

IN THE HIGH COURT OF LESOTHO HELD AT MASERU

CASE NO.

In the matter between:

THE CROWN

versus

JACOBUS MICHIEL DU PLOOY

Accused

INDICTMENT

A: PARTICULARS OF THE ACCUSED:

1. The Accused is Jacobus Michiel Du Plooy, an adult male, South African, of 4 Hill Street, Ficksburg, South Africa.

B: CROWN'S SUMMARY OF SUBSTANTIAL FACTS:

2. The LHWP is one of the biggest dam projects in the world. The Lesotho Highlands Development Authority ("the LHDA") was created by statute to supervise this project and Mr Masupha Ephraim Sole ("Mr Sole") was appointed as its first Chief Executive with effect from October 1986. In his position as Chief Executive Mr Sole was closely involved with the evaluation and awarding of contracts in this project, as well as variation orders and contractors claims, and was in a position to influence them. As Chief Executive Mr Sole was in a position of trust vis-a-vis the LHDA and also his employer, the Lesotho Government, which had seconded him to the LHDA.
3. Highlands Water Venture ("HWV"), a partnership comprising inter alia Impregilo, a company registered in Italy, was a contractor in respect of the project. In particular HWV was awarded LHDA contract 123, concluded in December 1990 alternatively February 1991, a contract for the building of the Katse dam and appurtenant works.
4. As a result of disciplinary proceedings against him Mr Sole was removed from his position as Chief Executive of the LHDA towards the end of 1995. Thereafter civil proceedings were launched against him in the High Court of Lesotho. In the course of these proceedings and after he had been ordered to discover all his bank records Mr Sole denied having any bank accounts outside Lesotho. When it was then discovered that he had a bank account in Ladybrand and that large amounts had been transferred to this account from Switzerland, a criminal complaint was laid with the Director of Public Prosecutions who applied to the

relevant Swiss authorities for the release of any accounts held by Mr Sole in Switzerland. This application was later expanded to include other accounts held in Switzerland which had paid monies over to Mr Sole's Swiss accounts. The Accused held one of these accounts.

5. This application to the Swiss authorities was opposed. The Examining Magistrate ordered release of the accounts. Appeals against this order to the Zurich High Court were unsuccessful, as were further appeals to the Swiss Federal Court. The accounts of all these parties, including the Accused and Mr Sole, were then forwarded to the Director of Public Prosecutions and it is inter alia on the basis of these accounts that the bribery charge in this indictment is framed.
6. Mr Sole did not at any stage disclose the existence of his Swiss accounts to either the LHDA or the Lesotho Government. In fact he denied having any such accounts and did so on oath in the civil trial referred to.
7. The evidence will show that not only were payments involving substantial amounts made by HWV and/or Impregilo through the Accused's account(s) to Mr Sole but also that they were made secretly, and that the payments coincided with payments made by the LHDA to HWV under contract 123.
8. The Accused acted as an intermediary to whom HWV and/or Impregilo paid monies intended in whole or in part for Mr Sole. By paying these monies through the Accused HWV and/or Impregilo sought to avoid detection of their conduct.

9. From these facts, as well as the other evidence that will be led, the Court will be asked to draw the inescapable conclusion that the payment of these monies to the Accused by HWV and/or Impregilo and the payment in turn by the Accused to Mr Sole were intended as and did constitute bribe money relating to Mr Sole's employment with the LHDA in the context of the LHWP.

C: PREAMBLE TO THE CHARGE:

WHEREAS at all relevant times to the charge set out below:

10. Mr Sole was a civil servant in the employ of the Lesotho Government and as such a State or public official.
11. While retaining his status as a civil servant Mr Sole was seconded to the LHDA as Chief Executive Officer.
12. Mr Sole had, without the knowledge of his employer or the LHDA, bank accounts in Switzerland.
13. The LHDA was a statutory body established in terms of section 4 of the Lesotho Highlands Development Authority Order No.23 of 1986.
14. The LHDA was the authority entrusted with the responsibility for the implementation, operation and maintenance of the LHWP which is a water project being built on the rivers in the mountains of eastern and central Lesotho, which project entails the building of dams, tunnels and hydro-electric power facilities in Lesotho for the transfer of water to South Africa and for the generation of electricity for consumption in Lesotho and the eastern Free State, a province of South Africa.
15. The LHWP is the product of a treaty between the Kingdom of Lesotho and the Republic of South Africa, which treaty was concluded between the two

governments in October 1986.

16. At all relevant times the governing body of the LHDA was its Board of Directors, but the day to day affairs of the LHDA were the responsibility of its Chief Executive, Mr Sole , who in terms of section 8 of the Lesotho Highlands Development Authority Order of 1986 was responsible for the execution of the policy of the LHDA and the transaction of its day to day business. As such he was in a position to make or influence decisions improperly benefiting contractors.
17. For purposes of the LHWP the LHDA concluded contracts with various contractors and consultants who, in terms of the contract so concluded, would be responsible for building or supervising aspects of the LHWP.
18. HWV was a contractor who was involved through the contract it concluded with the LHDA, in the building of the LHWP.
19. The Accused had a bank account or bank accounts in Switzerland.
20. The Accused was responsible for or involved in, as intermediary, the payment/transfer of funds from HWV and/or Impregilo to Mr Sole through bank account(s) held by him in Switzerland.
21. The count of bribery referred to hereinafter relates to:
 - 21.1 payments made by the mentioned contractor and/or one of its constituent

partners –

21.1.1 to the Accused who in turn paid such monies or part thereof over to Mr Sole into his Swiss bank account(s); and/or

21.1.2 of monies or part thereof which were destined/intended for the benefit of Mr Sole in Lesotho and/or;

21.2 a contract which was -

21.2.1 to be executed in Lesotho by the said contractor; and/or

21.2.2 was negotiated by or on behalf of the said contractor with the LHDA in Lesotho; and/or

21.2.3 was concluded by or on behalf of the said contractor with the LHDA in Lesotho; and/or

21.2.4 a contract in respect of which the said contractor was to benefit either in Lesotho or from the work they were to perform in Lesotho and/or;

21.3 variation orders and/or contractors claims arising out of the contract referred to in paragraph 21.2 above; and/or

21.4 payments which were made or were to be made by the LHDA to the said

contractor pursuant to the contract between the LHDA and the said contractor, such payments being made or initiated or authorised in Lesotho.

22. The payments referred to in paragraphs 20 and 21 above were made in respect of action or inaction by Mr Sole in his capacity as described in paragraphs 10 and 11 above and/or were intended to influence Mr Sole in such capacity.
23. By reason of the facts set out in the foregoing paragraphs, together with the facts alleged in the indictment as a whole, this Honourable Court has jurisdiction in respect of the bribery charge referred to in part D below.
24. At all times material to the bribery charge referred to in part D below, the Accused, when he performed or was involved in the act or acts referred to in the charge, he did so wrongfully, intentionally and corruptly.

NOW THEREFORE the Accused is guilty of the charge set out below.

D: THE CHARGE:

BRIBERY:

25. The Accused is guilty of the crime of bribery in that over the period February 1991 to May 1993, HWV and/or Impregilo made payments/transfers totalling USD1 264 404.00 into a Swiss bank account held by the Accused who thereafter paid/transferred at least USD375 000 thereof to Mr Sole in circumstances as described in the Preamble and more particularly paragraph 22 above.