

THE STATE  
VS.  
DR. KIZITO DOAH  
DR. ALHASSAN L. SESAY  
DR. A. A. SANDY  
MR. EDWARD BAI KAMARA  
AND  
DR. DURAMANI CONTEH

Counsel:

R. S. FYNN for the State

Y. H. WILLIAMS for the 1<sup>st</sup> accused

S.K. KOROMA and R. A. NYLANDER for the 2<sup>nd</sup> accused

G. C. D. COLE for the 3<sup>rd</sup> accuse

E. A. MANLY-SPAIN for the 4<sup>th</sup> accused

E. N. B. NGAKUI and A. B. S. SANGARI for the 5<sup>th</sup> accused

JUDGMENT DELIVERED ON THE 24<sup>TH</sup> DAY OF OCTOBER, 2013

1. The accused persons stand charged on a twenty count indictment of the offence of misappropriation of Donor Funds contrary to section 37 (1) of the Anti-Corruption Act, 2008, Act No. 12 of 2008. Each accused is charged separately with four counts. The Counts are as follows:

COUNT 1

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

1 Certified true and correct copy of the Original \*  
MAY 2013  
DATE: 2013  
AND REGISTRARS

Particulars of Offence:

DR. KIZITO DAOH, being the Chief Medical Officer at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of October 2008 and 30<sup>th</sup> December 2008, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 2

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. KIZITO DAOH, being the Chief Medical Officer at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of April 2009 and 30<sup>th</sup> June 2009, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).



### COUNT 3

#### Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

#### Particulars of Offence:

DR. KIZITO DAOH, being the Chief Medical Officer at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of November 2010 and 30<sup>th</sup> March 2011, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le7,894,466 (Seven Million Eight Hundred and Ninety-Four Thousand Four Hundred and sixty-Six Leones).

### COUNT 4

#### Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

#### Particulars of Offence:

DR. KIZITO DAOH, being the Chief Medical Officer at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of September 2010 and 30<sup>th</sup> November 2010, at Freetown in the Western



Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le7,894,466 (Seven Million Eight Hundred and Ninety-Four Thousand Four Hundred and sixty-Six Leones).

### COUNT 5

#### Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

#### Particulars of Offence:

DR. ALHASSAN L. SESAY being the Director, Primary Health Care, Ministry of Health and Sanitation, on a date unknown between the 1<sup>st</sup> day of October 2008 and 30<sup>th</sup> December, 2008 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

### COUNT 6

#### Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.



Particulars of Offence:

DR. ALHASSAN L. SESAY being the Director, Primary Health Care, Ministry of Health and Sanitation on a date unknown between the 1<sup>st</sup> day of April 2009 and 30<sup>th</sup> June 2009, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 7

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. ALHASSAN L. SESAY being the Director, Primary Health Care, Ministry of Health and Sanitation on a date unknown between the 1<sup>st</sup> day of September 2010 and 30<sup>th</sup> November 2010, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).



COUNT 8

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. ALHASSAN L. SESAY being the Director, Primary Health Care, Ministry of Health and Sanitation on a date unknown between the 1<sup>st</sup> day of November 2010 and 30<sup>th</sup> March 2011, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le5,803,267 (Five Million Eight Hundred and Three Thousand Two Hundred and Sixty-Seven Leones).

COUNT 9

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

MR. EDWARD BAI KAMARA, being the Permanent Secretary at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of October 2008 and 30<sup>th</sup> December 2008, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor



Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 10

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

MR. EDWARD BAI KAMARA, being the Permanent Secretary at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of April 2009 and 30<sup>th</sup> June 2009, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 11

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.



Particulars of Offence:

MR. EDWARD BAI KAMARA, being the Permanent Secretary at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of September 2010 and 30<sup>th</sup> November 2010, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 12

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

MR. EDWARD BAI KAMARA being the Permanent Secretary at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of November 2010 and 30<sup>th</sup> March 2011, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le7,894,466 (Seven Million Eight Hundred and Ninety-Four Thousand Four Hundred and Sixty-Six Leones).





COUNT 13

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. DURAMANI CONTEH, being the Director of Hospital and laboratory Services at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of October 2008 and 30<sup>th</sup> December 2008, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 14

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. DURAMANI CONTEH, being the Director of Hospital and laboratory Services at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of April 2009 and 30<sup>th</sup> June 2009, at



Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leones).

COUNT 15

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. DURAMANI CONTEH, being the Director of Hospital and laboratory Services at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of September 2010 and 30<sup>th</sup> November 2010, at Freetown in the Western Area of the Republic of Sierra Leone misappropriate Donor Funds in the sum of Le5,803,267 (Five Million Eight hundred and Three Thousand Two Hundred and Sixty-Seven Leones).

COUNT 16

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.



