



**THE SIERRA LEONE ANTI-CORRUPTION COMMISSION LAW
REPORTS**

Foreword

When I qualified as a Barrister and Solicitor it was already twenty-four years since the last Sierra Leone Law Reports had been published in 1974. Even during my student days we had to use predominantly UK Law Reports. Only a handful of well known Sierra Leonean cases from the Sierra Leone Law Reports were being continually resorted to, so much so that they seemed like the only Sierra Leonean cases that had ever been reported upon in a book series. As the civil war raged, we experienced a military regime, a brief spell of democracy, then engulfing political turmoil in the form of the AFRC regime and later the Freetown invasion. By then, all eyes, nation and international, were fixed on achieving the cessation of violence. The role of the judiciary during these periods is well documented. Suffice it to say that case reporting was not among the top priorities of the national agenda. With these events behind us, the paramount nature of judicial reform became undeniable.

Lawyers in Sierra Leone form a small though growing community and anecdotal snippets of cases are generally bandied around at meetings and dinners of the Sierra Leone Bar Association. These would include notable discussions of legal principles in a case, or the surprising turn in cases which one would have expected to be resolved differently. Of course, the clearest sense of direction possible would be gained by directing enquiries at colleagues in their main areas of practice. Intrachambers, there is unlimited communication, but then there is also limited breadth and span of potentially relevant cases. Information concerning high profile cases is only more accessible by a hair's breadth given the state of press reports, although at best such reporting has served as notification to lawyers.


The Sierra Leone Bar given these hiccups has been fully behind projects of this sort from the get go, but legal practice being the tread mill that it is, have not been able to divert their energies towards what seems a very academic, yet wholly worthwhile exercise. And then of course, one could wax psychological about how institutionalized practices are generated by locus and the normativity of systems, no matter how "abnormal" some practices are. Besides, there is so much that needs to be done in Sierra Leone; to each his pet project. Ms. Hudroge's background in International Law is possibly a plus here since it escapes the "bogged down" factor.

My experience in legal practice prior to joining the ACC led me to believe that the employ of precedents fell woefully short of the mark, which I suspect may, because each case's determinative force then becomes centrifugal, create at trial, a wholly lopsided emphasis on only the facts at hand. It is very unhealthy to have cases spinning on their own axis in what should be a coordinated choreography within a synchronized universe.

Appointed as Director of Prosecutions at the ACC in 2010 the commission started compiling raw judgments in ACC cases but there had been no attempt to synthesize and condense the principles found therein, no academic analyses of individual cases and cases as against each other. Anticipating staff turnover at the ACC and anticipating lapses in record keeping practices it became important to have the judgments in a more secure and usable form.

Ms. Hudroge was contracted to do these law reports which is the first attempt at producing ACC Law Reports. Ms. Hudroge took on the task with a high level of diligence and commitment. ACC prosecutors have found this compilation very useful for case preparations, we feel strongly about having all ACC cases reported in like manner, possibly on a more professional level. The ACC is optimistic about the prospective involvement of the OSF in the production of the *Reports*.

Clearly, the ACC wholeheartedly supports this endeavour and I can say that I would be hard pressed to find a Sierra Leonean lawyer who would not find the resulting product helpful. With that in mind, the ACC can press on with its unrelenting battle reassured in the knowledge that a project of the sort has been left in very capable and trusted hands. We wait with baited breath.



Reginald Sydney Fynn Jr.
Director of Prosecutions
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Author's Note

There is a general absence in Sierra Leone, of secondary material generated from the reporting and analysis of statute and case law at the level of Magistrates Court; High Court; Court of Appeal and Supreme Court. Notably, in 2007, it was said that the Sierra Leone Law Reports were to be re-launched with priority being given to coverage of cases decided by the High Court and Court of Appeal between the period 1974 and 1982.¹ Prior to this, there had been no such reports for thirty-four years. The Law Society did indeed produce in 2007, 2 volumes spanning 1974-1982, but this attempt was incomprehensive and “unofficial,” produced in the absence of a state instituted body to undertake the work. In the same vein, the UNDP has been funding an official law reports series from the Sierra Leone Law Courts for years, to no obvious result. As it stands, actual hardcopies of judgments can only be accessed through a formal petition of the Master Registrar, who then authorizes a clerk to make them available. Awareness of the contentious legal issues raised in a case, are often limited to high profile cases reported in the news media.

Thus, the possibility to further develop the substance of Sierra Leone’s legal framework through widespread and thorough reliance on case law has not for a lengthy period, been properly exploited. This mirrors the state of affairs regarding the trials that have resulted from charges preferred by the Anti-Corruption Commissioner. Hitherto, only the raw material, that is, the actual judgments emanating from the ACC trials have been available. This has given rise to a compelling need for the broad dissemination, availability and accessibility of ACC cases. This need could not be overemphasized, in light of the circumstances surrounding the establishment of the ACC, the importance of the struggle against corruption, the need for the ACC to demonstrate transparency in its own working methods and procedures, the benefits of cross fertilization of ACC case law, into the treatment of similar offences in national courts (given the ACA’s more recent status), the benefits of cross fertilization of the SLACC case law into the treatment of similar cases by other Anti-Corruption bodies worldwide and lastly the need to publicize the details of the work of the ACC, so as to invite constructive criticism and suggestions for room for improvement.

It is submitted that absent an *ACC Law Report*, the aforementioned aims would not be achievable. This first volume is therefore an attempt to produce detailed, concise and digestible reports of 13 cases prosecuted by the ACC. The reports provide a general backdrop to the issues in a given case, as well as a thorough, but to the point analysis. A typical report is based on the Judgment, but also takes into consideration other relevant material not forming part of the judgment, such as law concerning similarly constructed offences and case law from common law jurisdictions. Each individual treatment of an Anti-Corruption Commission case is divided into five sections, inspired mainly by the format of the All England Law Reports, with innovations, to accommodate the unique nature of ACC cases.

It is believed that the availability of a detailed insight into the ACC’s work will lead to its infiltration into other areas of the law and give rise to increasingly creative argumentation in national court, will spark the interest of students in this field and create increased interest of the public in the ACC’s work.

In the **Held** section of the case summary, the aim is to extricate the Court’s sentence and verdict. The **Ratio Decidendi** section which aims to provide summaries of the reasoned findings of facts and law behind the verdict and sentences and where possible provide a *summation* of the selective application of the law

¹ Awareness Times, 16 July 2007, “Welcome Address by Yada Williams to the Annual Conference of the Sierra Leone Bar Association”.

adduced by the parties, to the facts. It is a filter of sorts, by virtue of which, out of all the material put forward, only the most relevant and credible emerge. In essence, it not only explains how the verdict was arrived at, but also provides concision of the entire case laid out.

Notes are drawn from sources extraneous to the judgment, which may simply affirm, contradict or provide further elaboration upon it, acting as a springboard for the **Critique** section. It differs from the **Critique** section as it does not discuss the principles cited in these authorities in detail, but simply points out their existence. The aim of the **Summary of Facts** section is to catalogue the key phases in the case, which necessitates a two prong approach; the first at the level of the recording of the procedural history of the case, including the Prosecution's charges, and the second, the recording of the key events in the Prosecution's case theory; interspersed with the Defence's own case theory and juxtaposed at the relevant points, by supporting or contradicting evidence, which in most instances is footnoted. This **Application of Law** section will condense the law contained in the charges in the indictment, i.e. statute law, as well as assess and define the elements, with reliance on relevant case law. It will map out defences advanced by the Accused and the basis of their acceptance or rejection, in whole or part. It will simply gather all the law adduced by the parties, with a limited application to the facts.

The **Critique** seeks to analyse in depth, questions of law, identified and addressed by the Trial/Appeal Court as the case may be. The **Critique** will particularly take note of, questions of law, which in the Anti-Corruption Commission context are likely to arise repeatedly, albeit in possibly markedly different circumstances, thereby creating potential scope for the formulation of emergent, duly considered and equally relevant principles. The **Critique** will also note questions of law that give rise to innovative methods of resolution and will consider the extent to which approaches taken by the Trial or Appeal Chamber conform or diverge from the traditional approaches to like questions. The **Critique** evaluates the mode of construction of statutes employed, or the Court's interpretative method of case law, all the while, assessing on the other hand, the unique circumstances of a case, the consistency of the Court's methods, the possible direct consequences in the application of methods or principles articulated by the Court, including its advantages and drawbacks, whether it is likely to have the desired effect and lastly perceivable fallacies in the reasoning behind the employment of chosen principles or methods. The **Critique**, applies these aforementioned evaluative approaches to the Court's own method of evaluation of evidence; whether there are authorities in support of the principles employed by the Court in its evaluation of evidence, such as for example, the rules on: corroboration, the reliability of witnesses, the credibility of witnesses' accounts, the assessment of the demeanour of witnesses, the decision to favour one witnesses account over another, etc.

The **lay out** opted for seeks to set out case reports in the most comprehensive and comprehensible manner, and in an order, which not only facilitates selection of the most crucial aspects of a Judgment, but from a practitioners point of view, in an arrangement which sets them out from most to least sought after aspects. For the more academically minded readers, who wish to properly contextualize a judgment, it is worth mentioning, that the major sections of the report should be viewed as a filtering process, with the **Summary of Facts**, being the broad based foundation of the report; the **Application of Law** section being the second step, being generally discursive in its nature, the **Ratio Decidendi**, being a synthesized constriction of the afore-mentioned/ a selection of the criteria worthy of being determinative of an outcome, post keen deliberation, and which then serves as a springboard for findings under the **Held** section.

On a more personal note, the compilation of this manual has witnessed days of foraging for sparse materials at the Sierra Leone Law Library, going to and fro about Freetown in search of electricity and on the other hand, fortunately, a temporary sojourn in the icy depths of the North, where the shortness of days was numbed by a diligent wake set to a relentless cadence, drummed out by fingers on keyboards and texts hitting desktops. It has been a solidifying experience and in spite of the setbacks, I have enjoyed the sum of it and sincerely hope that my modest efforts turn out to be of some use.

Amira Hudroge,
5th November 2012.

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Case Report:
Taju-Deen

THE HON. MR. JUSTICE M.O. TAJU-DEEN AND THE STATE

THE COURT OF APPEAL OF SIERRA LEONE
JUSTICE M.E.T. THOMPSON
JUSTICE A.N. BANKOLE STRONGE
JUSTICE PATRICK HAMILTON
12 August 2004

Definition of Public Office and Public Officer- Definition of Advantage- Standard of proof for Prosecution in a criminal trial – Standard of proof for Accused in a criminal trial – Shifting the burden of proof – Presumption of innocence- The Accused's right to remain silent – Whether guilt can be inferred from the Accused's failure to speak in order to rebut evidence meeting proof beyond reasonable doubt standard – Whether discrepancies in descriptions between witnesses' accounts and charges, about thing forming subject matter of litigation can constitute reasonable doubt – What is weight to be given to the Defence's evidence where Prosecution's evidence is not overwhelming – Whether Chief Justice's consent needed for Court of Appeal Judge to act as a Trial Judge - The Anti-Corruption Act 2000, s. 7 (1), 7 (2), 8 (1), 38, 43 (1) (a) – (c) & 45- The Constitution of Sierra Leone 1991, s. 120 (2) - The Courts Act 1965 (as amended by s. 6 of the Act of 1966), s. 57 (b)-(c), 58 (1)-(4), & 59 (1)-(5) - The Criminal Procedure Act 1965, 1st schedule, s. 136 & 144(2) - (UK) Criminal Appeal Act 1907, s. 4 (1).

Held

Trial Judgment: The Accused was found guilty on Counts 1-8, and ordered to forfeit to the State his Nissan Terrano, satellite dish and recorder. He was sentenced on 22nd June 2001 on Counts 1,2,5,6 to a year imprisonment to run concurrently *and* 6 months imprisonment or the sum of Le30m, on Counts 3, 4, 7 and 8. Both sentences were to run concurrently.

Appeal Judgment: The Court of Appeal rejected the Appellant's 1st and 5th Ground of Appeal, but upheld his 2nd to 4th, 7th to 8th and 10th to 12th Ground of Appeal.² The Appellant abandoned his 6th and 9th ground of appeal. The Court of Appeal ordered that any and all monies paid by the Appellant in consequence of the sentences passed by the Trial Judge, be paid back to him and quashed convictions under Counts 1-8 for being unreasonable and said that they could not be supported by the evidence.

Ratio Decidendi

The Appellant put forward 12 Grounds of Appeal, which gave rise to a discussion by the Court of Appeal as follows:

- ❖ *Ground I:* The Appellant argued that the Trial Judge exceeded her jurisdiction per Section 120(ii) of the 1991 Constitution, which required her, as a Justice of the Court of Appeal, to be requested by the Chief Justice, in order to be able to sit and act as a Judge of the High Court. *The Court of Appeal rejected Ground I* on the basis that there was no requirement in law that the Chief Justice consent to a Judge's sitting on a case.

² See **Critique** below, at p.16 for a discussion of the Court's approach to structuring its treatment of the Grounds of Appeal

The Courts of Appeal treated Grounds II, III, and IV collectively.³

- ❖ *Ground II:* The Appellant argued that the Trial Judge *incorrectly applied the Prosecution's burden of proof* regarding Counts 1-8, wrongfully holding that the Prosecution had proved its case; constituting errors of law and fact, which led to his wrongful conviction.
- ❖ *Ground III:* The Appellant argued that the Trial Judge erred on the facts in holding that the Prosecution *had proved* the Accused's guilt regarding Counts 1-8.
- ❖ *Ground IV:* The Appellant argued that the Trial Judge had erred in fact and law regarding the *standard of proof* in a criminal trial, i.e. proof beyond reasonable doubt and had erroneously stated that the Court's doubt had to relate to "substantial matters"⁴ and that "there is nothing to rebut the particulars in the charges."⁵ She had erred in fact by her dismissive attitude towards the Defence's evidence,⁶ by *failing to adequately consider the discrepancies in the descriptions of the items* concerned and *stating that inconsistent descriptions were of no consequence.*⁷ *The Court of Appeal held that inconsistent descriptions between different sources of evidence and as against the description in the indictment, regarding the subject matter of the litigation, created a reasonable doubt as to the Accused's guilt.* With regard to Counts 1-4, such discrepancies raised doubts as to whether the vehicle imported was what the Accused possessed.⁸ With regards to Counts 5-8, the descriptions range from satellite dish and satellite receiver to satellite dish and satellite decoder.⁹ The Court of Appeal held that the *Trial Judge erred on the facts when she said that the use of different names for the same thing, do not raise a doubt*¹⁰ *as to the "thing" referred to in the indictment.*
- ❖ *Ground V:* The Appellant argued that the Trial Judge erred in law and on fact by dealing with Counts 1,2,5,6 in the indictment under Section 7(2)¹¹ of the Anti-Corruption Act 2000, although the Accused was never charged under section 7 (2).¹² *The Court of Appeal rejected*

³ Appeal Judgment, p.23. Note that findings under Ground IV apply to Grounds II and III.

⁴ Page 261, Vol. 2, Records of Appeal, lines 18-20.

⁵ Page 265, Vol. 2, Records of Appeal, lines 16-18.

⁶ *Failing to examine the evidence.* In the annexed, separate concurring judgment of Justice M.E. Tolla Thompson, he refers to the Trial Judge dismissing the discrepancies relating to the vehicle as "of no moment", dismissing the account provided by the Accused's Wife as a "fairy tale" and saying that the Accused's silence failed to rebut the finding of corrupt acquisition. Justice Thompson argued that the Trial Judge should have been more *circumspect* given this was the first ACC case.

⁷ Appeal Judgment, p. 13.

⁸ See **Critique** below, pp. 16-17, which argues that there are enough overlaps in the descriptions to reasonably conclude that a single vehicle was concerned.

⁹ As per PW7. Note that the Prosecution attempted to rely on the 1st Schedule to the Criminal Procedure Act No. 32 of 1965, Rule 8, which states that it is sufficient to use ordinary language which indicates with reasonable clarity what is being referred to, Appeal Judgment, p. 31. Refer to FN 8 above.

¹⁰ Page 263, Vol. 2, Records of Appeal, lines 17-22.

¹¹ The Anti-Corruption Act, section 7(2): "Where during a Trial of an offence under subsection (1) the Court is satisfied that there is reason to believe that any person is holding pecuniary resources or property in trust or otherwise on behalf of the Accused, or acquired such resources or property as a gift from the Accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the Accused."

¹² Page 257, Vol. 2, Records of Appeal, lines 1-2.

Ground V, stating that this was a typographical error, especially as the hand written judgment states that the charges were dealt with under section 7(1).

- ❖ *Ground VI*: The Appellant argued that the Trial Judge erred in law and fact by considering hearsay evidence, which was inadmissible and highly prejudicial to him, in the evidence summaries of his wives; Haja Mariama Taju-Deen and Hawa Irene Taju-Deen, wrongfully attached to the indictment and addressed by the testimony of PW7. *The Court of Appeal did not rule on Ground VI, as this was later abandoned.*
- ❖ *Ground VII*: The Appellant argued that the Trial Judge failed to qualitatively evaluate the totality of the evidence before her,¹³ because she had failed to lay the proper foundation for resolving primary facts,¹⁴ and that this resulted in his wrongful conviction. *The Court of Appeal indirectly addressed Ground VII by addressing Grounds 1-5 and 11-12, which it dealt with as being subsumed under Ground VII.*

The Courts of Appeal treated Grounds VIII, X, and XI, and XII collectively.¹⁵

- ❖ *Ground VIII*: The Appellant argued that the Trial Judge erred in law and fact by holding that the ingredients of the offences in sections 7(1) and 8(1) had been proven, which made it incumbent on the Accused to then rebut the “presumption of guilt.”¹⁶ The Trial Judge buttressed her reasoning with section 45 of the Anti-Corruption Act 2000, which created a rebuttable presumption that an advantage was given or accepted as an inducement/reward, **where it had been proven that the Accused did accept an advantage.** It was based on this reasoning that the Trial Judge inferred that the Accused corruptly acquired *the satellite dish and receiver*, since, although the Accused admits to possessing them, he chose to remain silent regarding the manner of their acquisition,¹⁷ and gave no evidence to rebut the evidence that they were given to him as an inducement/reward/as the benefit of an advantage. The Court of Appeal held that the Trial Judge had erred in law and in fact in inferring guilt since **the burden of proof had not been shifted to the Accused.** The Court of Appeal held that only when the Prosecution has proved the ingredients of the offence charged, does the Appellant carry the burden of disproving the elements of the offence.¹⁸ **There was no proof that the Accused**

¹³ Refer also to Ground XII.

¹⁴ This is also a reference to Appellant’s contention that the Trial Judge’s misapplied the Prosecution’s burden of proof at Ground II.

¹⁵ Appeal Judgment, p.27.

¹⁶ In the annexed, separate concurring judgment of Justice M.E. Tolla Thompson, he makes clear that as regards Section 45 of the ACA 2000, the burden of proof on the Defence when it has to rebut a presumption which has been established against it, is that of the balance of probabilities: *R v. Carr-Briant* 1943 K.B. at page 612 and *Jamil Mohamed v. Commissioner of Police* 16 WACA 1955/6.

¹⁷ “From the statement, the only inference which can be drawn is that the satellite dish belongs to him but because he has unpolluted explanation as to his acquisition of them, the conclusion then is that it was acquired by him corruptly...The evidence is that they were given to the Accused as an inducement or reward. The Accused gave no explanation to rebut this”: Page 263 Vol. 2, Records of Appeal, lines 19-17.

¹⁸ The Accused’s burden of proof under Section 7(1) would in that instance be; “that he was not in control, or possession of any resources or property, or in receipt of the benefit of an advantage, as charged, which he may reasonably be suspected of having acquired or received corruptly. The Accused’s burden of proof under Section 8(1) would be that: “that he did not accept an advantage as an inducement for abstaining to perform his duty and for expediting the performance of an act...”

accepted these items;¹⁹ *R. v. Leckey*, 1944, K.B. at p. 80 and the Prosecution's evidence did not establish any nexus between Bockarie Kakay and the satellite dish and receiver.²⁰ In light of this, "the Appellant was absolutely within his rights not to say anything"; *Hall v. Regina* 1971 1 A.E.R.; *R v. Chandler* 1976 3 A.E.R. AT 105. Thus, the Trial Judge's finding that the "only inference", which could be drawn from the Accused's silence was his corrupt acquisition of the items, was wrong. It could not be the only inference given the Accused's wife's explanation of the provenance of the items and that the Accused had been angered by the gift.

- ❖ *Ground IX*: The Appellant argued that the Trial Judge erred in fact and law, in interpreting section 45 of the ACA 2000.²¹ Her interpretation of the burden of proof was that once the offences had been proved by the Prosecution, the burden of proof shifted to the Accused to rebut the presumption of guilt. The Appellant also argued that the case should not have proceeded beyond the 'No Case to Answer' submission. *This Ground was later abandoned by the Appellant.*²²
- ❖ *Ground X*: The Appellant argued that the Trial Judge erred in Law by relying on Section 43 (1) of the ACA No. 1 of 2000, when that provision was never raised for determination by either the Prosecution or Defence. This misdirection culminated in the Judgment. Section 43(1) essentially makes it a crime for a public officer **to accept** an advantage in the knowledge that it was being given to him as in inducement, even where he did not have the capacity /intention to carry out what was being sought from him, by those attempting to induce him.²³ *As per Ground VIII above, it was not proven that the Accused did accept any inducements/advantages.*
- ❖ *Ground XI*: The Appellant argued that the Trial Judge did not adequately consider the Defence's case, in that she dismissed the explanation given by the Appellant's Wife as a "fairy tale",²⁴ and "quite a likely story."²⁵ The Appellant contended that the Trial Judge, in saying that the "Accused has failed to offer any defence at all,"²⁶ did not give adequate weight to the evidence that the Accused had rejected an offer for a 4 wheel drive from Mr. Kakay, the 3rd Accused in a case before him and had told Kakay's Counsel to warn him against contacting the Appellant.²⁷ *The Court of Appeal accordingly assesses these aspects of the Defence's evidence in dealing with the issue of inferring guilt under Ground VIII above.*²⁸

¹⁹ "From the evidence adduced in the lower court, no burden was cast on the Accused to disprove any of the allegations in Counts 5, 6, 7 and 8 of the Indictment", p. 34 of the Appeal Judgment.

²⁰ The Applicant's Wife, Mrs. Hawa Irene Taju-Deen testified 2 unknown boys installed them as a gift from an unknown donor, who was to contact her, but never did. This was after Kakay, had promised her a wedding gift.

²¹ The Anti-Corruption Act, section 45 states that: "Where in any proceedings for an offence under this Act, it is proved that the Accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved."

²² Although on the question of shifting the burden of proof, see Ground XIII, pp. 25-26.

²³ Refer to **Notes**, at p.14, for authorities on this principle.

²⁴ Refer to FN 6 above.

²⁵ The Applicant's Wife, Mrs. Hawa Irene Taju-Deen testified that the source of the Nissan Pathfinder was from an undisclosed friend.

²⁶ Page 266, Vol. 2, Records of Appeal, lines 1-4.

²⁷ Page 258, Vol. 2, Records of Appeal, lines 26-32.

²⁸ For references to Defence's evidence, see Appeal Judgment, pp. 17-19 and 27-32.

- ❖ *Ground XII*: The Appellant argued that the Judgment was unreasonable and unsafe, having regard to the totality of the evidence. *The Court of Appeal affirmed Ground XII by quashing all the Appellant's previous convictions.*

Notes

The Accused simply should have received the gift as an inducement and need not have acted on it; *R v. Carr*, 40 Cr. App. R. 188, Ct-MAC. The fact that the Accused made a mental reservation to not act is irrelevant; *R v. Mills*, 68 Cr. App. R. 154, CA. The (UK) Prevention of Corruption Act 1916, section 2 establishes a presumption similar to that of section 45 of the ACA 2000. The concept of “miscarriage of justice” as a determining factor in allowing or dismissing appeals, mirrors the concept of “unsafe” convictions under s. 2 (1) of the UK Criminal Appeal Act 1968, as applied in *R v. Carr Briant* [1943] K.B. 607, 29 Cr. App. R. 76, CCA; *R v. Graham* (H.K.), *R v. Kamal*, *R v. Ali (Sajid)*, *R v. Marsh and others* [1997] 1 Cr. App. R. 302. On the burden of proof, note that, any reasonable doubt as to the Accused's guilt, operates in the Accused's favour; *R v. Bentley* (Deceased) [2001] 1 Cr. App. R. 21, CA, *R v. Ewing*, 77 Cr. App. R. 47, CA, *R v. Carr-Briant* [1943] K.B. 607, 29 Cr. App. R. 76, CCA. The Accused's burden of proof is the balance of probabilities meaning that it was more probable than not /more likely than not: *R v. Braithwaite*. The burden of proof remains on the Prosecution throughout, an Accused is entitled to remain silent, that being his right and his choice. An inference from failure to give evidence cannot on its own prove guilt and the Prosecution should have established a case (sufficiently compelling as to), call for an answer, before drawing any inferences from the Accused's silence: *R v. Birchall* [1992] Crim. L.R. 311, CA. There should be an adequate explanation (evidential basis), provided by evidence (for the Accused not going into the witness box), for declining to draw an adverse inference from silence at trial: *R v. Cowan*; *R v. Gayle*; *R v. Ricciardi* [1996] 1 Cr. App. R. 1, CA.

Cases referred to in Judgment

The Gauntlet [1872] L.R. 4 P.C. 184.
The State v. Harry Will, Lamin Feika and Bockarie Kakay.
Hall v. Regina M [1971] 1 A.E.R. 324.
R v. Chandler [1976], 3 A.E.R. 105.
R v. Bathurst, [1968] 2 Q.B. 99.
R v. Leckey, [1944] K.B. 80.
R v. Carr-Briant [1943] K.B. 612.
Jamil Mohamed v. Commissioner of Police 16 WACA 1955/6.
Kamara v. The State 1972/73 ALR (SL).
Cohen v. Bateman.
Sallu Mansaray v. The State SC Cr. Appeal 1/80.
Brima Dabo v. The State Cr. Appeal 1/79 SL SC.

Summary of Facts

The Accused was charged under Counts 1, 2, 5, 6, 9, 10 with Corrupt Acquisition of Wealth contrary to section 7 (1) of the ACA 2000 and under Counts 3, 4, 7, 8, 11 and 12, with Accepting an Advantage as an Inducement contrary to section 8(1) of the ACA 2000. The offences are alleged to have occurred between 1st and 30th April 2000 at Freetown. The Prosecution alleged that Bockarie Kakay an Accused in a criminal trial before the Appellant, imported, under the name of Hardy Sheriff, a Nissan Terrano into Sierra Leone and registered it under the name of Haja

Mariama Deen, a wife of the Accused, without her knowledge; that Kakay paid customs duty, registration and licensing fees and that the vehicle was licensed as AAK 273 and taken to the Appellant's residence. The Prosecution further allege that its licence was replaced by AAN 934, which was the registration number of a car owned by the Appellant; that the Appellant later requested Amadu Bah to take the Nissan Pathfinder to 7 Canteen Street and that the a satellite dish and decoder and the sum of \$20,000 were also given to the Appellant by Bockarie Kakay.²⁹ The Appellant admitted Kakay and others had tried to influence him, but that he had resisted. The trial was held at Freetown High Court, proceedings having been taken under Section 136 and 144 of the Criminal Procedure Act, No. 32 of 1965. The Accused was acquitted in relation to counts 9-12, as the Prosecution conceded at the close of its case, that it had not adduced the evidence to support those charges. The Accused was however, convicted and sentenced on 22nd June 2001 on Counts 1-8 for offences of corruption contrary to sections 7 (1) and 8 (1) of the Anti-Corruption Act No. 1 of 2000. He appealed pursuant to sections 57, 58 and 59 of the Courts Act 1965³⁰ against his conviction and sentence.

Application of Law

The Appeal Court perused the details of the offence under section 7 (1) of the ACA 2000, which are; the control/possession of any resources by a public officer, OR, his being in receipt of the benefit of any advantage, which he may reasonably be suspected of having acquired or received corruptly. The details of the offence under section 8 (1) of the ACA 2000 were also considered and they are the acceptance by a public officer, of an advantage, as an inducement for abstaining to perform his duty or for expediting the performance of an act; in this case, the inducement pertained to the performance of the public officer's duty as Judge in the trial of *The State v. Harry Will, Lamin Feika and Bockarie Kakay*.

