

A public official who wilfully and seriously misconducts himself in relation to his public office, such as misusing official position, covering up conflict of interest, etc., may commit the common law offence of misconduct in public office.

The Court of Final Appeal has in previous court cases spelt out the key elements of the offence of misconduct in public office. It was held that the offence would be committed where:

- a public official;
- in the course of or in relation to his public office;
- wilfully misconducts himself; by act or omission, for example by wilfully neglecting or failing to perform his duty;
- without reasonable excuse or justification; and
- where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

Even if a public servant does not accept any advantage, he may still commit the offence of misconduct in public office if he:

- misuses his official position for pecuniary gains (whether for himself or others);
- uses his discretionary power improperly;
- dishonestly shows partiality towards a contractor; or
- wilfully neglects to perform his duties

Therefore, public servants should always be vigilant and steer themselves away from conducts which may call into question their integrity.