Particulars of Offence:

DR. DURAMANI CONTEH, being the Director of Hospital and laboratory Services at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of November 2010 and 30<sup>th</sup> March 2011, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le5,803,267 (Five Million Eight hundred and Three Thousand Two Hundred and Sixty-Seven Leones).

COUNT 17 :

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. A.A. SANDY being the Director of Human Resources and Nursing Services, at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of October 2008 and 30<sup>th</sup> December 2008, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leone).



COUNT 18

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. A.A. SANDY being the Director of Human Resources and Nursing Services, at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of April 2009 and 30<sup>th</sup> June 2009, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor funds in the sum of Le4,368,000 (Four Million Three Hundred and Sixty-Eight Thousand Leone).

COUNT 19

Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

Particulars of Offence:

DR. A.A. SANDY being the Director of Human Resources and Nursing Services, at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of September 2010 and 30<sup>th</sup> November 2010, at



Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor funds in the sum of Le5,803,267 (Five Million Eight hundred and Three Thousand Two Hundred and Sixty-Seven Leones).

### COUNT 20

#### Statement of Offence:

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act, No.12 of 2008.

#### Particulars of Offence:

DR. A.A. SANDY being the Director of Human Resources and Nursing Services, at the Ministry of Health and Sanitation, on a date unknown, between the 1<sup>st</sup> day of November, 2010 and 30<sup>th</sup> March 2011, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor funds in the sum of Le5,803,267 (Five Million Eight hundred and Three Thousand Two Hundred and Sixty-Seven Leones).

2. The original indictment that was filed contained 6 accused persons but after the 1<sup>st</sup> appearance, the prosecution, for good reasons, decided to drop the charges against the 3<sup>rd</sup> accused in that indictment. The said 3<sup>rd</sup> accused was accordingly discharged and the indictment renumbered in the manner it is now.



As customary to all anti-corruption matters, the prosecution, after the accused had taken their plea applied pursuant to an instrument dated 26<sup>th</sup> day of March 2013 and duly signed the Attorney General for this matter to be tried by judge alone instead of by judge and jury. The Court after hearing Mr. R. S. Fynn on the said application granted the order for the matter to be tried alone rather than by judge and jury. The implication of this is that I sit both as tribunal of facts and law. To this end, I must always bear in mind the underlining cardinal principle that it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. That the prosecution bears this burden throughout the trial and if at the end of the day there is any doubt created in my mind as to whether the accused are guilty or not, that doubt must be resolved in favour of the accused; in which case the accused must be acquitted and discharge. See the cases of *Woolmington Vs. DPP (1935) A C 462*; *Kargbo v. R (1968-69) ALR SL*

4. I must also bear in mind that though the accused persons are charged jointly (same indictment), they all face individual charges of misappropriation of Donor Funds; this means that the evidence against each accused must be considered separately and against that accused person only.
5. As I have already stated, the accused persons are each charged with four counts of misappropriation of Donor Funds. Section 37(1) under which the accused persons are charged provide thus:

*"a person who being a member or an officer or otherwise in the Management of an organization whether public body or otherwise, dishonestly appropriate anything whether property or otherwise, which has been donated to such body in the name or for the benefit of the people of Sierra Leone or a section thereof commits an offence."*



To prove its case against the accused persons, the prosecution called three witnesses. One of the two witnesses listed on the back of the indictment was dispensed with, whilst notices for two additional witnesses were filed.

7. The first prosecution witness is Felix Lansana Tejan-Kabba who is the Chief Investigations Officer at the Anti-Corruption Commission. He told the court that he was the lead investigator into this matter and he came to know all the accused persons during the course of investigation of this matter. He said he supervised the other investigators who he assigned to obtain interview statements from the accused persons. During the course of the investigation the witness said he served various notices to institutions including the Ministry of Health and Sanitation for the production of documents which he later analysed. The witness tendered the following exhibits: "A1-9"; "B1-8"; "C"; "D1-7"; "E1-10"; "F1-2"; "G1-6"; "H1-32"; "J1-15"; "K1-18"; "L1-10"; "M1-29"; "N1-6"; "O1-4"; "P1-21" and "Q1-17"

Exhibit "A1-9" is a bundle of documents containing among others the Request for GAVI Funds for supervision/monitoring purposes, the accompanying budget, the payment voucher showing receipts/disbursement of the funds; retirement documents, the names and signatures of the accused and the deliverables.

Exhibits "B1-8", "D1-7" and "E1-10" contain the same documents as in exhibit "A1-9". And exhibits "C" and "F1-2" are attachments to "D1-7" and "E1-10" respectively.

Exhibits "J1-15", "K1-18", "L1-10", "M1-29" and "N1-6" are the respective interview statements of the accused.



