

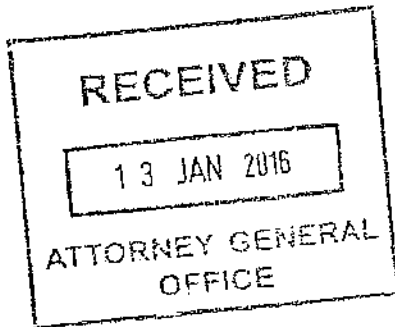
IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

BETWEEN: P O L I C E

Prosecution

A N D: NICOLAS GIANNO, and
ROSITA STANFIELD

Accused



Counsel: L Sua-Mailo for prosecution
 L R Schuster for accused

Hearing: 4, 6, 7, 13, 14 August 2015; 1, 2, 3, 4, 7, 29, 30 September 2015;
 1, 6, 7, 8, 9, 14, 15 October 2015

Submissions: 12 November 2015

Judgment: 24 December 2015

JUDGMENT OF SAPOLU CJ

Introduction

1. The accused Nicolas (Niko) Gianni and Rosita Stanfield were jointly charged with Faatoafe Mati Silao with eight counts of obtaining by deception pursuant to s.172 of the Crimes Act 2013. The accused Nicolas Gianni was also charged with two individual counts of false accounting pursuant to s.198 of the Act.

2. At the conclusion of the evidence for the prosecution, defence counsel made a submission of no case to answer on behalf of the three accused in respect of all the charges. I ruled on 8 October 2015 that there was no case to answer in relation to the accused Faatoafe Mati Silao in respect of the eight joint counts of obtaining by deception with which he was charged. Those counts against Faatoafe were therefore dismissed and he was discharged. I also ruled that there was no case to answer in respect of the accused Mr Gianni and Ms Stanfield in respect of two of the counts of obtaining by deception with which they were jointly charged. Those two counts relate to informations S1862/15 and S1866/15. Accordingly, those two informations were also dismissed. That left six joint counts of obtaining by deception against Mr Gianni and Ms Stanfield and two individual counts of false accounting against Mr Gianni alone.

The charges

3. I will now set out the remaining charges of obtaining by deception against the accused Mr Gianni and Ms Stanfield and the individual charges of false accounting against Mr Gianni. In doing so, I will refer to the alleged victims of the charges of obtaining by deception by their initials to preserve confidentiality.
- (a) Information S1853/15 – The accused are charged that at Leulumoega-tuai between 1 and 30 May 2015 they obtained by deception the amount of \$1,585 from SI a male of Saleilua, Falealili.
 - (b) Information S1861/15 – The accused are charged that at Leulumoega-tuai on 13 May 2015 they obtained by deception the amount of \$1581 from TT a female of Leulumoega-tuai.
 - (c) Information S1863/15 – The accused are charged that at Leulumoega-tuai on 15 May 2015 they obtained by deception the amount of \$1581 from MS and FS a female and male of Leulumoega-tuai.

- (d) Information S1864/15 – The accused are charged that at Leulumoega-tuai on 15 May 2015 they obtained by deception the amount of \$3200 from FI a male of Saleilua, Falealili.
- (e) Information S1865/15 – The accused are charged that at Leulumoega-tuai on 16 May 2015 they obtained by deception the amount of \$1581 from NLM a female of Nofoalii.
- (f) Information S1888/15 – The accused are charged that at Vaitele on 13 May 2015 they obtained by deception the amount of \$31625 from RF a male of Faatoia and Vaitele.

4. The individual charges of false accounting against Mr Gianni are as follows:

- (a) Information S2030/15 – The accused Mr Gianni is charged that at Matafele on 18 May 2015, with intent to deceive, he made or caused to be made or concurred in making a false entry in a document, namely, an ANZ Bank international telegraphic transfer application form.
- (b) Information S2031/15 – The accused Mr Gianni is charged that at Matafele on 19 May 2015, with intent to deceive, he made or caused to be made or concurred in making a false entry in a document, namely, ANZ Bank international telegraphic transfer application form.

The relevant provisions of the Crimes Act 2013

5. Section 172 of the Crimes Act 2013, under which the charges of obtaining by deception are laid, relevantly provides:

“(1) A person commits the offence of obtaining by deception or causing loss by deception who, by any deception:

- (a) Obtains ownership, or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or

(b) ...; or

(c) ...; or

(d) ...

“(2) In this section ‘deception’ means:

(a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and –

(i) knows it is false in a material particular; or

(ii) is reckless as to whether it is false in a material particular; or

(b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or

(c) a fraudulent device, trick, or stratagem used with intent to deceive any person.”

6. Section 198 of the Act, under which the charges of false accounting are laid, relevantly provides:

“A person is liable to imprisonment for a term not exceeding seven (7) years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to deceive or cause loss to any other person:

“(a) makes, or causes to be made, or concurs in the making of any false entry in any book or account or other document required or used for accounting purposes; or

“(b) ...; or

“(c) ...

The elements of the offences

7. With some necessary modifications of the elements of the offence of obtaining by deception under s.240 of the Crimes Act 1961 (NZ) as set out by Heath J in *R v Sullivan [2014] NZHC 2301*, para [488], the elements of the offence of obtaining by deception under s.172 of our Crimes Act 2013 which the prosecution must prove beyond reasonable doubt in order to succeed are:

- (a) The accused must have made a representation that is materially false.
- (b) The representation must have been made with an intent to deceive another person.
- (c) The accused must have known of the falsity of the representation or was reckless whether the statement was true or false.
- (d) The false representation must have given rise to one or more of the situations to which s.172 (1) (a), (b), (c), or (d) refers.

8. For the purpose of the offence of false accounting under s.198 of the Act, the elements of the offence which the prosecution must prove beyond reasonable doubt in this case in order to succeed are:

- (a) The accused must have made, or caused to be made, or concurred in the making of a false entry.
- (b) Such an entry must have been made in a book, account, or other document required or used for accounting purposes.
- (c) The accused must have had an intention to deceive someone.

The evidence in relation to the six joint charges of obtaining by deception against both accused

9. The evidence in this case is lengthy and complicated. I have given it careful consideration and have decided to accept the evidence for the prosecution and to reject the evidence for the defence. I will now set out first the evidence relied upon by the prosecution to prove the six joint charges of obtaining by deception.

10. By letter dated 19 April 2015, the accused Ms Standfield wrote to the Honourable Prime Minister and advised that she is a Samoan living and working in the United Kingdom as an accountant and as a stock market investor and broker. She also said in her letter that she is currently working for the Ufun company and its Utoken digital currency. Her business partner is Nicolas Gianno and they will arrive in Samoa on 1 May 2015 and will leave Samoa on 19 May 2015. Ms Standfield further said that the Utoken is a digital currency created and issued by the Ufun company in March 2014 and can be used online and offline. The letter goes on to say that Ufun's vision was to be the best and the biggest e-commerce in Asia and soon in every country around the world. The Ufun company was first launched in 2013 in Hong Kong and had chosen Bagna, Bangkok, in Thailand to be the location of its headquarters and it operates offices in more than twelve countries.

11. On Friday 1 May 2015, Ms Stanfield and Mr Gianno arrived in Samoa. In the arrival form filled in by Ms Stanfield for immigration purposes, it is shown that the purpose of her visit to Samoa was holiday and business and she would be staying in a hotel. In the arrival form filled in by Mr Gianno, it is shown that he was never married and the purpose of his visit to Samoa was business and he would also be staying in a hotel. As the evidence shows, Ms

Stanfield and Mr Gianni did not stay in a hotel when they arrived in Samoa but stayed with Ms Stanfield's family at Leulumoega. The arrival forms filled in by Ms Stanfield and Mr Gianni also show that each of them did not bring into Samoa \$20,000 or more or an equivalent in foreign currency.

