovered until December 1997 and was the subject of proceedings numbered OS 546 of 1997 in the National Court of Justice in PNG between the plaintiff, Gordon Karlile, Joe Seeto, the Independent State of PNG and Jodi Pty Limited.

Particulars

Transcript of the December 2004 Committal Hearing at page 62, lines 1 to 16.

152. The first and third defendants continued to prosecute the plaintiff in respect of the Musa Charge following the December 2004 Committal Hearing.

153. By reason of the matters pleaded at paragraphs [121] to [152] above, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge after the December 2004 Committal Hearing.

154. By reason of the matters pleaded at paragraphs [121] to [153] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Musa Charge after the December 2004 Committal Hearing.
155. In the alternative to paragraph [154] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Musa Charge after the December 2004 Committal Hearing based on insufficient grounds.
156. By reason of the matters pleaded at paragraphs [121] to [155] above, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the plaintiff in respect of the Musa Charge after the December 2004 Committal Hearing.
157. By reason of the matters pleaded at paragraphs [121] to [156] above, the first and third defendants continued to prosecute the plaintiff in respect of the Musa Charge after the December 2004 Committal Hearing for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
158. By reason of the matters pleaded at paragraphs [121] to [157] above, in continuing to prosecute the plaintiff in respect of the Musa Charge after the December 2004 Committal Hearing, the first and third defendants were motivated by malice in fact.
159. By reason of the matters pleaded at paragraphs [121] to [158] above, the third defendant's continued prosecution of the Musa Charge after the December 2004 Committal Hearing was not in good faith.
160. By reason of the matters pleaded at paragraphs [121] to [159], the continuation of the prosecution of the Musa Charge by the first and third defendants after the December 2004 Committal Hearing constituted a collateral abuse of legal process.

December 2004 bail application

161. On or about 15 December 2004, the plaintiff applied for a variation of his bail conditions to enable him to travel to PNG to obtain evidence to defend himself against the Musa Charge.

Particulars

Application for variation of bail conditions made before Magistrate Black at the Cairns Local Court on 15 December 2004.

162. The first and third defendants opposed the plaintiff's application for a variation of his bail conditions to enable him to travel to PNG.

163. A variation of the plaintiff's bail conditions to enable him to travel to PNG was refused.

164. In opposing the plaintiff's application for a variation of his bail conditions the first and third defendants deprived the plaintiff of the opportunity to gather evidence to defend himself against the Musa Charge.

29 December 2004 Letter

165. On or about 14 December 2004, the plaintiff's solicitor provided the third defendant with:

- (a) copies of files of Greg Toop, solicitor, in relation to Court proceedings filed in PNG between the plaintiff, Gordon Karlile, Joe Seeto, the Independent State of PNG and Jodi Pty Limited in relation to the vessel known as MV "Bukaup" or MV "Freedom"; and
- (b) photographs of MV "Freedom" at the arrest of that vessel by the PNG Police on 3 December 1997.

Particulars

Meeting between John Magoffin of The Law Office and Andrew Lloyd of the third defendant on or about 14 December 2004.

166. On or about 29 December 2004, the plaintiff's solicitor sent a letter to the third defendant ("**the 29 December 2004 Letter**"), stating, *inter alia*:

- (a) Court proceedings had been commenced by the plaintiff against Gordon Karlile, Joe Seeto, the Independent State of PNG and Jodi Pty Limited following the seizure of the vessel M.V. "Freedom" in December 1997 after that vessel disappeared in the early 1990s; and
- (b) the original files maintained by Greg Toop in relation to those proceedings may be available for inspection.

Particulars

Letter from The Law Office to the third defendant dated 29 December 2004.

167. The first defendant was informed of the contents of the 29 December 2004 Letter.

Particulars

Evidence of the first defendant at the committal hearing in respect of the Musa Charge on 29 April 2005 – transcript page 299, lines 30 to 32.

168. After receipt of the 29 December 2004 Letter, the first and third defendants failed to:
- (a) obtain a copy of any summons or other documents filed by the plaintiff in the PNG Courts in relation to the ownership of the vessel M.V. "Freedom"; or
 - (b) arrange for the inspection of the files of Greg Toop in relation to the Court proceedings filed by the plaintiff in relation to the ownership of the vessel MV "Freedom".
169. After receipt of the 29 December 2004 Letter, the first and third defendants continued in their prosecution of the Musa Charge.
170. By reason of the matters pleaded at paragraphs [121] to [169] above, the first and third defendants failed to make sufficient inquiry to be informed of the true facts after receipt of the 29 December 2004 Letter.
171. By reason of the matters pleaded at paragraphs [121] to [170] above, after receipt of the 29 December 2004 Letter, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge.
172. By reason of the matters pleaded at paragraphs [121] to [171] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Musa Charge after receipt of the 29 December 2004 Letter.
173. In the alternative to paragraph [172] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Musa Charge after receipt of the 29 December 2004 Letter based on insufficient grounds.
174. By reason of the matters pleaded at paragraphs [121] to [173] above, after receipt of the 29 December 2004 Letter, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Musa Charge.
175. By reason of the matters pleaded at paragraphs [121] to [174] above, the first and third defendants continued to prosecute the plaintiff in respect of the Musa Charge after receipt of the 29 December 2004 Letter for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.