Exhibit "G1-6" is a letter with attachments from the Director of Transparency and Accountability of GAVI Alliance Secretariat to Mr. Joseph Teckman Kanu (PW2).

Exhibit "H1-32" is a document titled "Audit Report - GAVI HSS1 Grant, Phase 1 2008 - 2011."

The witness told the court that all the accused persons with the exception of the 3<sup>rd</sup> accused admitted receiving and signing for the amounts stated against their names in exhibits "A1-9"; "B1-8"; "C"; and "F1-2". He said the 3<sup>rd</sup> accused admitted signing and receiving the amounts stated against his name in exhibits "A1-9" and "B1-8" but denied signing and receiving the amounts against his name in exhibit "C" and "F1-2". The witness maintained that by exhibits: "A1-9", "B1-8", "D1-7", and "E1-10", the accused were supposed to have provided reports of their supervisory activities which said reports were to contain retirements of the funds they received for the said supervisory exercises.

8. Under cross examination for the 1<sup>st</sup> accused, the witness said that his finding against the 1<sup>st</sup> accused was that the 1<sup>st</sup> accused received moneys for supervision work in the provinces but did not provide proof of utilization of the funds he received in the form of receipts and retirement. The witness said the moneys mentioned in the counts against the 1<sup>st</sup> accused were budgeted for by GAVI. When shown exhibit "A4", the witness said the 1<sup>st</sup> column is marked "DSA for the CMO (Chief Medical Officer) and the second column is marked "DSA for the driver. The witness admitted that the driver mentioned therein is a public officer with the Ministry of Health and Sanitation. The witness was shown exhibit "H1-32" and asked to read the recommendation against the heading "Budget Execution - Internal control" at page 25. For the avoidance of doubt I will reproduce the relevant portion of the said recommendation hereunder:





"..... The MOHS shall require as a standard procedure that all recipients of advances (directorates, districts etc) provide a technical activity report with a detail financial liquidation reports including full supporting documentation (such as a fuel invoices, list with per diem recipients including their sign off confirming receipt of per diem and mission orders with proof of visit by the location travelled to, supplier invoices for any external purchases) to the HSS Finance Officer within two months after the activity. No additional advances shall be given to a recipient in case the prior advance has not been satisfactorily liquidated and accounted for under the supervision of the Director of Finance."

9. Exhibit "H1-32" which is a draft is dated December 7, 2012. When it was put to PW1 that Exhibit "H1-32" was the first document to make retirement of funds by recipients a requirement, the witness said he wouldn't know as he has not see any other document with respect to that requirement. Asked further whether he had seen a document predating exhibit "H1-32" making retirement a requirement, the witness answered in the negative.
10. Counsel for the 2<sup>nd</sup> accused like the others adopted the general questions put to PW1 in cross examination by Counsel for the 1<sup>st</sup> accused and asked some specific questions. Answering to specific questions asked by Counsel for the 2<sup>nd</sup> accused, PW1 said neither he nor his colleague investigator who interviewed the 2<sup>nd</sup> accused visited the districts the 2<sup>nd</sup> accused alleged to have visited and supervised. PW1 also admitted that he did not speak to Dr. Amara in respect of exhibit "O1-4" which is the retirement made by the 2<sup>nd</sup> accused nor did he also ask Dr. Amara about the after activity Report the 2<sup>nd</sup> accused alleged to have submitted to him.
11. With respect the 3<sup>rd</sup> accused, PW1 agreed with Counsel for the 3<sup>rd</sup> accused that the 3<sup>rd</sup> accused admitted receiving DSAs as stated in Exhibits "A1-9" and "B1-8" but denied receiving the amounts stated against his name in exhibits "C" and "F1-2". PW1 also agreed with Counsel



that the 2<sup>nd</sup> accused two signatures in exhibits "A1-9" and "B1-8" are the same whilst the signatures in exhibits "C" and "F1-2" are different from each other and also from those in exhibit "A1-9" and "B1-8". When shown exhibit "B2", the witness admitted that what was required by 2<sup>nd</sup> accused was the submission of a Report and not retirement of funds. The witness said the 2<sup>nd</sup> accused submitted two Reports to him on the 5<sup>th</sup> of March, 2013 which are exhibits "P1- " and "Q1- ". PW1 said what was given to the 3<sup>rd</sup> accused was DSA and went further to say that during his investigation, he did not come across any evidence requiring the 3<sup>rd</sup> accused to make retirement of the DSA he received. On the general question of retirement of DSA, PW1 said the retirement or not of DSA depends on the instructions.

12. Cross examining on behalf of the 4<sup>th</sup> accused, Mr. G. R. Cole asked PW1 whether he or any member of his team went to the provinces to verify the 4<sup>th</sup> accused claim that he went to the districts he stated in his interview statement, to which the PW1 answered in the negative. The witness said he does not know the difference between a DSA and Imprest. The witness also said he does not know the hierarchical structure in the Ministry of Health and Sanitation.