The Court of Appeal considered whether the Accused was a public officer for the purposes of the ACA 2000, and accordingly defined a public officer as one who holds an office in the service of the government of Sierra Leone.³¹ Additionally, the Court of Appeal cited sections 58(1)-(4) and 59(1)-(5) of the Courts Act 1965, which define its powers of Appeal. Under these sections, appeals against conviction are to be allowed where the verdict is unreasonable in light of, or cannot be supported by the evidence; where the judgment was based on a wrongfully decided question of law; or where there was a miscarriage of justice. In the same vein, an appeal may be dismissed, if, in spite of arguments in the Appellant's favour, there was no substantial miscarriage of justice.³² Where an appeal against conviction is allowed, a verdict of acquittal shall be entered. Where the

²⁹ PW1, Head of the Licensing of Vehicles, Sierra Leone Road Transport Authority, testified that Kakay came to her office and requested transfer of ownership of a vehicle from Hardy B. Sheriff to Haja Mariama Deen as per exhibit A2.

³⁰ These allow for leave to appeal against conviction to be granted, either by the Court of Appeal or the Trial Judge, where the Grounds of Appeal are questions of fact or mixed questions of fact and law.

³¹ Appeal Judgment, p. 20.

³² Section 4 (1) Criminal Appeal Act 1907. *Kamara v. the State* 1972/73 ALR (SL). *Cohen v. Bateman* quoted in *Sallu Mansaray v. The State* SC Cr. Appeal 1/80. *Brima Dabo v. The State* Cr. Appeal 1/79 SL SC: all the afore-mentioned authorities make the point that even where the judgment and verdict is reached based on the Trial Judge's misdirection due to errors in Law and Fact, the critical decisive factor should be an ascertainment of whether there was a substantial miscarriage of justice. Where there has been one, the verdict should be quashed; but the verdict may be upheld where, there has been no such substantial miscarriage of justice and that on a correct direction, the only proper and reasonable verdict would be one of guilty.

appeal is against the sentence, the Court of Appeal may leave the sentence unaltered or substitute it. A sentence may be affirmed or substituted, where there has been an improper conviction on some count, but a proper conviction on another; in this case, the sentence shall be that which is warranted in Law, by the verdict. A conviction for one offence and sentence could be substituted for another offence, where the Court of Appeal are of the opinion that the findings of fact against the Accused can support the latter conviction, in which case, the substituted sentence should not be of greater severity. Where the Court of Appeal finds that the court beneath it lacked jurisdiction, the Court of Appeal may order a retrial.

Critique

In spite of the Court of Appeal's recognition of the duplicitous tendency of the Appellant's grounds and its merging of some of them, based on their similitude and merit in order to address them in an expeditious manner, the actual lay out of the Judgment could have been more logically sequenced. For example, the Court of Appeal treats Ground I, then Ground V, *before going on to treat* Grounds II, III and IV collectively. The identification of the substance of Grounds VI to X, *before* actually dealing with Grounds VIII, X, XI, and XII collectively, *then* stating that Ground VII had been addressed through Grounds I-V and XI-XII, is another such example of this back and forth manoeuvre. The Court of Appeal then separately considers whether Counts 1-4 and 5-8, should stand, in light of the discussions had under the various grounds, and it is only then, that its position with regard to most of the Grounds of Appeal, is made clear.

It should be noted that apart from Ground I, which is categorically rejected, and Grounds VI and IX which were abandoned by the Appellant, there is no direct ruling concerning each individual ground, except through the consideration of whether Count 1-8 ought to be quashed or not. It is only in evaluating the substance of these counts, that the Court of Appeal's position with regard to each of the Grounds of Appeal is discernable. Prior to the consideration of the Counts, the Court of Appeal's consideration of the mostly merged Grounds of Appeal was limited to listing all the law relevant to the Defence's contentions. There could have been more clarity in this regard.

Although Justice Tolla Thompson in his separate concurring opinion states that the Prosecution's evidence in support of the counts is not overwhelming, the Court of Appeal does not address the impact of circumstantial evidence against the Accused; such as his having his vehicle transferred from his residence to a garage during investigation of its purchase and its possession by the Accused, and the fact of the Accused's replacing the vehicle in question's registration number with that of his private car.

With regards to the issue of inconsistent descriptions of the vehicle, **the transfer of ownership form, PW1's evidence**, as well as **owners registration card**, refer to chassis number: JN1WHYD21UO160732, although their description of the make varies. **The owner's registration card** and **indictment** both refer to Nissan Terrano. **The transfer of ownership form** and the **owner's life card**, both refer to Nissan Pathfinder and it is clear that the chassis no. was altered from JN1WHYD21UO160732³³ to JN1WHYD214016732 on the **owner's life card**. It is not surprising therefore, and should be immaterial that it is the altered chassis no. that the indictment

³³ As is down on the **transfer of ownership form**.

proffers and *its opting **for either make** cited in the various sources of evidence, should have been considered adequately precise.*

The fact is that even though the Defence allege the items in question came from undisclosed sources, they remained in the possession of the Accused, in spite of, as the Defence itself admits, Kakay's contacting the Accused's wife and trying to offer him a vehicle.

[Appeal Judgment:
Taju-Deen]

The State vs Justice M. O. Taju Deen

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:

HON. MR. JUSTICE M.E.T. THOMPSON	—	PRESIDING JUDGE
HON. MR. JUSTICE A.N. BANKOLE STRONGE	—	JUSTICE OF APPEAL
HON. MR. JUSTICE PATRICK HAMILTON	—	JUDGE

BETWEEN:

HON. MR. JUSTICE M.O. TAJU-DEEN	—	APPELLANT
---------------------------------	---	-----------

AND

THE STATE	—	RESPONDENT
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MR. TERRENCE TERRY FOR APPELLANT
THE LEARNED ATTORNEY GENERAL AND MINISTER OF JUSTICE,
MR SOLOMON BEREWA (AS HE THEN WAS) FOR THE RESPONDENT

JUDGEMENT DELIVERED BY HONOURABLE MR. JUSTICE
A.N.BANKOLE STRONGE J.A.

ON 12th DAY THE AUGUST DAY OF August 2004

This Appeal is by the Appellant, HONOURABLE MR. JUSTICE M.O. TAJU DEEN against his conviction and sentence by the High Court in Freetown on a Twelve (12) Count Indictment of the offences of CORRUPTION contrary to Sections 7 (i) and 8 (i) of the Anti-Corruption Act No. 1 of 2000. The Appellant was convicted and sentenced on the 22nd day of June, 2001. The sentence of the Court was 1 YEAR imprisonment on Counts 1, 2, 5 and 6 to run concurrently and six (6) months imprisonment or the sum of Le30,000,000.00 (Thirty Million Leones) on Counts 3, 4, 7 and 8. Both sentences to run concurrently.

The Appeal is brought pursuant to Section 57 (b) and 57 (c) of the Courts Act, 1965. Act No. 31 of 1965 (As Amended by Section 6 of Act of 1966) which enacts as follows:-

- Section 57:
- (a) A person convicted by or in the Supreme Court may Appeal to the Court of Appeal:-
 - (b) With the Leave of the Court of Appeal or upon the certificate of the Judge who tried him that it is a fit case for Appeal against his conviction on any ground of Appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient Ground of Appeal.
 - (c) With the Leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by Law."

For the Supreme Court in the above enactments read High Court.

The powers of the Court of Appeal on the hearing of such an Appeal are spelt out in Sections 58 (1), 58 (2), 58 (3), 58 (4) and Section 59 (1), 59 (2) and 59 (5) of the Courts Act, supra, which enacts, as follows:-

- 58 (1) Subject and without prejudice to sub-section (2) the Court of Appeal on any such Appeal against conviction shall allow the Appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the Appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of Justice, and in any other case shall dismiss the Appeal.
- 58 (2) On an appeal against conviction the Court of Appeal may, notwithstanding that they are of opinion that the point raised in the Appeal might be decided in favour of the Appellant dismiss the Appeal if they consider that no substantial

miscarriage of Justice has actually occurred.

58 (3) Subject to the special provision of this Act the Court of Appeal shall, if they allow and Appeal against conviction quash the conviction and direct a judgment and verdict of acquittal to be entered.

58 (4) On an Appeal against sentence the Court of Appeal may leave the sentence unaltered or pass such other sentence warranted in Law (whether more or less severe in substitution therefore as they think ought to have been passed).

Section 59 (1) If it appears to the Court of Appeal that an Appellant, though not properly convicted on some count has been properly convicted on some other count, the court may either affirm the sentence passed on the Appellant at the trial or pass such sentence in substitution thereof as they think proper, and as may be warranted in Law by the verdict on the count on which the court consider that the Appellant has been properly convicted.

59 (2) Where an Appellant has been convicted of an offence and the court which tried him or the jury (as the case may be) could have found him guilty of some other offence, and on the finding of such court or jury it appears to the Court of Appeal that such court, or the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the Appeal, substitute for the verdict found by such court or the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in Law for that other offence, not being a sentence of greater severity.

59 (5) Where the Court of Appeal is of the opinion that the proceedings in the trial court were a nullity, either through want of jurisdiction or otherwise, the court may order the Appellant to be tried by a court of competent jurisdiction.

The trial was held at the Freetown High Court as a result of proceedings having been taken:

- (i) Under Section 136 of the Criminal Procedure Act No. 32 of 1965 (viz: consent in writing by a Judge to the preferment of the Indictment without a committal for Trial consequent upon a previous preliminary investigation) and,
- (ii) Under Section 144 (2) of the same Act (viz: Order for the Trial to be by Judge alone).

The Indictment preferred pursuant to the provisions of Section 38 of the Anti-corruption Act No. 1 of 2000 and filed reads as follows

COUNT 1

STATEMENT OF OFFENCE

Corrupt acquisition of wealth contrary to Section 7 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone being a public officer, to wit, acting Judge of the Superior Court of Judicature was in receipt of the benefit of an advantage to wit, a Nissan Terrano Motor Vehicle with engine No. VG-397591N and Chassis No. JN1WHYD2140160232 registered as AAK273 AU PR. which he may reasonably be suspected to have received corruptly.

COUNT 2

STATEMENT OF OFFENCE

Corrupt acquisition of wealth contrary to Section 7 (1) of the Anti-Corruption Act, 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone, being a public officer to wit, acting Judge of the Superior Court of Judicature was in possession of property, to wit, a NISSAN TERRANO MOTOR VEHICLE with engine No. VG- 30-39759IN AND CHASSIS No.JN1WHYD2140160732 with registration No. AAK273 A U P R which he may reasonably be suspected of having acquired corruptly

COUNT 3

STATEMENT OF OFFENCE

Accepting an advantage as an inducement contrary to Section 8 (1) of the Anti-Corruption Act. N. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone, being a public officer to wit, acting Judge of the Superior Court of Judicature accepted an advantage, to wit, a Nissan Terrano Motor Vehicle with engine No. VG-30-397591N and Chassis No. JN1WHYD2140160732 with registration No. AAK273 AU-PR as an inducement for abstaining to perform his duty as a Judge, namely to give judgment according to the evidence adduced before him.

COUNT 4

STATEMENT OF OFFENCE

Accepting an advantage as an inducement contrary to Section 8 (1) of the Anti-Corruption Act No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone, being a public officer to wit, acting Judge of the Superior Court of Judicature accepted an advantage, to wit, a Nissan Terrano Motor Vehicle with engine No. VG-30-397591N and Chassis No. JN1WHYD2140160732 with registration No. AAK273 Au-PR, as an inducement for expediting the performance of an act, to wit, the trial of the case entitled The State Vs Harry Will, Lamina Feika and Bockarie Kakay.

COUNT 5

STATEMENT OF OFFENCE

Corrupt acquisition of wealth contrary to Section 7 (1) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone, being a public officer to wit, acting Judge of the Superior Court of Judicature was in receipt of the benefit of an advantage to wit, a satellite dish together with a satellite receiver which he may reasonably be suspected to have received corruptly.

COUNT 6

STATEMENT OF OFFENCE

Corrupt acquisition of wealth contrary to Section 7 (1) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown, between the 1st day of April, 2000 and the 30th day of April, 2000 at Freetown in the Western Area of Sierra Leone, being a public officer to wit, acting Judge of the Superior Court of Judicature was in possession of property, to wit, a Satellite dish together with a satellite receiver which he may

reasonably be suspected to have received corruptly.

COUNT 7

STATEMENT OF OFFENCE

Accepting an inducement contrary to Section 8 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice Tajū-Deen on a day unknown between the 1st day of April 2000 and the 31st day of May 2000 at Freetown in the Western Area of Sierra Leone, being a public officer, to wit, acting Judge of the Superior Court of Judicature accepted an advantage, to wit, a satellite dish together with a satellite receiver as an inducement for abstaining to perform his duty as a Judge, namely, to give judgment according to the evidence before him.

COUNT 8

Accepting an advantage as an inducement contrary to Section 8 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Hon. Mr. Justice M.O. Tajū-Deen on a day unknown between the 1st day of April, 2000 and 31st day of May, 2000 in Freetown, in the Western Area of Sierra Leone being a public officer, to wit, acting Judge of the Superior Court of Judicature accepted an advantage, to wit, a satellite dish together with a satellite receiver as an inducement for expediting the performance of an act, to wit, the trial of the case entitled The State vs. Harry Will, Lamin Feika and Bockarie Kakay.

COUNT 9

STATEMENT OF OFFENCE

Corrupt Acquisition of Wealth contrary to Section 7 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M.O. Taju-Deen on a day unknown between the 1st day of April 2000, and the 31st day of May 2000, at Freetown in the Western Area of Sierra Leone, being a public officer, to wit, acting Judge of the Superior Court of Judicature, was in receipt of the benefit of an advantage, to wit, \$ 20,000 which he may reasonably be suspected to have received corruptly.

COUNT 10

STATEMENT OF OFFENCE

Corrupt Acquisition of Wealth contrary to Section 7 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M. O. Taju-Deen on a day unknown between the 1st day of April, 2000 and 31st day of May 2000 at Freetown in the Western Area of Sierra Leone, being a public officer, to wit, acting Judge of the Superior Court of Judicature was in possession of property, to wit, the sum of U.S. \$20,000 which he may reasonably be suspected to have received corruptly.

COUNT 11

STATEMENT OF OFFENCE

Accepting an advantage as an inducement contrary to Section 8 (i) of the Anti-Corruption Act No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M. O. Taju-Deen on a day unknown between the 1st day of April, 2000 and 31st day of May 2000 at Freetown in the Western Area of Sierra Leone, being a public officer, to wit, acting Judge of the Superior Court of Judicature accepted an advantage, to wit, US \$ 20,000 as an inducement for abstaining to perform his duty as a Judge, namely to give Judgment according to the evidence adduced before him.

COUNT 12

STATEMENT OF OFFENCE

Accepting an advantage as an inducement contrary to Section 8 (i) of the Anti-Corruption Act, No. 1 of 2000.

PARTICULARS OF OFFENCE

Honourable Mr. Justice M. O. Taju-Deen on a day unknown between the 1st day of April, 2000 and 31st day of May 2000 at Freetown in the Western Area of Sierra Leone, being a public officer, to wit, acting Judge of the Superior Court of Judicature accepted an advantage to wit, the sum of U.S. \$20,000 as an inducement for expediting the performance of an act, to wit, the trial of the case entitled THE STATE VS HARRY WILL, LAMINA FEIKA AND BOCKARIE KAKAY.

The trial commenced on the 14th December 2000. At the close of the case for the prosecution the Learned Attorney General and Minister of Justice conceded that the prosecution had failed to adduce evidence to support the charges as laid in Counts 9, 10, 11 and 12 of the Indictment. The Learned Trial Judge thereupon recorded the verdict on those counts thus:-

COUNT 9: Acquitted and discharged.

COUNT 10: Acquitted and discharged.

COUNT 11: Acquitted and discharged.

COUNT 12: Acquitted and discharged.

On the 22nd day of June 2001, the Presiding Judge, the Honourable Justice Patricia Macaulay, in a lengthy Judgment recorded the verdict and sentence of the court as follows:-

VERDICT

COUNT 1 — GUILTY

COUNT 2 — GUILTY

COUNT 3 — GUILTY

COUNT 4	—	GUILTY
COUNT 5	—	GUILTY
COUNT 6	—	GUILTY
COUNT 7	—	GUILTY
COUNT 8	—	GUILTY

SENTENCE:

A term of imprisonment of 1 year on Counts 1, 2, 5 and 6, sentences to run concurrently. A fine of the sum of Le 30,000,000.000 (Thirty Million Leones) or 6 months imprisonment on Counts 3, 4, 7, and 8, sentences to run concurrently.

CONSEQUENTIAL ORDERS

1. Vehicle AAK 273 Nissan Terrano to be forfeited to the State
2. Satellite Dish on the roof of the accused's house at Fornima and the recorder to be forfeited to the state.

It is against these verdicts of Guilty and Sentences thereon that the Appellant has appealed to this Court on questions of mixed Law and Fact, pursuant to Sections 57 (b) and 57 © of the Courts Act 1965 Act No. 31 of 1965 (as amended by Section 6 of the Act No. 21 of 1966) on Twelve (12) Grounds of Appeal (as amended) as follows:-

1. That her Lord ship the Honourable Justice Patricia Macaulay exceeded her jurisdiction when she proceeded to try the Criminal Case of the STATE VS. HON. MR JUSTICE M.O. TAJU-DEEN contrary to Section 120 (ii) of the 1991 Constitution.

PARTICULARS OF ERROR IN LAW AND ON THE FACTS

- (1) The Trial Judge wrongfully proceeded to sit and try the Appellant then accused in the Criminal Trial when as a Justice of the Court of Appeal; she was not requested by the Chief Justice to sit and act as a Judge of the High Court in that particular matter in

accordance with the provisions of Section 120 (ii) of the 1991 Constitution.

- (2) That the Trial Judge failed to consider adequately or at all the burden of proof which is cast on the prosecution regarding the offences relating to Counts 1 to 8 as charged in the Indictment.
- (3) The Trial Judge erred in Law and on the facts in that she wrongfully held that the prosecution had proved its case regarding the guilt of the accused in respect of Counts 1 to 8 of the Indictment before her in the High Court.
- (4) The Trial Judge misdirected herself and / or erred in Law and on the facts with regard to the Standard of proof required in this instant Criminal Trial namely proof Beyond Reasonable Doubt which consequently led to the wrongful conviction by her of the accused now appellant in respect of the 8 Counts Offences under Count 1 — 8 in the Indictment.

PARTICULARS OF ERROR OF LAW

- (a) The Trial Judge misdirected herself in Law in that she wrongfully held in her judgment to be found at page 261 lines 18 — 20 of the Records of Appeal; Vol. 2 where the following appear:-

“For the court to have doubts, it should be doubts,
relating to substantial matters”.

- (b) “From the evidence I find that the prosecution has proved the charges in these counts beyond reasonable doubt” at page 263 at lines 22 — 23

- (c) “I find that the prosecution has proved the charges against the accused beyond all reasonable doubt.”

- (d) At page 265 lines 16 — 18, the Trial Judge held the following:-

“There is nothing to rebut the particulars in the charges.
I find that the prosecution has proved the charge in count 4
beyond all reasonable doubt and I find the accused guilty as charged.”

- (e) I find that the prosecution has proved this count beyond all reasonable doubt P. 266 lines 4 and 5.
- (f) I find that the prosecution has proved the charges against the accused in Count 8 beyond all reasonable doubt — Page 266 lines 23 — 26.

PARTICULARS OF ERROR ON THE FACTS

The Learned Trial Judge misdirected herself and / or erred on the facts and consequently was demonstrably wrong on the evidence and facts before her when she came to the conclusion that the prosecution had proved its case beyond all reasonable doubt at page 262 lines 25 to 31 in her judgment contained in Volume 11 of the Records of Appeal where the following appears:-

- (i) “To examine the evidence relating to the Satellite dish and Receiver, we have the explanation of Mrs. Hawa Irene Taju-Deen and the Statement of the accused. What do we have from this ? In the first place these gifts like the Nissan Pathfinder was given to the accused’s wife. According to her two boys brought the Satellite Dish and Receiver from an undisclosed friend, quite an unlikely story”.
- (ii) The Trial Judge erred on the facts in failing to adequately consider the issue of proof beyond reasonable doubt in the light of proved or admitted facts by some of the prosecution witnesses and / or a variety of exhibits replete with different chassis numbers regarding the vehicle in question, different make of the vehicle ranging from Nissan Terrano to Nissan Pathfinder, different colour of the vehicle, and the vexed issue of whether the vehicle in question which was secreted at the accused’s residence totally unsolicited by him and without his consent was the one and same vehicle that arrived in Sierra Leone.
- (iii) In respect of the offences relating to the Satellite Dish and Receiver, here again the Trial Judge failed to adequately deal with the question of Reasonable Doubt having regard to some of the testimonies of the Prosecution witnesses which

varied from Satellite Dish to Decorder to Satellite Dish and Receiver and where the Judge in her Judgment referred to Recorder and Decorder respectively.

- (iv) The Learned Trial Judge at Page 263 lines 21 to 27 of her Judgment contained in Volume II of the Records of Appeal misdirected herself and / or erred on the facts before her when she held as follows:-

“From the evidence adduced I find that the prosecution has proved the charges beyond all reasonable doubt. I find the accused guilty as charged in Count 1. I find the accused guilty in Count 2. I find the accused guilty in Count V. I find the accused guilty in Count VI”.

- (v) The Learned Trial Judge misdirected herself and / or erred on the facts and wrongfully evaluated the evidence before her at page 263 Volume II of the said Records of Appeal lines 17 to 22 in her Judgment when she stated the following:-

“The submission of Counsel for the accused is that because the recorder has been referred to as decorder there should be a “doubt” is baseless. Some people call a chicken a fowl, a philson a crepe, a pig a hog. They are infact the same thing. There is no “no doubt” as to what was taken from the accused’s house.”

- 5) The Trial Judge erred in Law and on the facts in that in her Judgment she dealt with Counts 1, 2, 5 and 6 in the Indictment under Section 7 (2) of the Anti Corruption Act No. 1 of 2000 in respect of which the then accused now appellant never faced trial in the High Court.

PARTICULARS AND / OR MISDIRECTION IN LAW

The Trial Judge erred on the facts when at Page 257 of the Records of Appeal Volume II — lines 1 and 2 she stated the following:-

"I shall deal with the charges under Section 7 (ii) of the Anti-Corruption Act." These are as in Counts 1, 2, 5, and 6 in the Indictment."

- (6) The Trial Judge erred in Law and on the facts in all the circumstances of this case when she took into consideration hearsay evidence clearly inadmissible and highly prejudicial which were contained in the Summary of Evidence of Haja Mariama Taju-Deen and Hawa Irene Taju-Deen wrongfully attached to the Indictment before her at the commencement of the trial and repeated by prosecution witnesses at the trial until Judgment was delivered by her.

PARTICULARS OF ERROR OF LAW

- (i) That the wrongful admission of the Summary Evidence of Haja Mariama Taju-Deen and Hawa Irene Taju-Deen wives of the accused and the report of them by Thomas Konie Akimbobola, P.W. 7 on the facts of this instant case was highly prejudicial to the accused now appellant.
- (7) The Trial Judge erred on the facts in that in a Trial by Judge alone as in this instant case she failed to lay the requisite or proper foundation for resolving not only the primary facts in the case but also failed to qualitatively evaluate the totality of the evidence before her, thereby resulting in the wrongful conviction of the Appellant on Counts 1 to 8 as charged in the Indictment in circumstances which fell far short of a reasoned judgment according to Law.

PARTICULARS OF ERROR OF FACTS

- (i) In respect of the alleged vehicle and the Satellite Dish and Receiver the Trial Judge arrived at a number of inferences or findings that do warrant the Court of Appeal setting them aside as they clearly constitute matters that not only entertain doubts whether the decision below is right, but also matters to convince the Court that the Judgment of the Court below is wrong.

- (8) The Trial Judge erred in Law / or misdirected herself in Law and on the facts in that she wrongfully referred to and made adverse comment or reference to the accused's silence in her said Judgment which resulted in her wrongfully coming to a conclusion that the accused is guilty.

PARTICULARS OF ERROR IN LAW AND ON THE FACTS

The Trial Judge misdirected herself in Law and on the facts in that she wrongfully commented on the accused's refusal to comment and in wrongly holding as follows:-

At page 263 Volume 11 Lines 7 to 17 .

"The accused himself says in his statement "I have a Satellite dish and a Receiver at my Fornima residence. I don't intend to make any comment about it."

"From that statement the only inference which can be drawn is that the Satellite Dish belongs to him but because he has an unpolluted explanation as to his acquisition of them, the conclusion then is that it was acquired by him corruptly. The evidence is clear that the accused was in receipt of the benefit of an advantage of a Satellite Dish and Receiver. These were found in his house. The evidence is clear that they were given to the accused as an inducement or reward. The accused gave no evidence to rebut this."

- (9) The Trial Judge erred in Law and the facts in her interpretation and application of the provisions of Section 45 of the Anti-Corruption Act No. 1, 2000 and consequently wrongfully held that the accused now Appellant did not rebut the presumption of proof against him in respect of all the remaining 8 Counts in the 12 Count Indictment.

PARTICULARS OF ERROR OF LAW

- (i) The Trial Judge misdirected herself and / or erred in Law when she held that the offences had been proved by the prosecution for the burden to shift to the accused to rebut the presumption of guilt.

- (ii) The Trial Judge misdirected herself in Law both at the end of the NO CASE Submission when she ordered that the case should go to trial and thereafter at the end of the trial proper when she wrongfully concluded that Counts 1 to 8 have been proved thereby shifting the burden on the defence to rebut the presumption that the offence is proved.

PARTICULARS OF ERROR ON THE FACTS

- (i) The Trial Judge misdirected herself when she held at Page 265 lines 16 to 18 of Volume 2 of the Records of Appeal the following:

“There is nothing to rebut the particulars in the charge. I find that the prosecution has proved the charge in Count 4 beyond reasonable doubt and I find the accused guilty as charged.”

- (10) The Trial Judge erred in Law in that she wrongfully relied on Section 43 (i) of the Anti-Corruption Act 2000 in circumstances wherein the essential ingredients of that particular statutory provision did not and could not have given rises to or warranted the operation Section 43 (i) (a), (b) and (c) which constitute a safety valve for the accused person.

PARTICULARS OF ERROR OF LAW

- (i) Her Lordship the Trial Judge erred in Law by referring and relying on Section 43 (i) of the Anti-Corruption Act No. 1 of 2000 when that provision was never raised for determination by either the prosecution or defence and was at best a red herring.
- (ii) Section 43 (i) of the Anti-Corruption Act 2000 was wrongfully relied upon by the Learned Trial Judge and in consequence misdirected herself which culminated in her judgment dated 22nd June, 2001.

PARTICULARS OF ERROR ON THE FACTS

- (i) The Trial Judge misdirected herself and / or erred on the facts when she stated at page 266 lines 22 to 23 of Volume 2 of the Records of Appeal that:
“there is no doubt that the accused did do what the law forbids.”
- (ii) The Learned Trial Judge did not sufficiently or adequately consider the case of the defence.

PARTICULARS OF ERROR OF LAW

- (i) The Trial Judge erred in Law in that at Page 266 lines 1 — 4, Volume 2 of the Records of Appeal she wrongfully said the following:-

“I have also spelt out the defence open to the accused.
That he has failed to offer any defence at all. Infact the
accused offered no explanation and his wife has a fairly tale
which I will not repeat.”

PARTICULARS OF ERROR ON THE FACTS

- (i) The Trial Judge erred on the facts in that she wrongly inferred guilt on the accused barely from the evidence adduced in relation to the Satellite Dish and Receiver when on the facts before her it was abundantly clear that the prosecution failed to establish that Bockarie Kakay had any connection or nexus with the said Satellite and Receiver and / or was the owner and / or the same person who sent both the Satelite Dish and Receiver to the accused's residence and found on the premises of the accused and which the accused himself said he had in his house — see page 265 at lines 27 to 29 of the Records of Appeal.
- (ii) The Trial Judge misdirected herself and erred on the facts by failing to give adequate weight to what she herself mentioned at page 258 lines 26 to 32 as follows:-

“The evidence is that whilst the case was in Court before the accused

as a Judge the 3rd accused met the accused and offered him a four wheel drive vehicle. The accused in his statement said that when this offer was made he turned it down and because he was really mad at the offer he told the Counsel representing Mr. Bockarie Kakay to warn his client to stop trying to reach him."

- 12 That the Judgment was unreasonable and unsafe and cannot be supported having regard to the totality of the evidence.

I wish to state that the work of this Court would be more expeditiously dispatched, not by the multitude of Grounds of Appeal, but by the cogency and merit of those Grounds of Appeal. Some of the Grounds of Appeal reproduced above could have been merged together under one or two topics thereby saving time and labour.

The Appellant was granted leave to argue his Appeal against conviction and his Appeal against sentence.

