

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

**OS NO. 34 OF 2010**

BETWEEN:  
**HON PATRICK PRUAITCH**  
*Plaintiff*

AND:  
**CHRONOX MANEK, JOHN NERO & PHOEBE SANGETARI**  
**Comprising the Ombudsman Commission**  
*First Defendant*

AND:  
**JIM WALA TAMATE, The Public Prosecutor**  
*Second Defendant*

AND:  
**DEPUTY CHIEF JUSTICE GIBBS SLAIKA, SENIOR MAGISTRATES  
PETER TOLIKEN & NERIE ELIAKIM**  
*Third Defendant*

AND:  
**THE INDEPENDENT STATE OF PAPUA NEW GUINEA**  
*Fourth Defendant*

Waigani: Polume-Kiele J  
2018: 5 February & 19 June

***PRACTICE AND PROCEDURE-*** *Application for dismissal of the entire proceedings for abuse of process – Order 12, Rule 40 (1) (a) (b) and (c) – National Court Rules, s 155(4) – Constitution – relevant considerations*

***PRACTICE AND PROCEDURE -*** *Application seeking orders - Order 4 Rule 42 and Rule 15 (1) – National Court Rules - for referral to Supreme Court – s18 (2) – Constitution*

**Cases Cited:**

*Pruaitch vs. Manek* [2017] SC 1593

*Pruaitch vs. Manek* [2011] SC1052

*John Nilkare vs. The Ombudsman Commission of Papua New Guinea* [1999]

PNGLR 333

*Enforcement Pursuant to Constitution s 57; Application by Gabriel Dusava (1998) SC581*

*Supreme Court Reference No 1 of 1978; Re Leo Robert Morgan [1978] PNGLR 460*

*Supreme Court Reference No. 5 of 1980 re: Joseph Auna [1980] PNGLR 500*  
*Wartoto vs. The State (2015) SC1411*

*Andrew Nagari vs. Rural Development Bank (2007) N3295*

*Somare vs. Manek (2011) SC 1118*

### **Counsels:**

*Mr. Varitimos*, for the Plaintiff/Applicant

*Ms Koralyo*, for the First Respondent

*Mr L Kandi*, for the Second & Fourth Respondents

### **RULING**

**19<sup>th</sup> June, 2018**

1. **POLUME-KIELE J:** Two motions were moved before me on the 5<sup>th</sup> of February 2018. The first motion by the first Respondent seeking to dismiss the entire proceedings for being frivolous or vexations and an abuse of the process of the Court under Order 12 Rule 40 (1) (a) (b) and (c) of the *National Court Rules*; Section 155 (4) of the *Constitution* and the Court's inherent power. The second motion by the applicant seeking orders under Order 4 Rule 42 and Rule 15(1) of the *National Court Rules* that the matter be referred to under s 18 (2) of the *Constitution* that the following Constitutional questions be referred to the Supreme Court for interpretation.

2. I now hand down my ruling on the motions.

#### ***Introduction***

3. The plaintiff/applicant filed these proceeding following the referral of the matter of an investigation of the plaintiff for misconduct in office by the first defendants to the second defendant ("the Referral") under section 20 (4) of the *Organic Law on the Duties and Responsibilities of Leadership* ("the Constitutional Law") in which he seeks orders that:

- (i) the referral is unconstitutional, in excess of the jurisdiction of the first defendant and therefore illegal, invalid and of no force or effect, because the first defendants did not afford the plaintiff a right to be heard before making the Referral, in breach of their duty to do under section 20 (3) of the Constitutional Law;

- (ii) the referral is unconstitutional, in excess of the jurisdiction of the first Defendant and therefore illegal, invalid, and of no force or effect, because the first Defendants did not afford the Plaintiff a right to be heard before making the referral, in breach of their duty to do under section 2 (3) of the Constitutional Law; and
- (iii) That pursuant to section 23 (2), and 155 (4) of the Constitution, a permanent injunction prohibiting forthwith the defendants their officers, employees, servants, agents or whosoever, from taking any further actions or steps under the Constitutional Law or otherwise pursuant to the Referral.”

**Background**

4. The plaintiff/applicant in these proceedings claims that the Ombudsman Commission (First Respondent) did not afford him a right ( a further right) to be heard before making the Referral, a breach of their duty to do so under section 20 (3) of the *Organic Law on Duties and Responsibilities of Leadership (OLDRL)*.

5. Given this breach, the applicant says that he is entitled to seek a referral to the Supreme Court on the interpretation of the above terms.