13. Asked by Counsel for the 5<sup>th</sup> Accused Mr. A. E. Manly-Spain whether he or his colleague investigators verified the retirement made by the 5<sup>th</sup> accused to the Directorate in the Ministry of Health and Sanitation, the witness answered in the negative. When also asked whether he verified that there is a set system through which Reports and Receipts go through at the Directorate as alleged by the 5<sup>th</sup> accused, the witness also answered in the negative. Though the witness agreed with Counsel that the respective amounts given to the 5<sup>th</sup> accused were for supervision of laboratories and hospitals he however said he could not tell whether the 5<sup>th</sup> accused gave moneys to the persons he mentioned in his interview statement.



4. Under re-examination, PW1 said he could not during the course of his investigation find any Reports of supervision submitted by any of the accused persons. He also said the budget attached to each of the requests clearly state what the money given to the accused was for and how it should be spent.
15. <sup>witness</sup> The next prosecution is Joseph Teckman Kanu, Permanent Secretary in the Ministry of Social Welfare, Gender and Children's Affairs. The evidence of PW2 is that he was Permanent Secretary in the Ministry of Health and Sanitation from 2011 to 2013. He said he is familiar with the GAVI grant to Sierra Leone and that during his tenure as Permanent Secretary at the Ministry of Health and Sanitation, he received in December, 2012 a Draft Audit Report of GAVI Grant for the period 2008 to 2011. He said upon receipt of this document Exhibit H1-32, he immediately conveyed a Senior Management meeting to discuss and address the issues raised in the document. He said the document came with certain proposals principal amongst which was for an investigation to be conducted on the findings contained in the document. The findings in the document, he pointed out relate to undocumented expenditures amounting to US\$442,078, unjustified disbursement amounting to US\$556,487.00, overcharged procurement estimated at US\$100,872.00 and diversion of Assets estimated at US\$43,386.00. He said in the meeting in which the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> accused persons were present, the Managers of the two implementing arms of the Ministry i.e the Directorate of Planning and Information and the Expanded Programme on Immunization (EPI) were asked to provide the necessary answers to the Audit Report Findings. The conclusion of the meeting, the witness went on, was to get all persons concerned to provide necessary documentations for the undocumented expenditures.
16. The witness said that prior to the arrival of the GAVI Team, a second meeting was held in which the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> accused persons were also present and the purpose for that second meeting was for the Ministry to



take a definitive position to explain to the GAVI Team the circumstances relating to the discrepancies. The witness said that during the wrap-up meeting with GAVI, they were informed the amount unaccounted had on account of the documentation supplied by the Directorate of Planning and Information and the Expanded Programme on Immunization (EPI) been reduced from US\$1,143,000.00 to US\$523,303.00. The witness further told the Court it was observed by the GAVI during the wrap-up meeting that no documentation was provided for supervision activities, fuel purchases and training, among others. The witness also told the Court that he participated in the supervision activities whilst he was at the Ministry but that he was <sup>not</sup> in post the period relative the charges the accused person are facing. On the question how he would know whether an official had gone on supervision activities, the witness said there are two ways a person can know whether an official has gone on assignment: (1) the official's absence from post and (2) the back to office report that would normally be submitted on the outcome of the mission. On the question as to who should sign for DSA as in exhibit A4 (being taken as an example), the witness said in a situation where the team leader assumes responsibility, the team leader should sign but that for good accounting practice the beneficiary of a DSA should sign and receive his DSA. The witness said he did not know whether documentations required in respect to exhibit "G1-6" have been provided and also that he did not know whether the final findings of GAVI have changed from the position of exhibit "G1-6" since he left the Ministry of Health and Sanitation.

17. Answering questions posed by Mr. Yada Williams Counsel for the 1<sup>st</sup> accused, the witness said the requirement to provide documentation by recipient of GAVI funds was only prescribed for the first time in the Draft GAVI Audit Report of 7<sup>th</sup> December, 2012. He said further that he did not see anything in writing making provision of documentation a requirement prior to the Draft GAVI Audit Report.