12. On Monday 4 May or Tuesday 5 May 2015, Mr Gianni, Ms Stanfield, and the prosecution witness WF went and met with the Acting Prime Minister TSA. The Prime Minister was at the time away from the country on official business. Mr Gianni and Ms Stanfield then made a presentation to TSA on the Utoken digital currency and the benefits to be gained from investing in it. Following the presentation, Mr Gianni and Ms Stanfield made other presentations to other people on the benefits to be gained from investing in the Utoken digital currency which included the four presentations at Leulumoega on 9 May, Nofolii on 10 May, the Accident Compensation Board on 12 May and the Central Bank on 15 May. The deception alleged by the prosecution against Mr Gianni and Ms Stanfield lies in those presentations. It is therefore important to refer to the evidence relating to those presentations and the investments that were made as a consequence of the presentations. In doing so, it is to be noted here that there other presentations made by Mr Gianni and Ms Stanfield which are not the subject of any charges. In addition, it is also to be noted that about thirteen people invested in the Utoken but not all of them were made the subject of any charges.

(a) Presentation at Leulumoega on 9 May 2015

13. In respect of the presentation at Leulumoega, the prosecution witness MS testified that on Saturday 9 May 2015 before Mothers Day on 10 May, she and her son FS attended a presentation conducted by Mr Gianni and Ms Standfield at the house of Ms Stanfield's

family. It appears from the evidence that this was a power point presentation. MS said that Ms Stanfield told the people who were present at the presentation that their company Ufun has made lots of money from investing in gold and pearls. She had therefore come to Samoa for her poor family and the people of her village to invest monies in their company. MS further said that she found the presentation particularly attractive as she and her family are poor. After the presentation, she returned home and talked to her husband about it. They agreed to invest the money of their son FS in the Ufun/Utoken program.

14. FS, the son of MS, is a planter. He was called as a witness by the prosecution. He testified that during the presentation by Mr Gianni and Ms Stanfield they explained that the price for a one star package of Utoken digital currency was US\$500 or \$1,581 talā and if you invest now on a one star package of Utoken you will earn ten times more in one or two months. This presentation took about an hour. Following the presentation, FS and his mother MS gave \$1,581 talā to Ms Stanfield on or about 15 May to be invested on a one star package of Utoken.

(b) Presentation at Nofotalii on 10 May 2015

15. In respect of the presentation by Mr Gianni and Ms Stanfield at Nofotalii, the prosecution witness TT who is a housewife gave \$1,581 to the accused Ms Stanfield as an investment in the Utoken digital currency. She testified that on Sunday 10 May 2015 which was Mothers Day, she met with Ms Stanfield at the EFKS church service at Nofotalii and Ms Stanfield invited her to attend the presentation on the Utoken program to be held at the Nofotalii EFKS hall that same evening. When TT went to the presentation in the evening, there were about thirty people present. It was a power point presentation.

16. TT said that the presentation was conducted by Mr Gianni in English and translated into Samoan by Ms Stanfield and the witness WF. TT also testified that Mr Gianni said there is a new company called Ufun which has been established which makes its money from trading in gold and diamonds. Mr Gianni also referred to 'stars' during the presentation and said if you invest \$1,581 now in the Ufun company, you will get a high return of \$10,000 in July. Following the presentation, TT gave Ms Stanfield \$1,581 on 13 May as her investment in the Utoken program. TT said that some of the other mothers who attended the Nofoalii presentation also invested monies in the Utoken program.

17. The prosecution witness NTM who was also present at the presentation at Nofoalii testified that Ms Stanfield is a friend of hers and she invited Ms Stanfield to do a presentation to the members of her EFKS congregation at Nofoalii. NTM further said that the presentation was about an opportunity for people, especially the 'vulnerable' people, to make some kind of money. It was attended by about twenty five to thirty people. NTM also said that Mr Gianni and Ms Stanfield explained that they were part of an organisation that put in money to get money. Copies of the presentation which were then given out to the people present to look at showed that the organisation Mr Gianni and Ms Stanfield were referring to was the Ufun/Utoken. The presentation took about an hour. NTM was unsure and appeared forgetful in certain parts of her evidence. Following the presentation, she gave \$1,581 to Ms Stanfield on 16 May as her investment on a one star package of Utoken.

(c) Presentation at the Accident Compensation Board on 12 May 2015

18. On Tuesday 12 May 2015, Mr Gianni and Ms Stanfield did a power point presentation to the Accident Compensation Board. This was arranged by the prosecution witness RF who is a member of the Accident Compensation Board. RF was present at that presentation which was about Ufun/Utoken, that is, the Ufun company and its Utoken digital currency. FR testified that Ms Stanfield did the introduction and Mr Gianni then took over the rest of the presentation. RF took notes during the presentation and he said that Mr Gianni talked about the Utoken being recognised in eighty five countries and it was still growing. Multi-storey buildings supposed to be owned by the Ufun/Utoken company or which accommodated its offices were also shown during the power point presentation. RF noted that the assets of the company will grow about 600% in one year. When asked by the Court whether there was any mention in the presentation that if you invest in the Utoken now you will earn ten times more by 21 July 2015, RF replied he does not recall but that was mentioned by Mr Gianni during his subsequent conversation with Mr Gianni after the presentation. Following the presentation, RF gave a total amount of \$31,625 on 13 and 14 May to Mr Gianni and Ms Stanfield to be invested in the Utoken scheme.

(d) Investment by the witness FI on 15 May 2015

19. The prosecution witness FI did not attend any of the presentations by Mr Gianni and Ms Stanfield at Leulumoega or Nofoalii. He lives in Falealili but quite often he goes and stays with his father's family at Leulumoega. It was on one of those visits to his father's family at Leulumoega that FI heard about the presentations on the Utoken by Ms Stanfield who is a relative of his father. These must be the presentations conducted by Mr Gianni and Ms Stanfield at Leulumoega and Nofoalii as they are neighbouring villages.

20. On 14 May 2015, FI went and saw Ms Stanfield at Leulumoega about the Utoken program. Mr Gianni was present with Ms Stanfield and Ms Stanfield explained to FI the purpose of the Utoken program. According to FI, Ms Stanfield said to him that if he invests in the program his money will be doubled. The next day, 15 May, FI gave Ms Stanfield \$3,200 to be invested in the program. He said that he trusted Ms Standfield as she is his father's relative.

(e) Investment by the witness SI sometime in May 2015 after Mothers Day

21. The prosecution witness SI is a taxi driver. He is a brother of the witness FI. He said that he knows Ms Stanfield well as she is his aunty. SI testified that he heard about Ms Stanfield's investment scheme from his brother FI who had already invested in the scheme. He then went and talked to Ms Stanfield about the Utoken investment scheme in the presence of Mr Gianni. Ms Stanfield explained the scheme to him and said that if he invests now, his money will be doubled by August 2015. He then gave \$1,583 to Ms Stanfield in the presence of Mr Gianni as his investment. He trusted Ms Standfield as she is his aunty.

(f) Presentation to the Central Bank on 15 May 2015

22. The presentation made by Mr Gianni and Ms Standfield to the Central Bank was held at the Central Bank conference room on Friday 15 May 2015. The witness FR testified that he had suggested to Mr Gianni and Ms Stanfield to do a presentation of their Utoken investment scheme to the Central Bank as it is the central authority that controls foreign exchange. This appears from the evidence of RF to have been on 14 May after the

presentation by Mr Gianni and Ms Stanfield to the Accident Compensation Board on 12 May and after RF, Mr Gianni and Ms Stanfield had seen the witness Imakulata Lealofi of the Central Bank on 13 May regarding the remittance or repatriation of RF's funds overseas for his investment.

23. The presentation by Mr Gianni and Ms Stanfield to the Central Bank was held on Friday morning 15 May 2015 at around 10:00am and it was attended by members of the management staff of the Central Bank including the governor, Benjamin Pereira the assistant governor monitoring stability group, Magele Philip Penn the assistant governor corporate group services, Gafatasi Patu the manager legal, and Papua Schmidt the assistant manager domestic market division. This was also a power point presentation and it took about two hours because of the questions from the management staff of the Central Bank to Mr Gianni and Ms Stanfield concerning their presentation. The evidence also clearly suggests that the power point presentation given to the Central Bank on 15 May was the same kind of power point presentation given by Mr Gianni and Ms Stanfield at Leulumoega on 9 May and at Nofolii on 10 May to people without the knowledge and experience of the Central Bank management staff in financial and investment matters.
24. According to the evidence of Mr Pereira who is also an economist by profession, on Thursday 14 May 2015, the governor of the Central Bank asked him to arrange a presentation by the Ufun group to the Central Bank the next day which was Friday 15 May. Around 10:00am on 15 May, Mr Gianni and Ms Stanfield did their presentation. They said that they are representatives of the Ufun company which has invested in the mining industry and will be opening one thousand stores in China. They also focused on private companies

like Facebook and Google which had been converted into public companies and are very successful. Mr Gianni and Ms Stanfield also explained that the Utoken is a digital currency operated by the Ufun company and said that if you invest now in the Utoken packages your investment will be ten times more by 21 July 2015, that is in two months time, as the Ufun company is backed by its investments in the mining industry and it will also be opening one thousand stores in China. Mr Pereira said that he felt that this high return of 1000% on an investment within two months was too far-fetched and too good to be true. He also said that Mr Gianni and Ms Standfield did not provide any financial statements or audited accounts of the Ufun company in order for potential investors to have the confidence to invest their monies in the company's Utoken digital currency.