The facts which emerge from an examination of the record of proceedings in the High Court were these:-

One Hardy Sheriff, a businessman of No. 25 Hill Street, Freetown, imported a Nissan Terrano vehicle into Sierra Leone and registered the said vehicle in the name of Haja Mariama Deen of No. 13c Davies Street, Freetown, without her knowledge. The prosecution alleged that in fact it was one Bockarie Kakay, one of three accused persons in a criminal trial before the Honourable Mr. Justice Taju-Deen, the Appellant herein, who, as a cover-up purchased and imported the said Nissan Terrano into Sierra Leone during the course of the said trial. Haja Mariama Deen is one of the wives of the Honourable Mr. Justice M.O. Taju-Deen. The said vehicle was registered and licensed as AAK.273 by Bockarie Kakay who paid both Customs Duty and Registration and Licensing Fees for the said vehicle. This vehicle eventually was taken to the residence of the Appellant at Fornima, Goderich in the West End of Freetown. In the course of time, instead of the registration number of the vehicle AAK 273, the said vehicle had affixed on it a licenced with number AAN 934. That number AAN 934

happened to be the registration number of a Datsun Laurel Car owned by the appellant. Later on the said Nissan Terrano vehicle was towed to a garage owned by Abu Bakar Kamara at No. 7 Canton Street, Freetown by one Amadu Bah. He, Amadu Bah testified that it was at the request of the appellant that he towed a Nissan Pathfinder to the garage of Abu Bakar Kamara at No. 7 Canteen Street, Freetown. His evidence was confirmed by the testimony of Abu Bakar Kamara. He Abu Bakar Kamara, testified that it was the Appellant who sent a driver to him and that as he was busy, he asked Amadu Bah to go to the house of the Appellant and bring the vehicle to his garage at No. 7 Canteen Street, Freetown.

It also emerged from perusing the Records that a Satellite Dish and Receiver were found at the Fornima residence of the Appellant. The prosecution alleged that these items were given to the Appellant by the said Bockarie Kakay.

Finally the prosecution alleged that the sum of U.S. \$20,000.00 (Twenty Thousand United States Dollars) was given to the Appellant by the said Bockarie Kakay.

The Appellant admitted that approaches were made to him by the said Bockarie Kakay and other persons to influence him in the conduct of the case before him but that he rejected all such approaches.

The various allegations as stated above were investigated by the Anti-Corruption Commission, a body established by the Anti-Corruption Act, 2000. Indeed the prosecution of the appellant was based on the findings of the Anti-Corruption Commission.

Counts 1, 2, 5 and 6 charge the appellant with the offence of:-

“Corrupt acquisition of wealth contrary to Section 7 (I) of the Anti-Corruption Act No. 1 of 2000”

Counts 3, 4, 7 and 8, charge the Appellant with the offence of:-

“Accepting an inducement contrary to Section 8(I) of the Anti-Corruption Act No. 1 of 2000”

Section 7 (i) of the Anti-Corruption Act No. 1 of 2000 reads:-

7 (i): A public officer is guilty of the offence of corrupt acquisition of wealth if it is found, after investigation by the Commission, that he is in control or possession of any resources or property or in receipt of the

benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly or in circumstances which amount to an offence under this Act.”

Section 8 (i) of the Anti-Corruption Act No. 1 of 200 reads:-

8 (i) Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his:-

- (a) Performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;
- (b) Expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself, or by any other public officer in his capacity as a public officer; or
- (c) Assisting, favouring, hindering, or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body; is guilty of an offence.

For the purpose of the Act the following are interpreted:-

1. “Public Officer” means a holder of a public office.
2. “Public Office” means an office in the service of the Government of Sierra Leone, and includes service in, the offices of President, Vice President, Minister, Deputy Minister, Attorney-General and Minister of Justice, Member of Parliament, Magistrate, Judge of the Superior Court of judicature, and . Officers in the Armed Forces, the Police Force, a Public Corporation or on the Board thereof; a Local Authority, any Commission or Committee established by or under the Constitution or by or under any law or by the Government.
3. “Advantage” includes:-
 - (a) any gift, loan, fee, reward or Commission, consisting of money or of any valuable security or other property or interest in property;
 - (b) any office, employment or contract,

- (c) any payment, discharge, or liquidation of any loan; and
- (d) any other benefit or favour (except entertainment);

The Judgment appealed against is contained in Pages 232 to 266 inclusive of the Records.

Counsel for the Appellant commenced his argument by arguing GROUND I of the Appellant's appeal. That GROUND I as filed was amended in the particulars to read:-

- (1) That her Lordship the Honourable Justice Patricia Macaulay exceeded her jurisdiction when she proceeded to try the Criminal Case of The STATE VS. HON. MR. JUSTICE M.O. TAJU-DEEN contrary to Section 120 (ii) of the Constitution.

PARTICULARS OF ERROR IN LAW AND ON THE FACTS

The Trial Judge wrongfully proceeded to sit and try the Appellant then accused in the criminal trial when as a Justice of the Court of Appeal she was not requested by the Chief Justice to sit and act as a Judge of the High Court in that particular matter in accordance with the provisions of section 120 (ii) of the 1991 Constitution. Section 120 (ii) of the Constitution of Sierra Leone Act No. 6 of 1991 reads:-

- 120 (ii) Notwithstanding the provisions of the preceeding subsections, any Justice of Appeal may, on the request of the Chief Justice, sit and act as a Judge of the High Court.

Learned Counsel for the Appellant submitted that the request of the Hon. The Chief Justice referred to in Section 120 (ii) supra is a condition precedent enabling a Justice of Appeal; to sit as a High Court Judge. In this reply the Learned Attorney-General and Minister of Justice submitted that the High Court as presided over by Macauley J. was properly constituted as there was no break in the jurisdiction of the Learned Trial Judge who had jurisdiction at the commencement of the Trial. This Court finds no merit in the submissions of Learned Counsel for the appellant and holds that there is no requirement in Law for the Hon. The Chief Justice to give his consent for a Judge to continue to sit on a case after his or her eleva-

tion. Once a Judge is properly seized of a matter and has jurisdiction over that matter, he continues to be so seized and have jurisdiction until the matter is determined, withdrawn or removed from that Judge by order of a Higher Court or the removal of that Judge from office as laid down in the Constitution of Sierra Leone. Ground 1 is therefore rejected.

Appellant's Counsel next proceeded to argue GROUNDS 5 (as amended). It reads:-

- (5) The Trial Judge erred in Law and on the facts in that in her Judgment she dealt with Counts 1, 2, 5 and 6 in the Indictment under Section 7 (2) of the Anti-corruption Act, 2000 in respect of which the then accused now appellant never faced trial in the High Court.

PARTICULARS AND OR MISDIRECTION IN LAW

The Trial Judge erred and / or misdirected herself in Law by wrongfully relying on Section 7 (2) of the Anti-Corruption Act No. 1 of 2000 in her purported determination of Counts 1,2,5 and 6 of the Indictment.

PARTICULARS OF ERROR ON THE FACTS

The Trial Judge erred on the facts when at Page 257 of the Records of Appeal — Volume 2 lines 1 and 2 she stated the following:-

“I shall deal with the charges under Section 7 (ii) of the Anti-Corruption Act.”

Section 7 (2) of the Anti-Corruption Act reads:-

- 7 (2) “Where during a Trial of an offence under subsection (I) the Court is satisfied that there is reason to believe that any person is holding pecuniary resources or property in trust or otherwise on behalf of the accused, or acquired such resources or property as a gift from the accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.”

I have taken the trouble to examine the original file in this case in the lower Court. I have read the handwritten judgment of the Learned Trial Judge. I find that what appears at

257 Line 1 is a typographical error. The hand written Judgment reads:-

"I shall deal with the charges under Section 7 (I) of the Anti-Corruption Act

AND NOT

"I shall deal with the charges under Section 7 (ii) of the Anti-Corruption Act" as appears the Records. It is quite clear from the original file that the reference was to Section 7 (I). ROUND 5 therefore is without merit and is dismissed.

I shall deal with GROUNDS 2,3 and 4 together

ROUND 2 — Failure of the Learned Trial Judge to consider adequately or at all the burden of proof cast on the prosecution regarding the offences relating to Counts 1 — 8 of the Indictment.

ROUND 3 — Error of the Learned Trial Judge in Law and on the facts in holding that the prosecution had proved its case in respect of Counts 1 — 8 of the Indictment.

GROUND 4 — Misdirection of the Learned Trial Judge and /or errors by the Learned Trial Judge in Law and on the facts with regard to the standard of proof in a Criminal Trial.

Several instances of the above complaints in Grounds 2, 3 and 4 were stated by Learned Counsel for the appellant for consideration by this Court. ✓

Some brief remarks on the interpretation of Statutes may be appropriate here. In substance, the general canons of construction applicable to Statutes which create or punish criminal offences or deal with criminal procedure are the same as those applicable to other Statutes:-

SEE CRAIES ON STATUTE LAW 6th Ed. (1963) Maxwell, Interpretation of STATUTES 11th Ed. 1962.

A long line of authorities lay down that penal Statutes must be construed strictly. The classic Rule is that stated in THE GAUNTLET: 1872 L.R. 4 P.C. 184 at 191.

"No doubt all penal statutes are to be construed strictly, that is to say, the Court must see

that the thing charged as an offence is within the plain meaning of the words used; must not strain the words on any notion that there has been a slip, that there has been a CASUS OMISSUS, that the thing is so clearly within the mischief that it must have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, though within the words is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used. And the court is not to find or make any doubt or ambiguity in the language of a penal Statute where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

The Appellant is charged under Section 7 (I) and Section 8 (I) of the Anti-Corruption Act, 2000, Act No. 1 of 2000. For the accused now Appellant to be found guilty of the offence created by Section 7 (I) he must be:-

"in control or possession of any resources or property or in receipt of the benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly."

For the accused, now Appellant to be found guilty of the offence created by Section 8 (I) of the said Act, he must have:

"accepted an advantage as an inducement:

- (i) for abstaining to perform his duty as a Judge, namely, to give judgment according to the evidence adduced before him;
- and / or
- (ii) for expediting the performance of an act, to wit, the Trial of the case entitled The State Vs. Harry Will, Lamin Feika and Bockarie Kakay.

The above are the ingredients of the offences with which the Appellant was charged, tried and convicted. For the prosecution to succeed, the ingredients as charged must be proved and it is only then that the accused, now Appellant, carries the burden of proving under Section 7 (I):-

That he was not in control, or possession of any resources or property, or in receipt of the benefit of any advantage, as charged, which he may reasonably be suspected of having acquired or received corruptly.

And under Section 8 (i)

That he did not accept an advantage as an inducement

- (i) For abstaining to perform his duty as a Judge, namely,
to give judgment according to the evidence adduced before him;
- AND (ii) For expediting the performance of an act, to wit, the trial of the
case entitled The State Vs. Harry Will, Lamin Feika, and Bockarie Kakay

I make bold to say that if the prosecution fails to discharge the burden of adducing evidence as stated above, then the Accused / Appellant need not utter a word.

COUNTS 1 — 4 of the Indictment charge the Accused / Appellant with “....receipt of the benefit of an advantage, to wit, a Nissan Terrano Motor vehicle with engine Number VG-30-39759IN and Chassis No. No. JN1WHYD21 4016732 registered as AAR 273 AU PR.

The evidence of the 1st Prosecution witness, Mrs. Alice Pratt at pages 153 — 159 of the Records is very instructive. She was employed at the material time by the Sierra Leone Road Transport Authority and was head of the licencing of vehicles and drivers sections of that establishment. She described in detail the process of registering, licencing and transferring ownership of vehicles. On a vehicle being registered the owner is given an owner's Blue Card. This card shows that the vehicle has gone through the licensing process. On the importation of a vehicle, the owner attends at her office with the Bill of Lading and a receipt from the department of Customs for Customs Duty paid. The owner is given a Registration Form to complete and the vehicle is inspected by the Fitness Section to verify that the information on the vehicle is the same as that on the documents submitted e.g. chassis number, engine number and the type of the vehicle. If all the information is correct the vehicle is licenced. On a transfer of ownership the transferor collects a transfer of ownership form from P.W. 1's office and on its completion and presentation of the transfer Blue Card the transfer is effected.

Her departments assigns numbers to vehicles and never gives the same number to two vehicles. P.W. 1 knew Bockarie Kakay, the third accused mentioned in Counts 4 and 8 of the Indictment. Bockarie Kakay came to her office and requested to transfer ownership of a vehicle. He was directed through the procedure already described. The transfer was to be from Hardy B. Sheriff to Haja Mariama Deen as per exhibit A2. On the completed Transfer of Ownership Form Exhibit A3, the following details appear:

Vehicle Reg. No. AAK 273 Au — PR.

Make / Type: Nissan Pathfinder

Engine Number: VG30-39759IN

CHASSIS Number: JN1WHYD21U0160732

BODY COLOUR: GREY

OWNERS' REGISTRATION CARD NO. A— 43163.

On Exhibit A4, the Bill of Entry the following details appear:-

Importer;s Name: HARDY B. SHERIFF

Description: One CD Unit unpacked

Used Secondhand Nissan Terrano

CHASSIS NO. JN1WHYD21U0160732

The Owner's Blue Card issued to the transferee,, Haja Mariama Deen show the following details:-

Reg. No. AAK 273

Date: 4—3—2000

BODY- JEEP

COLOUR: GREY

One does not need ocular gymnastics to observe that the Chassis No. on Exhibit B: JN1WHYD214016732 was originally JN1WHYD2 1U0160732 the letter U was altered to appear to be the figure 4. This alteration was blatantly done in a different colour of ink. The reason for this will be clear later on in this judgment.

GROUND 6: The Appellant abandoned Ground 6.

GROUND 7: Failure by the Learned Trial Judge to qualitatively evaluate the totality of

the evidence thereby resulting in the wrongful conviction of the appellant on Counts 1 — 8

- GROUND 8:** Adverse comments made by the Learned Trial Judge to the Accused's silence.
- GROUND 9:** This ground was abandoned by the Appellant.
- GROUND 10:** Learned Trial judge wrongfully relied on Section 43 (1) of the Anti-Corruption Act 2000.
- GROUND 11:** That the Learned Trial Judge did not sufficiently or adequately consider the case for the defence.
- GROUND 12:** That the judgment is unreasonable and cannot be supported having regard to the totality of the evidence.

I shall deal with Grounds 8, 10, 11, and 12 together. Ground 7 is an omnibus Ground and will be dealt with separately.

GROUND 8, 10, 11 and 12: The Common Law position is that a suspect is entitled to remain silent and no adverse inference should be drawn when he has, after caution, remained silent. The Appellant, in his Statement, Exhibit D said INTER ALIA:-

"I have a Satellite Dish and a Receiver at my Fornima residence.
I don't intend to make any comment."

The Learned Trial Judge's Comment on this piece of evidence is as follows:- at page 263 lines 9 to 17 of the records;

"From that statement the only inference which can be drawn is that the Satellite Dish belongs to him but because he has unpolluted explanation as to his acquisition of them, the conclusion then is that it was acquired by him corruptly. The evidence is clear that the Accused was in receipt of the benefit of an advantage of a Satellite Dish and Receiver. These were found in his house. The evidence

is that they were given to the accused as an inducement or reward.

The accused gave no evidence to rebut this.”

Although at Common Law the Appellant has the right of silence and it would be improper for a Court to make adverse comment on his silence yet by the Anti-Corruption Act, 200, No. 1 of 2000, Section 7 (I) and Section 8 (I) where the ingredients of the offences created in these sections have been proved it is incumbent on the Accused, now Appellant to rebut the presumption of guilt.

Section 45 of the Anti-Corruption Act, supra reads:-

Section 45 “Where, in any proceedings for an offence under this Act, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.”

The Learned Trial judge at page 265 lines 15 to 18 had this to say:

“The Accused’s attempt to exonerate his action in no defence.
There is nothing to rebut the particulars in the charges.”

Section 43 (i) of the Anti-Corruption Act, Supra, states:-

Section 43 (i):

If, in any proceedings for an offence under this Act, it is proved that the Accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given on account of his doing or abstaining from doing anything as is referred to in this Act, it shall be no defence that:

- (a) he did not actually have the power, right or opportunity to do so or abstain;
- (b) he accepted the advantage without intending to do or abstain, or
- (c) he did not in fact do so or abstain.

The Learned Trial Judge in her Judgment at page 266 lines 20 — 23 said:

“I refer also to Section 43(I) of the Anti-Corruption Act, 2000, Counsel for the Accused himself said that the word corruptly means doing what he law forbids.”

The complaint in Ground 11 is that the Learned Trial Judge did not sufficiently or adequately consider the case of the defence.

At page 266 lines 1 - 4 of the Records the Learned Trial Judge said:-

“I have also spelt out the defence open to the Accused that he has failed to offer any defence at all. In fact the Accused offered no explanation and his wife has a fairy tale which I will not repeat.”

That the Judgment is unreasonable and unsafe and cannot be supported having regard to the totality of the evidence will be dealt with in the conclusions of this Judgment.

GROUND 7: The complaint in this Ground is encapsulated in Grounds 1 to 5, 11 and 12.

Having thus dealt with all the grounds which were raised in this Appeal I have now to consider whether the verdict of the Court below on each of the Eight Counts ought to stand.

1st Count :—

There is abundant evidence from P.W. 1 Alice Pratt, Exhibit A3, the completed Transfer of ownership Form, Exhibit B, that the Chassis Number of the vehicle imported into Sierra Leone by Hardy B. Sheriff and transferred to Haja Mariama Deen is:-

JN1WHYD21U0160732

As stated earlier in this Judgment, exhibit “B” has been doctored by the alteration of the letter “U” in the chassis No:

JN1WHYD21U0160732

to the figure “4” to let it appear as:

JN1WHYD2140160732

The alteration is self evident. The Learned Attorney-General and Minister of Justice in his opening address at Page 68 of Volume I lines 24

To page 69 lines 1 to 9 of the records said:-

"We will lead evidence to show that in the course of the Trial he (the appellant) was assured an advantage in the nature of a vehicle because the road to his house was rugged. We will show evidence how this vehicle was brought to this jurisdiction by one of the Accused persons who was appearing before him, how that accused person paid the customs duty to clear that vehicle, how that same accused person registered and paid the registration fee for that vehicle which he has offered the Accused. He registered it in the name of the wife of the Accused. We will lead evidence to show how the accused took possession of that vehicle and secreted it at his residence on the far West of Freetown. We will also show evidence that when the fact of the purchase of that vehicle and its possession by the Accused was being investigated, the Accused removed from that vehicle the registration number that was given to it and replaced that registration number by the registration number of his private car and then had that vehicle removed from his residence in the far West and brought to a garage at Canton Street, next to the residence of his wife in whose name the vehicle had been registered."

From the text immediately above quoted, it is beyond any doubt that the Learned Attorney-General and Minister of Justice was referring to the vehicle testified to by P.W. 1, and referred to it Exhibit "A3", A4" and Exhibit "B". There are however manifest discrepancies between the vehicle, the subject matter in Counts 1 to 4 of the Indictment and the vehicle referred to by P.W. 1 and evidence in Exhibits "3", "4" and Exhibit "B". The vehicle, the subject matter in Counts 1 — 4 of the Indictment is a NISSAN TERRANO MOTOR VEHICLE with Engine Number VG 30 — 397591N and CHASSIS Number JN1WHYD2140160732 Registered as AAK 273 AU.PR. The vehicle testified to by P.W. 1, is a NISSAN PATHFINDER with Engine Number VG 30 — 397591N and Chassis Number JN1WHY21U0160732, Exhibit "3" describes the vehicle imported by Hardy B. Sheriff was NISSAN TERRANO with CHASSIS Number JN1WHY21U0160732, Exhibit "B" the Owner's Life Card describes the vehicle as a NISSAN PATHFINDER with CHASSIS No.

JN1WHY2140160732. It is this Exhibit, Exhibit "B" which has been altered for the CHASSIS NO to read:-

JN1WHY2140160732

Instead of:

JN1WHYD21U016073

Which is shown on exhibit "4" THE BILL OF LADING.

It was argued by the Learned Attorney-General and Minister of Justice that notwithstanding these blatant discrepancies Counts 1 — 4 of the Indictment can be saved by invoking 1st Schedule to the Criminal Procedure Act No. 32 of 1965, Rule 8 thereof.

Rule 8 reads:-

"Subject to any other provisions of these Rules, it shall be sufficient to describe any place, thing, matter, Act or omission whatsoever to which it is necessary to refer in any information or indictment in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, act, omission referred to."

This Rule, with respect to the Learned Attorney General and Minister of Justice cannot be properly invoked in this case. The thing, the subject matter of Counts 1 to 4 is described with such particularity as to leave no doubt about what is described. However the evidence led in support of those Counts creates a lot of doubt as to the "thing" referred in the Indictment.

This Court is not satisfied on the evidence led in the Lower Court in support of Counts 1 to 4 of the Indictment that the Accused / Appellant is guilty of the offences charged

The verdict of Guilty on Count 1 is set aside as it is unreasonable and cannot be supported having regard in the evidence. The conviction is quashed and this Court directs that a Judgment and verdict of acquittal be entered.

COUNT 2: For a reasons already stated under Count 1 above the verdict of Guilty on Count 2 is set aside. The Conviction is quashed and it is directed that a Judgment and

verdict of acquittal be entered.

COUNT 3: For reasons already stated under Count 1 above the verdict of Guilty on Count 3 is set aside. The Conviction is quashed and it is directed that a Judgment and verdict of acquittal be entered.

COUNT 4: For reasons already stated under Count 1 above the verdict of Guilty on Count 4 is set aside the Conviction is quashed and it is directed that Judgment and verdict of acquittal be entered.

COUNT 5: Count 5 of the Indictment deals with a Satellite Dish and a Satellite Receiver as do Count 6, 7 and 8. P.W. 7 — Thomas Konie Akinbobola gave evidence in the lower Court. His evidence is contained in Pages 182 — 183, 184 and 185 to 186 of the Records. He testified as to how he went to the house of the Appellant and found one Supermax Satellite Decoder and a Satellite Dish fixed at the top of the Appellant's house. One of the wives of the Appellant, Hawa Irene Taju-Deen in her summary of evidence stated that two unknown boys came and installed a Satellite Receiver and Dish at her house. The boys, she said, told her that the Satellite Receiver and Dish were a surprise gift and that the donor will contact her later, but no one contacted her. According to her the Appellant was angered by the presence of the Satellite Receiver and Dish in his house. When contacted by the Police the Appellant made a statement and said:-

"I have a Satellite Dish and a Receiver at my Fornima residence,
I don't intend to make any comment about it."

The evidence before the Learned Trial Judge was that two unknown boys went to the Appellant's house, met one of his wives, Hawa Irene Taju-Deen and installed a Satellite Dish and Receiver. This was after Bockarie Kakay, the 3rd Accused standing trial before the Appellant in the court below, had promised her a wedding present. The Appellant was angered by the presence of the Satellite Dish and Receiver in his house. The Learned Trial Judge did

not believe the evidence as stated above. Referring to the Appellant's statement quoted above, the Learned Trial Judge said at Page 263 lines 9 to 17.

"From that statement the only inference which can be drawn is that the Satellite dish belongs to him but because he has an unpolluted explanation as to his acquisition of them, the conclusion then is that it was acquired by him corruptly. The evidence is clear that the accused was in receipt of the benefit of an advantage of a Satellite Dish and Receiver. These were found in his house. The evidence is clear that they were given to the Accused as an inducement or reward. The Accused gave no evidence to rebut this. "

With respect to the Learned Trial Judge there was no evidence before her that the Appellant was given either a Satellite dish or a receiver. There was no evidence that he accepted either of these items. The evidence is that one of his wives had been promised a wedding present and shortly after that promise two unknown boys went to her house and installed a Satellite Dish or Receiver, there was no legal burden on him to rebut anything. The Learned Trial Judge, with respect, should not have made the adverse comment she made upon the failure of the Accused to, as she said, "rebut the allegations made against him". When interviewed by the Police the Appellant in his statement said, INTER-ALIA"

"I have A Satellite Dish and a Receiver at my Fornima residence.

I don't intend to make any comment about it."

The Learned Trial Judge commented as follows:-

"From that statement the only inference which can be drawn is that the Satellite Dish belongs to him but because he has an unpolluted explanation as to his acquisition of them the conclusion then is that it was acquired by him corruptly".

That comment by the Learned Trial Judge was not justified and evidently led her to a wrong conclusion. Her comment was quite wrong. The Appellant was absolutely within his right not to say anything and he cannot properly be criticized for that. See the cases of HALL V REGINA M 1971 1 A.E.R. at 324, R. V. CHANDLER 1976 3 A.E.R. AT 105

The question I ask myself is why is the inference drawn by the Learned Trial Judge the "Only" inference that can be drawn from the evidence and the circumstances of the case before her. Did not one of the wives of the Accused now Appellant offer some explanation as to how the Satellite Dish and Receiver came to be installed in the Appellant's house ? The Learned Trial Judge made short strift of that explanation as a "Fairy Tale" which no one will believe.

It was submitted by the Learned Attorney-General and Minister of Justice that a Trial Judge has a right to comment on the silence of an accused either when the matter is being investigated or when the accused refuses to say anything at the end of the prosecution's case if there was a burden on the accused to disprove or prove something. Reference was made to:-

BLACKSTONE'S CRIMINAL PRACTIC 1995

AND

R. V. BATHURST, 1968 2 Q.B. 99

PARA F. 19. 16 PAGE 2144

For that submission to be upheld, the accused must be under a burden to disprove or prove something. From the evidence adduced in the lower court no burden was cast on the accused to disprove any of the allegations in Counts 5, 6, 7 and 8 of the Indictment.

In the case of R V LECKEY, 1944 K.B. at page 80, also in 29 CR.APP.R. at page 128, D was charged with Store breaking and Larceny.

When he was being interviewed by the Police he said: "I am saying nothing". In the course of his Summing Up the Deputy Chairman said:

"Can you imagine an innocent man.....not saying something to the Police.....he said nothing." The Court of Criminal Appeal allowing an Appeal against Conviction, held that such a direction to the Jury was a misdirection.

The Judgment of the Learned Trial Judge is replete with misdirections in Law and on the facts. The Court has no doubt that she came to erroneous conclusions because of these misdirections.

Section 58 (i) of the Court's Act supra enacts as follows:-

Section 58 (1) — "Subject and without prejudice to sub-section (2) the Court of Appeal on any such Appeal against conviction shall allow the Appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the Judgment of the Court before whom the Appellant was convicted should be set aside on the ground of a wrong decision of any question of Law, or that on any ground there was a miscarriage of Justice, and in any other case shall dismiss the Appeal"

The verdict of Guilty on Count 5 is set aside as it is unreasonable and cannot be supported having regard to the evidence. The conviction is quashed and the Court directs that a Judgment and verdict of acquittal be entered.

COUNT 6: For the reasons already stated under Count 5, the verdict of Guilty on Count 6 is set aside. The Conviction is quashed and it is directed that a Judgment and verdict of acquittal be entered.

COUNT 7: For the reasons already stated under Count 5 above the verdict of Guilty on Count 7 is set aside. The Conviction is quashed and it is directed that a Judgment and verdict of acquittal be entered.

COUNT 8: For the reasons already stated under Count 5 above, the verdict of Guilty on Count 8 is set aside. The Conviction quashed and it is directed that a judgment and verdict of acquittal be entered.

CONSEQUENTIAL ORDER

This Court Orders that any and all monies paid by the Appellant in consequence of the sentences passed by the Court below be paid back to him forthwith.

This Court would want to put on record its appreciation of the invaluable help and assistance of both Counsel in this Appeal.

Hon. Justice M.E.T. Thompson J.A. (Presiding)

Hon. Justice Abel N. Bankole Stronge J.A. *A.N. Bankole Stronge*

Hon Justice Patrick Hamilton J. *Pat Hamilton*

CR.APP.9/2001,2/2001 & 3/2001

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:

HON. MR. JUSTICE M.E.T. THOMPSON
HON. MR. JUSTICE A.N. BANKOLE STRONGE
HON. MR. JUSTICE PATRICK HAMILTON

JUSTICE OF SUPREME COURT (PRESIDING)
JUSTICE OF APPEAL
JUDGE

BETWEEN:

HON. MR. JUSTICE M.O. TAJU-DEEN

APPELLANT

AND

THE STATE

RESPONDENT

MR. TERENCE TERRY FOR APPELLANT
THE LEARNED ATTORNEY GENERAL AND MINISTER OF JUSTICE,
MR. SOLOMON BEREWA (AS HE THEN WAS) FOR THE RESPONDENT

JUDGEMENT DELIVERED BY HONOURABLE MR. JUSTICE M.E. TOLLA
THOMPSON PRESIDING JUDGE

ON *Thurs* DAY THE 12th DAY OF *August* 2004

Tolla Thompson JSC

My Lords

I have had the opportunity and the privilege of reading the judgment of my learned brother Stronge J.A. I agree with him in the main. I only wish to add few words of my own on two points, out of deference to the argument by the learned Attorney General and learned counsel for the appellant:

The first point relates to Section 45 of the Anti Corruption Act No of 2000. To be precise the words in the Section "unless the contrary is proved".