6. In order to fully appreciate the nature of the application and the flow of events that have occurred since the referral, a chronological chart is set out below showing the path that this case has travelled through to this application. I reproduce with some variation, the events that had ensued since the filing of these proceedings (adopted from the second respondent’s submission) a table charting the flow of processes that the plaintiff/applicant has pursued before the courts (both the National and Supreme Court) to protect his rights. I also note that whilst pursuing these avenues, the referral has been kept in abeyance for the last 7 years and 5 months.

7. Table setting out in chronological order, proceedings filed in relation to these proceedings since the referral:

Date of filing of proceedings	Nature of Cause of Action	Outcome of proceedings
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<p>20<sup>th</sup> August, 2009</p>	<p>A referral was made by the first respondent to the Public Prosecutor regarding the allegations. Aggrieved by the referral, the applicant filed a judicial review proceedings in <b>OS (JR) No. 345 of 2009</b>, (<i>Order 16 of the National Court Rules</i>)</p> <p>The ground for review was based on the proposition that the applicant had been denied the right to be heard on the matter.</p>	<p>Judicial Review application heard on the 2<sup>nd</sup> September 2009. On 8<sup>th</sup> of September 2009; the National Court refused leave to review that decision</p>
		<p>03<sup>rd</sup> February, 2010, a Tribunal (third respondent)</p>
		<p>was appointed by the Honourable Chief Justice, Sir Salamo Injia This Tribunal is yet to convene and determine the Referral.</p>
<p>04<sup>th</sup> February, 2010</p>	<p><b>OS No. 34 of 2010: Pruaitch vs. Chronox Manek &amp; Ors</b> was filed seeking certain declaratory, preventive; injunctive and stay orders pursuant to ss. 23, 255 (4) and 217 (b) of the <i>Constitution</i>.</p>	
<p>On 12<sup>th</sup> February, 2010</p>	<p>Two Notices of Motion, one filed by the plaintiff and another by the Commission moved before his Honour Kariko J.</p>	<p>Kariko, J dismissed the proceedings, <i>OS 34 of 2010 (Pruaitch vs. Manek [2010] N4149)</i> - multiplicity of proceedings and matter was res judicata. The issues raised were the same issues which had already been determined by Hartshorn, J in <b>OS (JR) No. 345 of 2009</b>. His Honour found that the proceedings before him were in effect judicial review proceedings because they were seeking a review of the decision made by the Commission to refer the leader to the Public Prosecutor which had been heard and determined. The proceedings before him were an abuse of process.</p>

19 <sup>th</sup> February 2010	<b>SCA No. 7 of 2010: Pruaitch vs. Manek</b> filed on 12 <sup>th</sup> February 2010 against the decision of Kariko, J	The plaintiff sought and obtained an ex parte stay order before Sevua, J (sitting as a single judge of the Supreme Court) on 19 <sup>th</sup> February, 2010, thereby restraining the Leadership tribunal from convening its hearing.
31 <sup>st</sup> March 2010	The Supreme court comprising their Honours Kirriwom, Gavara-Nanu and Davani, JJ dealt with only two matters arising out of that appeal namely, leave to appeal on question of facts alone and the question of stay.	The Supreme Court reserved its decision.
31 <sup>st</sup> May, 2010		The Supreme Court delivered its ruling refused leave to appeal on the question of facts alone and ordered that the interim stay Orders given by Sevua, J on 19 <sup>th</sup> February, 2010 remain until the remaining grounds of the appeal were determined. <b>(Pruaitch vs. Manek [2010] SC1052)</b>
30 <sup>th</sup> June 2010	The Supreme Court comprising their Honours Sakora, Lenalia and Manuhu, JJ dealt with the remaining grounds of the Plaintiff's Appeal in <b>SCA No. 7 of 2010.</b>	The Supreme Court reserved its ruling.

31 <sup>st</sup> March 2011		<p>The Supreme Court delivered its decision (<b>Pruaitch vs. Manek</b> [2011] SC1093 and made the following Orders</p> <p>(a) <i>The Appeal is allowed;</i></p> <p>(b) <i>The ruling and order of the National Court made on February 2010 in OS No, 34 of 2010 – Honourable Patrick Pruitch MP vs. Chronox Manek &amp; Ors is quashed.</i></p> <p>(c) <i>Proceedings OS No. 34 of 2010 – Honourable Patrick Pruitch MP vs.</i></p>
		<p><i>Chronox Manek is reinstated and shall be heard by the National Court presided over by another judge;</i></p> <p>(d) <i>Pursuant to section 23 (2) 23 (2) and 155 (4) of the Constitution and until the hearing and determination of all the Appellants claims herein, the Respondents their officers, servants , agents or whomsoever, are hereby restrained from taking any further actions or steps or conducting any further inquiries under the Organic Law or otherwise pursuant to the referral;</i></p> <p>(e) <i>Order 3 of the Supreme Court Orders made on 31<sup>st</sup> May 2010 on suspension is discharged.</i></p>
14 <sup>th</sup> June 2011	His Honour Kandakasi J issued certain directional Orders in regard to the conduct of the proceedings OS No 34 of 2010 – Honourable Patrick Pruitch MP vs. Chronox Manek & Ors	