25. During the cross-examination of Mr Pereira, defence counsel pointed out that only a public company is under an obligation to disclose its financial statements and audited accounts but not a private company and Ufun is a private company. But even if that is so, it will be an act of good faith on the part of a private company which seeks investments from members of the public to disclose its financial statements and audited accounts to potential investors, especially if asked to do so.
26. Mr Pereira also expressed the opinion that the Utoken scheme presented by Mr Gianni and Ms Stanfield was tantamount to a pyramid scheme because of the promise of a very high return on the investment within a very short period of time. This was also the same opinion expressed by some of the other Central Bank officials who gave evidence in this case. This was also the same opinion expressed by some of the other Central Bank officials who gave

evidence in this case. While the promise of a very high return on an investment within a very short period of time may be some of the characteristics of a pyramid scheme which is generally labeled as a scam, I am satisfied from the cross-exam by defence counsel that this was not a pyramid scheme. The reason is that one of the characteristics of a pyramid scheme is the requirement for the latest investors to recruit more investors. That requirement is missing from the Utoken scheme presented by Mr Gianni and Ms Standfield in all of their presentations. As the evidence shows, none of the people who invested in the Utoken was required to recruit any other investors. I am also not satisfied that this was a ponzi scheme. However, this is not fatal to the charges of obtaining by deception because the word 'deception' is not restricted in meaning to a pyramid or ponzi scheme.

27. On 21 May in a subsequent meeting between Mr Gianni and Ms Stanfield and the staff of the Central Bank, Mr Gianni made a clarification of their presentation that was done on 15 May. I will refer to the nature of that clarification by Mr Gianni and how it differs from the presentation that was done on 15 May later in this judgment.
28. Mr Patu who is also a lawyer by profession testified that the power point presentation made to the Central Bank was attended by the management staff of the Central Bank. The gist of the presentation was that if you deposit monies now in the Utoken, by 21 July 2015 you will actually get tenfold. The entire presentation revolved around that concept and every time Mr Gianni and Ms Stanfield came around the Utoken packages, they would emphasise the tenfold increase. However, when they came around to the disclaimer that was only touched upon in a flash of probably about five seconds. Mr Patu also testified that because Ms Stanfield is a Samoan, he asked her a Christian question from the biblical book of Proverbs

about wealth quickly gained will quickly dwindle away, while wealth gained little by little will increase. Ms Stanfield's reply was that the Utoken was the exception to the biblical rule.

29. When the Court asked Mr Patu about the nature of the disclaimer that was mentioned, he said it was like a flash. It was all of a sudden that the disclaimer came up during the power point presentation for about two or three seconds and then it was taken down again. Mr Patu further said that because he was trying to grasp the tenfold increase concept, he asked both Mr Gianni and Ms Stanfield about what will happen if he were to deposit \$1,000 now and they replied he will gain \$10,000 by 21 July 2015 and he could physically withdraw that money. He also specifically asked them 'if I deposit my \$1,000 physical cash with you today, on 21 July will I receive \$10,000 cash' and they said yes.
30. Mr Patu also said that Mr Gianni and Ms Stanfield presented a picture of investors who have gained from this kind of investment and they cited as examples the original investors of the companies Facebook, Google, and Utube who are now millionaires. Mr Gianni and Ms Stanfield further said that their company Ufun is backed by 5 billion dollars worth of gold and one thousand stores to be opened in China and all these businesses need money for investments. In Mr Patu's opinion, Mr Gianni and Ms Stanfield were trying to convey the impression that we will miss out on this opportunity to get rich if we do not invest now in the Utoken packages of their Ufun company.
31. Under cross-examination, Mr Patu also remembered Mr Pereira asking Mr Gianni and Ms Stanfield about the financial statements and audited accounts of their Ufun company. Mr Gianni and Ms Stanfield replied that it is only when you become a member of the company

that those statements and accounts can be disclosed to you. Mr Patu also said that he understands that a private company does not have to disclose its financial statements and audited accounts but the way Mr Gianni and Ms Stanfield conducted their presentation made it appear that their Ufun company was not a private company but actually a public company.

32. As it also appears from Mr Patu's evidence, the presentation took almost two hours because of the many questions asked by Mr Patu himself and his Central Bank colleagues.
33. Mr Penn who has worked for thirty one years in the Central Bank testified that he recorded the presentation by Mr Gianni and Ms Stanfield to the Central Bank using his cell phone. He produced a copy of that recording in evidence. At page 10 of the recording, Mr Gianni is shown to have said: "The reason for that, because, for the new investors that buy new packages as we speak, and also the existing members, whatever the initial investment that they have bought, pay close attention, whatever the investment that they have bought, whatever the investment they buy right now, in two months, in until July 21st, whatever investment they buy, after that period their investment is going to be worth tenfold. Therefore if someone invests 50,000 or 500,000 dollars as we speak, to buy packages which I'll introduce later, their investment will be worth ten times the actual investment. So 50,000 would be worth \$500,000 dollars, 500,000 would be worth \$5 million. It's gonna be worth tenfold." It is clear that, here, Mr Gianni was speaking about the "value of an investment" and not the "value of a Utoken package". This is important because during the cross-examination of the witness Mr Pereira, defence counsel suggested to him that Mr

Gianno had said during the presentation to the Central Bank that it was the "value of the package" that was going to increase but not the "value of the investment".

34. At page 15 of the recording, Ms Stanfield is shown to have said: "[This] will happen in two months. If you invest now you can get a return of 900 per cent in two months, between now and the 21st of July". Then further on at page 21, Ms Stanfield is shown to have said: "So it's best for anyone who wants to invest to get in now. From the 21st of July you will have to buy at the expensive price. The growth between now and the 21st of July is approximately 900 per cent." Perhaps it should be noted here that Mr Penn did not recall any disclaimer being explained or mentioned orally during the presentation to the Central Bank.

35. Mr Penn also testified that Mr Gianno and Ms Strickland mentioned in their presentation to the Central Bank that they are from London and Ufun has offices in Bangkok in Thailand, Kuala Lumpur in Malaysia, and Jakarta in Indonesia. Like Mr Pereira, Mr Penn said that he found the presentation by Mr Gianno and Ms Stanfield to be too good to be true. This was because it is very rare to get a tenfold increase on an investment in two months. When defence counsel during cross-examination put to Mr Penn that the Ufun Group has reserves in mining, gold, and a thousand stores to be opened in China to back up investments in the company as explained by Mr Gianno and Ms Stanfield, Mr Penn replied that anyone can say that but there was no firm evidence to support it. It was for Mr Gianno and Ms Stanfield to convince the Central Bank about the truthfulness of their proposal and not for the Central Bank to convince Mr Gianno and Ms Stanfield that their proposal was not believable.