Section 45 states:

"Where in any proceedings for an offence under this Act it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as alleged in the particulars of the offence unless the contrary is proved"

The question I have to ask myself what burden of proof is required to prove the contrary by the accused? This question was considered by the Court of appeal in the case of R v. Carr- Briant 1943 K.B. at Page 612, in which the appellant was charged under Section 2 of the prevention of corruption Act 1916 which provides:

"That a consideration shall be deemed to have been given corruptly unless the contrary is proved"

The court answered the question in the following terms:

"In our judgment in any case where either by statute or at common law some matter is presumed against an accused person "unless the contrary is proved" the jury should be directed that it is for them to decide whether the contrary is proved that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish."

Let me say right away that I am aware that the appeal before us was tried by a judge sitting alone nevertheless she assumed the function of both judge of law and of fact. The proposition in R v. Carr-Briant was quoted with approval in the case of Jamil Mohamed v Commissioner of Police 16 WACA 1955/6 page 107 in which the Court of Appeal Bairamian action president said:

"In any criminal case in which the onus of proof rest on the defence the onus is discharged if the jury are satisfied that on the balance of probability for or against the defence upon the whole of the evidence what the defence has proved whether it is insanity or anything else, has been made out"

I shall adopt the proposition of law articulated in the authority I have referred to above.

On a close scrutiny of the judgment I think the learned judge went wrong in the evaluation of the evidence particularly the evidence of the defence. She made a short shrift of it. I shall highlight a few.

The evidence relating to the different description of the vehicle in the indictment and the evidence of DWI. This evidence was dismissed by the learned trial judge "as of no moment"

Again, the evidence given by one of the prosecution witness Akimbombola relating to the possession of the satellite dish by the wife of the appellant. The comment of the learned trial judge was that it was "a fairy tale which no one can believe".

Yet again in EX D the appellant said when his wife told him about the gift from Bockarie Kakay, he said nothing. On this the learned trial judge went on to comment "in fact there is nothing to rebut the finding of the accused action was corrupt"

In my judgment the learned trial judge should have adopted some degree of circumspection in the evaluation of the evidence of the defence considering that this was the first case prosecuted under the new Anti Corruption Act 2000.

The next point I wish to deal with is the power of the Court of Appeal in its application of Section 58 of the Court Act 1965.

The learned Attorney General urged this court to invoke Section 58 (2) of the Court Act supra with regards to counts 5, 6, 7 and 8.

Section 58 (2) reads:

"On an appeal against conviction the Court of Appeal may not withstanding that they are of the opinion that the points raised in the appeal might be decided in favour of the appellant dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred".

The above section is identical with Section 4 (1) of the Criminal Appeal Act 1907. In my view in invoking Section 58 (2) it must be established that there has been "no substantial miscarriage of justice".

In *Kamara v the State* 1972/73 ALR (SL) page 410 the head note reads:

"When a trial judge has directed the jury wrongly on a point of law or has made a mistake of facts or omitted to mention a point in favour of the accused the conviction should be quashed on appeal unless the case can be brought within the Court Act of 1965 Section 58 (2) on the ground that no substantial miscarriage of justice has occurred since on a correct direction the only reasonable and proper verdict would be one of guilty"

In dealing with the meaning attributed to the words 'no substantial miscarriage of justice' Channel J. in the case of *Cohen v Bateman* two criminal appeal reports page

179 and page 108 which was quoted with approval in the Supreme Court case of Sallu Mansaray v the State SC Cr. Appeal 1/80 had this to say:

"If however the court in such a case come to the conclusion that on the whole of the fact and with a correct direction the only reasonably and proper verdict would be one of guilty there is no miscarriage of justice within the meaning of the proviso, notwithstanding that the verdict actually given by the jury may have been due to some extent to such an error of the judge not being a wrong decision of a point of law"

In the case of Brima Dabo v State Cr. Appeal 1/79 SL SC unreported. The Court stated the principle thus:

"If the Court is satisfied that the evidence is overwhelming and that on a proper direction the only proper and reasonable verdict would be one of guilty; then no substantial miscarriage of justice has actually occurred"

With the greatest respect to the learned Attorney General in the light of the authorities I have referred to, I am reluctant to invoke the proviso in this appeal for the following reasons:

- i. The evidence in support of the counts as highlighted in this judgment is not overwhelming
- ii. The judgment of the learned trial judge is replete with misdirection in law and on the facts. This Court has no doubt that she came to the erroneous conclusion because of these misdirection.

Instead the court thinks that Section 58 (1) supra is applicable to the instant case.

Section 58 (1) states:

"Subject and without prejudice to sub section (2) the Court of appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that of any ground there was a miscarriage of justice and in any other case shall dismiss the appeal"

On the point of miscarriage of justice Channel J. again said:

"There is such a miscarriage of justice not only where the court comes to the conclusion that the verdict of guilty was wrong but also when it is of the opinion that the mistake of fact or omission on the part of the judge may reasonably be considered to have brought that verdict and when on the whole fact and with a correct direction the jury may fairly and reasonably have found the appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one, because the appellant has lost the chance which was fairly opened to him of being acquitted and therefore as there is no power of this court to grant a new trial the conviction has to be quashed"

As a result, the verdict of guilty on count 5, 6, 7 and 8 is set aside as it is unreasonable and cannot be supported having regard to the evidence. The conviction is set aside and the court direct that a judgment and verdict of acquittal be entered.

W. M. J. Shi
for [illegible]

Case Report:
Emmanuel O.
Leigh

THE STATE v. EMMANUEL O. LEIGH

THE HIGH COURT OF SIERRA LEONE
JUSTICE AKIIKI KIIZA
21 March 2006

Misappropriation – Definition of Wilfulness – Inferring acceptance of incriminating evidence by Defence due to its failure to challenge evidence during cross-examination – Court’s oversight of substantive law on Fiduciary duty of a Public Officer – Omission and duty to act in the context of fiduciary duties – Weight of consistency as between testimonies – Inferring guilt from Accused’s ex post facto conduct/ statements – Court’s oversight of substantive law on Impersonation and on Deception – Court’s oversight in thoroughly addressing Defence arguments before proceeding to discredit them – Impact of conceding to facts surrounding commission of the offence without conceding to the fact of actual commission – The Anti-Corruption Act 2000 (as amended), ss. 12 (1) & (2) – The Anti-Corruption Act 2008, s. 36 – UK Children and Young Persons Act 1933, s. 1.

Held

The Prosecution proved beyond all reasonable doubt that the Accused wilfully misappropriated from the GOSL³⁴ the sum of Le8, 193,921 of public revenue. The Accused was found guilty and sentenced to 3 years imprisonment.³⁵

Ratio Decidendi

The Court assessed the testimony of Prosecution Witnesses as strong, straightforward and reliable in establishing that the person named Emmanuel O. George to whom salary cheques had been made out as serving as the Principal of Laura Dove Vocational Institution³⁶ was nonexistent. The evidence showed that the salaries made out to the fictitious George were never mentioned to the GOSL, or retained in an account as unpaid salary. In contrast, the Court deemed the Accused’s demeanour and resort to untruthfulness as evidencing his desperation to avoid punishment for his crimes.

The Court guided by the Defence’s failure during cross-examination to challenge incriminating evidence from PW7³⁷, concluded that it was the Accused and not PW7 who would sign on the salary voucher against the name of Emmanuel O. George. This was a fact to which both PW4³⁸ and PW7 testified. Further, PW7 testified that the Accused said nothing in response to PW7, when the latter pointed out to him the name of Emmanuel O. George on the salary vouchers. Instead, the Accused started going alone to the Bank to withdraw the salary of 27 teachers, all of which he would hand to PW7, except for his and Emmanuel O. George’s.

³⁴ The Government of Sierra Leone.

³⁵ The Prosecution asked for a deterrent sentence, arguing the Accused wasted time by letting the trial go ahead when he knew he was guilty of the offence. The Court took into consideration the Defence’s mitigation pleas for leniency; that the Accused was a first offender and should be given opportunity to reform, as he had shown remorse; that he was the sole bread winner of his family and getting another job would be difficult.

³⁶ Hereafter referred to as Laura Dove.

³⁷ Trial Judgment pp. 4-5; unnamed Bursar /Financial Controller at Laura Dove from 1999-2005.

³⁸ Trial Judgment p. 7; unnamed ACC Investigator.

The Court also inferred the Accused's guilt from PW4's testimony that the Accused in one of his statements,³⁹ admitted to compiling⁴⁰ the staff list which featured the name Emanuel O. George. The Court also inferred the Accused's guilt from PW7's testimony that that even after the Accused had been alerted to the discovery of the erroneous photo verification forms, with the name Emmanuel O. George, the Accused continued signing for the money of Emmanuel O. George for 19 months. The Court inferred that the Accused had to have been guilty, otherwise he would have immediately tried to get the form cancelled. The Court inferred that the Defence accepted the veracity of PW7's evidence since it failed to challenge it.⁴¹

In addition, the Court was attentive to the consistency in the Prosecution evidence with regard to the fact that the letters "RTD" were signed against the name of Emmanuel O. George on the salary vouchers. PW7 testified that he witnessed the Accused do this and the Accused told him that "RTD", meant "*Retired and Returned*". Similarly, PW4 testified that the Accused admitted to signing the letters "RTD", against the name of Emmanuel O. George.⁴² As a result, the Court found that the aforementioned cheques were consistently cashed and signed for with the letters "RTD" by the Accused, who ended up taking a total sum of Le8, 193,921.

The Accused's offer on three occasions to refund the money also led the Court to reason that the Accused was responsible for the loss in question; the offer was recorded on 7th July 2011 in the minutes of the Emergency Meeting of Laura Dove's Board of Governors, in the Accused's 2 statements and in his testimony.⁴³ The Court disbelieved the Accused's proffered motive in making this offer i.e. to salvage the reputation of his school and highlighted the implausibility of someone offering to refund a large sum of money he had not taken, deeming the proffered motive an afterthought to enable self-exoneration. The Accused did not proffer this motive only apparently until trial.⁴⁴

In arriving at its sentence, the Court took into account the gravity of the offence, the significance of the amount misappropriated, the Accused's obligation to protect the school and its property deriving from his position of responsibility as a school administrator, and lastly the legislators' concern to deter misappropriation, reflected in the maximum sentence for its commission.⁴⁵

Notes

A person may in some cases incur criminal liability through failure to discharge his official duties or contractual obligations; *Pittwood* (1902) 19 TLR 37. Neglect of duty by a Police Officer while on duty resulted in his conviction of the common-law offence of wilful misconduct in public office; *Dytham* (1979) QB 722. Knowledge plays the same role in relation to circumstances as

³⁹ Trial Judgment, p. 7; Exhibit E, pp. 6-7.

⁴⁰ Trial Judgment, p. 7; "the Accused told him that, he was the one who had prepared the staff list."

⁴¹ Trial Judgment, pp. 7-8.

⁴² Exhibit E, p. 12.

⁴³ Trial Judgment, pp. 8-9. The minutes of the meeting were admitted as Exhibit C, p. 6. Exhibit C is said to have been recorded by PW5 although the testimony of PW5 is not incorporated in the Trial Judgment, neither is his/her identity knowable from it.

⁴⁴ Although the Trial Judgment does not expressly say so, it can be inferred from pp. 8-9; "I think that the after reason advanced by the Accused person to refund the money . . . is an afterthought on his part . . . In all these three instances, which were recorded at different times . . . he never stated that the reason was . . ."

⁴⁵ Trial Judgment, p. 11; A term of up to 10 years imprisonment or a fine not exceeding Le 30m or both.

intention plays in relation to consequences; *Dunne* (1998) 162 JP 399. To deceive is to induce a man to believe that a thing is true which is false; *Re London and Globe Finance Corporation Ltd* (1903) 1 Ch 728 or, to falsely persuade someone that something may be true; *Lambie* (1982) AC 449. A deception need not be practised against the ultimate victim of the offence concerned; *Kovacks* (1978) 1 WLR 370. Where the actions of a 3rd party who is not the ultimate victim of the design are necessary to bring it to fruition, s/he cannot be convicted unless s/he is proven to have acted as a party to the fraud rather than pursuant to the deception; *Rozeik* (1996) 1 WLR 159. Misleading omissions can amount to Deception; *Furth* (1989) 91 Cr App R 217. Where the Accused is legitimately authorised to seek the assistance of a 3rd party in bringing his/her scheme to fruition, the 3rd party cannot be expected to be concerned with the lawfulness of the Accused's acts; *Naini* (1999) 2 Cr App R 398.

The general rule is that there is no requirement that evidence be corroborated except where there is a statutory requirement to that effect, in the case of identification evidence and where certain types of witnesses give evidence, such as accomplices, for the Prosecution, complainants in sexual offences cases and confessions by the mentally handicapped; *Blackstone's Criminal Practice* 2004, pp. 2070-2071. Evidence to be capable of corroboration must be relevant and admissible; *Scarrott* (1978) QB 1016; be credible; *DPP v Kilbourne* (1973) AC 729; emanate from a source other than the witness requiring corroboration; *Whitehead* (1929) 1 KB 99; and implicate the Accused. Judges have full discretion to determine whether corroboration is needed; *Makanjuola* (1995) 1 WLR 1348. A party must make it known to a Witness that his evidence is not accepted/challenge him during testimony; *Hart* (1992) 23 Cr App R 202; otherwise, failing to cross-examine a witness upon a particular matter in respect of which it is proposed to contradict him, amounts to acceptance of the truth of that witnesses' evidence in chief on that matter; *Wood Green Crown Court, ex parte Taylor* (1995) Crim LR 879. The maximum sentence provided by statute should be reserved for the most serious examples of that offence; *Carroll* (1995) 16 Cr App R (S) 448. Custodial sentence, if necessary, should be as short as possible and consistent with the duty to protect the interests of the public and to punish and deter the criminal; *Bibi* (1980) 1 WLR 1193. Where overcrowding of prisons is a grave concern, the Courts should heed the message and impose imprisonment only when necessary and for no longer than necessary; *Kefford* (2002) 2 Cr App R (S) 495. The length of prison sentence should be proportionate to the harm caused, the culpability of the offender and the effect of offence upon the victim *Blackstone's* p. 1824.

Cases referred to in Judgment

R v Sheppard (1981) AC 3911

Summary of Facts

The Accused, Emmanuel Oluwole Leigh was charged with one Count of Misappropriation of Public Funds, section 12(1) of the ACA (as amended). It was alleged that, on unknown dates between 2nd January 2001 and 31st July 2002, in Freetown, he wilfully misappropriated public revenue from the GOSL amounting to Le8, 193,921.

PW1⁴⁶ testified that he found on the Laura Dove e-database, 2 photo verification forms concerning teachers in the same school, with the same photo and sharing the same personal data,⁴⁷ but

⁴⁶ Systems Administrator at the Accountant General's Department.

⁴⁷ Trial Judgment, p.4; residential address, date of birth, dates of professional appointment and next of kin.

differently named Emmanuel O. George and Emmanuel O. Leigh respectively. One form designated Emmanuel O. George as the Principal with a monthly salary of Le365, 492 per month, while the other designated Emmanuel O. Leigh as Vice-Principal with a monthly salary of Le423, 810.⁴⁸ It was the Accused's photo that was on the 2 photo verification forms, a state of affairs he attributed to a failure of the Ministry of Education to recognise his departure from his old job at another school and his joining Laura Dove. Both Prosecution and the Defence agreed that there was no one by the name of Emmanuel O. George at Laura Dove. The indictment therefore sets out the accumulated salary of Emmanuel O. George, i.e. Le 8,193,921 as the misappropriated sum.

PW7 testified to seeing the name Emmanuel O. George from January 2001 and telling the Accused about it, although the Accused said nothing. PW7 said that he and the Accused had up to this point been going to the Bank together to cash salary cheques, but that from then on the Accused started going alone to the Bank to cash salary cheques and that the Accused did so till August 2001. PW7 said that as he was merely Acting Bursar,⁴⁹ he never asked the Accused about the reasons for his conduct, although PW7 did inform the Chairman of the Board Governors.⁵⁰ PW7 testified that he personally resumed paying salaries from September 2001, but the Accused simply continued to retain both his and Emmanuel O. George's salaries.⁵¹ PW7 saw the Accused sign "RTD" against the name of Emmanuel O. George, on the salary voucher for September 2001 and the Accused told him that "RTD" means returned/retired. PW11⁵² testified that the Accused told him that he would sign for both names, appending "RTD", which he said meant returned/retired, against the name of Emmanuel O. George on the salary voucher.⁵³

The Accused testified on oath, denying the offence. He denied ever handling any money and said he was merely in charge of the general school administration. He attributed the alleged loss to PW7 since only PW7 handled finances, including payment of salaries and so could have misappropriated Government funds. However, the Accused testified that he was prepared to refund the money, because he did not want bad publicity for the school. The Defence argued that the Prosecution evidence left a doubt as to whether it was his client or PW7 that was the responsible for the misappropriation. The Defence did however admit that Le8, 193,921 was public revenue and had been made out as salary to Emmanuel O. George; that said sum had been misappropriated and that the monies had been signed for with the letters "RTD" always appended on the concerned vouchers.

⁴⁸ Exhibit A; photo verification forms. Trial Judgment, p. 5, although it is inconceivable that a Vice-Principal would earn more than the actual Principal; perhaps a point worthy of mention in the presentation of the Prosecution's case or perhaps in the ratio of the decision, as going to the fact that information on the forms had been purposely doctored.

⁴⁹ Trial Judgment, p. 5. It does seem unusual that the Accused would merely *act* as bursar for a 6 year period; refer to FN 37 above.

⁵⁰ It is also curious that this individual, if he were in a position which guaranteed decision making power and actual knowledge, was not called.

⁵¹ The mechanics of how the Accused could have continued to retain his and George's salaries during the period when salaries were being paid out by PW7 would have been better laid out, although there is no reason to assume that the Accused did anything other than cash the concerned cheques directly with PW7. This does raise issues about PW7's responsibility to refrain from making payments to the Accused on behalf of a person he knew to be non-existent and in the midst circumstances which had come to his knowledge as suspicious.

⁵² Trial Judgment, p. 5; (Unnamed ACC Investigator).

⁵³ Exhibit E, p. 12. However, note that at Trial Judgment, p. 5, the Accused told PW11 and PW7 that the words meant "returned/retired", while at Trial Judgment, p.7, the Accused told PW7 they meant "retired **and** returned". This inconsistency could result in some doubt as to the true meaning of the term "RTD".

Application of Law

The Court outrightly restated section 12 of the ACA 2000 (as amended),⁵⁴ in its efforts to apply the Law to the facts. Section 12 states as follows; *(1) Any person who misappropriates public revenue, public funds or property is guilty of an offence. (2) A person misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a public corporation or a local authority is deprived of any revenue, funds or other financial interest or property belonging or due to the Government, the public corporation or local authority.*

The Court then proceeded to articulate the ingredients of the offence. Carefully dissecting the provisions of section 12, the Court made it clear that in order to make a finding of appropriation based on these facts, it should be established that firstly, the funds were public in nature, secondly that the Accused acted wilfully and lastly, that the government had been deprived of the revenue in question.

Recognising that the applicable provision, section 12 (2) did not provide a definition for the very mens rea it itself required for commission of the offence, i.e. *Wilfulness*, the Court sought to derive a meaning for the term from Sierra Leonean cases on the subject and from the UK case of *R v Sheppard* (1981) AC 3911. Together, these furnished a meaning for the term “wilfully”, so that the wilful commission of an act could be said to be its “commission in the knowledge of a clear risk of adverse consequences, or, the commission of an act without caring about the consequences.” The Court sought to further enhance this meaning by considering Lord Keith’s statements on the meaning of “wilful conduct” in *Sheppard*, where he equated it to Common Law recklessness. The relevant quote here reproduced was not integrated into the Judgment: “*I turn now to consider the meaning of the adverb “wilfully” . . . This is a word which ordinarily carries a pejorative sense. It is used here to describe the mental element . . . The primary meaning of “wilful” is “deliberate” . . . As a matter of general principle, recklessness is to be equiparated with deliberation.*”⁵⁵

The Court thereby interprets *Sheppard’s* take on “wilfully” as entailing both deliberate/intentional actions on one level and another level entailing reckless actions. To buttress this approach, the Court cited reasoning from Blackstone’s Criminal Practice 2001 Edition, paragraph A2.8, although it did not seek to reproduce excerpts within the body of the Judgment.

Of relevance from paragraph A2.8 in Blackstone’s Criminal Practice 2001 is that; “*“Wilfully”*, which has some similarities with “malice” since it dates from an earlier “legislative vocabulary, should not be understood merely in its most obvious or literal sense of “deliberately” or “voluntarily” It is now taken as a composite word to cover both intention and a type of recklessness. It differs from malice, however in that it is not restricted to subjective recklessness, but includes, apparently, Caldwell recklessness . . . wilfulness requires basic mens rea in the sense of either intention or recklessness, and that even in the absence of the word “wilfully”, this is the

⁵⁴ Now Section 36 of the ACA 2008.

⁵⁵ *R v Sheppard* (1981) AC 3911, p. 418, para d.

mens rea which will normally be implied by the Courts for serious criminal offences in the absence of any other factors indicating a wider or narrower basis of liability."⁵⁶

The Court proceeded to describe the standard of the burden of proof incumbent on Prosecution as that of proving the allegations against the Accused beyond reasonable doubt. The Court recognised the Prosecution's submission that it had met this standard. The Court also took into account that the Defence had conceded to the Prosecution having met the relevant standard of the burden of proof with regards to some pivotal facts other than the actual issue of the Accused's culpability, i.e. that the Prosecution had indeed proven beyond reasonable doubt that the funds allegedly misappropriated were public revenue, and that the GOSL had been deprived of said revenue. Since the fact of deprivation had therefore been established, the Court identified the question bearing on the determination of guilt, as "whether it was the Accused person who wilfully committed acts" which led to the misappropriation from the GOSL of the Le8, 193,921 of public revenue.

⁵⁶ Blackstone's Criminal Practice 2004, Oxford, p. 27.

Critique

It can be noted that none of the names of witnesses are cited in this judgment. It is the practice in common law jurisdictions for the names of witnesses to be cited, where references are made to their testimony, unless their identity is the subject of a protective court order, in which case said order would more ideally be referenced by the written judgment.⁵⁷ Of the four witnesses whose testimonies are cited and expressly relied upon to reach a verdict, only their roles and not their names are expressly cited. That is, PW7, the acting Bursar, PW4 and PW11, the unnamed ACC Investigators who interviewed the Accused and PW1, the unnamed Systems Administrator at the Accountant General's Department. Including the names of witnesses where they are not subject to anonymity may add to realism for the reader and possibly facilitate the retention of facts.

The structure of judgment may be less than ideal since it starts with the application of the law, then principal facts, before moving on to the ratio, and lastly rendering the verdict. It is submitted that, it is necessary that all the relevant facts be laid bare before ever the application of the law can be addressed, followed by the ratio and finally crowned by the verdict. At least, this is the general practice.⁵⁸ The charges are found at page 1, the application of law from pages 1 -3, the facts at pages 4 -7, the ratio at page 8-10, and the verdict at p. 10, roughly. Of note, the Court deems that it is applying the law to the facts at page 4, although pages 4-7 are mostly factual.

It is submitted that the falsehood of the Accused's excuse behind how his name came to be on the two forms, should have been addressed in detail so as to, underscore the accuracy of the verdict. The two photo verification forms carried two respective names; one was designated Emmanuel O. George as the Principal with a monthly salary of Le365,492 per month, while the other was designated Emmanuel O. Leigh, that is the Accused's actual name, as Vice-Principal (whereas the Accused was actually the Principal and not Vice) with a monthly salary of Le423,810. These facts could for example have been elaborated upon to emphasise the point that although they illogically show that the Vice-Principal earned more than the Principal, the Accused's name still somehow miraculously found itself designated as the higher earner. Further, the Accused claimed that his photo was on the 2 forms, since the Ministry of Education failed to recognise his departure from his old job at another school and his joining Laura Dove. This makes no sense since it is in essence the identity of another that by virtue of the form, is associated with Laura Dove, rather than, the Accused's name being replicated and associated with his former or even any other school. This goes to the fact that the information on the forms had been purposefully doctored.

Note that the Chairman of the Board of Governors, to whom PW7, the Acting Bursar said he spoken of the circumstances, including the Accused's conduct (that is, signing and cashing the

⁵⁷ **Withholding the name of a witness**; Ordinarily a witness will be required to give his or her name at the beginning of examination-in-chief. The name of the witness will already have been disclosed in the statements served upon the defence prior to the commencement of the proceedings. The trial judge, in the exercise of his inherent jurisdiction to control the proceedings may permit a departure from this practice in appropriate cases; [http://www.cps.gov.uk/legal/v to z/witness protection and anonymity/](http://www.cps.gov.uk/legal/v%20to%20z/witness%20protection%20and%20anonymity/), webpage accessed on 21.12.13.

⁵⁸ Atkinson R. Hon., (2002), *Judgment Writing*, Paper delivered to the AIJA Conference, Brisbane; <http://www.aija.org.au/Mag02/Roslyn%20Atkinson.pdf>; "Structure — I have a simple acronym for the structure of judgments. It is an acronym that is easy to remember because it is something that all of us get in our role as decision makers and that is – FLAC... F for facts; L for law; A for application, and C for conclusion. That basic structure of a judgment, modified to suit a particular situation, will ensure that you order your own thoughts in reaching a just, and indeed one might say, often inevitable conclusion", webpage accessed on 21.12.13.

cheque of an unidentified individual), was not called as a witness by either party. It seems plausible that the Chairman of the Board, is a position which would have guaranteed decision making power and actual knowledge, as is demonstrated in the Acting Bursar's report to the Chairman. It is noteworthy that in spite of his likely responsibility to call the Accused to account, the Chairman appears to have neither to have done this, nor to have been called as a witness during trial.

PW7 testified that he personally resumed paying salaries from September 2001, but the Accused simply continued to retain both his and Emmanuel O. George's salaries. The mechanics of how the Accused could have continued to retain his and George's salaries during the period when salaries were being paid personally paid out by PW7, would have been better laid out, although there is no reason to assume that the Accused did anything other than cash the concerned cheques directly with PW7. This does raise issues about PW7's responsibility to refrain from making payments to the Accused on behalf of a person he knew to be non-existent and in the midst circumstances which had come to his knowledge as more or less suspicious.

It is notable that section 12 .2 of the ACA 2000 and even its latest revision in section 36 of the ACA 2008, does not incorporate the meaning of wilfulness or indicate where it should be adopted from.

[Trial Judgment:
Emmanuel O.
Leigh]

The State vs Emmanuel O. Leigh

21/3/16

JUDGEMENT

The accused person stand indicted for one count of Misappropriation of Public Funds C/S 12 (1) of the Anti Corruption Act 2000 (as amended). It is the prosecution's case that Mr. Emmanuel Oluwale Leigh, on unknown dates between the 2nd day of January 2001 and the 31st day of July 2002 in Freetown in the Western Area of Sierra Leone, misappropriated a sum of Le8,193,921 being an amount of money from a Public Fund by which act, the Government of Sierra Leone was deprived of its funds.

On his part, the accused person defended himself on oath and in effect, denied the offence and blamed PW7, the bursar for the loss of Public Funds as he himself never handled any money but as it was the sole domain of the bursar.

The burden of proof is on the prosecution to prove the allegations against the accused person beyond reasonable doubt. In an attempt to discharge this burden, the prosecution called a total of seven witnesses. On the defence side, the accused person gave his defence on oath. Ms Mammattah who appeared for the state, submitted to the effect that, the prosecution had adduced enough evidence to discharge the burden cast on it. Hence the court should find the accused person guilty as indicted and be convicted.

On the other hand Mr. Edward appearing for the accused person, submitted to the effect that, the prosecution evidence left a doubt as to who was to blame for the misappropriation between his client and the bursar (PW7) and according to him, the evidence showed that the bursar should have been the right person for the prosecution to indict but not his client, the accused person.

Section 12 (1) of the Anti Corruption Act 2000, as amended (herein after referred to as ACC). enacts as follows "12 (1)

- (1) Any person who misappropriates public revenue.....is guilty of an offence;
- (2) A person misappropriates public revenueif he willfully commits an act whether by himself, or through another person, by which the Government.....is deprived of any revenuebelonging or due to the Government....."

The ingredients / elements of the Offence could be identified as follows:

- (i) The funds/ revenue must have been public in nature.
- (ii) He must have acted willfully.
- (ii) The government must have been deprived of the revenue complained of.