176. By reason of the matters pleaded at paragraphs [121] to [175] above, in continuing to prosecute the Musa Charge after receipt of the 29 December 2004 Letter, the first and third defendants were motivated by malice in fact.
177. By reason of the matters pleaded at paragraphs [121] to [176] above, the third defendant's continued prosecution of the Musa Charge after receipt of the 29 December 2004 Letter was not in good faith.
178. By reason of the matters pleaded at paragraphs [121] to [177], the continuation of the prosecution of the Musa Charge by the first and third defendants after receipt of the 29 December 2004 Letter constituted a collateral abuse of legal process.

April 2005 Committal Hearing

179. On or about 29 April 2005, the committal hearing in respect of the Musa Charge continued at the Cairns Local Court before Magistrate Black ("**the April 2005 Committal Hearing**").
180. At the April 2005 Committal Hearing, the first defendant gave evidence that:
- (a) she had been provided with a copy of the 29 December 2004 Letter;
 - (b) enquiries had been made in relation to the location of the vessel M.V. "Freedom" and the existence of any Court documents relating to that boat;
 - (c) enquires as to the location of the vessel M.V. "Freedom" revealed that the vessel was not in Port Moresby Harbour at the time Daphne Musa alleges she was raped by the plaintiff;
 - (d) she had seen copies of Court records relating to the vessel M.V. "Freedom" showing that the vessel was purchased in Lae in 1997; and
 - (e) she objected to the plaintiff being permitted to travel to PNG whilst on bail to obtain information to defend himself against the Musa Charge.

Particulars

Transcript of the April 2005 Committal Hearing at:

- page 286, lines 16 to 57;
- page 297, lines 1 to 23;
- page 308, lines 40 to 57;
- page 309, lines 1 to 6;
- page 322, lines 20 to 23; and
- page 332, lines 13 to 46.

181. The first and third defendants continued to prosecute the plaintiff in respect of the Musa Charge following the April 2005 Committal Hearing.

April 2005 bail variation

182. On or about 29 April 2005, orders were made by consent varying the plaintiff's bail conditions to allow international travel with the consent in writing of the AFP.

Particulars

Transcript of the April 2005 Committal Hearing at page 339, lines 1 to 34.

183. On or about 4 May 2005, the plaintiff wrote to the first defendant requesting the consent of the AFP to the plaintiff travelling to PNG.

Particulars

Letter from The Law Office to the first defendant dated 4 May 2005.

184. On or about 6 May 2005, the AFP refused to grant the plaintiff permission to travel to PNG.

Particulars

Letter from the AFP to the plaintiff's solicitor dated 6 May 2005.

185. In refusing to grant the plaintiff permission to travel to PNG, the first and third defendants deprived the plaintiff of the opportunity to gather evidence to defend himself against the Musa Charge.
186. By reason of the matters pleaded at paragraphs [121] to [185] above, after the April 2005 Committal Hearing, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge.
187. By reason of the matters pleaded at paragraphs [121] to [186] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Musa Charge after the April 2005 Committal Hearing.
188. In the alternative to paragraph [187] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Musa Charge after the April 2005 Committal Hearing based on insufficient grounds.
189. By reason of the matters pleaded at paragraphs [121] to [188] above, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Musa Charge after the April 2005 Committal Hearing.

190. By reason of the matters pleaded at paragraphs [121] to [189] above, the first defendant continued to prosecute the plaintiff in respect of the Musa Charge after the April 2005 Committal Hearing for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.
191. By reason of the matters pleaded at paragraphs [121] to [190] above, in continuing to prosecute the Musa Charge after the April 2005 Committal Hearing, the first and third defendants were motivated by malice in fact.
192. By reason of the matters pleaded at paragraphs [121] to [191] above, the third defendant's continued prosecution of the Musa Charge after the April 2005 Committal Hearing was not in good faith.
193. By reason of the matters pleaded at paragraphs [121] to [192], the continuation of the prosecution of the Musa Charge by the first and third defendants after the April 2005 Committal Hearing constituted a collateral abuse of legal process.