36. Apart from the very high return on investments within a very short period of time, the other reason why Mr Penn found the presentation by Mr Gianni and Ms Stanfield to be too good to be true is the integrity of the people behind Ufun and the absence of any mention by Mr Gianni and Ms Stanfield during their presentation on 15 May of the fact that the Ufun operations in Bangkok had been closed down following a raid by the Thai police on 10 April 2015
37. Defence counsel during the cross-examination of Mr Penn tried to suggest that the company whose office in Bangkok was raided by the Thai police was Ufun Stores Ltd but the company represented by Mr Gianni and Ms Stanfield is the Ufun Group. The two companies Ufun Stores Ltd and Ufun Group are different entities and the accused have no connection to Ufun Stores Ltd but are representatives of the Ufun Group. I am not able to accept this for the following reasons.
38. The letter of 19 April 2015 from Ms Stanfield to the Honourable Prime Minister states that the Ufun company was first launched in Hong Kong in 2013 and has chosen Bagna, Bangkok, in Thailand to be the location of its headquarters because Thailand is likely to become the centre of Asia and as the ASEAN Economic Community will officially be established in Thailand in 2015. The accused had also said during their presentation to the Central Bank that Ufun has offices in Bangkok, Kuala Lumpur, and Jakarta. There were also several references in the presentation which clearly showed that Ufun has an office in Bangkok. In addition, amongst the countries listed in Ms Stanfield's business card is Thailand which suggests that Ufun has an office in Thailand. The notes taken by the

witness RF during the presentation to the Accident Compensation Board on 12 May also specifically notes that the headquarters for Ufun is located in Thailand.

39. A Thai police officer to whom I will refer for convenience as "Mr Paul" was brought over from Thailand to be a witness for the prosecution. He testified that on 10 April 2015, the Thai police applied to a Court in Thailand for an arrest warrant and a search warrant and then carried out a raid of the head office of Ufun in Bangkok. He was a member of the police party that carried out that raid. He said that the police arrested three of the top executives of Ufun while the other top executives managed to flee the country. The Thai police also seized a computer, a database, and bank accounts from the office of Ufun. Following the raid by the Thai police, the top executives of Ufun who were arrested were charged with obtaining loans from members of the public by deception. Mr Paul also referred to one of the photos which formed part of the presentation by Mr Gianni and Ms Stanfield to the Central Bank as the photo of the building in Bangkok which housed the office of Ufun that was raided by the Thai police. There was no mention by Mr Paul of any other Ufun entity in Bangkok other than the Ufun company whose office is shown in that photo. The clear inference to be drawn from this is that the Ufun office in Bangkok that was raided by the Thai police must be the office of the same Ufun company whose headquarters appears in the photo given in the presentation by the accused and which is represented by the accused.
40. The other reason why Mr Penn was of the opinion that the presentation by Mr Gianni and Ms Stanfield was too good to be true was that it is not possible for investments in the Utoken to earn a tenfold return within a very short period of time without the Ufun company

being registered first as an IPO (initial public offering) so that the shares in Ufun can be listed in a stock market like Wall Street. There may then be a hope of a high return on an investment within a short period of time. However, Mr Gianni and Ms Stanfield had said in their presentation that Ufun will not become an IPO until 2017. It was therefore not reasonably possible for an investment made in the Utoken in May 2015 to increase tenfold by 21 July 2015 or even soon thereafter if Ufun is not to be registered as an IPO until 2017.

41. Mr Penn also found it implausible that the affairs of Ufun in Bangkok or in Asia would be governed and monitored by the Central Bank of Switzerland and be regulated by the Basel Guidelines as suggested by the defence during cross-examination. Mr Penn said that based on his experience, the affairs of a company would be monitored and regulated by the Central Bank of the country where the company is based. There is no evidence to show that Ufun is based in Switzerland which is in Europe or has any connection to Switzerland. What the evidence shows is that Ufun had its headquarters in Bangkok which is in Asia and had an office in a ten storey building in Bangkok which was closed down on 10 April 2015 after being raided by the Thai police.

42. After the presentation on Friday 15 May, Mr Gianni and Ms Stanfield met again with the management staff of the Central Bank on Thursday 21 May. At that meeting, Mr Gianni and Ms Stanfield showed the management staff a clarification note of their presentation for the first time. Under cross-examination, Mr Patu accepted that on 21 May Mr Gianni clarified how the investors money could benefit from the Utoken scheme if they invest prior to 21 July 2015. Mr Patu also said under cross-examination that at the presentation on 15 July, he understood the concept of the Utoken investment scheme to be that if you invest

\$1,000 now you will get \$10,000 or ten times more on 21 July. However, the clarification given by Mr Gianni on 21 July was that what it would be cheaper to invest now than to invest after 21 July. There was a significant difference between what was said at the presentation on 15 July and the clarification on 21 July. This baffled Mr Patu because he had asked a specific question during the presentation on 15 July whether if he deposits \$1,000 cash today, on 21 July will he receive \$10,000 (ten times more), and Mr Gianni and Ms Stanfield said yes. That was not the only difficulty with the clarification.

43. Mr Pereira had also testified that at the presentation to the Central Bank on 15 July, Mr Gianni and Ms Stanfield had said that if you invest in a Utoken package, your investment will increase ten times more by 21 July. During cross-examination, defence counsel repeatedly put it to Mr Pereira that what Mr Gianni said during the 15 May presentation was not that the 'investment' will increase ten times more but that it is the 'value of the package' that will increase tenfold. Mr Pereira maintained his answer that Mr Gianni had said that it is the value of the 'investment' that will increase tenfold. He also said that to his understanding an increase in the 'investment' is essentially the same thing as an increase in the 'value of the package' on which someone invests his money. Mr Pereira also accepted that the clarification given by Mr Gianni and Ms Stanfield on 21 May was that it would be cheaper to invest now in the Utoken than to invest after 21 July.
44. What is to be noted here is that what Mr Pereira and Mr Patu testified to have been said by Mr Gianni and Ms Stanfield at the 15 May presentation is essentially the same as what the witness FS testified was said by Mr Gianni and Ms Stanfield at the Leulumoega presentation on 9 May and what the witness TT testified was said by Mr Gianni and Ms

Standfield at the Nofaalii presentation on 10 May. It is also the same as what the witness RF testified was said to him by Mr Gianni at their conversation after the presentation to the Accident Compensation Board on 12 May. With the witness FI and SI, they were simply told by Ms Stanfield in the presence of Mr Gianni that their monies (not the value of their packages) will be doubled.

45. It is also to be noted that the presentation to the Central Bank on 15 May was followed by a clarification on 21 May. This was in the form of a clarification note and oral explanations. With the presentation at Leulumoega, Nofaalii, and to the Accident Compensation Board there was no subsequent clarification. According to Mr Gianni's evidence, this was because at the time of those presentations the clarification note was not available to him and Ms Standfield. Furthermore, none of the witnesses from those three presentations testified that Mr Gianni or Ms Standfield said to them that it is cheaper to invest now in the Utoken than to invest after 21 July.
46. The complexity of the Utoken investment scheme is also shown by the numerous questions asked by the management staff of the Central Bank to Mr Gianni and Ms Stanfield during the 15 May presentation and the fact that there was a subsequent clarification. I very much doubt whether the people who attended the Leulumoega and Nofaalii presentations really understood the Utoken scheme. The same goes for the witnesses FI a planter and SI a taxi driver who invested their monies because they trusted Ms Stanfield as their relative. I also doubt whether the people attending the Accident Compensation Board presentation really grasped the complexity of the Utoken scheme. A copy of the presentation was produced in evidence and some parts of it are expressed in technical language. It seems to me that those

people who invested in the Utoken scheme were drawn in because of the prospect of getting rich quickly within a short period of time without knowing what they were getting into – the get rich quick mentality Mr Patu had in mind when he asked Ms Stanfield a biblical question at the Central Bank presentation.

The evidence for the defence in relation to the charges of obtaining by deception

47. Ms Stanfield elected not to give evidence. Only Mr Gianni gave evidence. He testified that he is a digital currency consultant and a marketing consultant and he does the marketing side of the Ufun Group company. He said that the Ufun Group company is located in Kuala Lumpur, Malaysia, and it has a reserve system and invests in many projects and businesses such as gold mining, nickel mining, and marble mining. He also said that he came to Samoa because Ms Stanfield is a Samoan with her heart in Samoa and she wanted to introduce the Utoken as an investment opportunity to help her family in Samoa and those people without much money. They also wanted to introduce the Utoken as an investment opportunity to the Samoan Government so that it can actually benefit from this opportunity as well.
48. Mr Gianni denied that he told the people at the Leulumoega and Nofaalii presentations that their monies will increase tenfold. He said that what he explained to the people in those presentations was the possibilities of earning more money if they invest in the Utoken and that there are definitely indications that the money will increase tenfold. This is different from what the witness FS said that at the Leulumoega presentation Mr Gianni and Ms Stanfield told the people who were present that if you invest now on a one star package of Utoken, you will earn ten times more in one or two months. It is also different from what the witness TT said that at the Nofaalii presentation Mr Gianni told the people who were

present that if you invest \$1,581 now in the Ufun company, you will get a high return of \$10,000 in July.