05 <sup>th</sup> July, 2011	Aggrieved by the manner in which these proceedings, leading up to the making of the directional Orders of 14 <sup>th</sup> June, 2011 were conducted, the plaintiff/applicant filed an application for leave to Appeal. <b>(SCA No. 74 of 2011)</b> against the directional Orders of his Honour Kandakasi, J.	
15 <sup>th</sup> July 2011	His Honour Injia, CJ (sitting as a single Supreme Court Judge) heard the leave application	Leave to Appeal granted
19 <sup>th</sup> July, 2011	The matter returned before Injia, CJ. His Honour heard an application for stay of the Orders of Kandakasi J made on the 14 <sup>th</sup> of June 2011	Certain Orders handed down by his Honour Kandakasi, on 14 <sup>th</sup> June, 2011 were stayed until the hearing and determination of the Appeal.
26 <sup>th</sup> July 2011	Kandakasi, J recalled the matter in <b>OS No. 34 of 2010</b>	Kandakasi J ordered that the orders made on the 14 <sup>th</sup> June 2011 were forthwith vacated.
05 <sup>th</sup> August 2011	Appeal <b>(SCA No. 86 of 2011)</b> against the decision of Kandakasi, J made on 26 <sup>th</sup> July, 2011 vacating the Orders of 14 <sup>th</sup> June 2011 was <b>functus officio</b> when the stay order of the Supreme Court was binding on the primary judge.	
16 <sup>th</sup> December, 2011	Appeals, <b>SCA No. 74 of 2011</b> and <b>SCA No. 86 of 2011</b> heard by the Supreme Court.	Ruling reserved.
02 <sup>nd</sup> March 2012		Decision delivered (Batari, Gabi and Makail, JJ) <b>(Pruaitch vs. Manek [2012] SC1168)</b> - Orders: 1. <i>The Appeal SCA No. 74 of 2011 is dismissed;</i> 2. <i>The Appeal SCA No. 86 of 2011 is upheld;</i> 3. <i>The judgment Orders and directions made by Honourable Justice Kandakasi on 26<sup>th</sup> July 2011 in OS No. 34 of 2010 are discharged, set aside and quashed.</i>

05 <sup>th</sup> September 2012	Notice of Motion seeking discovery under <i>Order 9 Rules 5 and 7 of the National Court Rules</i> filed	Heard on 21 October 2012. Ruling reserved, Kassman,
03 <sup>rd</sup> December, 2014		Ruling delivered refusing relief sought by applicant in notice of motion (filed 5 September 2015); Kassman J.
31 <sup>st</sup> March 2015	Appeal ( <b>SCA No. 1 of 2015 – Pruaitch vs. Manek</b> ) filed	Leave to Appeal granted on 24 <sup>th</sup> March, 2015.
16 <sup>th</sup> December 2015	Appeal heard by the Supreme Court ( <b>SCA No. 01 of 2015</b> )	Decision reserved
09 <sup>th</sup> June, 2017		Judgment delivered. ( <b>Pruaitch vs. Manek [2017] SC 1593</b> )

8. Given the track and the flow of events that have occurred or actions undertaken by the applicant to seek certain reliefs or remedies before the Courts, the third respondent has not been unable to convene to determine the referral.