May 2005 letter

194. On or about 4 May 2004, the plaintiff requested the first defendant conduct further investigations as follows:
- (a) as to whether a statement can be taken from the Harbour Master at Voco Point or other development officers as to the whereabouts of the vessel M.V. "Freedom" or M.V. "Bakaup"; and
 - (b) as to whether a statement can be taken from Joe Seeto as to the whereabouts of the vessel M.V. "Freedom" or M.V. "Bakaup" in December 1995 to January 1996.

Particulars

Letter from The Law Office to the first defendant dated 4 May 2005.

195. On or about 27 May 2005, the first defendant swore an affidavit in which she stated, *inter alia* that she was informed by Leisa James of the AFP that:
- (a) Joe Seeto had been contacted and he advised he was in litigation with the plaintiff as to the ownership of the M.V. "Freedom";
 - (b) Joe Seeto advised he had purchased the M.V. "Freedom" in Lae in July 1997 from Gordon Karlile;

- (c) Joe Seeto advised that he sailed the vessel to Port Moresby shortly after he purchased it; and
- (d) Joe Seeto advised that an order was made by the National Court of PNG restraining him and Gordon Karlile from moving the vessel from its mooring in Port Moresby.

Particulars

Affidavit of the first defendant dated 27 May 2005.

196. The first defendant did not conduct her own enquiries as to the existence of any records in relation to the arrest or seizure of the M.V. "Freedom".
197. On or about 6 June 2005, Moses Ibsagi of the PNG Police swore an affidavit in which he stated, *inter alia*, that he had conducted checks with the Department of Marine Transport and found that the vessel M.V. "Freedom" was registered to the plaintiff but ownership was in dispute following a salvage operation.

Particulars

Affidavit of Moses Ibsagi dated 6 June 2005.

August 2005 Committal Hearing

198. On 30 August 2005, the committal hearing in respect of the Musa Charge continued at the Cairns Local Court before Magistrate Black ("**the August 2005 Committal Hearing**").
199. The plaintiff requested Raina Martens be called by the third defendant to give evidence at the August 2005 Committal Hearing and the first and third defendants declined this request.

Particulars

Transcript of the August 2005 Committal Hearing at page 352, lines 37 to 43.

200. At the August 2005 Committal Hearing, the first defendant gave evidence, *inter alia*, that a statement was taken from Joe Seeto confirming that the vessel M.V. "Freedom" had been stolen and later returned.

Particulars

Transcript of the August 2005 Committal Hearing at:

- page 353, lines 55 to 57; and
- page 354, lines 1 to 22.

201. At the August 2005 Committal Hearing, Moses Ibsagi of the PNG Police gave evidence, *inter alia*, that he supplied information to the first defendant in around June 2005 confirming that the M.V. "Freedom" was not in Port Moresby Harbour for several years prior to 1997.

Particulars

Transcript of the August 2005 Committal Hearing at page 410, lines 19 to 32.

202. At the August 2005 Committal Hearing, the third defendant further amended the Musa Charge to read "*that on a date unknown, but between the 18th day of December 1997 and the 30th day of December 1997 in Port Moresby, Papua New Guinea, the defendant did, contrary to section 50BA of the Crimes Act of 1914, the Commonwealth, engage in sexual intercourse with a person under the age of 16 years, Daphne Musa*".

Particulars

Transcript of the August 2005 Committal Hearing at pages 418 to 431.

203. By reason of the matters pleaded at paragraphs [121] to [202] above, after the August 2005 Committal Hearing, the first and third defendants did not have reasonable grounds to believe the plaintiff was guilty of the Musa Charge.
204. By reason of the matters pleaded at paragraphs [121] to [203] above, the first and third defendants did not honestly form the view that there was a proper case to continue the prosecution of the Musa Charge after the August 2005 Committal Hearing.
205. In the alternative to paragraph [204] above, the first and third defendants formed the view that there was a proper case to continue the prosecution of the Musa Charge after the August 2005 Committal Hearing based on insufficient grounds.
206. By reason of the matters pleaded at paragraphs [121] to [205] above, after the August 2005 Committal Hearing, the first and third defendants lacked reasonable and probable cause in continuing to prosecute the Musa Charge.
207. By reason of the matters pleaded at paragraphs [121] to [206] above, the first and third defendants continued to prosecute the plaintiff in respect of the Musa Charge after the August 2005 Committal Hearing for the improper purpose of succumbing to pressure or perceived pressure from the AFP and the second defendant to prosecute an Australian citizen in PNG for child sex offences.