49. In relation to the presentation to the Accident Compensation Board, Mr Gianni said that as he understood the evidence of the prosecution witness RF, what RF was referring to was the comparison between the bitcoin which after the first year has had 0% growth and the Utoken which has seen a 600% growth in its first year. As earlier mentioned, RF testified that he took notes of the presentation by Mr Gianni and Ms Stanfield to the Accident Compensation Fund and he noted down that Mr Gianni said that the assets of the company will grow about 600% in one year. RF was unsure whether Mr Gianni said during the presentation that if you invest in the Utoken now you will earn ten times more by 21 July 2015 but he was certain that Mr Gianni said that to him during their conversation after the presentation. Mr Gianni in his evidence did not deny what RF said that during his conversation with Mr Gianni after the presentation, Mr Gianni mentioned that if you invest in the Utoken now, you will earn ten times more by 21 July 2015.
50. Furthermore, at the presentation by Mr Gianni and Ms Stanfield to the Central Bank which was recorded by Mr Penn, Ms Stanfield said that if you invest now in the Utoken you will get a 900 per cent return in two months, that is, by 21 July 2015. Mr Gianni in the same presentation said that whatever investment you buy right now, after two months, until 21 July, that investment will be worth tenfold.
51. The witness Mr Pereira testified that in the presentation to the Central Bank, Mr Gianni and Ms Stanfield had said that if you invest now in the Utoken packages, by 21 July 2015, that is in two months time, your investment will be ten times more. The evidence by the witness

Mr Patu is that the gist of the presentation by Mr Gianni and Ms Stanfield was that if you deposit your money now in the Utoken, by 21 July 2015 you will actually get tenfold.

52. After considering the denial by Mr Gianni, I have decided to accept the evidence of the prosecution witnesses FS and TT about what Mr Gianni and Ms Stanfield had told the people at the Leulumoega and Nofolii presentations and to reject the denial by Mr Gianni that he told the people at the Leulumoega and Nofolii presentations that their investments will increase tenfold. The evidence of FS and TT are also consistent with the evidence of the prosecution witness RF about what Mr Gianni mentioned to him in their conversation after the Accident Compensation Board presentation. The evidence of FS and TT are also consistent with what was said by the Central Bank officials Mr Penn, Mr Pereira, and Mr Patu in their evidence.
53. The prosecution witness NTM is a friend of Ms Stanfield. She was present at the Nofolii presentation. She did not say whether Mr Gianni and Ms Stanfield told the people at the Nofolii presentation that if you invest \$1,581 now in the Ufun company you will get a high return of \$10,000 in July. She appeared unsure and forgetful in certain parts of her evidence. I was not impressed with her evidence.
54. In relation to question of whether the Ufun, Ufun Group, or Ufun company has an office in Thailand and its headquarters is in Bangkok, Thailand, I found Mr Gianni's evidence under cross-examination evasive which unnecessarily prolonged the cross-examination. I do not propose to refer in detail to the questions put by counsel for the prosecution to Mr Gianni during cross-examination and the answers given by Mr Gianni as that will also unnecessarily prolong this judgment. My clear impression of this part of Mr Gianni's

evidence is that he was trying to avoid having any direct knowledge of the office of Ufun, Ufun Group, or Ufun company in Thailand or of Bangkok being the headquarters of Ufun because the witness Mr Paul from the Thai police had testified that the office and headquarters of Ufun in Bangkok was raided by the Thai police on 10 April 2015 and three of the top executives of Ufun were arrested and charged with obtaining loans from members of the public while the other top executives managed to flee the country. According to Mr Paul, the office and headquarters of Ufun in Bangkok ceased operations on 10 April 2015. The contention by the prosecution is that Mr Gianni and Ms Stanfield as representatives of Ufun or the Ufun Group must have known of this situation but did not disclose it in any of the presentations they held in Samoa in May 2015.

55. The evidence given by Mr Gianni in this connection is that the company Ufun Group of which he is a marketing consultant is a global company with main offices in many countries. In reply to persistent questioning from counsel for the prosecution whether the Ufun Group he represents has an office in Thailand and its headquarters is in Thailand, Mr Gianni's repeated answers were, no, I don't know, I would not know that for a fact, I would not know that for a fact because I have not been to Thailand, I have heard that there is an office of Ufun in Thailand but I don't know that for a fact. When counsel for the prosecution referred Mr Gianni to his business card which, like Ms Stanfield's business card, names several countries including Thailand, Mr Gianni replied that his business card only says Thailand but it does not say that the Ufun Group has an office in Thailand. When asked whether because of his business card he is saying that the Ufun Group has an office in Thailand, Mr Gianni replied he was not saying that but he concedes that the name Thailand appears on

his business card. Mr Gianni further said there is probably an office of the Ufun Group in Thailand and that Ms Stanfield acknowledged to him that there is an office of Ufun in Thailand. This is in spite of Mr Gianni's evidence that the Ufun Group is a global company with offices in many countries and the many references to Thailand in the presentations that Mr Gianni and Ms Stanfield delivered in Samoa which included a photo of the princess of Thailand in what was claimed to be a signing ceremony for a marble mining project of Ufun. The only offices of the Ufun Group whose existence were confirmed by Mr Gianni were the offices in Kuala Lumpur in Malaysia and Jakarta in Indonesia because Mr Gianni said he has been to those offices and actually seen those offices. Like the disciple Thomas, Mr Gianni appears not to believe anything for certain until he has actually seen it. I must say that I do not believe that Mr Gianni did not know of the office and headquarters of the Ufun or Ufun Group in Thailand. He must have known about that office in Thailand before he came to Samoa on 1 May 2015. He must also have known at some stage that the office of Ufun in Thailand was raided by the Thai police on 10 April 2015 and that three of its top executives were arrested by the Thai police and charged with deception.

56. In Ms Stanfield's letter of 19 April 2015 to the Prime Minister, she says that she is a digital currency consultant for Utoken/Ufun. She also says that Mr Gianni is her business partner. Mr Gianni does not deny that he and Ms Stanfield are business partners. In fact in his evidence under cross-examination he said that he and Ms Stanfield both represent the Ufun Group. He also said in his evidence in chief that he is a marketing consultant and he does the marketing side of Ufun's work. The whole of the evidence also suggest that Mr Gianni and Ms Stanfield are business partners.

57. Ms Stanfield then says in her letter of 19 April 2015 that the Utoken digital currency was created and issued by Ufun in March 2014 which implies that the Utoken was about one year and two months old in May 2015. However, when counsel for the prosecution asked Mr Gianni whether the Utoken has only been in existence for about one year given what is said by Ms Stanfield in her letter, Mr Gianni said no. He did not, however, say how long the Utoken has been in existence. There is therefore an inconsistency here between the evidence of Mr Gianni and what is said by Ms Stanfield in her letter of 19 April 2015.

58. Ms Stanfield also says in her letter that the Ufun company chose Bangna, Bangkok, in Thailand to be the location of its headquarters because Thailand is likely to become the centre of Asia and because the ASEAN Economic Community will officially be established there in 2015. However, Mr Gianni denied that Bangkok is the headquarters of the Ufun or the Ufun Group. This is another inconsistency between the evidence of Mr Gianni and what is said by Ms Stanfield in her letter of 19 April 2015. It should be noted that the witness RF in his notes taken at the presentation to the Accident Compensation Board specifically noted that the headquarters of Ufun is in Thailand. Mr Paul in his evidence also said that the Thai police raided the office and headquarters of Ufun in Bangkok. All of this does not inspire confidence in Mr Gianni's credibility. Other evidence which will appear in the remainder of this judgment which further increases lack of confidence in the credibility of Mr Gianni.

Relating the evidence to the elements of the six joint charges of obtaining by deception

59. I will now relate the evidence to each of the elements of the six joint charges of obtaining by deception that the prosecution must prove beyond reasonable doubt in order to succeed.