### ***Applicant's submission***

9. The applicant submits that he has not been heard on the allegations of misconduct levelled against him and seeks the following:

- *A declaration pursuant to section 23 (2), 155 (4) and 217 (6) of the Constitution that the referral of the matter of an investigation of the Plaintiff for misconduct in office by the First Defendants to the Second Defendant (“the Referral”) under section 20 (4) of the Organic Law on the Duties and Responsibilities of Leadership (“the Constitutional Law”) is unconstitutional, in excess of the jurisdiction of the First Defendant and therefore illegal, invalid and of no force or effect, because the First Defendants did not afford the Plaintiff a right to be heard before making the Referral, in breach of their duty to do under section 20 (3) of the Constitutional Law.*
- *A declaration pursuant to section 23 (2), 155 (4) and 217 (6) of the Constitution that the referral under section 20 (4) of the Organic Law on the Duties and Responsibilities of Leadership (“the Constitutional Law”) is unconstitutional, in excess of the jurisdiction of the First Defendant and therefore illegal, invalid, and of no force or effect, because the First Defendants did not afford the Plaintiff a right to be heard before making the referral, in breach of their duty to do under section 2 (3) of the Constitutional Law;*
- *Pursuant to section 23 (2), and 155 (4) of the Constitution, a permanent injunction prohibiting forthwith the Defendants their officers, employees, servants, agents or whosoever, from taking any*

*further actions or steps under the Constitutional Law or otherwise pursuant to the Referral.”*

- *Given the above breaches, he now says that he is entitled to seek a referral pursuant to Order 4 Rule 42 and Rule 15 (1) of the National Court Rules that the matter be referred under s 18 (2) of the Constitution for interpretation.*

### ***Respondent's submission***

10. The first, second and fourth defendants submit that this is an appropriate case for this Court to exercise its inherent power to intervene at this stage of the proceedings to prevent further abuse of its process. They submit further that essentially, the cause of action in the within proceedings is that the Commission did not afford the Plaintiff a right (a further right) to be heard before making the Referral, on breach of their duty to do so under section 20 (3) of the *Organic Law on Duties and Responsibilities of Leadership (OLDRL)*.

11. They say that this matter has already been determined in *Pruaitch vs. Manek* [2017] SC 1593 (see paragraph 21 of judgment); *Pruaitch vs. Manek* [2011] SC1052 at paragraph 36 & 37 of judgment.

12. Furthermore, there has been a long delay in prosecuting this matter. After filing these proceedings on **04<sup>th</sup> February, 2010**, the plaintiff did not bring his claim to trial and instead, has engaged in making endless interlocutory applications and perpetuating appeals against every decision made on such interlocutory applications. The plaintiff and his Lawyers have successfully manoeuvred the appeal process by way of a delay tactic for the Leadership Tribunal hearing and soaked up **8 years** in the appeal process. Therefore there is a real urge, in the overall circumstance of this case, to put an end to these never ending proceedings and allow the Leadership tribunal Hearing to commence, without further delay.

13. The first and second Defendants submit that the balance of justice and convenience, both in the subject to the Leadership Code is to allow the allegations to be proceeded with, to be finally determined on their merits, by an appropriate tribunal and seek orders that the proceedings be dismissed as being an abuse of the process of Court and with costs on a solicitor and client basis.

### ***Issues for determination***

14. In considering this application, I am led to ask the question as to whether it is proper for this court to determine this application; when the authority mandated to oversee the processes and referral of a leader is yet to complete its roles and responsibilities under the Organic Law on Duties and Responsibilities of Leadership.

15. Furthermore, whether it is appropriate to seek a referral to the Supreme

Court pursuant to s 18 (2) of the *Constitution*, when the applicant has had two opportunities before the Supreme Court and has had both appeals dismissed on matters relevant to the cause of action before this court?

## **Law**

16. It is clear that the Leadership Code was enacted to guard against abuse of office and to uphold the integrity of leaders and of the office they hold. Section 27 of the *Constitution* provides for "Responsibilities of Office": It states:-

### **27. Responsibilities of office.**

- (1) *A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not-*
  - (a) *to place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or*
  - (b) *to demean his office or position; or*
  - (c) *to allow his public or official integrity, or his personal integrity, to be called into question; or*
  - (d) *to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea.*
- (2) *In particular, a person to whom this Division applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Subsection (1).*
- (3) *it is the further duty of a person to whom this Division applies*
  - (a) *to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and*
  - (b) *if necessary, to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.*
- (4) *The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (further provisions) may, subject to this Division and to any Organic Law made for the*

*purposes of this Division, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.*

- (5) *A person to whom this Division applies who —*
- (a) *is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or*
  - (b) *fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsection (1), (2) and (3), is guilty of misconduct in office.*

17. In this regard, a person subject to the Leadership Code is expected to perform at a level of discipline well beyond that of an ordinary citizen. In the event that a breach occurs, Section 27 of the *Constitution* is invoked to deal with that person appropriately. Essentially, the public office or position which the Constitution and the Organic Law on the Responsibilities on Leadership are concerned with is any of those "Leadership" offices or positions enumerated under s 26 (1) *Constitution*.