18. Counsel for the 2<sup>nd</sup> accused adopted the cross-examination by the accused on behalf of the 1<sup>st</sup> accused.
19. Responding to questions from counsel for 3<sup>rd</sup> accused E. N. B. Ngakui, the witness said by the time he was transferred to the Ministry of Health and Sanitation as Permanent Secretary, the 3<sup>rd</sup> accused had already been transferred to Koinadugu District as District Medical Officer (DMO) and that exhibits "P" and "Q" had already been developed. The witness however said that he did not know the circumstances leading to the development of both exhibits by the Directorate of Human Resource of the Ministry of Health.
20. Answering questions from Counsel for the 4<sup>th</sup> accused G. R. Cole, the witness said both the Financial Orders and the Budget and Accountability Act make provisions for civil servants to retire per diem. No question was asked by Counsel for the 5<sup>th</sup> accused.
21. The third and last witness for the prosecution is Lawrence Sawber Caulker, the Deputy Accountant-General in the Office of the Accountant-General in the Ministry of Finance and Economic Development. The thrust of his evidence is to show the internal financial management controls put in place by government to ensure that public funds are properly accounted for by whosoever they are entrusted to, so that at the end of the day the state (citizenry) would not lose the benefits that are supposed to be derived from such funds. He said funds are accounted for by retirement; and that the requirement for retirement is for audit purposes to ensure whether funds are used properly or not.
22. Under cross examination by Counsel for the 1<sup>st</sup> accused Mr. Yada Williams, the witness said both the Government Budgeting and Accountability Act 2005, Act No. 3 of 2005 and The Financial Management Regulations 2007



provide for retirement of funds. The witness said there is difference between not retiring and misappropriation; venturing that situation may very well exist where a person performs an assigned task but fails to retire the funds given for that task. On the issue of retirement of donor funds, the witness said the Government Budgeting and Accountability Act is not clear on the retirement of donor funds. He furthered that at present, donor funds do not go through the consolidated fund and also that the Accountant-General had nothing to do with the GAVI funds.

23. Answering questions from Counsel for the 2<sup>nd</sup> accused, Mr. S. K. Koroma, the witness said there is a difference between an imprest and a per diem, describing an imprest as a fixed amount given to a person for a particular activity and a per diem as a Daily Subsistence Allowance (DSA). The witness said however that the requirement to retire applies both to an imprest and a per diem. Pressed further, the witness said there is no regulation that specifically states that a per diem must be retired. On the issue of punishment for flouting financial regulations, the witness said failure to adhere to financial reporting attract its own penalties as provided for in the specific statutes.
24. Asked by counsel for the 3<sup>rd</sup> accused Mr. E. N. B. Ngakui whether there is a difference between a an imprest and a per diem, the witness answered in the affirmative, stating that an imprest is a lump sum given to carry out many activities whilst a per diem is given for specific assignment, stressing that what is required with respect to a per diem is to report on the activity the per diem is given for.
25. In the absence of Counsel for the 4<sup>th</sup> accused, Mr. A. E. Manly-Spain Cross examined for both the 4<sup>th</sup> and 5<sup>th</sup> accused and the only question he asked the witness was whether the witness was aware of the charges the accused persons are facing to which the witness answered in the negative.



6. Under re-examination by prosecuting Counsel R. S. Fynn, the witness said an imprest may include a per diem and that the process he had explained in examination in chief relate to public funds.
27. After this witness, Prosecuting Counsel sought the leave of the Court to dispense with calling the witness from the Union Trust Bank whose name is listed on the back of the indictment. With defence counsel not objecting, the application was accordingly granted. Consequent upon this, the prosecution closed its case.

### ACCUSED PUT TO ELECTION

28. The accused persons were put to their election after the options opened to them were explained to them. All the accused persons chose to rely on their interview statements to the Anti-Corruption Commission and none called any witness.
29. Both the prosecuting and defence Counsel opted to file written submissions (addresses) and directions were given as to when to submit such written submissions (addresses). The 1<sup>st</sup> of October was fixed for oral submissions (if any).

### THE PROSECUTION'S CASE AGAINST THE ACCUSED

30. It is the prosecution's case that the accused are guilty of the offences as charged. Counsel submitted that the evidence of the three witnesses called by the prosecution conclusively proved its case against the accused. It is counsel's submission that the accused were at the time relevant to the charges they are facing all public officials serving with the Ministry of Health and Sanitation and also that the monies they are alleged to have misappropriated was public funds. The prosecution's case is that the accused persons were on four instances each given specific sums of money for supervisory work in the provinces. The moneys that were given to



them comprised of DSAs for themselves (the accused persons), their drivers and/or other personnel and also money for fuel. According to the prosecution, the accused were not only under an obligation to retire the amount given to them but also to provide end of activity Report to the Directorate of Planning and Information. The gravamen of the prosecution's case is that the accused failed to retire the amounts given to them on each of the four occasions and also to file end of activity Reports on their supervisory/monitoring trips to the provinces. The prosecution's case could be gleaned from paragraph 30 of its written closing address which states and I quote:

*"The accused persons have not given an explanation of what they did with that portion of money which they received for the DSA of the second person in their Directorate nor what they did with the money they received for their driver's DSA nor the money they received for fuel for the trip. They expect that their word that they went on the trip and supervised should be enough. No! it is not enough. Without an explanation from them then all of this money is still with them and the circumstances clearly disclose a dishonest misappropriation."*