(a) The accused must have made a representation that is materially false

60. In relation to the first element of the joint charges of obtaining for deception, namely, that the accused must have made a representation that is materially false, I accept the evidence given by the Central Bank officials Mr Pereira and Mr Penn to the effect that the representation made by Mr Gianni and Ms Stanfield at their presentation to the Central Bank on 15 May 2015 that if you invest your money now, that is May 2015, in the Utoken your investment will be tenfold or ten times more in two months times, that is by 21 July 2015, was too good to be true. So good to be true that it must be materially false for the reasons already given.
61. That was the same kind of false representation made by Mr Gianni and Ms Stanfield at their presentation held at Leulumoega on 9 May 2015 where, according to the evidence of the witness FS, Mr Gianni and Ms Stanfield said that if you invest now in a one star package of Utoken, you will earn ten times more in one or two months. It was also the same kind of false representation made by Mr Gianni and Ms Stanfield at the presentation they held at Nofolii on 10 May 2015 where, according to the evidence of the witness TT, Mr Gianni and Ms Stanfield said that if you invest \$1,581 now in the Ufun company you will get a high return of \$10,000 in July. It was also the same representation made by Mr Gianni to the witness RF after his presentation with Ms Stanfield to the Accident Compensation Board where, according to the evidence of the witness RF, Mr Gianni mentioned to him that if you invest in the Utoken now you will earn ten times more by 21 July 2015. Similar false representations were made by Ms Stanfield in the presence of Mr Gianni at her family's house at Leulumoega to the witnesses FI and his brother SI that if they invest in the Utoken

now, their monies will be doubled by August 2015. This was clearly a joint undertaking by both Mr Gianni and Ms Stanfield for which they must be held jointly responsible.

62. It is also to be borne in mind that in the letter of 19 April 2015 by Ms Stanfield to the Honourable Prime Minister, she says that she is a digital currency consultant for Utoken/Ufun and Mr Gianni is her business partner. Ms Stanfield also says in her letter that the headquarters of the Ufun company is in Bangkok, Thailand. This is the same headquarters of Ufun in Bangkok which the witness Mr Paul had testified was raided by the Thai police on 10 April 2015 and has ceased operations since since that day. However, Ms Stanfield did not disclose that fact in any of the presentations they held in Samoa in the month of May. It would also be unrealistic not to expect Mr Gianni to have been aware of that fact given his close business association with Ms Stanfield who is his business partner. All that Mr Gianni said, after persistent cross-examination by counsel for the prosecution, was that Ms Stanfield only acknowledged to him that Ufun has an office in Thailand. I do not believe that that was all that Mr Gianni knew about the office of Ufun in Thailand. I find that Mr Gianni must also have been aware that the office and headquarters of Ufun in Bangkok, Thailand, had ceased operations on 10 April 2015 but did not disclose that fact during any of the presentations that he and Ms Stanfield held in Samoa.
63. I therefore conclude that the prosecution has proved beyond reasonable doubt the first element of the joint charges of obtaining by deception against both accused.

(b) The presentation by the accused must have been made with an intent to deceive another person

64. In relation to the second element of the joint charges of obtaining by deception, namely, that the representation by the accused must have been made with an intent to deceive another person, intent is a state of mind and it is not physically possible to see into a person's mind as to what he is thinking about. But it can be possible to infer what is in a person's mind from his words and actions. Such words and actions are usually referred to as circumstantial evidence.
65. What happened here was that as part of the presentation held by Mr Gianni and Ms Stanfield at Leulumoega on 9 May 2015, they told the people who attended that presentation that if you invest now in a one star package of Utoken, you will earn ten times more in one or two months. This representation was so good to be true and that it must be false. Mr Gianni and Ms Stanfield also did not disclose the fact that the headquarters of Ufun in Bangkok had ceased operations since 10 April 2015. As a result, the witnesses MS and her son FS invested \$1,581 being the price of a one star package of Utoken. Mr Gianni and Ms Stanfield accepted and took that money. The only reasonable inference to be drawn from those circumstances is that when Mr Gianni and Ms Stanfield made the said false representation, they had an intention to deceive the people who were present at the Leulumoega presentation to invest their monies in the Utoken scheme.
66. I do not accept the suggestion from the defence that no one will know for certain whether Mr Gianni and Ms Stanfield would have actually invested the money from the investors in a Utoken scheme and earn ten times more in one or two months as that did not happen

because the Central Bank stopped Mr Gianni and Ms Stanfield from remitting the money overseas. If that had been allowed by the Central Bank, it would have been too late to recover the investors money because the money would be out of Samoa and Mr Gianni and Ms Stanfield would also be out of Samoa as they were about to leave the country on 26 May 2015 when they were stopped by the police at Faleolo airport.'

67. What I have said about the presentation at Leulumoega also applies to the presentation by Mr Gianni and Ms Stanfield at Nofaalii on 10 May 2015 where they told the people who were present that if you invest \$1,581 now in the Ufun company, you will get a high return of \$10,000 in July. This representation was also too good to be true that it must be false. Mr Gianni and Ms Stanfield also did not disclose the fact that the headquarters of Ufun in Bangkok had been raided by the Thai police on 10 April 2015 and its operations had ceased since that day. As a result, the witness TT invested \$1,581 and the witness NTM invested \$1,581 in the Utoken scheme. Again, the only reasonable inference to be drawn from those circumstances is that when Mr Gianni and Ms Stanfield made the said false representation, they must have intended to deceive the people at the Nofaalii presentation to invest their monies in the Utoken scheme.
68. The same goes for the representation made by Mr Gianni to the witness RF during their conversation after the prosecution to the Accident Compensation Board on 12 May 2015 where Mr Gianni said to RF that if you invest in the Utoken now you will earn ten times more by 21 July 2015. As a result, RF invested a total amount of \$31,625.
69. The same also goes for the representations made by Ms Stanfield to the witnesses FI and his brother SI at her family's place at Leulumoega in May 2015 in the presence of Mr Gianni,

that if they invest now in the Utoken, their monies will be doubled by August. That was also too good to be true. Ms Stanfield also did not mention to FI and SI that the headquarters of Ufun in Bangkok had been raided by the Thai police on 10 April 2015 and three of its top executives had been arrested and charged with obtaining loans from the public by deception. As a result, FI invested \$3,200 and SI invested \$1,583 in the Utoken.

70. All of these false representations were part of a joint undertaking by Mr Gianni and Ms Stanfield for which they should be held jointly responsible.

71. I therefore conclude that the prosecution has proved beyond reasonable doubt the second element of the joint charges of obtaining by deception against both accused.

(c) The accused must have known of the falsity of the representation

72. As to the third element of the joint charges of obtaining by deception, namely, that the accused must have known of the falsity of the representations that they made, having found that Mr Gianni and Ms Stanfield must have intended to deceive other people with the representations that they made, it must follow that they knew of the falsity of those representations but still made them. I therefore conclude that the prosecution has also proved beyond reasonable doubt the third element of the joint charges of obtaining by deception against both of them.

(d) The false representation by the accused must have given rise to one or more of the situations to which s.172 (1) (a), (b), (c), or (d) refers

73. In relation to the fourth element of the joint charges of obtaining by deception, namely, that the representation made by the accused must have given rise to one or more of the situations

to which s.172 (1) (a), (b), (c), or (d) refers, s.172 (1) (a) relevantly provides that a person commits the offence of obtaining by deception who, by deception, obtains ownership, or possession of, or control over any property. It is clear from the evidence that Mr Gianni and Ms Stanfield by way of false representations obtained possession of monies from people who invested in the Utoken. I therefore have no difficulty in concluding that the prosecution has proved beyond reasonable doubt the fourth element of the joint charges of obtaining by deception against both accused.

74. The prosecution having proved all four elements of the joint charges of obtaining by deception, I find the accused guilty of those charges.

The evidence in relation to the two individual charges of false accounting against the accused Nicolas Gianni

75. As earlier mentioned, the evidence in this case is lengthy and complicated. I have decided to accept the evidence for the prosecution and to reject the evidence for the defence. I will now set out first the evidence relied upon by the prosecution to prove the two individual charges of false accounting against the accused Mr Gianni.
76. As earlier mentioned in para 12 of this judgment, there were other Utoken presentations held by Mr Gianni and Ms Stanfield apart from the presentations which have been made the subject of the six joint charges of obtaining by deception that the prosecution has proved beyond reasonable doubt. A total of thirteen people had also invested in the Utoken but only seven of those people are mentioned in the obtaining by deception charges that the prosecution has proved. I mention this in order to understand why there was more money in

the personal account that was opened in Mr Gianni's name in the ANZ bank than the total amount of the monies invested in the Utoken by the investors whose names are referred to in the obtaining by deception charges.

