

IN THE HIGH COURT OF LESOTHO HELD AT MASERU

CASE NO.

In the matter between:

THE CROWN

versus

ACRES INTERNATIONAL LIMITED

Accused

INDICTMENT

A: PARTICULARS OF THE ACCUSED:

1. The Accused is Acres International Limited, a company registered in Canada, and for purposes of these proceedings a "company" as defined in section 3 of the Act, of Room 501, Maseru Sun Cabanas, Maseru, Lesotho, alternatively 4342 Queen Street, Niagara Falls, Ontario, L2E 6WI, Canada, which is represented in these proceedings for purposes of section 338(1) and (2) of the Act by its director or servant, namely E. Molieleng.

B: CROWN'S SUMMARY OF SUBSTANTIAL FACTS:

2. The Lesotho Highlands Water Project ("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 he 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. The Accused at all material times was a consultant which was awarded contracts in respect of the LHWP.
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.

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 were then forwarded to the Director of Public Prosecutions and it is inter alia on the basis of these accounts that the bribery charges in this indictment are 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 the Accused through intermediaries to Mr Sole secretly, but also that they coincided with events leading up to the award of contracts to the Accused by the LHDA and/or the actual award of such contracts and/or the payment thereafter of amounts due under the contracts and/or variation orders and/or contractors claims in respect of such contracts.
8. Margaret Bam, as well as one Zalisiwonga Mini Bam (now deceased and Margaret Bam's late husband), acted as intermediaries to whom the Accused paid monies intended in whole or in part for Mr Sole. By paying these monies through these intermediaries the Accused sought to avoid detection of its conduct.

9. From these facts, as well as other evidence that will be led in respect of the individual counts, the Court will be asked to draw the inescapable conclusion that the payment of these monies to Mr Sole by the Accused 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 CHARGES:

WHEREAS at all relevant times to the charges 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 consultants.
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. The Accused was a consultant which was involved, through contracts concluded by it with the LHDA, in the LHWP.
19. Margaret Bam and Zalisiwonga Mini Bam had bank accounts in Switzerland.
20. Margaret Bam as well as the aforementioned Zalisiwonga Mini Bam were responsible for or involved in, as intermediaries, the payment/transfer of funds from the Accused to Mr Sole through bank account(s) held by them in Switzerland.

21. The counts of bribery referred to hereinafter relate to:

21.1 payments made by the Accused -

21.1.1 to the mentioned intermediaries 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 contracts which were -

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

21.2.2 were negotiated by or on behalf of the Accused with the LHDA in Lesotho; and/or

21.2.3 were concluded by or on behalf of the Accused with the LHDA in Lesotho; and/or

21.2.4 contracts in respect of which the Accused was to benefit either in Lesotho or from the work it was to perform in Lesotho; and/or

21.3 variation orders and/or contractors claims arising out of contracts 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 Accused pursuant to contracts between the LHDA and the Accused, 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 and/or were intended to be utilised by the intermediaries as referred to in paragraph 20 above for this purpose, **more particularly in return for Mr Sole exercising his influence/powers in his official capacity for the benefit of the Accused, to wit for Mr Sole to use his opportunities/powers as Chief Executive of the LHDA to further the private interests of the Accused.**
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 charges referred to in part D below.
24. At all times material to the individual bribery charges referred to in part D below, the individual persons referred to in each such charge, when they performed or were involved in the act or acts referred to in each charge, they did so wrongfully, intentionally and corruptly.

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

D: THE CHARGES:

COUNT 1: - BRIBERY:

25. The Accused is guilty of the crime of bribery in that over the period June 1991 to January 1998 the Accused paid/transferred CAD **493 061.60** into a Swiss bank account held by Zalisiwonga Mini Bam (now deceased) who thereafter paid/transferred the said sum, or part thereof, to Mr Sole which payment/transfer was made to Mr Sole in circumstances as described in the Preamble and more particularly in paragraph 22 above.

COUNT 2: - BRIBERY:

26. The Accused is guilty of the crime of bribery in that **on or about 31 January 1991 and on or about 3 April 1991** the Accused paid/transferred CAD **180 000.00 and CAD 8 255.48 respectively** into a Swiss bank account held by Margaret Bam, **who transferred the said amounts to a Swiss account held by Zalisiwonga Mini Bam**, who **in turn** thereafter paid/transferred or was supposed to pay/transfer the said sum, or part thereof, to Mr Sole which payment/transfer was made to Mr Sole in circumstances as described in the Preamble and more particularly in paragraph **22** above.