31. In paragraphs 41 and 42 the prosecution had this to say: 41 *"This case was never merely about whether the accused visited the provincial districts to supervise (which they did not). It is more about whether the accused persons gave the money they received for the DSA to the rest of their team or simply kept it for themselves. It is about whether the money received for fuel was spent as was intended."* 42 *"The evidence is undeniable that the accused took the money as alleged (they admit having done so) and the circumstances of the taking have been shown to be altogether dishonest (there being no other reasonable explanation of why senior officials in public service will with such impunity avoid accounting for funds). The accused it must therefore be concluded and without a doubt misappropriated the amounts charged and they should each be found guilty on every count accordingly."*





## THE CASE FOR THE DEFENCE

2. As already pointed out, the accused are each charged (separately) with four (4) counts of Misappropriation of Donor Funds contrary to section 37(1) of the ACC Act, 2008. Although each defence Counsel submitted his written final address and made additional oral submission, their defence is virtually the same. I will in the circumstances therefore not consider their defence sequentially except where circumstances permit like in case of the 3<sup>rd</sup> accused with regards his denial of having signed and received the DSAs mentioned in exhibits "C" and "F1-2". To this end, I will outline the accused persons defence as follows:
33. Firstly, that it is the responsibility of the prosecution to prove every element of the offences with which the accused persons are charged and that the proof should be beyond reasonable doubt. That the accused have no duty to establish their innocence. For this proposition, counsel for the accused relied on the cases of *Woolmington V. DPP (1935) AC 462*, *Miller V. Minister of Pensions (1947) 2 All ER 373* and *The State V. Allieu Sesay & Ors unreported*. It is the submission of counsel for the accused (collectively) that the prosecution has failed to adduce evidence to establish the guilt of each of the accused in respect of each of the counts with which the accused persons are charged separately.
34. Secondly, that what each of the accused (on each of the four separate occasions) received from the Directorate of Planning and Information at the Ministry of Health and Sanitation was a DSA and not imprest. That the accused were not bound by any law whatsoever to retire the DSA they received as that was meant for their daily subsistence whilst in the field. The defence argued that the Government Budgeting and Accountability Act of 2005 and the Financial Management Regulations of 2007 do not apply to DSAs but rather to imprests.
35. Finally, that each of the accused performed the duty for which they received the DSA (as they respectively claim in their interview



statements; that it is the duty of the prosecution to disprove that assertion by each of the accused persons; an assignment the defence forcefully submitted the prosecution woefully failed to do.

36. In addition to the common grounds of defence stated above, Counsel for the 3<sup>rd</sup> accused pointed out that the 3<sup>rd</sup> accused in his interview statement told the ACC that he did not sign nor receive the amount stated against his name on exhibits "C" and "F1-2", an issue Counsel for the 3<sup>rd</sup> accused submitted the ACC failed to investigate and disprove. Also that, the DSA that was given to the 3<sup>rd</sup> accused on the two occasions he admitted to have received and signed for the same was for the preparation of exhibits "P" and "Q"; an assignment the 3<sup>rd</sup> accused dutifully carried out.

37. For all the above reasons, the defence collectively submitted that the prosecution has failed to prove its case against each of the accused persons, which therefore entitle the accused persons (all of them) to be acquitted and discharged of the offences charged.

#### THE LAW

38. The accused are all charged with the offence of misappropriation contrary to section 37(1). Section 36 (2) defines Misappropriation as follows:

*"A Person misappropriate public revenue, public funds or property if he willfully commits an act, whether by himself, with or through another person, by which a public body is deprived of any revenue, funds or other financial interest or property belonging or due to that public body."*



9. The online Free Dictionary defines misappropriation as "the intentional illegal use of the property or funds of another for one's own use or other unauthorized purpose particularly by a public official."
40. To prove the offence of misappropriation, the prosecution must prove that the accused dishonestly appropriated to himself or to his benefit public money, funds and/or property with the result that the public body is deprived of such revenue, funds or property or its benefit. Thus the two elements that the prosecution must prove are the appropriation and the dishonesty. In a number of decided cases within our jurisdiction, it has been held that to constitute misappropriation, the act or acts which cause the deprivation must be willful, that the accused must have acted willfully whether by himself or through another person and that the acts must have resulted in the public body being deprived of the revenue, funds or financial interest of property the accused is alleged to have misappropriated. *See The State vs. Francis Mohamed Fofanah Komeh & Anor, unreported 2011.*
41. Therefore to ground a conviction for misappropriation, it must be proved firstly that the accused was in-charge of or entrusted with public funds, revenue or property and secondly that he used the said public funds, revenue or property either for himself or for an authorized purpose. Where the prosecution fails to prove these two elements, then the case must fail.
42. The two facts that are not in contention in this case are (1) that the GAVI Funds are public funds and (2) that all the accused persons are public officers within the meaning of the ACC Act, 2008.
43. This case revolves on the question whether or not what each of the accused persons received on the four separate occasions they received moneys from the Directorate of Planning and Information for supervision

Qualified to  
as a member  
of the office



purposes in the provinces were DSAs or Imprests and whether they were under an obligation in law to retire such DSAs or Imprests.