By mutual submission of both Learned Counsel from either side, and with the courts concurrence, the prosecution has proved the 1st and 3rd ingredient as outlined above beyond reasonable doubt. I accordingly find that, the prosecution has proved beyond reasonable doubt that, the funds allegedly misappropriated was public revenue.

Secondly, I find that the prosecution has also proved beyond reasonable doubt, that, the Government of Sierra Leone, had been deprived of the said revenue. What is remaining for my determination is whether it was the accused person who willfully committed acts which led to the misappropriation of the public revenue amounting to Le8,193,921 and thereby depriving the Government of Sierra Leone the said amount.

The prosecution maintains that, it is the accused person who willfully misappropriated Le8,193,921 which was public revenue / funds meant to be

salaries for a non existent person in the name of Emmanuel O George, but the defence is of a view that, it was not the accused person who misappropriated the said amount of government revenue, but it was the bursar, (PW7) who as the financial controllers of the schools funds.

At this juncture, let me examine what the word "willfully" in section 12 (2) of ACC Act, means.

Unfortunately the ACC Act, does not give the definition of what is meant by the word "willfully" commits an act". As is the case in such situation, the courts tends to rely on interpretations given by court from within or outside their jurisdiction.

In Sierra Leone, I have not been able to come across any case defining that word, prior to my two earlier cases of State Vs _____ and State Vs _____

Where I relied on the definition of the house of Lords case of R Vs SHERPPARD (1981) AC 3911. Their Lordship interpreted the word "willfully" to mean one of the following.

- (a) When someone deliberately does an act knowing that there is a clear risk of adverse consequences to the other party will occur or
- (b) He does such an act without caring of the consequences. This means that, the accused person's mental element is material at the time of his actions. **LORD KEITH in the Sherppard Case above** equated willful conduct, to common law recklessness. My understanding of R Vs SHERPARD and case decided after it, is that the word "willfully" entails either.
 - (i) Deliberate actions of a person while knowing and appreciation his actions would risk someone or body to suffer loss OR

(ii) Such a person does something because he does not care whether there is a risk or not. (See also **BLACKSTONE'S CRIMINAL PRACTICE 2001 ED. Paragraph A2.8.**

Now let me apply the above definitions to our facts in the instant case.

The first question for my determination in this regard is who is responsible for misappropriation of the government revenue, amounting to Le8,193,921, which was meant to be salary for one Emmanuel O George? It is the prosecution's case that, it is the accused person who took the money.

On the other hand, the accused person passed on the baton to PW7, who was the bursar and the financial controller of the school funds.

As I have already found herein before, it is not in dispute that, Le8,193,921 was public revenue and which was meant to be salary of Emmanuel O George was signed for and misappropriated. It is also common ground that, there was no person employed by Laura Dove Vocational Institute as portrayed by the salary vouchers, but someone was signing for and taking money. The letters "RTD" was always being endorsed on the vouchers (see exhibit.

According to PW1, who is the systems Administrator at the Accountant General's Department he found two names on the database for Laura Dove Vocational Institution, these two names had 2 photo verification forms. One was in the name of Emmanuel O George and the second one was in the name of Emmanuel O Leigh. These two verification forms, had the same photograph, same residential address, same date of birth, same dates of first appointment as a government teacher, same next of kin and teaching in the same school. These photo verification forms were tendered in evidence and

were worked as exhibit "A". On other form, one of the photo verification form, Emmanuel O George was designated as the principal owning a sum of Le365,492 per month, and the second form of Emmanuel O Leigh had a designation of a Vice Principal with a net monthly salary of Le423,810/=. It is the amount of money for Emmanuel O George, went up to the tune of Le8,193,92 which is the subject matter of the current indictment in this case. As we have already found that there was no teacher at the School with the name of Emmanuel O George, the money should have been mentioned to the Government banking it as unpaid salary.

According to PW11, the ACC investigator, he found that the accused person signed for both names. He endorsed this letter "RTD" against the name of Emmanuel O George and he told him that, these letters meant returned / retired (See exhibit "E" page 12)

According to PW7, who had been bursar from 1999 – 2005, he started seeing the name of Emmanuel O George with effect from January 2001, that he had informed the Accused person about it but that the accused person merely kept quiet, but went ahead and withdrew the money from the bank. That the usual practice was that, he used to go the bank with the accused person to withdrawn the money, but after 2001, the accused started going alone to the bank to withdraw the salaries. That this went on till August 2001. He said that he never asked why the accused was doing this, as he was merely acting as bursar. However he said that he had informed the Chairman of the Board of Governors.

The witness told the Court further that, he had seen the accused person sign the letter RTD on the voucher against the name of Emmanuel O George for the September 2001 Salary and had told him that RTD, means, returned / retired that even after he had resumed paying salaries from September 2001,

the accused used to retain the salary for Emmanuel O George along with his (Emmanuel O Leigh).

On the other hand, the accused gave his testimony on oath and he in effect devised the offence. He stated that for him he was merely in charge of general administration of the school and had nothing to do with the finances, which were being handled by the bursar, PW7. This included payment of salaries.

He stated that, if anything it was PW7 who had misappropriated Government Revenue. He told court that, he had told PW4 in his statement (exhibit "E") that he was prepared to refund the money, because he did not want bad publicity for the school. As for his appearing on two different photo verification form, he stated that, this was because he had first worked at another school before joining Laura Dove Vocational Institution. And that, the authorities in the Ministry of Education had not rectified the anomaly.

I have carefully considered all the evidence before me and I have critically analyzed the document of all the witnesses who testified for the prosecution and also that of the accused person. The following are my findings.

There is evidence from the prosecution witnesses to show that, the salary vouchers for Laura Dove Vocational Institution, had a name of Emmanuel O George as principal of the School. There is evidence from both sides, that there was no one by that name employed at the school. However, his monthly salary used to come, and it amounted to a total sum of Le8,193,921. Assuming this time, someone was signing the letters RTD on the vouchers and the money instead of banking it, it was taken by that person. It is the prosecution's case that, that person was the accused. Which the accused has

denied and stated that, in his opinion, it was the bursar as he was the only person who dealt with all financial matters in the school.

To prove their contention, the prosecution called PW4, the investigator and PW7 - the bursar PW4, stated in court, that inter alia, during his investigations, he recorded two statements from the accused person (Exhibits "E" and "F:"). That in exhibit "E" the accused person had told him that, he was the one who had prepared the staff list, in which the name Emmanuel O George had featured. This is reflected on pages 6 and 7 of Exhibit E It can therefore be deduced from this that, the accused is the person who had included the name of Emmanuel O George on Staff list. This name had remained on the staff list for about 19 months.

The next question is who actually was signing and taking the money meant for Emmanuel O George? The accused stated that it must have been PW7, as the bursar of the school. However, the prosecution has submitted that, it was the accused person who had signed for and taken the money. According to PW7, the bursar, he told court that, when he had seen the name of Emmanuel O George on the salary vouchers, he had pointed out the matter to him, as his boss.

However, the accused is reported to have simply kept quiet. That he instead started going alone to the bank and drawing the money and used to hand him, the salary of only 25 teachers excluding that of Emmanuel O George and that of the accused person. He told court that, he used to see the accused person sign the letters RTD against the name of Emmanuel O George, which he told him meant, Retired and Returned. As pointed out by the Learned Prosecutor, this evidence was not challenged in cross examination by the accused person which means, he had accepted it as correct. This was a serious allegation by a prosecution witness, implicating the accused which

should have put the accused on his full alert, and should have challenged it during cross examination which he did not do.

Another piece of evidence which remains unchallenged during cross examination is the allegation by PW7 that, during the material time, the accused used to go to the bank alone to withdraw the salary for 27 teacher, but would retain that of Emmanuel O George and that of Emmanuel O Leigh. This is also a piece of incriminating evidence which the accused person never challenged during cross examination.

In fact the accused shows consistency in his charge and caution statements when he had told PW4 that, he had signed the letters RTD against the name of Emmanuel O George (See answer to question 50 - 1 on page 12 of exhibit "E")

In my considered view that the above evidence shows that it was, the accused person as opposed to the bursar, who had signed for the salary against the name of Emmanuel O George.

The prosecution has also relied on the fact that the accused person both in court, and in his charge and caution statement (exhibit "E" and "F", had offered to refund the money, hence indicating that he was the one responsible for the loss. On the other hand the accused person told court, that he had offered to refund the money because, he did not want the good name of his school to suffer.

I have also considered the piece of evidence carefully, and I come to the conclusion that, the explanation is not plausible at all, as one cannot see a justification for someone, to refund such a large sum of money, which he has not taken. Secondly I think that, the after reason advanced by the accused

person to refund the money, so as to defile the good name of the School, is an after thought on his part. This is evident for his both statement to PW4. (Exhibit E pages 11-12 and exhibit "F") and in the minutes of the Emergency Meeting of the Laura Dove Vocational Institute, Board of Governors on the 7/7/11, which were taken down by PW5 (see page 6 – paragraph 8 of exhibit "C").

In all these 3 instances, which were recorded at different times, while the accused person acknowledge the money and expressed his willingness to refund it, he never stated, that the reason for him to refund such a huge sum of money, was to save the good name of his school.

In the circumstances therefore, I dismiss this contention as a mere after thought and intended solely to get himself out of the current problems he is facing in the indictment before the court. Hence it can safely be ignored.

Another piece of evidence relied upon by the prosecution, is the photo verification form that the accused had 2 different photo verification forms, and all with the same particulars. The accused stated that, this was a mistake of the Ministry of Education Officials. After carefully reviewing the evidence, I tend to agreed with the prosecution witness, that, the accused should not have waited for 19 months while the mistake persisted. All the money for Emmanuel O George kept coming and being signed for him, as a law abiding citizen and who had his school at heart, and did not want to tarnish its name, as he claims, he should have acted immediately to cause the cancellation of second photo verification form with the name of Emmanuel O George. Which he did not do.

Putting everything into consideration, I find that, the prosecution witnesses, gave their evidence in a strong straight forward manner, and were reliable.

On the other hand, I was not impressed by the demeanor of the accused person. He struck me as a person desperate to exonerate himself from the consequences of his past illegal activities at all costs. He struck, me as a mere liar and I reject his lies. In the premises, therefore I accept the prosecution's version of events, and reject the side of the defence.

The prosecution has reprinted the true and correct sequence of events which took place at Laura Dove Vocational Institute during the time under review. I find that, the accused person, Willfully misappropriated the sum of Le8,193,921 which was part of public revenue, and as a result the government of Sierra Leone was deprived of that sum.

In the premises, therefore, I find that the state has proved its case against the accused person beyond reasonable doubt and I find him guilty as indicted and is accordingly convicted.

Thursday 30th March 2001 Before the Hon Mr. Justice A Kiiza J

Accused Prosecution

Mamattah for State

Edward for Accused person.

GT Judgment made in open cast.

Manmattah : Accused has wasted court's time. He was aware the he had committed the offence, but decided to waste courts time by having this trial.

I pray that accused be given a deterrent sentence. There are no antecedents known about the accused person. There is a lot of corruption in this country.

Also having regard to the amount of money misappropriated, I pray that the court deals with him stiffly so that, it becomes a deterrent to other offender.

Allocations

Edwards: Nothing is known about accused. He is a first offender. He should be given all opportunity to change and come back to society. The accused is a family man and a sole bread winner of his family. He has lost everything that he owns he has been convicted to get another job ofdates. I pray that he gets another opportunity in life, so that, he can reform.

He has showed some sign of remorse he would not repeat what he did. I pray further that you have mercy and not impose a custodial sentence only the alternative it will be difficult to meet, as he has lost his job. I leave it to the court's good judgment I would accept the verdict.

Sentence and reasons thereof

Accused is allegedly a first offended. He has prayed for leniency. He is said to have a family, where he is the sole bread winner. Now he appears repentant. However, on the other hand, the offence committed by the accused person is serious in nature. The maximum sentence imposed by the law, is a term of up to 10 years imprisonment or a fine not exceeding 30 million Leones or both. This show that the legislature showed concern to curb acts of misappropriation public funds.

Secondly the amount of money misappropriated on this case, is a lot ie Le8,193,921. The accused was a person in a responsible position as an Administrator of the school he should have ensured that, all goes well under

him including the safe guarding of the school and government property. He did not do this, putting every thing into consideration.

I do not think a none custodial sentences is appropriate. Putting every thing into account I sentence the accused person to 3 (three) years imprisonment
R/A explained

Case Report:
Senesie and
Koroma

THE STATE v. MOHAMED SENESIE AND POLICE CONSTABLE 8436/ KOROMA

THE HIGH COURT OF SIERRA LEONE

JUSTICE KIIZ J

29th June 2006

Absence of express definition of the charges-Absence of express definition of elements of the statutory offence - Presentation of Judgments - Need for express consideration of circumstances in mitigation to contribute to case law-Immateriality of amount constituting bribe- Abuse of position of trust- Circumstances constituting entrapment –Failure to serve indictment on time – Calculation of fines where bribe is minimal- Attempt to corrupt in order to avoid penalization for offence initially committed - The Anti-Corruption Act 2000, s.1, 4, 7 (1), 8 (1), 14, 15- The Criminal Procedure Act 1965, s. 144 (2).

Held

The 1st⁵⁹ and 2nd Accused⁶⁰ were both convicted on their respective guilty pleas. The 1st Accused was sentenced to a fine of Le500, 000 for the 1st Count and Le300, 000 on the 2nd Count, and in the event of a default on either of these payments, to serve 6 months imprisonment, although in the event of default on both, 6 months imprisonment is to run concurrently. The 2nd Accused was sentenced to a fine of Le500, 000 for the 1st Count, or in default of payment, to 6 months imprisonment.

Ratio Decidendi

There is no open rationalization of the verdict here, instead what can be discerned from this judgment, is that unlike the Judgments of *The State v. Alex Sesay* and *The State v. Isatu Conteh*,⁶¹ this Judgment in spite of the guilty pleas entered by both Accused, presents a summation of the facts, simply to underscore the fitting nature of the charges brought and to demonstrate the rectitude of the verdicts. As far as sentences are concerned, the Court did not clearly indicate whether it had indeed taken into consideration the circumstances pled in mitigation by the Accused, in its determination of the appropriate penalties, except for recognizing that they were both first time offenders and that they had saved the Court's valuable time by entering guilty pleas. The Court appeared to ignore the Defence's mitigation pleas that the 1st Accused had worked for the GOSL⁶² for 35 out of the 62 years of his life, but still only earned Le120, 000 monthly,⁶³ exacerbated by his wife's unemployment and his responsibility for 10 other dependants.⁶⁴ The Court also seemed to ignore the 2nd Accused's plea that he earned Le110, 000 monthly⁶⁵ and in addition to his wife had 5 dependants to maintain.⁶⁶ The Court, noting that the amount involved in the corruption offence was of no consequence, appeared to ground the reasoning behind its choice of penalties in the deterrence argument, saying that behavior such as the Accused's should not be

⁵⁹ Mohamed Senesie.

⁶⁰ Police Constable 8436 Koroma.

⁶¹ Refer to pp. 218 and 228 respectively.

⁶² The Government of the Republic of Sierra Leone.

⁶³ Equivalent to \$ 27.80 c, as per the exchange rate of 16 June 2012. Also on this point, refer to **Critique** at p. 90.

⁶⁴ Trial Judgment, p. 3.

⁶⁵ Equivalent to \$ 25.46 c, as per the exchange rate of 16 June 2012. See **Critique** at p.90.

⁶⁶ Trial Judgment, p. 5.

condoned⁶⁷ and also appeared to give weight to the Prosecution's argument that the Accused had committed serious offences, *given they had abused their positions of trust*.⁶⁸

Notes

The Presumption of Corruption under s. 45 of the ACA 2000 parallels that in s. 2 of the Prevention of Corruption Act 1916.⁶⁹ Under the latter, the Prosecution would have to prove firstly that the payment was actually made or offered *and secondly, that the person giving it was seeking a relevant contract or favor*, in order for the full burden be placed on the Defence; *Braithwaite* (1983) 1 WLR 385; *Evan- Jones* (1923) 17 Cr App R 121. The Presumption under s. 45 however, only requires that the first limb be proven. The determination of the appropriate level of any fine should reflect the gravity of the offence and all relevant mitigating and aggravating circumstances; *Messana* (1981) 3 Cr App R (S) 88. The offender's guilty plea should normally preclude the imposition of the maximum fine; *Universal Salvage v. Boothby* (1983) 5 Cr App R (S) 428. The Court must consider the offender's means before fixing the fine; *King* (1970) 1 WLR 1016 and the fine should not be a fine on the family; *Charambous* (1984) 6 Cr App R S. Referring to *Yorkshire*, the application of a rigid formula to the calculation of a fine was incorrect; *Chelmsford Crown Court ex parte Birchall* (1989) 11 Cr App R. (S) 510. The accused is a competent witness at every stage of Criminal Proceeding including in mitigation of sentence; *Wheeler* (1917) 1 KB 283. The Court must verify that the offender has the means and culpably neglects or willfully refuses to pay, and must have "considered and tried" all other methods of enforcing payment, before it orders imprisonment; *Norwich Magistrate's Court ex p. Tigger (formerly Lilly)* (1987) 151 JP 689.

Summary of Facts

On the 1st June 2006, Counsel for the Accused, prayed that that the matter be adjourned to the 16th June 2006 as the Accused persons had not been served.⁷⁰ On 21st June 2006, both Accused pleaded not guilty to Counts 1 and 2⁷¹ and the Court granted the Attorney General's application for trial by Judge alone, instead of by Judge and Jury, under section 144 (2) of the Criminal Procedure Act 1965;⁷² the case was therefore adjourned to the 21st June 2006. It appears that it was also at this point, that both Accused applied for bail;⁷³ the 1st Accused spoke of his family situation, of his land at Pendembu serving as surety, and of a personal guarantor. The 2nd Accused also raised the issue of his family, but had no surety. The Court held that they could be released on bail bond of Le 500, 000, if they had sureties of the same amount, which had to be approved by the Master/Registrar, and in default of which, they were to be remanded into custody.⁷⁴

⁶⁷ Ibid.

⁶⁸ Trial Judgment pp. 3-4. Also, refer to **Critique** below at p.90 where it is suggested that this was a relatively weighty consideration in the determination of sentences.

⁶⁹ Blackstone's Criminal Practice, 2004, p. 711; although the UK's 1916 Act is more precise in requiring the giver to seek to obtain or hold a government contract.

⁷⁰ Refer to **Critique** at p.90.

⁷¹ Trial Judgment, pp. 1, 2 and 3. There is no indication of what happened on the 16th of June 2006, through Trial Judgment p. 1, indicates that there was a Court session held by Justice Kiiz J.

⁷² Refer to **Application of Law** at p.89 and **Critique** at p.90.

⁷³ Trial Judgment, pp.1-2.

⁷⁴ Trial Judgment, p.2. One cannot tell whether both Accused were granted bail as there is no further discussion of the issue.

The Accused were charged with 2 counts; of which neither the headings, nor the constitutive elements are stated in the recorded Judgment. There are only tidbit references to Counts 1 and 2.⁷⁵ Initially, both pleaded not guilty, but on the 29th June 2006, they re-considered and pleaded guilty to Counts 1 and 2.⁷⁶ Both Accused were Assistant Immigration Officers, stationed at the Immigration Office in Bailu crossing point, Kailahun District. On the 11th September 2004,⁷⁷ 2 ACC Officers went to said location to verify received intelligence, indicating ongoing corruption there. The 2 ACC Officers found only the 2nd Accused there and were then joined by a 3rd ACC Officer. The ACC Officers pretended to be travelers needing emergency crossing certificates in order to cross over to the Republic of Guinea. The 2nd Accused told the ACC Officers that the 1st Accused had instructed him to issue the travel certificates; the 2nd Accused filled in the names of the 3 ACC Officers and asked for Le7000 each, which the 3 provided. The 2nd Accused, in response to a request from the ACC Officers for official payment receipts, indicated there could be nonesuch, as the certificates were unofficial and the transaction was illegal. The 2nd Accused then led the ACC Officers to the 1st Accused's location,⁷⁸ where the 1st Accused told the ACC Officers that the certificates were "*unofficial*" and asked for forgiveness, saying the practice would be stopped. As a gesture of his willingness to end the practice, the 1st Accused gave other unofficial blank certificates to the ACC Officials. The 2nd Accused contradictorily attempted to give the ACC officers Le150,000 for the matter to be dropped. Both Accused were then arrested, and eventually indicted by the ACC.⁷⁹ Later, at trial, the 2nd Accused would confirm that the official fee for emergency travel certificates were Le5000,⁸⁰ but that he had charged the ACC Officers Le7000.⁸¹

Application of Law

The Prosecution submitted that since the 1st Accused was an Assistant Immigration Officer, "being paid by the Sierra Leone government," he was a Public Officer.⁸² It also suggested this in regard to the 2nd Accused, since he was a Police Officer (acting as an Assistant Immigration Officer) "serving the government of Sierra Leone."⁸³ Although, this determination is a prerequisite if the provisions under which the charges were laid, are to apply, the Court did not expressly address s. 1 under Part I, entitled "*Preliminary*", of the ACA 2000, which states that;

"'public officer' means a holder of a public office;

'public office' means an office in the service of the Government of Sierra Leone, and includes service in, the offices of President, Vice-President, Minister, Deputy Minister, Attorney-General and Minister of Justice, member of Parliament, Magistrate, Judge of the Superior Court of Judicature, and offices in the Armed Forces, the Police Force, a public corporation or on the board thereof; a local authority, any commission or committee established by or under the Constitution or by or under any law or by the Government."

⁷⁵ Trial Judgment, pp. 1, 2 and 5.

⁷⁶ Trial Judgment, pp. 2 and 4.

⁷⁷ Trial Judgment, pp. 3 and 4.

⁷⁸ Trial Judgment, pp.3-4. It is unclear whether the ACC Officers had at this point revealed their true identity, although in this context, one could reasonably presume this was the case. Such presumptions could be avoided by a more water tight factual description.

⁷⁹ Trial Judgment, pp. 3-4.

⁸⁰ Equivalent to \$1.15c, as per the exchange rate of 16 June 2012. Also on this point, refer to **Critique** at p. 90.

⁸¹ Equivalent to \$1.62c, as per the exchange rate of 16 June 2012. Also on this point, refer to **Critique** at p. 90.

⁸² Trial Judgment, p. 3.

⁸³ Trial Judgment, p. 4.

In addition, although the Judgment does not cite the relevant provisions under which the charges were laid, it can be reasonably estimated from the facts that the Accused were charged as count one under Section 7 (1) of the ACA 2000, with the Corrupt Acquisition of Wealth and as count 2,⁸⁴ under section 8(1) with Soliciting or Accepting an Advantage.

This conclusion is based on the fact that under Section IV of the ACA 2000, entitled “Corrupt Practices”, the remaining sections concern no directly relevant provisions, i.e. S. 9; Using Influence for Contracts, S.10; Corrupting Public Officer, S. 11; Soliciting or Accepting Advantage for Public Officers etc., S. 12; Misappropriation of public funds or property, S. 13; Misappropriation of donor funds or property, S. 14; Impeding foreign investment, S. 15; Corrupt Transactions with Agents.

The relevant provisions would therefore appear to be as follows. Section 7 (1) states that: “A public officer is guilty of the offence of corrupt acquisition of wealth if it is found, after investigation by the Commission, that he is in control or possession of any resources or property or in receipt of the benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly or in circumstances which amount to an offence under this Act.”

Further, section 8 (1) states that: “Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- a. performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;
 - b. expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or
 - c. assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body;
- is guilty of an offence.

On the basis of the above deduction of which provisions were applied, the Prosecution’s statement that the maximum sentences for these offences could go up to 10 years imprisonment and fines up to Le30m or both,⁸⁵ would appear to be mistaken, since such sentences only apply to crimes committed under ss. 14 and 15.⁸⁶ Section 7 does not stipulate the range for an appropriate sentence

⁸⁴ Trial Judgment, pp. 1 and 5. One knows from their pleas and the sentences that they were charged with 2 counts.

⁸⁵ Trial Judgment, p. 4.

⁸⁶ 14. Any public officer who knowingly—

- a. performs or abstains from performing any act in his capacity as a public officer;
- b. expedites, delays, hinders or prevents the performance of any act, whether by himself or by any other public officer, in his or that other public officer's capacity as a public officer; or
- c. assists, favours, hinders or delays any person in the transaction of any business with a public body, in order that a non-citizen investor or potential investor is coerced, compelled or induced to abandon his investment or, as the case may be, is prevented from proceeding with his initial investment, to the advantage of any other person is guilty of the offence of corruption in respect of foreign investment and shall be liable, on conviction, to a fine not exceeding thirty million leones or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

or fine, since it applies to all offences under the Act. However, section 8 (2) which is the most fitting provision in these circumstances, would appear to be what should be referred to, to establish the appropriate sentence range since it is the more directly applicable provision of the two relevant provisions. Section 8 (2) states that: *“Any public officer, who solicits or without the general or special permission of the President, accepts any advantage, is guilty of an offence and shall, upon summary conviction be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.”*

The Court also applies section 144 (2) of the Criminal Procedure Act of 1965, in granting the Attorney General’s application for trial of the facts by Judge alone instead of by Judge and Jury. Section 144 (2) of the CPA 1965 states that: *“Notwithstanding anything contained in section 143, in any case where a person is charged at any sessions of the Supreme Court with a criminal offence not punishable by death the Attorney-General, if he is of the opinion that the general interest of justice would be served thereby, may make an application to the Court for an order, which shall be made as of course, that any such person or persons shall be tried by such Court with the aid of assessors, or by a Judge alone, instead of by a Judge and jury.”*

Critique

The case notes here highlight the atrocious state of case reporting in Sierra Leone. The 5 page notes are extraordinarily sparse, full of typographical and grammatical errors, omissions and unexplained abbreviations.

The Court approached the issue of the Accuseds’ punishment with a fixed principle in mind, which is the insignificance of the amount unlawfully received by the Accused persons. It is submitted that the insignificance of the amount pertains to a determination of liability or guilt rather than to the meting out of penalties. The Accuseds’ liability is a nonissue here since both Accused concede that

15. (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

a. performing or abstaining from performing or having performed or abstained from performing any act in relation to his principal's affairs or business; or

b. showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,
is guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's—

a. performing or abstaining from performing or having performed or abstained from performing any act in relation to this principal's affairs or business; or

b. showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,
is guilty of an offence.

(3) Any person who knowingly gives to any agent, or an agent who knowingly uses, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, is guilty of an offence.

(4) a person convicted of an offence under this section shall be liable on conviction to a fine not exceeding thirty million leones or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(5) In this section— "agent" includes a public officer and any person employed by or acting for another; "principal" includes an employer.

the facts as narrated by the Prosecutor are correct. Since, the issue of guilt is essentially settled, the judgment would have benefited from more clarity with regard to the issue of, which mitigating circumstances were accepted or not and why, in the determination of fines.

It is submitted the Prosecution erred in its representation of the maximum sentences attaching to the offences, but that even if the Prosecution had been correct, there is ample authority to the effect that fines should mainly reflect the gravity of the offence. Granted, gravity refers to more than just the sum forming the subject matter of the charges. Indeed, authorities indicate that the determination of fines should include considerations of the mitigating and aggravating circumstances, underscoring the principle that all surrounding circumstances should be factored in. Further, the offender's means do matter when fixing a fine and it should not unduly affect his or her family. Moreover, entering a guilty plea should operate to the Accuseds' advantage in this regard, acting as a mitigating circumstance of sorts.⁸⁷

The Court says that it "must not condone such acts", appearing to ground the sentences on the Prosecution's submissions that the offences involved breaches of trust and were serious. It is unclear how the Accused violated public trust any more than any other Accused convicted under the ACA 2000/2008. Considering the salary scale of the two Accused, the penalties imposed on them are disproportionately higher than those imposed on other persons convicted under the ACA 2000/2008. If it is the second attempt to bribe which results in the severity of the penalties, as an aggravating circumstance, it should be clearly spelt out, to avoid the preceding conclusion. There is no leniency exercised with regard to the appalling salaries of the Accused, who appear to be sacrificial lambs. Against the backdrop of other ACC cases where more has been at stake financially, this case sends the very message which the ACC was established partly to counteract; one's means determine one's access to justice.

Of note is that unlike the *Sesay and Conteh* cases,⁸⁸ where the Accused also pleaded not guilty, here the judge gives us a summation of facts, a tack which highlights the inconsistencies in the reporting or drafting methods of judgments.

⁸⁷ For affirmation of all these issues, see **Notes** at p.86.

⁸⁸ Refer to pp. 218 and 228 respectively.

[Trial Judgment:
Senesie and
Koroma]

**The State vs Mohamed Senesie &
Pc 8436 Koroma**

JUDGEMENT

MOHAMED SENESIE AND PC 8436 KOROMA

Thursday 1st June 2006 before the **Hon. Mr. Justice Kiiz J**

Accused Absent

Tumosugye for Accused

Tumosugye: Accused persons are not served I pray that matter be adjourned to 16/06/06

Matters affirmed 16/6/06. for plea.