### ***Consideration of motions***

18. I note that the proceedings arose from a referral to the Public Prosecutor following investigation of allegations under the *Organic Law on Duties and Responsibilities of Leadership*; s 26. In this regard, I am led to refer to the case of *John Nilkare vs. The Ombudsman Commission of Papua New Guinea* [1999] PNGLR 333, The Supreme Court (Amet CJ, Kapi DCJ, Los, Injia JJ) held:

*4. "The leadership Code is an important law which must be administered effectively and speedily to protect the people and the nation from improper and corrupt conduct of people in leadership positions. In balancing all these considerations, we have reached the conclusion that it would be in the interest of everyone that this Court should not quash the referral but allow the Public Prosecutor to proceed with the charges before a Leadership tribunal. In reaching this conclusion we have considered the four new charges that were included in the referral and bias, which has been established on the part of the Commission. These procedural errors only affect the rights of the appellant at a preliminary stage only and do not affect the substantive rights, which will be determined by the Leadership Tribunal. In relation to the four new charges, the appellant by now has ample opportunity to consider the charges and he will not doubt prepare his defence at the tribunal hearing. Any bias by respondent will not have any impact on the tribunal, which is differently constituted...."*

*7. Since the decision of the Commission is not conclusive or*

*determinative of any of the allegations, the balance of justice and convenience both in the interest of the people of Papua New Guinea and leaders who are subject to the Leadership Code is to allow the allegations to be proceeded with to be finally determined on their merits. The court does not believe that the balance of justice and convenience and the interest of leadership integrity and honesty and good government would be met by totally quashing the referral as sought by the appellant....*

19. It appears that all possible avenues available within the Court system have all been pursued by the plaintiff/applicant in regard to the referral. Having stated this, I am not saying that a citizen does not have the right to the full protection of the law.

20. It is equally important to note that due process of the law must be given its full effect and to exhaust its processes under law to determine the culpability of a leader alleged to have offended his leadership position.

21. In order to answer this question, a number of matters need to be considered and I find these have been already determined in the applicant's own appeals in *Pruaitch vs. Manek* [2017] SC 1593 and *Pruaitch vs. Manek* [2010] SC1052.

22. In addition, I am minded to refer to the Supreme Court judgment in SC581 - *Enforcement Pursuant to Constitution s 57; Application by Gabriel Dusava*, where the Supreme Court stated which I quote: "the court must enforce the primary purpose of the leadership code. That is the Leadership Code was intended to protect the people of Papua New Guinea from improper conducts by leaders"... Further, "Section 25 of the Constitution is entirely relevant to generous interpretation of the constitution, avoiding the austerity of tabulated legalism and enables the National Goals and Directive Principles to be fully taken into account." (Underlining mine). For instance in section 26(2) of the Constitution for example it is said that —

*"This Division applies to and in relation to a person referred to in subsection (1) not only in the office referred to in that subsection but also in any other office or position he holds under any law by virtue of that office".*

*By this, it means that those leaders who know that they have not done anything wrong can remain in office until they receive a declaration of 'no fault' by a tribunal so that the court should not consider that to apply strict law may encourage the mischief that the Leadership Code seeks to prevent.*

*Thus a person who has failed in his responsibilities of office can rectify the situation by availing themselves to the due processes of the law and allowing that process to prove themselves worthy of being a leader...*

23. Given the above, it is my view that this Court should uphold the purpose of the Leadership Code thereby guaranteeing the protection of the people of Papua New Guinea and give meaning to Section 28 (4) of the *Constitution* (see *Supreme Court Reference No 1 of 1978; Re Leo Robert Morgan* [1978] PNGLR 460 at 464, and “to preserve the people of Papua New Guinea from misconduct by its leaders” *Supreme Court Reference No. 5 of 1980 re: Joseph Auna* [1980] PNGLR 500 at p 504.

24. The purpose and entire thrust of Organic Law on the Responsibilities and Duties of Leadership; Section 26 of the Constitution is directed towards removing a person who is considered, after due inquiry, to be unworthy of continuing in office.

25. Given these circumstances, the issues for determination here are in regard to whether this is an appropriate case for this Honourable Court to exercise its power under Order 12 Rule 40 (1) (a) (b) and (c) of the *National Court Rules* and *Constitution* Section 155 (4) and/ or its inherent power to intervene at his stage of the proceedings to prevent any further abuse of its process.

26. Firstly, the processes of the First Respondent to execute their functions and responsibilities as mandated under the Organic Law on Duties and Responsibilities of Leadership which is mainly to maintain a check and balance on good governance and accountability of good leadership.