Personal account in the ANZ bank Mr Gianni's name

77. According to the evidence of the prosecution witness Vern Lusiano who is a sales consultant at the ANZ bank, on Tuesday 12 May 2015 around 4:45pm in the afternoon, Mr Gianni and Ms Stanfield came to the ANZ bank in Apia to open a joint account in their names. Mr Lusiano explained to Mr Gianni and Ms Stanfield that for the purpose of a joint account each of them is required to provide two IDs. Because only Mr Gianni had two IDs on him at that time, the account was opened as a personal account in the name of Mr Gianni alone. After Mr Gianni filled the necessary bank forms to open the account, he deposited \$5,500 into the new account while Ms Standfield was standing close by. It would be recalled in this connection that 12 May was the same day that Mr Gianni and Ms Standfield had held a presentation at the Accident Compensation Board.
78. Mr Lusiano also testified that Mr Gianni explained to him that the purpose of the account was for his salary which was payable in London but can be withdrawn from this personal account in Samoa.
79. As noted from the ANZ bank interim statement of account dated 28 July 2015, after the initial cash deposit of \$5,500 on 12 May 2015, there were further cash deposits, all with the narration "Utoken," on 14, 15 and 18 May 2015. As of 18 May, the balance in the account was \$133,042.25. The deposit slips for those cash deposits were also produced in evidence.

Except for the deposit slip for the first cash deposit on 12 May, all the other deposit slips contain the narration "Utoken". It shows that the monies which were invested in the Utoken by investors were deposited into this account. The interim statement of account then shows a telegraphic transfer of funds overseas in the amount of \$11,030 on 18 May 2015 and another telegraphic transfer of funds overseas in the amount of \$20,000 on 19 May 2015.

Transfer of funds overseas from the ANZ bank account

80. The witness RF had testified that after the presentation by Mr Gianni and Ms Standfield to the Accident Compensation Board on Tuesday 12 May 2015, he paid to Mr Gianni and Ms Standfield US\$5,750 on 13 May. He made a second payment of US\$5,750 on 14 May. So the total amount he paid to Mr Gianni and Ms Standfield was US\$11,500 which was equivalent to about \$31,711 talā. On Wednesday 13 May, RF went to the Central Bank to seek approval for the remittance of money overseas for investment purposes. He met with the prosecution witness Imakulata Lealofi whose duties include checking applications for Central Bank approval to remit funds overseas.
81. According to the evidence of Ms Lealofi, RF came to the Central Bank for approval to remit funds overseas for investment purposes but he was not entirely clear as to where his money was to be sent. RF then called Ms Standfield on his cell phone to come to the Central Bank. Ms Standfield and Mr Gianni soon arrived. Ms Lealofi then asked Ms Standfield about the purpose for remitting RF's funds overseas and Ms Standfield replied that it was for investment in their company called Utoken. Ms Lealofi then explained the Central Bank requirements for such a remittance. An agreement between the local investor and the overseas company in which the investment is to be made needs to be produced. An

application letter setting out the details of such an agreement should also be given to the Central Bank as well as a tax clearance certificate from the country where the investment is to be made.

82. Ms Lealofi said that Ms Standfield then asked her about what if the money is sent to her personal account as a gift. Ms Lealofi also explained the Central Bank requirements for such a remittance. Ms Lealofi then heard Ms Standfield saying that it would be easier if the money is sent as a gift while RF and Mr Gianni were still standing next to her.
83. The prosecution witness Faatali Peti who is employed in the section of the ANZ bank for the remittance of funds overseas testified that on Monday 18 May 2015, Mr Gianni and Ms Standfield came to the ANZ bank between 2:00pm and 3:00pm in the afternoon to remit some funds to London from the personal account in the ANZ bank under Mr Gianni's name. This was after Mr Gianni, Ms Standfield, and the witness RF had met with Ms Lealofi at the Central Bank on 13 May. Ms Peti said that Mr Gianni wanted to remit \$20,000 to his personal account in London but Ms Standfield whispered to him to remit only \$11,000.
84. When Ms Peti asked Mr Gianni about the purpose of the remittance, he replied that it was a gift for the use of his wife and children. Ms Peti then filled in a telegraphic transfer application form based on the information given to her by Mr Gianni while Ms Standfield was still present. The box with the narration "Gift/payment to family or friend" was ticked by Ms Peti. After the telegraphic transfer application form was filled in by Ms Peti, she gave it to Mr Gianni to check and sign. Mr Gianni duly signed the form as applicant.

85. Ms Peti also filled in a pink Central Bank BOP form that has to be filled in when someone sends money overseas through the bank. It is noted in that BOP form that the purpose of Mr Gianni's remittance was "Gift". Ms Peti explained that this is a Central Bank form that has to be filled in and returned to the Central Bank for every remittance of funds overseas. The sum of \$11,000 was then remitted to Mr Gianni's personal account in London after payment of the bank fee of \$30. This remittance must have been in pounds sterling.
86. Certain points need to be noted here about these bank forms. Mr Gianni and Ms Standfield had been to the Central Bank on 13 May and informed Ms Lealofi that the purpose for remitting RF's funds overseas was for investment in their company called the Utoken. Ms Lealofi explained to them the Central Bank requirements for such a remittance for investment overseas and for the remittance of funds as a gift. Ms Standfield then said in the presence of Mr Gianni and RF that it would be easier to send the money as a gift. On 18 May Mr Gianni remitted \$11,000 and on 19 May \$20,000 from his account at the ANZ bank to his personal account in London as gifts for the use of his wife and children. Again, on 20 May he tried to do the same but his account in the ANZ bank was frozen on advice from the Central Bank. Secondly, Mr Gianni told the witness Ms Peti that the money was to be sent to his personal account in London for the use of his wife and children but when he was questioned by constable Penehuro Tapeli on 26 May he said that he is not married and does not have any children. Mr Gianni in his evidence denied that he told Ms Peti that the purpose for his remittances was as gifts for the use of his wife and children. I disbelieve Mr Gianni's denial and accept Ms Peti's evidence. In the arrival form filled in by Mr Gianni when he arrived in Samoa on 1 May 2015, he placed a tick in the box next to the narration "Never married". Defence counsel also conceded during the evidence of constable Tapeli

that Mr Gianni is never married and does not have children. Mr Gianni said the same thing in his evidence. Thirdly, Mr Peti gave evidence that amounts of \$20,000 or less can be remitted overseas as gifts without prior Central Bank approval. This must be why Mr Gianni remitted only \$11,000 on 18 May and \$20,000 on 19 May and tried to remit another \$20,000 on 20 May. Fourthly, the monies that were deposited by Mr Gianni in his personal account with the ANZ bank were monies received from local investors for investment overseas in the Utoken. And Mr Gianni wanted to remit all of that money overseas, presumably as a gift for the use of his wife and children. But the money was not intended by the investors for the use of Mr Gianni's wife and children.

87. It therefore appears that the information Mr Gianni gave Ms Peti to be noted in the telegraphic transfer application form and the Central Bank form was false. His intention was clearly to mislead the ANZ bank and to circumvent the Central Bank requirements about producing an agreement between the local investors and the overseas company in which the money was to be invested, producing a letter of application setting out the details of such an agreement, as well as producing a tax clearance certificate from the country where the investment is to be made.

88. After 18 May, Mr Gianni and Ms Standfield again went to the ANZ bank on Tuesday 19 May to remit \$20,000 from Mr Gianni's personal account with the ANZ to his personal account in London as a gift for the use of his wife and children. Again Ms Peti filled in the necessary telegraphic transfer application form and Central Bank BOP form based on the information provided by Mr Gianni. Both forms were duly signed by Mr Gianni as

applicant. After payment by Mr Gianni of the \$30 bank fee, the \$20,000 was remitted to Mr Gianni's personal account in London. This remittance must also have been in British pounds.