Friday 16th June 2006 before the Hon. Mr. Justice A Kiiza J

Wednesday 21st June 2006 before the Hon. Mr. Justice Kiiz J

Both Accused persons present Accused by Tumosugye for state by Mamattah.

On 1st CT

R1: PNS

R2: PW9

2nd CT

AC: P

.....
Tumosugye: There is an official from AG that, court proceeds with tried by judge alone under S. 144 92) of ACC Act.

Court: the application by the learned AG to have the accused tried by judge alone, instead by judge and jury, is granted as prayed for. Matter to be brought on 29/06/06.

AT: I apply for bail I am an Assistant Immigration Officer, stationed at Kailahun – married with 8 children. I own land at Pendemlu I have a - He is

called Mudasa Milo. He is a carpenter we married from same house / family I am not working instead for at month.

AC I do not have another

A2:- I apply I am a Police Officer, stationed at Kailahun Police Station married with 1 child. I have no property of my own. I have no one to stand surely for me

Tumosugye; I have no objection, but accused should furnish surety.

CA: Both need persons to be released or bail on a bond of Le500,0000 Leones, with a substantial surety each, to wit the same amount. The sureties have to be approved by the master / registrar. In default, both to be remanded his custody from 29/06/06.

Thursday 29th June 2006 Before the Hon. Mr. Justice Kiiz J

Accused Present
Tumosugye for state
Ngaku for A1

Ngakui: having seen the indictment, I would likes to have a conference with my colleagues. We consider that, there is no need to waste the court's time in respect of A1.

In the circumstances, we would like his change over plea from not guilty to guilty.

AC: What my advocate has said is true. I want to change my plea from not guilty to guilty.

C11 Indictment re read and explained to A1

AI 1st It is true I plead guilty

2nd CI

A1 It is true. I plead guilty

.....

Tumosugye

Facts are that A1 is an Assistant Immigration Officer, in Republic of Sierra Leone. In September 2011, he was stationed at Bailu Crossing point in the Kailahun District. He was being paid by the Sierra Leone Government, therefore he was a public officer. On 1st September 2004, 2 Offices of Anti Corruption Commission, went to ACC's workplace, to verify information they had received that, there were corruption related activities at A1 placed of work. 2 ACC officers never found AC at his workplace. They only found A2. They pretended to be crossing to the Republic of Guinea and wanted official emergency crossing certificates. While still in office, they were joined by another traveller, by the name of Mohamed Sesay. A2 informed the three travellers that, he had instruction from A1 to issue the travel certificates. A2 wrote out in the names of three officers, and asked each of them to pay Le7,000 for the certificates. The money was paid to A2. The 2 ACC Officers demanded the Government of Sierra Leone Official receipts for the money. A2 then informed them that the certificates he had issued were unofficial and therefore he could not issue a receipt for an illegally transaction. A2 led the officers to where A1 was and A1 immediately told the 2 ACC officers, were actually unofficial and he asked for forgiveness to stop the practise.

He also pulled out other unofficial blank certificates and handed them over to the ACC officials, as a gesture that, he was willing to stop the practice. A2 also pulled out Le150,000 Leones from the bog he had, in 2000 Leone denominations and handed the money to the 2 ACC officials begging them to drop the matter. There after the matter was picked upand, both accused were arrested any ACC AND FINALLY WERE INDICTED with the two offences.

Accused: facts are correct as narrated by the prosecutor

BW

CT: The Accused is convicted upon his our plead of guilty.

BW

Tumosugye: I have no record of A1's, previous conviction. He is a fulfilling officer who abused his trust. I pray for appropriate sentences.

BW

Mgakui: I appreciate my colleagues Sulaiman. A1, is a first offender. I pray for the Court to temper justice will mercy, as accused has pleaded guilty. Accused is 62 years of age. He has a wife, who is unemployed. He has 8 children and a young sister and another dependent who look up to him. Accused has served the government of S/Leone for 35 years. He is now getting

Le120,000 per month though by Law he it is not his justification to do what he did, given the conduct of A1 up to now, during his arrest and investigation informed then after that.....

I pray for mercy on his behalf for leniency. I pray that a fine called specific in the circumstances.

Allocation: I have nothing to say, but I agree what my lawyer has told the court.

BW

A2: I want also to charge my plea from not guilty to guilty.

GJ The indictment re – read and explained to Accused No.2

A2 The fact as read out are correct. I plead guilty.

Prosecution

The facts in respect of A2, are that, he is a Police Officer serving the government of Sierra Leone, as a police man. In 2009, he was deployed at Bailu crossing point, in Kailahun District in the Immigration Department. Up to 3/9/04, he was acting as Assistant Immigration Officer; He was deputy for AI, an used to sit in the same office, as AI. On 11/9/011, while in the Immigration Officers he was approached by 3 travellers, including 2 ACC investigators for emergency traveling certificates. He issued them with unofficial documents of which each paid his Le7000.

He finally led them to where A1 was. They were both subsequently arrested and charged accordingly

BN

A2 The facts as narrated by the prosecutes, represents it exactly what took place. The official fee for the emergency travel certificate, by government, is 5000, but he charged them 7,000. The three travellers demanded official receipts in respect of Le7,000 that they had paid.

A2 informed them, that what he had given them was unofficial & illegal he pleaded for mercy. They both have prayed for leniency and appear repentant before the court. They both have family obligations. On the other hand, they committed serious offences, Whose maximum sentences could go up to 10 years imprisonment, and fines of up to 30 million Leones or both.

Courts must not condone such acts, though they must take into account, the circumstances of each case on its own facts. As I have said herein above, the Accused pleaded guilty, were cooperative with the investigations, and appear repentant before the court, and also the amount involved is insignificant, I would be persuaded to be lenient, while in case of defaulting A2's 6 months imprisonment on each count to run concurrently order accordingly.

Bm

R/A explained

Imposing the sentence. Putting every thing into consideration. I would fine A1 the sum of Le500,000 on 1st court, and Leone 300,000 on the 2nd court. In default to serve six (6) months imprisonment on each court.

As for A2, I sentence him to a fine of Leone. 500,000. For the first count or 6 months imprisonment in default.

Tumosugye: I have no record of previous conviction in respect A2. Acts of Corruption are rampant. He breached the trust put in him by the government I pray for a commensurate sentence.

Allocations

I am 29 years, I have a wife, and one child I earn 110,000 Leones per month. I have 2 brothers and 2 sisters I look after. I plead for a fine and not a custodial sentence.

BM

CA Sentences for both A1 & A2 and reasons thereof. Both Accused persons are allegedly first offenders. They have also pleaded guilty hence saved the court's valuable time

Case Report:
Mannah and
Koroma

THE STATE v. MATHEW M. MANNAH and MOHAMED S. KOROMA

THE HIGH COURT OF SIERRA LEONE

August 2006

Exclusive role of admitted exhibits as bases for Court findings - Mere filings not bases for Court findings - Evidence tendered at committal stage delimits the scope of evidence for admission at trial stage - Decision to not call evidence tendered at committal stage must not prejudice Defence - Obligation to ensure presence in Court of all "witnesses listed at the back of the indictment"- Presumption of presidential permission attaching to the acceptance of gifts of a customary nature by Paramount Chiefs - Circumstances defining gift as of a customary nature - Relevant onus and standard of the burden of proof- Individual assessment of liability of multiple defendants- Personal circumstances discounted as factors in mitigation – Whether the Courts must acquit the Accused where the Prosecution fails to call all the "Witnesses listed at the back of the indictment"- Advantages amount to rewards and inducements where not necessary for the practical fulfilment of public obligations - The Anti-Corruption Act 2000 (as amended), ss.8 (1) (a), (2), (3) & (4); s. 45 and part 3 – The Sierra Leone Criminal Procedure Act 1965, s. 108, 111 (1), 117& 124

Held

Both Accused were found guilty. The 1st Accused was sentenced to 3 months imprisonment on counts one and two respectively, to run concurrently. The 2nd Accused was sentenced to 3 months imprisonment on counts three and four respectively, to run concurrently. The Court ordered that PW5's money⁸⁹ be refunded to him.

Ratio Decidendi

A critical analysis of the demeanour of the Accused and of Prosecution Witness testimonies reveals the absence of internal contradictions⁹⁰ *albeit* minor inconsistencies *as between them*.⁹¹ The Court assessing PW3⁹², PW4 and PW5 as simple, elderly and rural people, noting that PW3 and PW5 were opposing parties and that PW5 had already won out on the dispute,⁹³ determined that PW5 had no reason to lie about the demands of both Accused in order to frame either of them. It therefore adjudged PW3, PW4 and PW5 to be reliable witnesses and as such dismissed the 1st Accused's contention that the demands in question emanated from local Regent Chief Pa Roke Sesay.⁹⁴ The Court was therefore satisfied beyond a reasonable doubt of the veracity of their evidence. In response to the Defence argument that the ACC Commissioner's findings attributed the demand for the money and items to Pa Roke, the Court's response was that in its

⁸⁹Exhibit E.

⁹⁰Trial Judgment, p. 10; "They never contradicted themselves, in my view, materially."

⁹¹Trial Judgment, p. 4; "There were minor inconsistencies watering in the Prosecution Witnesses testimony." This appears to be the only way of making sense of this statement.

⁹²Idrisa Kanu.

⁹³Trial Judgment, p.4; "PW5 actually won the case, regarding the bush" and at p. 10; "PW5 was a beneficiary in the bush dispute with PW3." No further explanation is provided as to how and when the dispute ended up being resolved and how PW5 came to be the victor.

⁹⁴ Trial Judgment, pp. 3-4. Regent Chief is used here in the same sense as a Regent Monarch; he rules during the minority, absence, or disability of a Chief.

determinations, it relied only on evidence admitted as exhibits, not merely filings by either party; material not admitted was beyond its deliberative competence.

Upon evaluation of the evidence, the Court found that the 2nd Accused demanded and received money from PW3 and PW5 as payment for a site visit, in his capacity as Senior District Officer, to the land forming the subject of the dispute between the two. The 2nd Accused testified to receiving Le 200,000 from PW5, through Pa Roke Sesay, for his benefit as a Public Officer, *in carrying out his official duties*.⁹⁵ However, in view of PW1's⁹⁶ testimony that *the GOSL provided vehicles, offices and funds for the Officers to facilitate their work*, the Court found that the Accused had abused their official oaths *requiring honesty* for the performance of their quasi-judicial functions concerning land disputes between members of the public. The Court held that this amounted to an abuse of their position of trust as Public Officers.

The Court disagreed with Counsel for both Accused that sections 8 (3) and (4) of the ACA were applicable, since Pa Roke Sesay did not qualify under section 8 (3) of the ACA as a Paramount Chief and further since the money was not given for the benefit of Pa Roke Sesay in his capacity as Regent Chief.

The Court's did consider factors pled in mitigation such as the Accuseds' first time offender status, their pleas for mercy, and the dependence of their large families. Nonetheless, it concluded that the Accused had ignored these personal circumstances and gone ahead to commit serious crimes by fleecing the poor of money and food.

Notes

A man accepting an office of trust concerning the public is answerable criminally to the King (State) for misbehavior in his office, no matter how that officer was appointed; *Bembridge* (1783) 3 Doug 327. It is a Common Law offence to bribe a public officer and for the officer to accept that bribe; *Whitaker* (1914) 3 KB 1283. In Common Law, the provision of consideration to a public officer, as an inducement or reward is considered as an act tending to corrupt; *Andrew-Weatherfoil Ltd* (1972) 1 WLR 118. Fines should be measured against the gravity of the offence, with aggravating and mitigating circumstances considered; *A-G's Ref (No. 41 of 1994)* (1995) 16 Cr App R (S) 792 and *Messana* (1981) 3 Cr App R (S) 88. The Court must always consider the offender's own means and not his families'; *Charambous* (1984) 6 Cr App R S; before fixing the fine; *King* (1970) 1 WLR 1016. Determination of a fine must take into account, the damage done, prior record of the Accused, counterproductive effect, the offender's plea, attitude and performance after the event; *Yorkshire Water Services* (2002) 2 Cr App R (S) 37. However, the application of a rigid formula to the calculation of a fine is incorrect; *Chelmsford Crown Court ex parte Birchall* (1989) 11 Cr App R. (S) 510.

Committal proceedings are the means by which a magistrate's court determines whether there is sufficient evidence against an Accused in respect of an indictable offence to justify standing trial; *Blackstone's Criminal Practice 2004*, p.1227. Generally, in "committals with consideration of the evidence", it is the Prosecution that is allowed to present its evidence, in the form of witness

⁹⁵ Trial Judgment, pp. 9-10; cross-examination.

⁹⁶ Permanent Secretary and Boss of the 1st Accused, at time of the dispute.

statements. In UK practice, section 5 C of the CPIA 1996 and section 97 (A) of the MCA 1980, authorise a Magistrate to secure a deposition by a summons or warrant, where a person is likely to be able to produce evidence helpful to the Prosecution but unwilling to; *Blackstone's*, p. 1235. Similarly, section 117 of the Sierra Leone CPA 1965, allows the Court to compel the attendance of Prosecution witnesses not present in Court. In general Common Law practice, the Defence cannot adduce any evidence; *Blackstone's*, p. 1234. Section 108 of the Sierra Leone Criminal Procedure Act 1965 refers to these “committal proceedings” as preliminary investigations.

The procedure under the CPA 1965 as touched on by the Court in *Mannah and Koroma*, appears to be relatively comparable to the procedure set out in the UK Criminal Procedure and Investigations Act 1996, schedule 2, para. 1 (2) which makes the evidence collected at the committal stage, transferrable to the actual trial/evidence for the trial. This is because section 124 of the CPA, states that all evidence admitted at the stage of the preliminary investigation, shall be transmitted in proper time to the Supreme Court. Section 111 (1) of the SL CPA 1965 refers to the taking by the Magistrate’s Court of depositions/statements of Prosecution Witnesses, which may include answers in cross to the Defence. Section 115 of the SL CPA 1965 states that after the examination of Prosecution witnesses, the Court should read the charges to the Accused and invite the Accused to respond, informing him that he is not obliged to do so. However as per the CPA, these proceedings at the level of a Magistrate’s Court need not be thought of, exclusively in the sense of mirroring “committal proceedings”, since as per section 108 of the CPA, a Magistrate may opine that a matter nevertheless triable by a Magistrate should be tried before the Supreme Court.

The phrase “witnesses whose names are on the back of the indictment,” means all those persons whose evidence was tendered at trial; *Blackstone's*, p. 1451. By using a person’s evidence at committal proceedings, the Prosecution indicates that he is an intended prosecution witness for the trial, so that the Defence may hesitate to approach or take a statement from him and where the Prosecution fails to call said witness, the Defence, banking on that witness’ presence, may miss what they deem potentially helpful material: *Blackstone's*, p. 1452. Counsel’s discretion not to call a witness on the back of the indictment, must be not exercised unfairly or so as to prejudice the Defence: *Adel Mohammed El Dabbah v A-G for Palestine* (1994) AC 156. The Prosecution is under no obligation to call witnesses whose statements were served upon the Defence as unused material but never formed part of the Prosecution case; *Richardson* (1994) 98 Cr App R 174.

There is no obligation on the Prosecution to use all the evidence favoring its own case, at the committal stage; *Epping and Harlow Justices, ex parte Massaro* (1973) QB 433. By implication, at committal proceedings the Prosecution is not under an obligation to tender the evidence of all witnesses who appear to be credible and capable of giving evidence relevant to the case; *Nugent* (1977) 1 WLR 789.⁹⁷ Under UK statutory law, a witness on the back of the indictment need not be called if the Prosecution anticipate being able to read his statement (CJA 1988, ss. 23 and 24); *Blackstone's*, p.1452. The Prosecution has a discretion to not call a witness on the back of the indictment if the witness’ lack of credibility becomes apparent during the period between committal and trial; *Oliva* (1965) 1 WLR 1028. Where the Prosecution decides that a witness at the back of the indictment is capable of belief, they must call him; *Balmforth* (1992) Crim LR 882; to

⁹⁷ So that the question of obligations to call Witnesses, only arises in relation to the subsequently delimited boundaries of the case, effectuated by the act of listing the names of witnesses at the back of the indictment or appending witness statements/depositions to it. Prior to that, there is no obligation relating to the wider pool of credible witnesses.

avoid a situation wherein the Defence end up not being able to cross him on evidence which earlier assisted the Prosecution since they will instead examine him in Chief; *Blackstone's*, p.1453.⁹⁸ On the other hand, the Prosecution is entitled to call witness it does not regard as credible/reliable; *Cairns* (2003) 1 WLR 796.

In trial by jury, the Prosecution need not call a Witness on the back of the indictment, even if it regards him as credible, if his anticipated evidence would be likely to confuse the jury about the nature of the Prosecution case; *Nugent* (1977) 1 WLR 789 and *Adel Muhammed El Dabbah v A-G for Palestine* (1944) AC 156.

Where the Prosecution is obliged to call or tender a witness, reading his statement may be an acceptable alternative; *Armstrong* (1995) Crim LR 831. If the Prosecution intend not to call a witness on the back of the indictment, they nonetheless have a duty to ensure that he is present at Court for trial (except if absent for reasons outside the control of the Prosecution), so that the Defence may call him if they wish; *Oliva* (1965) 1 WLR 1028. The Defence is then disadvantaged by possibly having the Prosecution attack that Witness' evidence, instead of it, (the Defence), doing so; *Blackstone's*, p. 1453. In the absence of a witness named on the back of the indictment, the trial can proceed; Cavanagh (1972) 1 WLR 676, since (even though said witness was credible), there was other evidence capable of proving the case, and since adjourning the case, until the point of the witness' potential future availability, was no guarantee. The Court's reasoning was that, the Defence benefited rather than suffered from the absence of this witness' evidence.

Cases referred to in Judgment

Kelfala vs. R (1937-49) ACR-SL, 85.

Summary of Facts

The Accused were indicted on four counts under section 8 (1) of the ACA 2000 (as amended), 3 of which were for soliciting an advantage and the 4th for accepting an advantage. The 1st Accused was charged with counts one and two, with soliciting an advantage. He is alleged on an unknown date between 1 to 31st July 2001, at Port Loko District in Sierra Leone, to have solicited an advantage of Le500, 000, 1 male goat, 1 bag of rice, and 5 gallons of palm oil from PW3 as an inducement for acting in his capacity as a Public Officer. The 2nd Accused was charged with counts three and four for accepting an advantage. He is alleged on the 25th January 2002 at Port Loko District, to

⁹⁸ On the basis of any witness statements or summaries thereof, attached to the indictment, it is submitted that it is not helpful to the Defence to call a Witness whose evidence it knows to be adverse to the Defence case, because try as it might, it will only likely end up eliciting evidence helpful to the Prosecution, during its direct examination of said witness. Due to the general rule in Common Law Jurisdictions against contesting or impeaching the evidence of one's own witness in Chief/Direct, the Defence's attempts at attacking the Prosecution case would be impeded. Further, even though it is possible for Counsel to impeach her own witness where the Judge declares such a witness to be hostile or adverse, pursuant to a prayer to that effect, in the usual course of events, a hostile witness is one who ends up surprising the party that called her, so that there needs to be a change between her statements and testimony. Only then, can the party who called that witness ask the Judge to declare her hostile. Testimonial evidence adverse to the Defence case which is consistent with the witness' statements cannot therefore give rise to such a declaration. The only other possible limited grounds for making the declaration is where the Judge deems Witness' demeanor in the box to indicate she is lying. On the other hand, the Defence would of course have been able to directly seek to elicit supporting material by directly attacking the witness' version of the facts in issue: <http://www.deakin.edu.au/buslaw/law-essentials/resources/du-witnessexam.pdf>

have solicited from PW3 the same advantages as the 1st Accused as an inducement for acting in his capacity as a Public Servant. Further, the 2nd Accused is charged with accepting Le200, 000 as an advantage.

The Prosecution called 6 Witnesses. PW3 testified to competing for the same “farm bush”⁹⁹ with PW5 and seeking the services of the 1st Accused as adjudicator over this dispute. PW3 testified that the 1st Accused summoned both parties to his office and demanded that PW5 deliver the aforementioned items and sum to Pa Roke Sesay. PW4¹⁰⁰ testifies to being present during this meeting and confirms PW3’s account of it. PW5 confirmed in his testimony that the 1st Accused did demand money and the food items. PW3 and PW5 both testified that the 1st Accused expressed his coming to settle their dispute as conditional upon their delivery of the items to Pa Roke Sesay.

In their defence, the Accused relied on their statements made to the ACC Investigators. The 1st Accused in his statement to PW6¹⁰¹ admitted that his duties included settling disputes over land¹⁰² and admitted to having a meeting with PW3, PW5 and Pa Roke Sesay. The 1st Accused does however deny making the alleged demands, attributing them to Pa Roke Sesay. The 1st Accused’s Defence argued that as per the ACC Commissioner’s findings, the extract of which was attached to the indictment, it was stated that it was Pa Roke who made the demands.

PW3 testified that the 1st Accused never settled the dispute so that he was referred to the 2nd Accused¹⁰³ and that they raised Le20, 000 for fuel to facilitate the 2nd Accused’s visit to the site, but that the 2nd Accused refused the Le20, 000 and stated that he was to be given Le500,000, 5 gallons of palm oil, 1 goat and 1 bag of rice for his services.¹⁰⁴ PW4’s testimony is slightly different in that he states that he gave Le20, 000 to the 2nd Accused, who although he accepted it, complained about its smallness and extended the time given to the parties to enable thorough acquisition and delivery of the items. PW5 testified that he gave Le200, 000 to Mr. Abdulla Bangura,¹⁰⁵ who passed this on to Pa Roke Sesay, who in turn handed this over to the 2nd Accused for a site visit. PW4 confirms the 2nd Accused’s receipt of the sum of Le200, 000, stating that the 2nd Accused never came.¹⁰⁶ The 2nd Accused in his statements¹⁰⁷ accepted receiving the Le200, 000¹⁰⁸ for the purpose of visiting the disputed land. Defence counsel for the 2nd Accused submitted that there was insufficient evidence to implicate his client and that the inconsistencies in the Prosecution case required an acquittal.

⁹⁹This would be a bush area used for farming.

¹⁰⁰ PW4’s role or identity is not expressly stated in the Judgment. Instead statements referring PW4 raise a probability of his being Pa Roke Sesay, since PW4 is persona central the plot, (refer to FN 106 below). We are told that “PW4 handed the Le20, 000 to the 2nd Accused” at p. 9 of the Trial Judgment and that the 1st Accused in his statement, admitted as exhibit F, “acknowledged meeting the parties with Pa Roke Sesay”; at p. 5 of the Trial Judgment.

¹⁰¹ ACC Investigator; Exhibit F.

¹⁰² Trial Judgment, p.5; “bush dispute”.

¹⁰³ Unclear from the Judgment who referred the parties to the 2nd Accused.

¹⁰⁴ A visit to settle the dispute.

¹⁰⁵ As per FN 100 above, it is unlikely that Mr. Abdulla Bangura was PW4. Surprisingly, it appears as though he was not called as a witness.

¹⁰⁶ These preceding statements further buttress the point that PW4 was indeed Pa Roke Sesay.

¹⁰⁷ Trial Judgment, p. 9; Exhibits A, B and C. The 2nd Accused also confirmed this in cross-examination.

¹⁰⁸ Exhibit E.

Application of Law

Given multiple defendants, the Court considered the case against each defendant separately, count by count. The Court identified the onus of the **burden of proof** as incumbent on the Prosecution in such criminal trials. As such, the Accused bore no legal burden with regard to proving their innocence. The Court identified the relevant standard of this burden as being proof beyond reasonable doubt, which meant that any doubt as to the guilt of the Accused should result in their acquittal.

The Court proceeded to evaluate whether **elements of the offence** set out in Section 8(1) of the ACA 2000 had been satisfied. Accordingly, as per the Court's interpretation of section 8 (1), the Accused firstly, must be a Public Officer, secondly, have solicited or accepted a reward/advantage and thirdly, that reward/advantage should have been aimed at inducing him to perform or abstain from performing an act/acts in his capacity as a Public Officer, **or**, in order to reward him for having performed or abstained from performing said act/s.

In actuality section 8 more elaborately states:

“(1) Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

a. performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;

b. expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or

c. assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body;
is guilty of an offence.

(2) Any public officer, who solicits or without the general or special permission of the President, accepts any advantage, is guilty of an offence and shall, upon summary conviction be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.”

With regard to the first limb; the Court found that the Prosecution proved beyond reasonable doubt that the 1st Accused was a public officer since the 1st Accused confirmed it in his ACC statement¹⁰⁹ as did PW1 in his testimony. The Court made a similar finding in relation to the 2nd Accused since the 2nd Accused admitted to being a public officer in his statements,¹¹⁰ a fact also testified to by PW1.

Applying the second and third criteria as identified by the Court to the evidence, the **Court determined on the basis of** PW3, PW4 and PW5's evidence concerning the **demands** made by the 1st Accused; specifically PW3 and PW5's testimony that the 1st Accused had demanded the items be handed over to Pa Roke Sesay as a precondition for his site visit; and on the basis that the presumption in sections 8 (3) and (4) do not apply; **that the Prosecution had indeed** proved the 2nd ingredient of section 8 (1) i.e. soliciting a reward, **as well as**, proved the 3rd ingredient of section 8 (1), which was the inducing/inducement of performance or non-performance. **The Prosecution**

¹⁰⁹ Trial Judgment, p.2: Exhibit F.

¹¹⁰ Trial Judgment, p.8: Exhibits A. B and C.

had therefore proven the offence of soliciting an advantage under section 8 (1) (a)¹¹¹ of the ACA, i.e. counts one and two, beyond reasonable doubt

With regard to counts three and four, the Court applied its understanding of the cited provisions to the evidence of PW3 and PW4 that the 2nd Accused demanded the named items, in exchange for a site visit; the 2nd Accused's own acknowledgement of the receipt of Le200, 000 in exchange for a site visit and PW5's evidence that he gave Le200, 000 to the 2nd Accused in exchange for a site visit. This evidence led the Court to conclude that the fact of the 2nd Accused's demanding or in other words soliciting, and accepting, money from PW3 and PW5, had been proven, so that the Prosecution had proved counts three and four against the 2nd Accused beyond reasonable doubt.

The Defence attempted to rely on sections 8(3) and (4) of the ACA in an attempt to legitimise the transferral of the items to Pa Roke, since those provisions do legitimise gifts being made to Chiefs, according such gifts the presumption of presidential permission. Section 8 (3) states that; "*The general permission of the President is deemed to have been granted for the acceptance of gifts of a customary nature by Paramount Chiefs.*" Section 8 (4) states that; "*For the purposes of subsection (3), a gift is not of a customary nature unless given in circumstances recognised as appropriate by custom.*"

The Court stressed that the aforementioned sections legitimised such gifts only where they were made to Paramount Chiefs, for their own personal benefit and not on behalf of a 3rd party. The Court noted that Pa Roke Sesay was not a Paramount Chief and that PW3, PW4 and PW5 testified that the items were for were to be received not for the Chief's benefit, but for the 1st Accused. The Court had concluded that as a result, the Prosecution had proved the count on accepting an advantage contrary to section 8 (1), beyond reasonable doubt.

The Defence argued that the West African Court of Appeal had decided in *Kelfala vs. R.* (1937-49) ACR-SL, 85, that where a Prosecution fails to call all the witnesses listed at the back of the indictment, the Accused should be acquitted. The Court here conceded that the finding in *Kelfala* did confirm the principle argued by the Defence, since it had been held that in the absence of special circumstances, all witnesses listed at the back of an indictment as Prosecution witnesses must be made available in Court even if the Prosecution does not wish to call them as witnesses. The Court did accept that *Kelfala* was binding upon it, but distinguished the articulated principle as emerging from dissimilar circumstances. The Court distinguished *Kelfala* from the present instance in that, principally, *Kelfala* was a murder case brought under the Criminal Procedure Act which required lower courts to conduct preliminary investigations, but in *Mannah and Koroma*, the case was brought under part 3 of the Anti-Corruption Act, which eliminated this and other procedures, in what this Court deems, the interests of expedited proceedings.¹¹² Secondly, the

¹¹¹ Trial Judgment, p.5: This is the only reference to the more specific provision of section 8 (1) (a) and not just section 8 (1), making it clear only at this point that the Accused were not charged with trading other possible forms of their actions, under 8 (1) (b) and (c), as against inducements.