208. By reason of the matters pleaded at paragraphs [121] to [207] above, in continuing to prosecute the Musa Charge after the August 2005 Committal Hearing, the first and third defendants were motivated by malice in fact.
209. By reason of the matters pleaded at paragraphs [121] to [208] above, the third defendant's continued prosecution of the Musa Charge after the August 2005 Committal Hearing was not in good faith.
210. By reason of the matters pleaded at paragraphs [121] to [209], the continuation of the prosecution of the Musa Charge by the first and third defendants after the August 2005 Committal Hearing constituted a collateral abuse of legal process.

Affidavit of Daphne Musa dated 19 November 2007

211. On or about 19 November 2007, Daphne Musa swore an affidavit in which she stated, *inter alia*:
- (a) in or about June or July 2004 her mother, Anna Musa, told her to make allegations to the first defendant that the plaintiff had raped her in 1995 and 1996;
 - (b) the plaintiff had never touched her sexually;
 - (c) in or about June or July 2004, she heard Raina Martens tell her mother she wanted to have the plaintiff "put behind bars";
 - (d) her mother told her to give a second statement to the first defendant as to the dates on which the plaintiff raped her; and
 - (e) the statements she made to the first defendant were not true.

Particulars

Affidavit of Daphne Musa dated 19 November 2007.

Withdrawal of the Musa Charge

212. On or about 16 January 2008, the third defendant notified the plaintiff's solicitor that it intended to present a nolle prosequi to the Cairns Supreme Court in relation to the Musa Charge at the next available opportunity.

Particulars

Letter from the third defendant to the plaintiff's solicitor dated 16 January 2008.

213. On or about 29 January 2008, the third defendant withdrew the Musa Charge.

Damages

214. The prosecution of the plaintiff in respect of the Musa Charge carried an imputation that was necessarily and naturally defamatory to the plaintiff in that it involved allegations of a criminal nature against the plaintiff in relation to sexual intercourse with a child.
215. The plaintiff suffered damage to his reputation as a result of the Musa Charge.
216. The prosecution of the plaintiff in respect of the Musa Charge and/or the continuance of the prosecution of the plaintiff in respect of the Musa Charge following the receipt of the September 2004 Statement and/or the December 2004 Committal Hearing and/or the receipt of the December 2004 Letter and/or the April 2005 Committal Hearing and/or the August 2005 Committal Hearing caused pecuniary loss to the plaintiff as follows:
- (a) The plaintiff incurred legal costs in defending the Musa Charge.
 - (b) In August 2004, the plaintiff operated an aircraft charter business in PNG through his company, Airwest Limited.
 - (c) Following his arrest in respect of the Musa Charge, the plaintiff was unable to manage the aircraft charter business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Airwest Limited.
 - (d) In August 2004, the plaintiff operated an earthmoving business in PNG through his company, Islands Field Service Limited and Kundu Consultants Limited.
 - (e) Following his arrest in respect of the Musa Charge, the plaintiff was unable to manage the earthmoving business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Islands Field Service Limited and Kundu Consultants Limited.
 - (f) In August 2004, the plaintiff operated a security services business in Port Moresby through his company, Phantom Security Services Limited.
 - (g) As at August 2004, Phantom Security Services Limited was in negotiations to sell the security services business.
 - (h) Following the plaintiff's arrest in respect of the Musa Charge, Phantom Security Services Limited was unable to complete the sale of its business.
 - (i) Following his arrest in respect of the Musa Charge, the plaintiff was unable to manage the security services business and the business ceased to trade resulting in

a loss of profits to the plaintiff and the loss of the business operated by Phantom Security Services.

- (j) In August 2004, the plaintiff operated an engineering and construction business through his company, Kundu Consultants Limited.
- (k) As at August 2004, Kundu Consultants Limited was involved in construction works to the value of approximately 14 million kina.
- (l) Following his arrest in respect of the Musa Charge, the plaintiff was unable to manage the engineering and construction business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by Kundu Consultants Limited.
- (m) As at August 2004, the plaintiff's company, Pioneer Health Services Limited, had obtained an order in the Supreme Court at Port Moresby for the payment to it of approximately 5.3 million kina including interest from the Fly River Provincial Government.
- (n) Following his arrest in respect of the Musa Charge, the plaintiff was unable to recover this judgment amount and the judgment amount was misappropriated by the plaintiff's business partner.
- (o) As at August 2004, the plaintiff operated a business providing portable commercial freezers, generators, fishing nets, outboard motors, dinghies and eskies to PNG locals to catch and store fish for the plaintiff to sell.
- (p) Following his arrest in respect of the Musa Charge, the plaintiff was unable to manage his fishing business and the business ceased to trade resulting in a loss of profits to the plaintiff and the loss of the business operated by the plaintiff.
- (q) As at August 2004, the plaintiff was the registered proprietor of the Aircraft;
- (r) Following his arrest in respect of the Musa Charge, the plaintiff was unable to maintain the Aircraft.
- (s) The Aircraft fell into disrepair and lost value as follows:
 - (i) the Piper Chieftain aircraft suffered corrosion damage as a result of a lack of maintenance and will cost approximately \$500,000 to repair;
 - (ii) the Cessna 206U aircraft and the Cessna 182 aircraft were broken into in PNG, had equipment stolen and were stripped for parts without the plaintiff's authority; and
 - (iii) the Bell helicopter suffered corrosion damage as a result of a lack of maintenance and is unable to be repaired.