27. Upon perusal of the materials on the court file and matters deposed to by both parties, I note that the applicant has to a greater extent been given every avenue available within the Court system to pursue and to protect his rights and or interest. Whilst these appear on the face of records fair and equitable, it must also be said that the same processes and avenues must be said to be made available to the first respondent whereby it is allowed to carry out its functions and responsibilities without hindrances to ensure good governance, accountability and good leadership. Likewise the second respondent.

28. Having express these views, it is still in the interest of justice that the rule of law must prevail. This means that due process must be allowed to take its course, whatever the outcome.

29. All persons are entitled under law to the protection of the law, including the applicant. This protection applies within law and upon proper applications of the law and within the spirit of the Constitution. In this present case, the proceedings emanated from the “referral” from the first respondent to the second respondent in 2009. Since then, the process has somewhat come to a “standstill” due to the multiple proceedings here in the National and Supreme Courts. Numerous pronouncements have been made, both at the National and

Supreme Court. These judgments are matters of public record and I need not recite them all in full as these judgments are available for public consumption.

30. In spite of these pronouncements, the applicant now seeks another relief with regard to this current application for a referral under s 18 (2) of the Constitution to the Supreme Court for constitutional interpretation. Upon due consideration of the materials presented, I am not satisfied that this is a matter that requires further determination at the Supreme, because the matters here have been raised and argued before the Supreme Court in 4 separate proceedings which have all been dismissed for a range of reasons. Given that the applicant has raised and argued this very issue before the Courts in proceedings that have now been concluded more particularly in the proceedings *Pruaitch vs. Manek & Ors* [2017] SC1593; the Supreme Court (*Manuhu, Murray & Pitpit, JJ*) (09<sup>th</sup> June, 2017) at paragraphs 14 to 20 inclusive and paragraphs 25 and 26 said; which I adopt:

*“14. We are also of the view that it is not in the public interest for proceedings of the Commission to be subjected to other civil proceedings. Such is the growing undesirable judicial development in the country which has to be discouraged by proper exercise of discretion. In criminal cases, it was held in *Wartoto vs. The State* (2015) SC1411 that the National Court sitting in its civil jurisdiction should not interfere with criminal proceedings. An accused person still has the right of protection of the law under Section 37 of the constitution and he or she can still exercise the other avenues for redress available to him or her under the Criminal Justice System, the Criminal Code and Criminal Practice Rules.*

*15. In relation to proceedings under the Leadership Code, we are also of the view that the National Court in its civil jurisdiction should not interfere with proceedings of the process under the Leadership Code. Proceedings under the Leadership Code are sanctioned by an Organic Law – not any ordinary Act of Parliament. For that reason alone, an aggrieved person enforcing his private right should not be allowed to interfere with the proceeding when it is still in progress. In the exercise of discretion, the Courts ought to take into account the hierarchy of laws and supremacy of Constitutional Laws and refrain from entertaining intervening civil proceedings.*

*16. Secondly a leader found guilty does not lose his right to challenge the proceeding of the Commission and any adverse finding of a Leadership Tribunal. With his right preserved, it is against public interest for a Leader to interfere midstream with a proceeding under the Leadership Code. In this case, for instance, the Appellant’s right to challenge his referral will not be lost if he is found guilty. There would be any cause of concern if he is found not guilty.*

*17. The OS proceeding, in our view, was instituted prematurely. A*

*cause of action in a case like this matures only when a Leader is found guilty and penalised. In other words, the constitutional process has to be completed before any challenge can be made against the process including decisions made by the Commission, the Public Prosecutor or the Tribunal. But if a leader is found not guilty, there would not be any cause of action against the constitutional process.*

*18. Thirdly the Commission, like the National Court, is an institution of the State. Institutions of the State are charged with the responsibility, with enabling laws, to administer the affairs of this country. The Commission should be permitted to carry out that constitutional function unhindered by private law cause of action.*

*19. Furthermore, when civil suits are entertained prematurely, the same cause of action is thus subjected to two different processes. This course is more likely to result in delays. Delays in the prosecution of leaders charged with misconduct offences undermine good governance and the public loses confidence in the systems of government.*

*20. This case is a classic example. The referral was made on 22<sup>nd</sup> July 2009. The OS proceeding was filed in February 2010. To date, there has been a delay of more than eight years. The delay has seriously undermined the Ombudsman Commission, the Organic Law and all efforts to promote good governance in the country...*