¹¹² Part 3, entitled; "Functions of Commission" elaborates briefly on the investigatory powers of the Commission. Section 5 (1) states that the object for which the Commission is established, is to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise. Section 2 (a) states that, without prejudice to the generality of subsection (1), it shall be the function of the Commission to examine the practices and procedures of Government Ministries, departments and other public bodies, in order to secure a revision of those practices and procedures which, in the opinion of the Commissioner, may

Judgment dating from 1939, during the colonial era, is antiquated. In *Kelfala*, the practice of preliminary investigations by the committing lower court was for all witnesses including those not called by the Prosecution to be examined.¹¹³

Critique

Although the 1st Accused's Defence argued that the extract of the ACC Commissioner's findings, attributed the demand for the money and items to Pa Roke, the Court ruled that material not admitted as exhibits were beyond its deliberative competence. This raises questions about whether the Defence did not exercise due diligence by failing to seek to have the Commissioner's findings admitted as evidence, and whether it only raised the issue in its final closing submissions.

The 2nd Accused in his statements and testimony admitted to receiving Le 200,000 from PW5, through Pa Roke Sesay, for his benefit as a Senior District Officer, in carrying out his official duties, i.e. a site visit for the purposes of resolving a land dispute. PW1 on the other hand testified that the GOSL provided vehicles, offices and funds for the Officers to facilitate their work. The Court therefore decided that the 2nd Accused's acceptance of money for performance of his official duty, constituted a crime, since the money was not vital to (the acquisition of any of the logistics that would enable) performance of the assignment. This meant that the accepted money would only personally benefit the recipient and not aid the actual performance of his duties. By contrast, the 2nd Accused's defence argument appears to be that he could not be liable for counts one and two since the advantage, he requested/solicited and accepted was not an inducement to, or reward for, performance but a practical necessity. The Court less than openly addresses this argument through reliance on PW1's testimony, but it is submitted that more openly confronting this aspect of the 2nd Accused's defence argument, would have warranted a reliance on the "presumption of corruption", under s. 45 of ACA 2000 which states that: "*Where in any proceedings for an offence under this Act, it is proved that the Accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence, unless the contrary is proved.*" Compounding witness' testimony with this presumption would have added fortitude to the Prosecution's case.

The Court's findings that the Accused had abused their official oaths requiring honesty for the performance of their quasi-judicial functions and abused their position of trust as Public Officers, were not offences under the ACA 2000/8 and would be equally true of all corruption offences committed by public officers, but here are mentioned to *perhaps* better clarify the sentences.

The Court distinguished *Kelfala* from the present instance. *Kelfala* which made the presence of all witnesses listed at the back of the indictment mandatory, even if the Prosecution did not intend to call them all as witnesses, only applied where lower courts had conducted preliminary investigations, so that the evidence elicited by the Prosecution at that stage, would have been relied upon by the Defence in the preparation of its own case. For the Prosecution to not stay faithful to its original list would be to prejudice the defence. Nonetheless, the many precedents allowing for

lead to corrupt practices, and to advise the heads of such Ministries, departments and other public bodies thereon. Section 3 sets out the Commission's discretion to decline or proceed further with any investigation into any complaint alleging an offence under the ACA.

¹¹³ It is submitted that there would be grounds for acquitting the Accused where there was a failure to follow the usual practice down as required procedure in Criminal Procedure Act.

exceptions to the Prosecution's obligation to call witnesses or ensure their presence were not discussed at all in attempting to distinguish *Kelfala*.¹¹⁴

¹¹⁴ See **Notes**, above at pp. 100-101.

[Trial Judgment:
Mannah and
Koroma]

The State vs Matthew M. Mannah
& Mohamed S. Koroma

**MATHIEU MUSTAPHA MANNER AND MOHAMED SYLVANUS
KOROMA**

JUDGEMENT

The two accused persons stand indicted on four counts under Section 8(1) of the Anti-Corruption Act, 2000, (ACC Act). The first three counts are on Soliciting an Advantage and the last one is on Accepting an Advantage.

Accused number one (A1) is indicted on the first two counts of Soliciting an Advantage, while accused number (A2) is indicted on Soliciting Advantage on the 3rd counts and the 4th counts is on accepting an advantage.

As is always the case the Court has to consider the case against each accused person separately and on each count. The prosecution has the legal burden to prove the case against the accused persons beyond reasonable doubt. The accused persons have no legal duty to prove their innocence. Any doubt as to the guilt of the accused persons will result in their acquittal.

In a bid to prove its case, the prosecution called a total of 6 witnesses. On their part the accused chose to rely on their statements made to the Anti-Corruption Commission Investigators (ACC).

I will start with the case against A1.

A1 is indicted on the 1st count with soliciting an advantage contrary to section 8(1) (a) of the ACC Act 2000 as amended. Particulars whereof are that on an unknown date between 1st July 2001 and 31st July 2001, at Port Loko District in Sierra Leone, did solicit an advantage of Le500,000.00 one male goat, one bag of rice and 5 gallons of palm oil from one Idrisa Kanu (PW3) as an inducement to perform an act as a Public Officer Section 8(1) of the ACC Act, 2000 as amended has 3 ingredients of the prosecution to prove.

- (i) The accused must be a Public Officer
- (ii) He must solicit or accept a reward/advantage.
- (iii) That reward/advantage must be aimed at inducing him or rewarding him for performing or abstaining from performing or having performed or obtained from performing any act in his capacity as a Public Officer.

On the evidence before the Court, A1 is clearly a Public Officer. This is in accordance with the testimony of PW1, the then Permanent Secretary and boss of A1. This is also corroborated by A1's own statement, exhibit 'F'. This ingredient in my view is clearly proved by the state beyond reasonable doubt. As to the next question of soliciting or accepting an advantage, according to PW3 he had a land dispute (bush dispute) with one Orah (PW5). The matter was then referred to A1 for settling. That A1 summoned them and upon reaching his office, he demanded a sum of Le500,000, 5 gallons of palm

oil, one goat and 1 bag of rice, and that these items should be handed over to Pa Roke Sesay, the Regent Chief of the area.

This story is echoed in material particular by PW4 who said that he was present, while A1 was demanding these items from PW3.

The same story is told by PW5, who was the opposite party to the land (bush) dispute with PW3.

In his defence, A1 stated in his statement to the ACC investigator, (PW 6) that, he did not demand anything from the parties (PW 3 & PW 5) but that it was the Regent Chief Pa Roko Sesay who did so. (see exhibit 'F').

Secondly Mr. Brewah the Learned Council for A1 submitted inter alia even the extract of findings by the then Commissioner of ACC, stated that, it was Pa Roko Sesay the Regent Chief who had demanded the said items and money from both PW3 and PW 5 hence his client is innocent and should be acquitted.

I will deal with this last submission of Mr. Brewa, first. Any statement, made or filed by either party and not being an exhibit officially admitted in evidence as such is not in my view evidence. The court relies only on adduced evidence before it alone when deciding the case. As the extract by the ACC Commissioner attached to the indictment was not evidence I can not consider it while evaluating the evidence on record.

Having said that I have carefully reviewed all the evidence and have critically analyzed the demeanors of the prosecution witnesses at this point and I find PW3, PW4 & PW5 reliable witnesses. PW3 & PW5 are simple, elderly and rural people. They were both competing for the farm bush, which A1 was to settle. Both implicated A1, that he had demanded the money and the food items. There were minor inconsistencies watering in the prosecution witnesses testimony. It is my considered view that as they were opposing parties and one of them (PW5) actually won the case, regarding the bush, there was 10 point for him to lie against A1, if he had not demanded for these items and the money. In the premises, therefore, I dismiss A1's contention in his document (exhibit "F") that, it was Pa Roko Sesay, the Regent Chief who had demanded for the food items and the money. Reliance has been put on the provision in Section 8(3) and 8(4) of the ACC Act in that the money and the food items were received not by A1, but Pa Roko Sesay the Regent Chief, hence they are deemed to have been received with the President's permission. With all due respect, my understanding of S.8(3) and (4) of ACC Act, is that , the type of chief recognized under the ACC Act is a Paramount Chief only. Secondly the Paramount Chief must receive the items or money, as gifts for his personal benefit and not on behalf of a third party. In the instance case, Pa Roke Sesay is not a Paramount Chief. Secondly there is evidence on record (from PW3, PW4 & PW5) that the money and food items were to be received for the benefit of A1 and not for the benefit of the Chief. I find that the prosecution has proved the second charge beyond reasonable doubt. The third ingredient is that the soliciting or

receiving of an advantage must be proved to be intended to perform or abstain from performing act in the official line of duty.

That PW3 & PW5 told the court that A1 had told them that they had to deposit the money and the food items with Pa Roko Sesay, first otherwise, he would not go to the bush to settle their dispute.

A1 in his statement (exhibit "F") admitted that this duties included settling bush dispute. He also acknowledged meeting the parties with Pa Roko Sesay. In the premises therefore, I find that the third ingredient element of the offence under Section 8(1)(a) of ACC Act, has been proved beyond reasonable doubt.

At this point, I would like to refer to a decision of the West African Court of Appeal in the case of **KELFALLA VS R. 1937-49 ACR – SL, 85.** This was cited by the defence in that as the prosecution never called all the listed witnesses at the back of the indictment, the accused has to be acquitted. It is true, that is what their Lordships decided in 1939. However, after a careful perusal of the entire judgement, I find that, though the case is binding on this Court is distinguishable from the present case before me.

First of all, the case before their Lordships in the **KELFALLA** case was a murder case, where preliminary investigations had been conducted and one of the key witnesses produced in lower court by this prosecution, was called by the prosecution during the appellant's trial in the High Court and his name

had been listed among witnesses for the prosecution at the back of the indictment. Their Lordships held that in absence of special circumstances, all witnesses whose names appear at the back of an indictment as witnesses for the prosecution must be made available in Court even if the Prosecution does not wish to call them as their witnesses. It must however be noted that the Kelfalla case is a very old case, decided in 1939. This was the time when Sierra Leone was still under colonial Era. Be it as it may, and as I have already pointed out above the present case is distinguishable from the **Kelfalla vs R Case** in that, in the Kelfalla case, apart from being a murder case governed by the Criminal Procedure Act, there were preliminary investigations carried out by the lower courts where all the witnesses including those not called by the prosecution had been examined by the committing lower Court and his evidence was on the lower committing Court's record.

On the other hand the present case is brought under a specialized Act, where most of the usual procedures followed under the Criminal Procedure Act have been waived. This is an Act brought to deal with special situational circumstances where by the more elaborate procedures under the criminal Procedure Act have been eliminated. In my considered view this was necessary so as to expedite proceedings. Among the procedures done away with was the requirement for the lower court to conduct Preliminary Investigations (See Part of III of the ACC Act). This is a difference between the Kelfalla case and the present one.

MISSING PAGE

candid and straight forward. I would in this circumstances accept his reason that, A1 had demanded money and food items as per the indictment from them before he could visit the bush dispute. These were to be handed over to Regent Chief Pa Roko Sesay on A1's behalf. Hence as we seen above.

In the circumstances therefore, I find that the prosecution has proved the second count against A1 beyond reasonable doubt. I found him guilty of the same and I convict him accordingly.

I now turn to A2 who is indicted on the 3rd and 4th counts of the indictment. I will examine the evidence in respect of the 3rd count where it is the prosecution's case that on the 25th day of January 2002 at Port Loko District in Sierra Leone, A2 solicited an advantage of Le500,000.00 one goat , one bag of rice and five gallons of palm oil from one Idrisa Kanu (PW3) as an inducement to perform an act in his capacity as a Public Officer Section 8(1)(a) of the Anti-Corruption Act 2000 as amended.

A1, in his statements 'A' B and 'C' acknowledged that he was a Public Officer. This is in line with PW1's testimony. I agree with the prosecution that A2 is a Public Officer.

Next the prosecution has to prove that on the 25/01/2002 he solicited the said sum of money and of items from PW3.

In his evidence, PW3 stated that when A1 never settled their land dispute, he was directed to contact, A2 that they raised a sum of Le20,000 to buy fuel for A2 to enable him to come to the site. That A2 refused the money and stated that he was given Le500,000.00 5 gallons of palm oil, one goat and 1 bag of rice, he would not come to the site to settle their problems. This version is supported by PW4, who had handled the Le20,000.00 to A2, who accepted it but at the same time said it was too small an amount. That he even gave them more time to look for the money and the food items, otherwise, he would have sold the land to PW5.

According to PW5, who appears to have 'won' the case, told the Court that he had given Le200,000 to Pa Roke Sesay through Mr. Abdulla Bangura which he handed over to A2 for his visiting the land in dispute. That though A2 never came to the land he was given the money.

In his own statements exhibits A, 'B' & 'C' A 2 accepts receiving the Le200,000 even in cross examination, he acknowledged receiving that amount of money for the purpose of visiting the land in dispute. It was exhibited as "E". On the other hand Mr. Beloku the Learned Counsel for A2 submitted to the effect that, there was no sufficient evidence to implicate his client and that there were some inconsistencies in the prosecution case, hence I should acquit his client.

I have carefully reviewed the evidence before me and have critically analyzed the denunciations of all the prosecution witnesses and that of the accused person. I am certified beyond reasonable doubt that, PW3, PW4 and AW5 are speaking the truth. They impressed me as truthful witnesses. They never contradicted themselves, in my view, materially. These are simple rural people PW5 was a beneficiary in the bush dispute with PW3. One does not see why he should lie and frame A2. In any case A2 himself acknowledged receiving the money during his cross examination in court. Putting everything into consideration, I find that A2 did not only demand money from PW3 and PW5 but actually received it. This was in respect of his visiting a bush land dispute between PW3 and PW5, in his capacity as Senior District Officer much in a Public Officer.

Mr. Beloku also submitted like Mr. Brewah had submitted that S 8(3) and (4) of ACC Act covered the situation, but with due respect to him and for reasons I have already given here in above while discussing the case against A1, I do not agree with him. Secondly, A2, admitted in court receiving the money (200,000 Leones) which had come from PW5, through Pa Roke Sesay. The money was not given for benefit by Pa Roke Sesay, in his capacity as Regent Chief, (he is not even a Paramount Chief as S.8(3) of ACC provides) but it was meant for the benefit and use by A2 a Public Officer, in carrying out his official duties PW1 who was the Permanent Secretary had told the court that no money or food items were supposed to be demanded from anybody as the government had provided vehicle & office imprest for the use by the officers. Putting everything

into account, I find that the prosecution has proved both the 3rd and 4th counts of the indictment against A2 beyond reasonable doubt and find him guilty as of the same, and I convict him guilty as of the same, and I convict him accordingly.

30/08/06

30/05/06.

Accused present

TUMWSIGYE FOR STATE

Brewah & Mgaiku for A1

Beloku for A2

As judgement read in open court.

.....Public Service Commission..... He has a wife and children.

He has a large family. After that money was paid, he was transferred out of Port Loko.

I pray that, he should not be given a custodial sentence.

BELOKU - I pray for leniency on behalf of A2 and should court have mercy.

He is a Public servant. He had just been transferred to Makeni.

TUMWESIGYE - Both accused persons are senior district officers who committed the offence against four people. One of them was alive I pray for a deterrent sentence that the state exhibited money of PW5 found it to A2.

BEREWA - With respect of A1, I pray that court exercise mercy. Accused is the first offender. A1 is almost at the end of..... I pray that, no custodial sentences should be imposed. He has a big extended family. This would affect his retirement benefit.

ALLOCUTION A1

I pray FOR MERCH

ALLOCUTION BY A2

I am asking for mercy.

.... Sentence and reasons thereof.

Both accused persons are convicted of serious offences whereby as public Officers, they abused their official oaths of office while dealing with land disputes, with persons and performing a sort of quasi judicial duty. Where honesty is expected. The government had provided them with official vehicles and imprest in their office for carrying out their duties. They decided to abuse the trust put in them and demand money and food items from poor

litigants. I am aware that they are both first offenders and have prayed for mercy. They also have large families. However they should have thought about this before they indulge in illegal activities, fleecing poor people.

Putting any thing into consideration I sentence A1 to term of 3 months imprisonment on 1st counts and 3 months imprisonment on 2nd counts. Both to run concurrently. As for A2, I sentence him to a term of 3 months imprisonment on 3rd counts and 3 months imprisonment and on the 4th count - Both to run concurrently.

The exhibited money (exhibit 'E') be refunded to PW 5.

Case Report:
Isaiah King
Sambo

THE STATE v. ISAIAH KING SAMBO

THE HIGH COURT OF SIERRA LEONE
JUSTICE C A ADEMUSU
14 December 2007

Corrupting a Public Officer – Offering an advantage to a Public Officer- Gifts as bribes so as to obtain a favour- Remand in custody –Bail - Exculpation of Accused due to deception by others motivating his conduct - Reliance on consistency between Accused’s interviews and testimony – Mistake as to the facts – Prosecution’s Burden of Proof - Need to disprove Accused’s Defence- Accused’s due process rights includes exhausting all available potentially exculpatory areas – Restitution of exhibits to Accused- Whether the preferment of charges should be grounded in legislative intent – Justice as prevailing consideration in assessing culpability of Accused – Whether it is possible to rebut the presumption of commission of an offence by raising a defence of Mistake – Whether Justice is best served by ascertaining legislative intent or the application of legal formulae - Whether necessary to ascertain the motivation behind the preferment of charges - The Anti-Corruption Act 2000 (as amended), ss. 10, 11(2), 12 and 45

Held

The Accused was acquitted on each count and discharged. The Court ordered the restitution of the trial exhibits to the Accused.

Ratio Decidendi

The Court reasoned that it was Magistrate Fisher’s desire to demonstrate his moral probity that had strongly motivated these proceedings. It therefore admonished against bringing any such further “time wasting” proceedings. While it recognised that the Accused fulfilled the technical requirements for the attribution of guilt, the Court nonetheless felt that in the exercise of the administration of justice,¹¹⁵ it was pertinent to look to the legislative intent behind the legal provision in question, that intent being in this instance, the creation of efforts that would constitute a campaign to wipe out corruption.

The Court accepted the veracity of the Accused’s Police Interviews, in finding that the Accused did not possess the requisite criminal intent for bribery; the Accused had stated that he was not motivated by a desire to find favour with Fisher as he was confident in the ability of his 2 solicitors to represent him in the Immigration matter before Fisher. The Accused in taking drinks¹¹⁶ to Fisher’s house, had simply succumbed to pressure from the Court Clerk and Fisher’s personal Security. The Court accepted the Accused’s statement that he was simply obliging the requests of the Clerk and Security in good faith. The Court had no doubt that the Clerk and Security used the Accused for their financial benefit; without them, the Accused would not have known of Fisher’s impending marriage and Fisher’s address. The Judge reasoned that as the Accused was genuinely mistaken as to the facts, he could not have known his acts were unlawful; mistake as to the facts needs only be subjective; *R v. Williams* (1987) 3 A.U. E.R. 411.

¹¹⁵ This could be seen as the larger concentric circle framing the question of the determination of guilt.

¹¹⁶ Exhibit B.

In light of the Prosecution's failure to disprove the Accused's allegations, to produce the Clerk or Security for examination, cross-examination, or in the alternative, produce evidence that the Accused had been given an opportunity to identify them, the Court was not satisfied that Justice had been done to the Accused. The Accused's description of his detention by the CID on 19th March 2006, and of Fisher restricting his bail on the 20th March and sending him to Pademba Road Prison on remand until 22nd March 2006, combined with the aforementioned absence of due safeguards reinforced the Court's reasoning.¹¹⁷

Notes

The offer and acceptance of a bribe of a holder of a public office is a Common Law offence; *Whitaker* (1914) 3 KB 1283; *Lancaster* (1890) 16 Cox CC 37. Blackstone's states that it is possible to try the offeror for an attempt to bribe where the offer is rejected.¹¹⁸ An attempt is the commission of an act more than merely preparatory to the offence; *DPP v Stonehouse* (1978) AC 55 and the mens rea for a crime of attempt is intent; *Pearman* (1984) 80 Cr App 2 259. Innocent receipt of an intended corrupt gift renders only the giver guilty; *Millray Window Cleaning Co. Ltd* (1962) Crim LR 99. Evidence of an Accused's previous misconduct is admissible as similar fact evidence; *Makin v. AG for New South Wales* (1894) AC 57, as is evidence of bad character; *Lewis* (1982) 76 Cr App R 33. However, the evidence should do more than suggest that the Accused is likely to commit the offence and should be part of the proof that he did commit it; *Thompson v The King* (1918) AC 221. For Mistake of Fact to apply the Accused must have an honest belief as to the circumstances which negative the intent to act unlawfully.

The Rule Against narrative dictates that the fact that the Accused has said the same thing to someone else on a previous occasion does not confirm his evidence; *Roberts* (1942) 1 All ER 187. A purely exculpatory statement is admissible as evidence of the reaction of the Accused to the allegations; *Storey* (1968) 52 Cr App R 334, but not as evidence of the consistency of the Accused's Defence.¹¹⁹ Self-serving statements, carefully drafted by Counsel or dictated in the latter's presence are inadmissible; *Newsome* (1980) 71 Cr App R 325.

The proper construction of a statute is question of Law, but the meaning of an ordinary word of the English Language is not a question of Law: *Brutus v. Cozens* (1973) AC 854. An interpretation of the word can only be sidelined if it is so unreasonable as to engender a perverse conviction; Blackstone's p.2005. Judicial notice of facts of common knowledge is lawful: *Luffe* (1807) 8 East 193; Judicial Notice on reference to extraneous sources of information: *Brandao v Barnett* (1846) 12 C1 & F787. Magistrates can use of personal knowledge of matters in the locality; *Ingram v Percival* (1969) 1 QB 548. A Judge has no power to refuse as a matter of policy, to allow a prosecution to proceed. If the Prosecution amounts to an abuse of process and is oppressive and vexatious, the judge can intervene; *Connelly v. DPP* (1964) AC 1254. Regarding the Accused's loss of his best opportunity to test the credibility of the allegations, due to the destruction of evidence by the Police; *T (Michael John)* (2000) Crim LR 832. Where evidence is maliciously

¹¹⁷ For a thorough discussion of a counter-approach to that taken by the Court regarding the roles of the Security Guard and Clerk, refer to **Critique** at pp.130-142.

¹¹⁸ Blackstone's Criminal Practice 2004, Oxford, p. 709.

¹¹⁹ Blackstone's Criminal Practice 2004, Oxford, p. 2091, also stating that none are duty bound to consider such a statement as a factor for consideration in reaching a conclusion; citing in contrast *Donaldson* (1976) 64 Cr App R 59 and *Squire* (1990) Crim LR 341.

affected, there can be an abuse of process; *Medway* (2000) Crim LR 415.¹²⁰ The Judge may invite the Prosecution to call a particular witness, or if they refuse, call the witness directly; *Olivia* (1965) 1 WLR 1028.¹²¹ For restitution to be ordered, the items must be shown to belong to the offender; *Lewis* (1975) Crim LR 353.

Cases referred to in Judgment

R v. Williams (1987) 3 AU. E.R. 411
R v Carr Briant (1943) 29 Cr. App R.
Sodeman R (1936) Z. AU. E.R.1130
R v. Patterson (1962) ALL E.R. 340.

Summary of Facts

The Accused was charged under Count 1 contrary to Section 10 of the ACA 2000 (as amended) with *Corrupting a Public Officer* and under Count 2, contrary to Section 11(2) with *Offering an Advantage*. The Prosecution alleged that while the Accused's matter was pending before the Magistrate Court No. 1 A in Freetown, the Accused, on 19 March 2006 delivered 10 crates of soft drinks and 4 bottles of wine valuing Le390, 600 to the premises of Magistrate Adrian Fisher, with the intent to influence him¹²² and offered an advantage to Magistrate Fisher, which the latter was not authorised to receive.¹²³ The Accused pleaded Not Guilty to both Counts.

The Prosecution's case consisted of 6 witnesses. First, PW1¹²⁴ testified to seeing the Accused outside his home on 5th March 2006, around 10:30 pm, the day before the Accused was due for his Court appearance before PW1 for passport offences. PW1 said he felt the Accused had unlawful motivations for being there as he never invited the Accused. PW1 said he sent his Watchman to the Accused and as a result of the response,¹²⁵ he told the Watchman to tell the Accused that he was not keeping Court in his house. PW1 says that 2 weeks later, he found drinks outside his front door and a letter from the Accused to PW1, which he handed over to the CID. This is confirmed by PW6¹²⁶ who worked as house help inside Fisher's compound, who testified that he found the Accused in front of Fisher's gate and that the Accused told him that he had come with 10 crates soft drinks, 4 bottles of wine for Fisher and an envelope. PW6 said that he PW6 placed these items before Fisher's front door and later handed Fisher the envelope.¹²⁷ PW1 considered the gifts as bribery.¹²⁸ PW1 denied receiving money from the Accused in person or his behalf.¹²⁹ PW1

¹²⁰ In this instance, not produced, or the opportunity to challenge particular evidence was simply not provided.

¹²¹ As per Blackstone's this would appear to apply to Witnesses who had been listed at the back of the indictment; p. 1454.

¹²² Under Section 10 of the ACA 2000, the Accused needs to, while having dealings with a Public Body, have given an advantage to a Public Officer in order to influence her. Refer to **Application of Law** at p.128 and **Critique** at para. 9, p. 134.

¹²³ Under Section 11 (2), the Accused needs to offer an advantage to a Public Officer, which that Officer is not lawfully authorized to receive. Refer to **Application of Law** at p. 128.

¹²⁴ Magistrate Adrian Fisher.

¹²⁵ Trial Judgment p. 2. As critical as this piece of evidence is, it is impossible to glean from the Judgment what the Accused said to the Watchman sent to him by Fisher.

¹²⁶ Abu Banba Sesay.

¹²⁷ Trial Judgment p. 7. A photocopy of the aforementioned letter was admitted as Exhibit C. Curiously, Trial Judgment p. 7 states that; "The letter in the envelope was put in evidence but only photocopy of it, was admitted as exhibit C."

¹²⁸ As per Exhibit A; the Accused's interview.

proceeded to identify, in Court the drinks alleged to constitute the bribe. PW2¹³⁰ confirmed her husband PW1's testimony that they met the Accused at their gate on 5th March 2006. She said PW1 told her the Accused had a case before him and that PW1 ordered the Watchman to not let anyone through the gates.

PW3¹³¹ tendered the Accused's interview of 22nd March 2006¹³² in which the Accused denied trying to bribe Fisher but admitted having a case before him. In Exhibit A, the Accused strongly denied intending to bribe Fisher. The Accused said that Fisher's Security gave him Fisher's address, saying the Accused should meet him¹³³ there at 10 pm. When the Accused did not show, the Security got upset, saying that Fisher had been waiting. The Security and the Clerk told the Accused about Fisher's imminent wedding, saying that Fisher wanted the Accused's financial assistance.¹³⁴ In compliance, the Accused gave to the Clerk Le 200,000 to be delivered to Fisher, which the Clerk confirmed Fisher had received, saying it was too small. The Security also confirmed Fisher's receipt of this sum, but then asked the Accused to buy phone cards for Fisher as Fisher wanted to call the Accused. The Accused consequently gave the Security Le100, 000 and phone cards worth Le24, 000,¹³⁵ receipt of which by Fisher was confirmed by the Security, saying Fisher promised to call, but Fisher did not. After 2 days, the Security told the Accused that Fisher wanted to see the Accused at home at 10pm and gave him the written address. The Security advised the Accused to write a letter to Fisher; when the Accused did not do so, he said the Accused was not serious. Consequently, the Accused obliged and wrote a letter with all his requests.¹³⁶ In his testimony, the Accused stated that the Clerk advised him to send a wedding gift.¹³⁷ Subsequently, the Accused took the letter, 10 crates of soft drinks and 4 bottles of wine as a wedding gift to Fisher's house, where he was from 10pm till 12am.¹³⁸ On 19th March 2006, the Accused was detained by CID in respect of the gifts. As regards the pending immigration matter, he was taken to appear before Fisher in Court on the 20th March 2006, where Fisher restricted his bail and sent him to Pademba Road Prison on remand. It was only on the 2nd April 2006, that the Accused was withdrawn from Pademba Road Prison. The Accused was finally charged with corruption offences under the ACA on 7 November 2006.¹³⁹ The Accused also stated that the Clerk and Security invited him more than four times to go see Fisher, and although he would not be able to remember their names, he would be able to identify them.¹⁴⁰

¹²⁹ Trial Judgment p.2; Cross-examination.

¹³⁰ Mrs. Doris Fisher.

¹³¹ Detective Sergeant Mohamed Kargbo Allieu. The Prosecution also called ACC Exhibits Officer, Ibrahim Bangura as PW5, who only tendered in the drinks the Accused took to Fishers' house as evidence; Trial Judgment, p.7, no indication of what this was labeled as.

¹³² As per Exhibit A.

¹³³ Trial Judgment p. 3; Exhibit A, where presumably, "him" refers to the Accused and Fisher given the context, and not to the Accused and the Security.