44. It is the prosecution's submission that what all the accused persons received were imprests, hence their obligation to retire and submit end of activity Report for each supervision undertaken. It is the prosecution's further submission that even if the amounts are said to be DSAs, the accused were still under an obligation to retire DSAs that were meant for their drivers and other personnel in their respective teams. That the failure to retire and to explain whether their respective drivers and other personnel received their DSAs suggest that they dishonestly appropriated the amounts they received and signed for as in exhibits "A1-9" "B1-8" "C" and "F1-2".
45. The case for the Defence on the other hand is that what the accused persons received in all the four occasions (with the exception of the 3<sup>rd</sup> accused who admitted to have received moneys on two occasions) were DSAs and not imprests and as such they were under no obligation to retire the said DSAs.
46. The question now is, was it DSA that the accused persons received on each of the four occasions they received moneys from the Directorate of Planning and Information? The answer to this could be found in the exhibits "A to F" inclusive. In the Budget Estimate attached to each of these exhibits, it is clearly stated that what the accused and drivers were to receive were DSA and fuel for transportation. Nowhere is it stated that the accused were to receive imprests for their supervisions.
47. The next question I need to address is whether or not the accused were bound to retire the DSAs they received for themselves and their drivers and also the amount for the fuel for each of the supervision trips to the



provinces. A DSA except where it is expressly provided, is not a subject of retirement. What is subject to retire is an imprest which is a bulk amount given for an activity(ies). DSA as the name implies is Daily Subsistence Allowance and is an amount calculated on category basis per night and how a recipient spends his DSA is of no consequence or importance to the institution giving it as long as the recipient performs the activity(ties) for which it is given. Thus it is unfathomable (except where it is expressly provided) to ask a recipient of a DSA to provide receipts in the form of retirement as to the food he ate, the water and beer he bought and the accommodation he occupied during his trip to perform the activity(ties) for which the DSA is given. Even the recommendation in the Draft Audit Report that the prosecution is relying on, does not say that DSAs should be retired. I will for clarity purposes reproduce again the said recommendation:

*"The MOHS shall require as a standard procedure that all recipients of advances (directorates, districts etc) provide a technical activity report with a detail financial liquidation reports including full supporting documentation (such as a fuel invoices, list with per diem recipients including their sign off confirming receipt of per diem and mission orders with proof of visit by the location travelled to, supplier invoices for any external purchases) to the HSS Finance Officer within two months after the activity. No additional advances shall be given to a recipient in case the prior advance has not been satisfactorily liquidated and accounted for under the supervision of the Director of Finance.;*

48. There is nowhere in any of the exhibits tendered by the prosecution where any of the accused persons was required to retire the amount given to him, his driver and/or other personnel. What was required of each of them according to the exhibits relied on by the prosecution was end of supervision Report which must be submitted to the Directorate of Planning and Information within a given deadline. I hold that even the amount that was provided for each of the trips to the provinces was not



subject to retirement as the amount was not paid from an imprest but rather is was a fixed sum calculated on the millage to be covered by the team during each supervision exercise. Had the fuel for each trip been paid for from an imprest in the possession of each of the accused, then each of the accused would have been under a duty to retire the imprest provided and to provide receipts for the purchase of fuel by each of them. I must however state that in exhibits A (A6), D (D4-7) and F (F6-10) there are receipts of fuel purchases attached to them though the prosecution did not state which accused submitted which receipt(s) and it is not for me or the court to inquire as to who provided such receipts.

49. The prosecution's contention is that accused persons (each and every one of them) did not carry out the activity for which each of them received DSAs for himself, his drivers and or other personnel for each of the four occasions they were to have gone to the provinces to do supervision work. It is the prosecution's strong argument that since each of the accused failed to submit an end of activity Report, that each of them did not go to the provinces and each therefore misappropriated the amount given to him on each occasion and that each and every one of them is guilty of the offences with which he is charged.
50. In every criminal matter, it is the duty of the prosecution to prove the guilt of the accused person and it does this by adducing evidence to prove every element of the offence charged. The accused is under no obligation (except in strict liability offences and where it is so provided by the Act) to establish his innocence. *See Woolmington v. DPP supra.* As the prosecution has alleged that each of the accused did not go to the provinces to do supervisory work, it was therefore the responsibility of the prosecution to prove that the accused did not go the provinces on each of the occasion they received moneys for supervision work. This could have been done by calling witnesses from each of the hospital alleged to have been visited by each of the accused to disprove the allegation by the accused that the visited such hospitals. Even the drivers