31. In *Andrew Nagari vs. Rural Development Bank* (2007) N3295; Gavara-Nanu, J) said:

*“The Court also has the inherent jurisdiction to dismiss the proceedings summarily for abuse of its process...The courts’ power in this regard is wide. The phrase “abuse of process” connotes that the process of the court must be used properly and bona – fide and are not to be abused. Thus, where the court’s machinery is improperly and incorrectly used, the Court has the duty to prevent such abuse of its process.”*

32. In *Agiru vs. Electoral Commission* [2002] SC 687, the Court held:

*“this Court in exercising its inherent power and its authority to do all things that are necessary for the proper administration of justice and all powers reasonably required to enable this Court to perform efficiently its judicial functions and to protect its dignity and integrity; it is the court’s duty to protect itself by ensuring that vexatious litigants do not abuse the Court’s process by instituting frivolous or vexatious suits. It behove litigants therefore to carefully choose their causes of action before they commence proceedings in this court*

*purporting to enforce their rights”.*

33. Furthermore, in *John Nilkare vs. The Ombudsman Commission of Papua New Guinea* [1999] PNGLR 333, The Supreme Court (Amet CJ, Kapi DCJ, Los, Injia JJ held:

4. *“The leadership Code is an important law which must be administered effectively and speedily to protect the people and the nation from improper and corrupt conduct of people in leadership positions. In balancing all these considerations, we have reached the conclusion that it would be in the interest of everyone that this Court should not quash the referral but allow the Public Prosecutor to proceed with the charges before a Leadership tribunal. In reaching this conclusion we have considered the four new charges that were included in the referral and bias, which has been established on the part of the Commission. These procedural errors only affect the rights of the appellant at a preliminary stage only and do not affect the substantive rights, which will be determined by the Leadership Tribunal. In relation to the four new charges, the appellant by now has ample opportunity to consider the charges and he will not doubt prepare his defence at the tribunal hearing. Any bias by respondent will not have any impact on the tribunal, which is differently constituted....*

7. *Since the decision of the Commission is not conclusive or determinative of any of the allegations, the balance of justice and convenience both in the interest of the people of Papua New Guinea and leaders who are subject to the Leadership Code is to allow the allegations to be proceeded with to be finally determined on their merits. The court does not believe that the balance of justice and convenience and the interest of leadership integrity and honesty and good government would be met by totally quashing the referral as sought by the appellant....*

34. In *Pruaitch vs. Manek* [2017] SC 1593, *Patrick Pruitch v Ombudsman Commission* (2011) SC1263; *Pruaitch vs. Manek* [2010] SC 1052; the Supreme Courts had discussed at great length the issues raised by the applicant and application of the appropriate law in relation to these issues... The basic principles that are to be applied when the Court is considering whether or not there has been an abuse of its processes are well established in this jurisdiction (see *Somare vs. Manek* (2011) SC 1118 (Somare Case):

*“Section 217 (6) of the Constitution allows for judicial review as the only way to challenge any decisions of the Ombudsman but restricted to the Ombudsman acting in excess of its jurisdiction. Accordingly, once an application for leave is refused that should be the end of the matter... (See also **Wartoto vs. the State** [2015] SC 1411)*

*“There is no doubt that this court, as a superior court of record has inherent jurisdiction to take steps to prevent any abuse of its processes. It is a power that extends to all situations where the justice of the case requires it to be exercised, and it is not confined to any closed categories of cases. It is a jurisdiction which the court has “to ensure that pursuit of its ordinary procedures by litigants does not lead to injustice...may be exercised at any stage of the proceedings where it appears to be demanded by the justice of the case...”*

*Abuse of the process of the Court is an expression used to describe any use of the process and procedures of the Court for an improper way. It encompasses a wide range of situations...” [Our underlining].*

35. In view of the foregoing, I find that the proceedings are an abuse of process of the court, given the whole history of this case commencing from the decision of the Ombudsman Commission to the present. I therefore adopt the statement in *Pruaitch vs. Manek & Ors* [2017] SC 1593 (paragraph 15) and say:

*“that the National Court in its civil jurisdiction should not interfere with proceedings of the process under the Leadership Code. Proceedings under the Leadership Code are sanctioned by an Organic Law – not any ordinary Act of Parliament. For that reason alone, an aggrieved person enforcing his private right should not be allowed to interfere with the proceeding when it is still in progress. In the exercise of discretion, this Court ought to take into account the hierarchy of laws and supremacy of Constitutional Laws and refrain from entertaining intervening civil proceedings.*