89. The next day, 20 May, in the afternoon Mr Gianni and Ms Standfield again went to the ANZ bank to remit another \$20,000 from Mr Gianni's personal account with the ANZ bank to his personal account in London as a gift for the use of his wife and children. Ms Peti testified that Mr Gianni indicated to her that he wanted to remit all the money in his personal account to London. To assist Mr Gianni, Ms Peti then advised him to obtain Central Bank approval to remit the full amount in his personal account in order to save him having to pay the bank's fee of \$30 everytime he remitted \$20,000 or a smaller amount. Mr Gianni refused to take Ms Peti's advice saying that the Central Bank was waiting for a letter from a company in London. This made Ms Peti to become suspicious and she referred Mr Gianni to her supervisor Yvonne Tuia. In fact the reference by Mr Gianni to a letter from a company in London is not correct because the witness Ms Lealofi never said to Mr Gianni that a letter was required from a company in London. What Ms Lealofi said that she told Mr Gianni was that a letter of application was required setting out the details of the agreement between the local investor and the overseas company in which the money is to be invested.

90. I have decided to believe Ms Peti and not Mr Gianni. There is no evidence to show that Ms Peti or any other ANZ bank employee signed Mr Gianni's name on the said forms. Why should Ms Peti or any other bank employee sign Mr Gianni's name on any of those forms in order for Mr Gianni to be able to remit funds to his personal account in London. There is

also no evidence to show that Ms Peti or any other bank employee would gain anything from signing Mr Gianni's name on those forms except to put his/her job at risk for forgery.

91. Ms Tuia in her evidence said that on 20 May Ms Peti came to her and relayed her suspicion about Mr Gianni for that was the third day in a row that Mr Gianni had come to the bank to remit funds from his ANZ bank account to his personal account in London as a gift for the use of his wife and children. Ms Tuia then called the prosecution witness Papua Schmidt who is the assistant manager domestic market division in the Central Bank. The advice from Ms Schmidt was to hold Mr Gianni's remittances and to refer him to the Central Bank. About half an hour later, Ms Tuia received a phone call from Ms Schmidt to freeze Mr Gianni's personal account at the ANZ bank. At that time Ms Schmidt was already aware of Mr Gianni and Ms Standfield because they had given a presentation on the Utoken to the Central Bank on 15 May. After Mr Gianni's account was frozen on 20 May, Mr Gianni and Ms Standfield went to the Central Bank on 21 May and provided a clarification for the presentation they had given on 15 May.

92. Ms Tuia also said in her evidence that the ANZ bank telegraphic transfer application forms were accounting documents required or used for accounting purposes.

93. Mr Gianni in his evidence also said that the funds he remitted to his personal account in London were his own money. He said that he and Ms Standfield had brought with them to Samoa 10,000 British pounds worth of Utoken activation points which they had bought from the Ufun company. So when an investor in Samoa gave them money for his/her Utoken investment they activated the appropriate points which they had already bought from the Ufun company and the investor's money automatically becomes his and Ms

Standfield's money because they had already paid for the activation points to the company.

Again, I find it difficult to believe this part of Mr Gianni's evidence.

94. Apart from Mr Gianni's word, there is no other proof that he had brought with him to Samoa any Utoken activation points whatever the words 'activation points' mean. Mr Gianni and Ms Standfield also never said anything in their presentations or told any investor that if you invest in the Utoken, they will activate any points for him/her and his/her money will automatically become the money of Mr Gianni and Ms Standfield.
95. The prosecution witness Margret Tafunai who is the manager of the financial market department of the Central Bank had testified that when she enquired of Mr Gianni about the funds that had been remitted from his ANZ bank account to the United Kingdom, Mr Gianni replied that funds were initially sent to the UK and would then be transferred to Malaysia for activation points. This is inconsistent with Mr Gianni's evidence that he and Ms Stanfield brought with them to Samoa activation points worth 10,000 British pounds and when an investor pays for his/her investment in the Utoken they would activate the appropriate points and the investor's money automatically becomes their money. It appears from what Mr Gianni told Ms Tafunai that the monies paid by investors would have to go first to the UK and then to Malaysia to obtain activation points and therefore did not automatically become the money of Mr Gianni and Ms Standfield at the time the money was paid to them as Mr Gianni testified.
96. Furthermore, in the letter dated 22 May 2015 from one Eddy Tan as vice-chairman of the Ufun Group which Mr Gianni and Ms Standfield produced to the Central Bank, it is there stated by Mr Tan that the funds received from investors in Samoa need to be remitted as US

dollars to Ufun's bank account in Indonesia in order to obtain activation points. This is also different from what Mr Gianni told Ms Tafunai that the funds were initially sent to the UK and would then be transferred to Malaysia for activation points. There is no mention of Malaysia in Mr Tan's letter. The letter from Mr Tan also shows that the activations points for the Samoan investors would be obtained in Indonesia which is in conflict with Mr Gianni's evidence that he and Ms Standfield brought with them to Samoa 10,000 British pounds worth of activation points which were activated whenever an investor invested money in the Utoken.

97. Furthermore, in the presentation by Mr Gianni and Ms Stanfield to the Central Bank, they were uncertain as to the bank that they use but in the end mentioned the UWay bank in Guinea which they said is owned by Ufun. In Mr Tan's letter of 22 May 2015 which Mr Gianni and Ms Standfield produced to the Central Bank, Mr Tan says that the funds received from the Samoan investors need to be remitted to their bank account in Indonesia. There is no mention of a bank account in Malaysia or in the UWay bank in Guinea.

98. I have to say that I have found Mr Gianni's evidence so incredible and unreliable and therefore reject it.

Relating the evidence to the elements of the two individual charges of false accounting against

Mr Gianni

99. I will now relate the evidence to each of the elements of the two individual charges of false accounting against Mr Gianni which the prosecution must prove beyond reasonable doubt in order to succeed.

(b) Such an entry must have been made in a bank, account, or other document required or used for accounting purposes

102. In relation to the second element of the individual charges of false accounting against Mr Gianno, namely, that the entry that was made must have been made in a bank, account, or other document required or used for accounting purposes, the witness Ms Tuia said a telegraphic transfer application form is a document that is required or used for accounting purposes. It appears that such document records a particular category of the banks transactions and is required for the purpose of preparing the financial statements of the bank. See the discussion of documents required or used for accounting purposes in *R v Sullivan [2014] NZHC 2301*.

103. I therefore conclude that the prosecution has proved beyond reasonable doubt the second element of the individual charges of false accounting against Mr Gianno.

(c) The accused must have had an intention to deceive someone

104. As to the third element of the individual charges of false accounting against Mr Gianno, namely, that the accused must have had an intention to deceive someone, it appears from the evidence that the reason for Mr Gianno remitting \$11,000 on 18 May 2015 and \$20,000 on 19 May 2015 was to circumvent the requirements of the Central Bank and to mislead the ANZ bank.

105. In the first place, a remittance of \$20,000 or less as a gift does not require prior approval by the Central Bank. On the other hand, a remittance for investment overseas has to satisfy

certain requirements of the Central Bank already mentioned in relation to the evidence of the witness Ms Lealofi from the Central Bank. When the witness Ms Peti advised Mr Gianni on 20 May 2015 to obtain Central Bank approval to remit the full amount in his account and save him having to pay the bank fee of \$30 every time he remits \$20,000 or less, Mr Gianni refused to take her advice. Evidently, Mr Gianni wanted to avoid the requirements of the Central Bank as explained by Ms Lealofi to Ms Stanfield in the presence of Mr Gianni and the witness RF. It therefore appears that the false entries which were caused by Mr Gianni to be made in the ANZ bank telegraphic transfer application forms and the Central Bank BoP forms was to deceive the Central Bank.

106. In addition, Mr Gianni must also have had an intention to deceive the ANZ bank because if the ANZ bank had been aware that the purpose of Mr Gianni's remittances was for investment overseas in the Utoken, it would have required Mr Gianni to obtain prior approval from the Central Bank which Mr Gianni wanted to avoid.
107. I therefore conclude that the prosecution has also proved the third element of the individual charges of false accounting against Mr Gianni.
108. The prosecution having proved all three elements of the individual charges of false accounting, I find Mr Gianni guilty of those charges.

Conclusions

109. I find the accused Mr Gianni and Ms Standfield both guilty of the remaining six joint charges of obtaining by deception.

110. I also find the accused Mr Gianni guilty of the two individual charges of false accounting.

PJM Sefah

CHIEF JUSTICE