that were alleged to have taken the accused persons on their various trips to the provinces were not called by the prosecution to prove that the accused persons did not go to the provinces as they have alleged. The drivers, one would expect would have been able to tell the court whether or not each of the accused persons went to the provinces on supervision. The failure by the prosecution to call witnesses to disprove the accused allegations that they went and supervised the various districts hospitals they were assigned to is fatal to the prosecution's case. In the case of *The State Vs. Anita J. Kamada* unreported; a Ruling delivered on the 10 of July 2013, Justice M. A. Paul relying on the authority of the cases of *Fox v. Police 12 WACA 215*, *Awosile v. sotunbo (1986) 3 NWLR (PT, 29) 471*, *NSC (Nig) Ltd. V Inns-Palmer (1992) INWLR (PT. 218) 422* and *Obor v. Rivers State Housing and Property Development Authority (1997) 9 NWLR (PT. 521) 425* opined and I quote: "where there is a failure to call a witness whose evidence is vital to the determination of an issue there is a prescription in law that if he had been called he would have corroborated the claim of the accused. In other words if he had been called, his evidence would have worked against the party who failed to call him."

51. The prosecution has placed much emphasis on each of the accused person's failure to submit end of activity Report on each of the four occasions they allegedly went to the provinces as proof that they did not go to the provinces on supervision. Even if for a moment I assume that each accused person did not submit an end of activity Report for each of the four visits they each made to the provinces; this is not conclusive evidence that they actually did not go to the provinces on supervision. I find comfort in this in the evidence of PW2 who said that a person may very well perform an assigned activity (task) but failed to submit a Report. Thus it is not sufficient for the prosecution to rely on the failure alone of the accused to submit their respective end of activity Reports to ground conviction; the prosecution must in addition to this prove that the accused did not actually carry out the activity(ies).



In this case however, each of the accused persons had something to say with the requirement to submit an end of activity Report: the 1<sup>st</sup> accused said it was not his responsibility to submit a Report but that of the Project Manager, the 2<sup>nd</sup> and 5<sup>th</sup> accused said they submitted Reports to the Directorate Planning and Information, the 3<sup>rd</sup> accused said the DSA given to him was to conduct a training needs assessment and to develop a Training Policy (exhibits P and Q) and the 4<sup>th</sup> accused said that as Permanent Secretary he was in charge of the Doctors and Managers who provided the technical supervision and monitoring and his responsibility was to ensure that they executed those technical functions properly. According to the accused persons, this was what each of them was required to do as per exhibits "A" "B" "C" and "D". Regrettably for the prosecution, neither the Director of the Directorate of Planning and Information nor a member of staff of that Directorate was called to disprove the assertion of each of the accused. No witness and no evidence was also led to disprove exhibits "P" and "Q" which the 3<sup>rd</sup> accused submitted to the ACC as his Reports for the two occasions he received DSAs as not the Reports required from him.

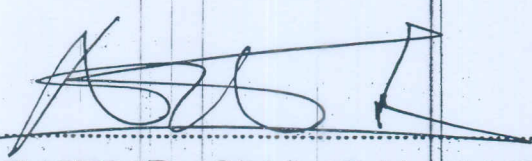
53. The successful prosecution of any case depends on the evidence adduced to prove every element of the offence charged. Where the prosecution fails to adduce evidence to establish the guilt of an accused person, the court has no alternative but to acquit and discharge the accused. In this instant case, I hold that the prosecution has failed to establish the guilt of each of the accused persons beyond reasonable doubt on each of the counts charged. The result of this is that the accused persons are accordingly acquitted and discharged.

54. Counsel for the accused all asked for cost to be awarded to the accused persons pursuant to section 138 of the ACC Act, 2008. That section is not inserted in the Act for nothing though it is to be used rather sparingly depending on the circumstances of the case in question. This section is to





be applied where taking everything into consideration the prosecution seems to be malicious; that is, in cases where the evidence is so tenuous that a careful analysis of the same would have dissuaded the prosecutor from pressing for charges. I hold that in this case, if careful analysis of the evidence before the ACC had been carried out, the Commission would have realized that it had no chance of success in pressing charges against the accused person. Though the accused persons may be reinstated in their previous positions, nevertheless they have incurred loss in providing for their defence and they have also suffered loss of self esteem notwithstanding their acquittal. In the circumstance therefore I hereby award costs to each of the accused, such costs to be taxed and paid out of the Consolidated Fund as provided for by section 138 of the ACC Act, 2008.



HON, JUSTICE ABDULAI H. CHARM J.

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+ SHEN  
DATE  
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