(t) As at August 2004, the plaintiff was the registered proprietor of ten ships in PNG, as follows:

- (i) the shipping vessel MV Pacori;
- (ii) the shipping vessel MV Bakaup;
- (iii) the shipping vessel Buka Princess;
- (iv) the shipping vessel Western Flyer;
- (v) the marine vessel Buka 1;
- (vi) the marine vessel Buka 2;
- (vii) the marine vessel Buka 3;
- (viii) the marine vessel Buka 4;
- (ix) the marine vessel Buka 5; and
- (x) the marine vessel Buka 6.

(u) Following his arrest in respect of the Musa Charge, the plaintiff was unable to maintain these ships and ensure they were securely moored.

(v) The ships were sunk, lost or stolen with the exception of the MV Bakaup which has suffered significant corrosion damage due to a lack of maintenance and is likely unable to be repaired.

(w) As at August 2004, the plaintiff and/or his company, Pioneer Health Services Limited, was the registered proprietor of real property in PNG as follows:

- (i) a 22 hectare farm including land and improvements at 17 Mile, Goldie River, Central Province;
- (ii) land and improvements at section 96, allotment 9, Moonbi Street, Korobosea, National Capital District;
- (iii) land and improvements at section 481, allotment 14, Rainbow Estate, National Capital District;
- (iv) a 10 hectare area of land at Tapila, Western Province including a marine base.

The plaintiff also held a lease in respect of:

- (i) land and improvements at 8 Mile, National Capital District; and
- (ii) an office complex at Hohola, Port Moresby, National Capital District.

(x) Following his arrest in respect of the Musa Charge, the plaintiff's rights in respect of the real property were lost through squatters claiming adverse possession of the properties under PNG laws.

(y) As at August 2004, the plaintiff was the registered proprietor of Cairns Property.

(z) Following his arrest in respect of the Musa Charge, the plaintiff was unable to travel to PNG to access funds required to pay the mortgage in respect of the Cairns Property.

(aa) The Cairns Property was sold by mortgagee sale in around late 2005.

(bb) As at August 2004, the plaintiff owned the Equipment.

(cc) Following the plaintiff's arrest in respect of the Musa Charge, the plaintiff was unable to maintain the Equipment and ensure the Equipment was securely stored.

(dd) The Equipment was stolen and the plaintiff was unable to take any action to retrieve the Equipment.

(ee) As at August 2004, the plaintiff, through his company Kundu Consultants Limited was engaged in the Kundu Consultants Claim.

(ff) Following the plaintiff's arrest in respect of the Musa Charge, the plaintiff on behalf of Kundu Consultants Limited was unable to prosecute the Kundu Consultants Claim and the proceedings were dismissed for want of prosecution.

(gg) The Kundu Consultants Claim is now statute barred by operation of PNG law.

(hh) As at August 2004, the plaintiff was engaged in the Department of Transport Claim.

(ii) Following the plaintiff's arrest in respect of the Musa Charge, the plaintiff was unable to prosecute the Department of Transport Claim and the proceedings were dismissed for want of prosecution.

(jj) The Department of Transport Claim is now statute barred by operation of PNG law.

217. By reason of the matters pleaded at paragraphs [121] to [216] above, the plaintiff is entitled to an order for damages against each of the defendants.

218. By reason of the matters pleaded at paragraphs [121] to [211] above, each of the first and third defendants acted with a contumelious disregard for the rights of the plaintiff.

219. The plaintiff is entitled to an order for exemplary damages against each of the defendants.

The plaintiff claims the following relief:

1. General damages.
2. Exemplary damages.

Signed: _____

Description: *Solicitor*

Date: *31 May 2012*

This pleading was settled by Claire Latham of Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.