*16. Secondly a leader found guilty does not lose his right to challenge the proceeding of the Commission and any adverse finding of a Leadership Tribunal. With his right preserved, it is against public interest for a Leader to interfere midstream with a proceeding under the Leadership Code. In this case, for instance, the Appellant’s right to challenge his referral will not be lost if he is found guilty. There would be any cause of concern if he is found not guilty.*

*17. The OS proceeding, in our view, was instituted prematurely. A cause of action in a case like this matures only when a Leader is found guilty and penalised. In other words, the constitutional process has to be completed before any challenge can be made against the process including decisions made by the Commission, the Public Prosecutor or the Tribunal. But if a leader is found not guilty, there would not be any cause of action against the constitutional process.*

*18. Thirdly the Commission, like the National Court, is an institution of the State. Institutions of the State are charged with the responsibility, with enabling laws, to administer the affairs of this country. The Commission should be permitted to carry out that constitutional function unhindered by private law cause of action.*

*19. Furthermore, when civil suits are entertained prematurely, the*

*same cause of action is thus subjected to two different processes. This course is more likely to result in delays. Delays in the prosecution of leaders charged with misconduct offences undermine good governance and the public loses confidence in the systems of government.*

*20. This case is a classic example. The referral was made on 22<sup>nd</sup> July 2009. The OS proceeding was filed in February 2010. To date, there has been a delay of more than eight years. The delay has seriously undermined the Ombudsman Commission, the Organic Law and all efforts to promote good governance in the country...*

## **Conclusion**

36. These proceedings have been ongoing in the last 8 years since filing this proceedings on 4<sup>th</sup> February, 2010. In fact, two Supreme Court decisions (*Pruaitch vs. Manek* [2010] SC1052; *Pruaitch vs. Manek* [2017] SC1593) have already determined that the plaintiff's claim is premature, without merits and an abuse of the process of the court.

37. More so, it would be pointless, having to refer the same issues for interpretation under s 18(2) of the *Constitution* when these same issues have already been determined in *Pruaitch vs. Manek* [2010] SC1052 and *Pruaitch vs. Manek* [2017] SC1593. More specifically, in *Pruaitch vs. Manek* [2017] SC1593) where the Supreme Court (Manuhu, Murray & Pitpit, JJ) stated that these proceedings (OS No. 34 of 2010) were:

- (i) Instituted prematurely;
- (ii) The Supreme Court should not have interfered with the proceedings of the process under the Leadership code;
- (iii) The Plaintiff did not have the evidence to support his claim in OS No. 34 of 2010; and
- (iv) ...

38. The Plaintiff was referred in 2009 and the parties are still dealing with the same matter before this Court. The Tribunal Hearing should proceed, without delay. The Plaintiff has recourse at the Tribunal Hearing. The nature of relief sought in these proceedings is available before the Tribunal. Any alleged procedural errors or issues of unfairness can be appropriately raised at the Leadership Tribunal.

39. Taking into account the background of the present proceeding, other preceding proceedings (before this court and the Supreme Court) involving the same matters and issues, and given the principles discussed above, I decline the application sought by the applicant in his notice of motion for referral under s 18 (2) of the Constitution.

40. The first and second respondents must perform their roles and responsibilities as envisioned in s 26 of the *Constitution* and to fulfil the purpose of the Leadership Code thereby guaranteeing the protection of the people of Papua New Guinea and give meaning to Section 28 (4) of the *Constitution* (see *Supreme Court Reference No 1 of 1978; Re Leo Robert Morgan* [1978] PNGLR 460 at 464. Further, the overall purpose of the Organic Law on Duties and Responsibilities of Leadership is “to preserve the people of Papua New Guinea from misconduct by its leaders” *Supreme Court Reference No. 5 of 1980 re: Joseph Auna* [1980] PNGLR 500 at p 504. It is therefore in the interest of good public administration that leaders occupying elective office account for their conduct. This will, in turn, enable a disposition of the Leadership Tribunal Hearing and to bring these matters to finality without further delay.

41. Given the foregoing, the overall consideration of this case warrants a dismissal of these proceedings, as being an abuse of the process of the Court and I so rule.

### ***Orders of the Court***

1. The proceedings are dismissed for being an abuse of the Court’s process.
2. Costs follow the event. Costs to be taxed if not agreed.

*Orders accordingly*

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Young & Williams Lawyers: *Lawyers for the Applicant*  
Ombudsman Commission In-House Counsel: *Lawyers for the First Respondent*  
Michael Wagambie Lawyers: *Lawyers for the Second & Fourth Respondents*