¹³⁴ Trial Judgment, pp.3-4; Exhibit A. The wedding was scheduled and did indeed take place on 1st April 2006, a fact of which the Court took Judicial Notice; Trial Judgment, p. 10. (There appears to be a typo here in the Judgment, as it states 2011).

¹³⁵ Trial Judgment, p.4; Exhibit A, where the Accused provided the names of two visual witnesses to this fact.

¹³⁶ Trial Judgment, pp.4-5; Exhibit A,

¹³⁷ Trial Judgment, p.8; Cross-examination.

¹³⁸ Trial Judgment, p.4; Exhibit A. Fisher's address is down as 6 Sheriff Drive, Malama Lumley. Trial Judgment, pp.4 and 7.

¹³⁹ Trial Judgment, pp. 5-6.

¹⁴⁰ Trial Judgment, p.6; Exhibit B, Accused's statement apparently dated 7th November 2006.

The Accused testified in his own Defence. His testimony aligns with his police interviews; that he acted at the instance of Fisher's Clerk and Security who passed on to him, Fisher's wedding invitation, which he said he gave to the Police.¹⁴¹ The Accused testified that each time they spoke, the Clerk would give the impression of shuttling and relaying messages between the Accused and Fisher. The Accused disagreed that the nature of his letter to Fisher was to seek a favour, even though the letter is described by the Judge as asking that the Accused's immigration matter in front of Fisher be thrown out of court or adjourned.¹⁴² The Accused produced a copy of his letter to Fisher.¹⁴³

Application of Law

The Accused was charged Count 1 contrary to Section 10 of the ACA 2000 (as amended) with **Corrupting a Public Officer**. Section 10 provides that: "*Any person who, while having dealings of any kind with any public body, gives an advantage to a Public Officer or any other person to influence any Public Officer is guilty of an offence.*"¹⁴⁴

The Accused was further charged under Count 2, contrary to Section 11(2) of the ACA 2000 (as amended) with **Offering an Advantage**. Section 12 provides that; "*Any person who offers an advantage to any Public Officer which the Public Officer is not authorised to receive by Law is guilty of an offence*".¹⁴⁵

The Court stated that as this was a statutory offence, it was necessary to take into consideration, the "presumption of corruption", under Section 45 of the ACA 2000 which stated that: "*Where in any proceedings for an offence under this Act, it is proved that the Accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence, unless the contrary is proved.*"¹⁴⁶ Its effect was that where the element of "giving" or "accepting" was established, it made it incumbent upon the Accused to rebut the presumption that the object concerned did indeed constitute an advantage and to rebut the presumption that there was an intention to influence underlying the transaction.

The Court elaborates on the nature of the burden of the Prosecution should it seek to rebut the "presumption of corruption", in *R v. Carr Briant* (1943) 29 Cr. App R. 71; citing the paragraph of that Judgment, which provides as follows: "In our Judgment, in any case where either by statute or at Common Law, some matter is presumed against an Accused person, "unless the contrary is proved", the Jury should be directed that it is for them to decide whether the contrary has been proved, that the burden of proof required is less than that required of the Prosecution in proving the

¹⁴¹ Trial Judgment, p.7; There is no indication from the judgment that this critical piece of evidence was admitted as an exhibit.

¹⁴² Trial Judgment, pp.7 and 8.

¹⁴³ Trial Judgment, p.7; Exhibit D. See also Trial Judgment, p.6; where PW4 Belinda Hebron, also produced and tendered a copy of the Accused's letter to Fisher, as Exhibit C and also tendered the Accused's statement apparently dated 7th November 2006, as Exhibit B.

¹⁴⁴ For a further discussion of this provision see **Critique** at pp. 134-135, paras.10-11.

¹⁴⁵ For a discussion of the choice of charges preferred by the Prosecution, the interaction between the legal provisions of the charges and whether alternative legal provisions would not have better suited the factual circumstances, see **Critique** at pp.130-139.

¹⁴⁶ Ibid.

case beyond reasonable doubt; and that the burden may be discharged by the evidence satisfying the jury of the probability of that which the Accused is called upon to establish.”¹⁴⁷ The Court notes that *R v. Carr Briant* has been followed in subsequent cases which have further enhanced the cited principle, since they have held that the burden is no more than that which rests upon a party in a civil action; *Sodeman R* (1936) Z. AU. E.R.1130 and *R v. Patterson* (1962) ALL E.R. 340. The combined effect of these authorities is that, they make it explicit that where the “presumption of corruption” is established by the facts, and where the Accused seeks to rebut said presumption, the burden of proof which his evidence needs to meet, is that of the balance of probabilities, i.e. the Accused must establish that there is an equal probability, that although he did “give”, such giving was not intended to constitute an advantage to the receiver.

¹⁴⁷ Trial Judgment, p.9, where the Court refers to *R v. Carr Briant* (1943) 29 Cr. App R. 71, p. 76.

Critique

A reading of *Sambo* would appear to be instantly jarring to any reader. From a lay perspective, it is difficult to see how the circumstances could have more clearly pointed out to an incidence of bribery. The account immediately begs the question as to how an *apparently* mathematically accurate application of the Law could result in such a mystifying decision.¹⁴⁸ Such an intuitively discomfiting decision, does indeed upon further dissection, reveal fundamental errors in legal reasoning. These errors appear to stem from a lack of thoroughness in the identification of the applicable law. In addition, the application of the defence of Mistake so as to negate the requisite intention for the offence of Corrupting and Offering an advantage to a public officer *is strikingly superficial*. It could be surmised that the near outrageous gaps in the application of the law, would easily enough have been filled by intuitively driven and committed research. It is almost as if the dictates of common sense which weighed heavily in the opposite direction and thereby should have compelled the giving of greater attention to the substance of the requirement for intention, and the substance of the defence of Mistake, were simply ignored. Indeed, a decision so far removed from the veritable application of principles derived from common sense and pragmatism recognised in the Common Law *and* other legal traditions as this analysis will show, tends to the conclusion that *Sambo* embodies a prejudiced application of the law, wherein, for reasons unknown to the reader, the Judge was predisposed towards ruling in favour of the Defendant. This appears to be a persuasive explanation of the reason why the Law was not examined and applied in all its relevant intricacies, and why the Judge preferred instead to envelope the facts in the mere dermis of the notion of Mistake.

It is submitted that, a thorough understanding of the dynamic between the Defence of Mistake and the mental element of criminal offences *generally*, would have offered up multiple modes of approaching the question of whether the Accused actually possessed the requisite Mens Rea and the question of his overall guilt for the offences charged. The fact of the existence of these different modes of tackling the same issue, all being similarly inclined and weighing collectively in favour of a finding of guilt on the part of the Accused, in practical terms, indicates the less than suitable treatment given to the facts by the Court and its potentially disruptive effect, both in terms of social policy and the patterns established by case law, if the Court's approach in *Sambo* is to be given precedential value.

What should be noted is that i.) the law as it stands was misidentified ii.) and even in that misidentified form was only superficially applied and iii.) the necessary links in the evidence (which even subject to a misidentified application of the law would at the very least have thrown in doubt the credibility of that law opted for), were not expressed. Instead testimonial evidence which was largely consistent and sharing a blatantly obvious point of convergence was instead sparsely treated. This is not surprising since an in depth assessment of the evidence would have been incompatible with the verdict. Consequently, the paucity of the approach to weighing evidence all the more points to a predisposition on the part of the Judge.

¹⁴⁸ It is notable that the Court found that the Accused may have fulfilled the technical requirements for the attribution of guilt but felt that the administration of justice required in the determination of guilt, consideration also of the legislative intent behind the provision. The technical presence of guilt therefore was discounted since the trial was not motivated by compliance with the legislative intent. This is discussed further at **Critique**, pp.140-142 below.

The alternate and sometimes overlapping modes of analysis are as follows:

- I. Firstly, section 45 of the ACA 2000 sets up a presumption of Corruption by stating that; *“Where, in any proceedings for an offence under this Act, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.”* Applying the elements of section 45 to *Sambo* therefore, it is clear that the Accused should have given an advantage. On the basis of the charges against *Sambo*, that advantage is presumed to be an inducement or reward for reasons cited in the particulars of the offence. This presumption holds unless the Defence can prove the contrary, and naturally, the Defence must do so on a balance of probabilities. Since the Accused admitted to giving the items cited in the charges as a wedding gift and said items were admitted in evidence, there is no question as to whether or not the presumption could be established here.
- II. Ordinarily, criminal trials operate on the basis of the presumption of innocence, so that the burden of proof rests on the Prosecution according to the standard of proof beyond reasonable doubt. In the normal course of criminal trials, the raising by the Accused of Defences such as Self-Defence and Mistake, means that the Defence must satisfy an evidential burden of showing that there is sufficient evidence to raise the issue. Once that burden is satisfied, the Prosecution continues to bear the burden of proving beyond reasonable doubt that the circumstances are such that these defences (which aim to re-contour the circumstances involved so as to negate the presence or the formation of the requisite mens rea in the mind of the Accused), cannot apply. *These defences therefore can only be wrought were the necessary intent is one which hinges upon an outcome or set of circumstances.* Specifically with regard to Mistake, the Prosecution would have to disprove it, by proving beyond a reasonable doubt that the Accused did possess the requisite mens rea. The burden of proof which the Prosecution continues to bear is the same as it would normally, except that it must now structure its case so as to meet the defence raise by the Accused.
- III. However, the burden of proof as distinct from the *mere evidential burden* can be shifted to the Defence where there is a presumption of guilt, such as the presumption of corruption/intent that could have operated in *Sambo*. When the burden of proof in the trial is shifted to the Defence, it must then prove its case on a balance of probabilities, i.e. that its account is equally as probable as the presumption of guilt. This effectively both rebuts the presumption and is the standard necessary for a not guilty verdict.
- IV. *The Accused must have sufficient grounds to raise the Defence of Mistake.*¹⁴⁹ *A theoretical argument that plausibly could have been useful to the Prosecution, is that, since to raise the defence of mistake in these circumstances is somewhat akin to “re-shifting the burden back to the Prosecution”, the act of raising the defence of mistake is in these circumstances (implicitly) a rebuttal of the presumption of corruption. Simply*

¹⁴⁹ When an Accused does on their own raise a negating defence, s/he has at most the burden of producing sufficient evidence to raise the issue.

put, the equation at this stage becomes; Defence of Mistake versus Presumption of Corruption. Although the burden of proof and the evidential burden are not to be confused, it might have plausibly helped the Prosecution to argue that some conceptual use could have been gained by viewing the raising of the defence of Mistake as an implicit rebuttal of the presumption of corruption, and that it might be conceptually useful to view the standard that must be met by the Defence in raising the defence of mistake, i.e. the standard of sufficient grounds, as is in effect simply the flipside of the standard of the balance of probabilities. This would in effect have suggested that the Court should use the same evaluative prism for assessing the sufficiency of the grounds of the defence, as it would normally do, for assessing the weight of reasons adduced by the Defence in a bid to counter the presumption of corruption. It would have meant that where the reasons adduced by the Defence would not ordinarily measure up to the standard of the balance of probabilities, (i.e. amount to an equally probable account of the events), then those reasons, no matter their collective designation, should not be deemed to constitute sufficient grounds for raising a defence (of mistake). It would have meant that the circumstances put forward by the Defence could not have met the standard of sufficiency of evidence since they could not have met the standard of the balance of probabilities and as a result the burden of proof could not have been reversed, since the presumption could not have been rebutted.

- V. **Admittedly, this reasoning is flawed and it would be unsound to suggest that a legally inaccurate argument should have been advanced. The evidential burden and the burden of proof are two distinct standards relevant to distinct phases in a trial and do not engender the same interpretation.**¹⁵⁰ What is submitted is that paying more attention to the interaction between these notions, including mentally conceptualising the interactions as described above, **may have at a minimum have brought to the forefront, plausible and worthwhile lines of argument such as the following:** *That the Defence failed to meet the sufficiency of evidence standard necessary for raising the defence of Mistake because:* A.) There were no sources of evidence other than the Accused confirming the persuasion by the Guard and the Clerk B.) The facts constituting the Defence's account can exist side by side with the Prosecution's case without necessarily negating the presence of the requisite intent in the Accused and this is because, more precisely; C.) The facts that were adduced by the Accused were practically evidence *in support of* intent (alternatively the presumption), as opposed to evidence countering intent (or counter-probabilities rebutting the presumption).
- VI. These arguments could have been crafted by the Prosecution to demonstrate that it should not have been subject to the burden of having to disprove the defence of mistake beyond

¹⁵⁰ It is hard to imagine a situation wherein successfully raising the Defence of Mistake, would do anything other than to "negative" the Presumption of Corruption hanging over the Accused. If the Defence of Mistake is raised at all, it instantly becomes incumbent on the Prosecution to try to discredit the former, against the standard of proof beyond reasonable doubt and if the Prosecution is busy trying to do this, it is because the Presumption of Corruption no longer applies; whether the Prosecution succeeds or fails in countering the Defence of Mistake, there can no longer be any reversion to the Presumption at that point. It is also nonsensical that the Prosecution would have to meet the standard of proof beyond reasonable doubt in relation to the Defence of Mistake, while the Defence was simultaneously engaged in disproving the Presumption against the standard of the balance of probabilities.

a reasonable doubt, due to the absence of sufficient grounds for raising the defence of mistake, **or in the alternative and more convincing scenario**, that the Defence's account does indeed inhere a reasonable doubt.

- VII. The Prosecution could have further argued that, the wholesale adoption of the Defence's account hook, line and sinker and further the Court's own initiative in designating the facts as mistake, which was never expressly pled by Defence counsel,¹⁵¹ suggests that the Defence was advantaged. This is because the effect of the Court on its own initiative crafting the circumstances put forward by the Defence into the form of a negating defence, enabled the Defence to skip the need to expressly rebut the presumption *which it would not ordinarily have been able to do* based on the weight of its evidence. The Court instead enabled the Defence to meet what is the likely lesser standard of *sufficiency*. **Admittedly, there is dicta counter to this proposition in *Albert v Lavin* [1982] AC 546,** which states that there is no rule of law that the evidential burden of making out particular defences is on the Accused and that where the evidential burden may fall depends on the course which the evidence takes in a case; where an Accused does not plead provocation or self-defence, if facts emerge in the course of the prosecution's own evidence which are capable of amounting to any defence, then that defence must be left to the jury: *Mancini v. D.P.P.* (1941) 28 Cr.App.R. 65; [1942] A.C. 1; *Palmer v. R.* (1971) 55 Cr.App.R. 223; [1971] A.C. 814.¹⁵² Nonetheless, the circumstances in *Sambo*, can be distinguished on the basis that the Accused was *unduly advantaged* since the Court not only raised the Defence of Mistake on its own initiative, in circumstances which would allow the Accused to fulfill a lesser standard of evidence had where the Accused had simply constructed factual arguments from the circumstances, but moreover the Court's raising of the Defence of Mistake craftily unifies mistaken belief affecting intent (compliance with what the Accused believed to be requests or instructions), and mistaken belief not affecting intent (compliance with what the Accused believed to be instructions concerning the communication of his desires), into a single Defence of Mistake.
- VIII. As concerns the substance and style of the judgment itself, it is submitted that, the absence of a lucid and sequential application of the relevant precepts and a failure to demonstrate their internal and co-relational dynamism, at the most, results in a state of confusion which contributes to equating the satisfaction of the evidential burden with the rebuttal of the presumption of corruption, since what is treated in the judgment is the direct (mis)application of the defence of Mistake so as to negate the Accused's intent to influence, without addressing the manner in which this process affected the status and role of the presumption of corruption.¹⁵³ It is submitted that the judgment should have spelled out in graduating phases; 1.) The manner in which the presumption of corruption/intent was established 2.) An assessment of whether or not the Accused's defence met the standard of sufficiency of grounds necessary to establish a negating defence 3.) A demonstration of the interaction between meeting the evidential burden

¹⁵¹ Trial Judgment p. 11-12; "In my own considered opinion, there is room for the issue of genuine mistake of fact to be a live one in this case."

¹⁵² Quoting Smith's commentary to the Court of Appeal's decision in *Reg. v. Morgan* [1976] A.C. 182.

¹⁵³ See above at FN 150.

necessary for raising defences and the “reversal of the burden of proof” back upon the Prosecution. It is submitted that attempts to outline as a mechanical process the application of the law, as opposed to making statements based on implicit reasoning, may have helped uncover the contradictions and errors in the Court’s approach.

- IX. With regard to point B.) above, one notes that the Defence’s evidence is to the effect that the Accused was influenced by Magistrate Fisher’s Security Guard and the Court Clerk to make the gift to Magistrate Fisher and that these persuasions or pressures negated the presence of the requisite Mens Rea in the Accused for the Crime of Corrupting a Public officer. Although section 10, does not expressly state what the requisite Mens Rea is for the crime of Corrupting a public officer, since the advantage must be given to the public officer to influence her, the Mens Rea as implied is the intention to give an advantage so as to, or in order to influence that public officer. In light of section 8 of the ACA 2008, which is the counter-face of section 10, since section 8 criminalizes on the other hand, the acceptance by a public officer of an advantage, as an inducement or reward for his act(s) or omission(s) in his official capacity, and further, due to the enumeration of these potentially influence-able acts and omissions in sections 8 (1) (a)-(c), it becomes even clearer that the requisite Mens Rea for section 10 is indeed the “intent to influence action or inaction in one’s favour”. Section 11 (2) is in more direct accordance with the presumption in section 45, since it outrightly criminalises the offer of any advantage to a public officer which that officer is not authorised to receive by Law.¹⁵⁴ It would appear therefore that the only possible defence an Accused could proffer as against section 11 (2) would apart from the obvious retort that the giving was authorized by law, be, that the giving did not constitute an advantage to the public officer and given the breadth of section 1, this would be a near impossible task to achieve.¹⁵⁵ These notions are noted here to make the point that any consideration of the Defence’s argument of the negation of intent applies only to section 10 and on that basis, it appears that there was never any attempt to counter the charge of section 11 (2), so that the latter would still stand, although contradictorily the Accused was also not convicted under section 11(2).
- X. With regard to point B.) above, it is submitted that, it would be possible for the requisite intent (alternatively, the presumption) and for the Defence explanation of the “*motive*” behind the Accused’s conduct, to co-exist without nullifying each other. The fact of the Accused being encouraged, persuaded or at the most, pressured into acting as he did, does not necessarily negative the intention on his part to give an advantage to Fisher, a public officer, as an inducement or reward. The Defence’s account and the Prosecution’s are not incompatible in that sense; the Defence’s excuses could not

¹⁵⁴ Section 11 (2) of the Anti-Corruption Act 2000 (as amended); Any person who offers any advantage to any public officer which that public officer is not authorized to receive by law, is guilty of an offence, and shall, on summary conviction, be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

¹⁵⁵ Section 1 of the ACA 2000 states that; “In this Act, unless the context otherwise requires:— “advantage” includes— a. any gift, loan, fee, reward or commission, consisting of money or of any valuable security or other property or interest in property; b. any office, employment or contract; c. any payment, discharge or liquidation of any loan; and d. any other benefit or favour (except entertainment).

negative the formation of Mens Rea since it was formed in the Accused's mind in spite of, or perhaps because of, the discussions had with, and the persuasions of, the Clerk and Security. **The argument that "I was influenced", does not in itself negate the Accused's own intention to influence Fisher.** The question of the presence of intent in light of this argument, can be rephrased into questions about *whether the directives or advice or urgings of the Clerk and Security, which fall short of physical, emotional or psychological coercion absolve or exculpate the Accused, from liability for his actions because they absolve him from responsibility for his own state of mind or mental awareness?* The possibility of this co-existence was not noted by the Judge, neither on the face of the Judgment was it raised by the Prosecution, who could have opted to have emphasised *either the intent aspect* or, *the presumption aspect*. The consistency of the facts underlying the judicially appointed defence of mistake with intention (or the presumption), would mean that Mistake as defence could have been disproved beyond a reasonable doubt and was thus defective, since the Accused's having been persuaded would not create a reasonable doubt about his possession of the requisite intent.

- XI. With regard to point C.) above, it is submitted that the circumstances as explained by the Defence go beyond the basic exigencies of section 45, i.e. the presumption of corruption/intent. Section 45 only requires that an advantage be given by an Accused, and in combination with section 10, that giving should be by the Accused to a public officer. Both the Prosecution and Defence accounts more closely accord with the requirements of section 10, since the Accused admits having a case before Fisher, admits to the letter requesting the favour and admits to gift giving. It is submitted that the giving by the Accused to a public officer, Fisher, goes beyond what is required by section 45 because it is coupled with the fact that he actually had a case pending for adjudication before Fisher; ("while having dealings of any kind with a public body", as per section 10), and the "advantages" given by the Accused to the public officer, were also accompanied by a letter from the Accused, which expressly sought the resolution of the pending case in the Accused's favour; ("gives an advantage to a public officer. . . to influence any public officer", as per section 10.) Since the "giving" is coupled with surrounding circumstances including the letter and the case, and thereby accords more precisely with section 10, it becomes as opposed to a set of circumstances which presume culpability or intent, it becomes actual proof of intent and consequently culpability.
- XII. There is no question that the actus reus and the mens rea should coincide; *R. v James Miller*, (1982) 75 Cr. App. R. 109; *Fagan v. Metropolitan Police Commissioner* (1968) 52 Cr.App.R. 700 (1969) 1 Q.B. 439 and no issue is made of this requirement in *Sambo*. However, the discussion in *Sambo* directs attention towards a coalescence through case law of adjudicative principles governing situations of this nature. What can be gleaned from a review of like cases, is that presumptions of guilt or intent, often operate in a context where offences can be construed as requiring basic/primary and specific/ secondary intent. It should be noted that the statutory or even common law definitions of these offences may not append the term "secondary/specific/ulterior intent" to definitional elements of the offence. Nonetheless, it is submitted here that presumptions of guilt relate to offences which typically require not only an intent to

commit the requisite actus reus, but further require an intent to effectuate an “unlawful outcome”, or an intent or desire to bring about a consequence. The effect of a presumption is that it presumes the existence of secondary intent wherever primary intent is present. This can be seen in the case of *Albert v Lavin*, (1981) 72 Cr. App. R. 178 where it could be seen that assault, (specifically assault on a constable in the execution of his duty),¹⁵⁶ was defined in such a way as to make evident its potential for this kind of construction. The mens rea of assault is defined as “the intended use of unlawful force to another without that other’s consent”. These criteria are obviously malleable and can be subdivided into primary and secondary levels of intent. Primary intent would here be; the intended use of force to another, and secondary intent would be; the intended use of *unlawful* force to another *without that other’s consent*. It is the lack of consent which renders the use of that force unlawful. Mistake of facts is the belief by the Accused in circumstances which if they did exist would render his actions lawful. The mistake must pertain to the facts and not the Law. It should further be noted that, these type of offences tend to, but may not necessarily, include the secondary aspect of the mens rea in the definition of the actus reus of the offence, so that the actus reus is often defined as being the commission of some sort of unlawful act, or bringing into being of some sort of unlawful consequence.

- XIII. The corruption offence of bribery in Common Law and the statutory offence of offering an advantage can be so construed, since primary intent relates to the giving of an advantage, whilst secondary intent relates to an intent to influence through giving. Sambo’s argument is that while he possessed primary intent, he possessed no secondary intent. The defence of Mistake therefore since it pertains to an erroneous appraisal of circumstances can serve as a defence only to the secondary, but not primary intent. This strand of his argument leads us to the next point.
- XIV. How has intent/intention been defined in similar contexts concerning Corruption/Bribery offences? It is submitted that intention in the context of these offences has been held to include knowledge by the Accused of the circumstances that render his act a crime. *Miller* also provides that intention¹⁵⁷ will be deemed to be present, where there is knowledge that an event is practically certain unless thwarted. This can also constitute recklessness since one is reckless as to whether the event comes to pass. Recklessness however also includes the giving of no thought to an obvious risk or, acting in spite of recognizing *some risk*. As a matter of fact, the mens rea can be superimposed on an existing act, or ongoing effects/consequences.
- XV. In *Grant v. The Overseers of Pagham* are found some incipient traces of the requirement of knowledge being used as a form of the requirement of intention. The circumstances are drastically different from *Sambo*, the central issue being whether actions on his behalf amounted to bribery of voters. It should be noted that acts committed by Grant’s agents could have amounted to bribery if he had knowledge of said acts and consented to them being done. *Grant demonstrates the early development*

¹⁵⁶ Contrary to section 51 of the Police Act 1964.

¹⁵⁷ Section 1 of the Criminal Damage Act 1971: intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged.

of the knowledge criteria as a substitute for intention where latter is not directly inferable and although knowledge was employed for the purposes of attributability, it could be seen that an act performed with intent in conjunction with the Accused's knowledge of the circumstances sufficed¹⁵⁸ in the stead of a more sophisticated form of intention, such as for example, "acting with the intent to corrupt" or "acting corruptly". Perhaps the bluntest form of expression of the approach which began to show itself here, is the "acquiescence by the Accused and his failure to actively oppose the coming into being of a set of circumstances, which would illegitimately favor him."

- XVI. Knowledge of the circumstances has been construed in this context as will be seen below, in terms of reasonable foresight or foreseeability of the materialisation of the crime. Applying this definition of the mens rea to *Sambo*, i.e. the formula that, the Accused's possession of basic intent + actual knowledge or alternatively constructive knowledge = intention, points in the direction of *Sambo*'s culpability.¹⁵⁹ The equation leads us to conclude that the defence of Mistake cannot negate intention, where, intention is construed to include knowledge which, on the Accused's own admission was present and where the Accused's mistake as to the facts was immaterial in so far as his knowledge, which constituted the requisite mens rea for the offence, was concerned.
- XVII. In light of this definition of the required mens rea therefore and in light of the evidence as discussed in paragraph XI. above, the question posed in paragraph X. above can thus be further refined in the following forms: i.) *Do the alleged actions of the Clerk and Security absolve the Accused from the responsibility of recognising that which is obvious?* ii.) *How could the Accused in spite of his conversations with the Clerk and Security, not have been aware of the implications of his actions?* iii.) *Even momentarily hypothesising that Fisher had sought the gifts as stressed by the Clerk and the Security, what other reason could there be, for Fisher doing so, or for the Accused obliging said request, other than, there being an understanding that an illegitimate quid pro quo belied the interaction between the Accused and Fisher?* iv.) *Is it not the case that the Accused's defence of Mistake asks for a line of demarcation to be drawn between the donation on one hand and the letter requesting a favour on the other, even though both were conveyed at the same time?* The Prosecution could have driven home the point during cross examination of the Accused by highlighting the risibility of his excuse. This could have been done by asking him the trenchant questions of 1.) *whether when viewed as a single chain of events, the various acts could be interpreted in any other manner than as an incidence of bribery?* 2.) *How he could reason that the nature of his letter to Fisher was not to seek a favour, when that letter asked that the Accused's immigration matter in front of Fisher be thrown out of court or adjourned?*
- XVIII. It should be further noted that the statutory offence in this instance, i.e. of Offering an Advantage, and other such statutory offences are constructed in a manner akin to corruption/bribery offences in Common Law. Whereas the required mens rea here is the intention to influence through giving, in other statutes it ranges from, *the performance*

¹⁵⁸ Corrupt Practices Prevention Act, 1854, and the Parliamentary Elections Act, 1868.

¹⁵⁹ In *Sambo*, in particular, the equation is more precisely, the Accused's possession of basic intent + actual knowledge of circumstances constituting the crime = intention.

of the alleged act while possessing a corrupt intent, or the performance of the alleged act with the intent to corrupt, or, the performance of the alleged act (e.g. the giving corruptly, i.e. to corruptly give or to have corruptly have given etc. At times, these qualifiers are supplementary to the requirement of an intention to influence. The presence of the two distinct qualifiers, i.e. on one hand, acting with a corrupt intent, or with the intent to corrupt, or acting corruptly, and on the other, the intention to influence, serve only to underscore the other.

- XIX. The mistake as to the facts should be based upon an honest mistake which need not be reasonable. The question of whether the mistaken belief is reasonable only bears upon whether it was honest, so that the more reasonable a belief appears, the greater the chances or likelihood of it being honest. *Levin* states that Mistake avails a defendant nothing if it is an unreasonable (and therefore *negligent*) one. **This qualification enables the argument to be put forward by the Prosecution that, the Accused's belief was not, as he would like to contend, an honest mistake since it would be far-fetched and unreasonable for the Accused, knowing he has a pending case before the Magistrate, whom he understood to be making requests of him, to believe that the fulfilment of said requests did not engender a quid pro quo, and to believe that the transaction had no bearing on the outcome of his case.** It would have been unreasonable for the Accused to have believed that such requests did not imply return favours. It would have been unreasonable for the Accused to have believed that by fulfilling the alleged requests he would not end up exerting influence over the Magistrate. It would have been unreasonable for the Accused to have not understood the implications of such transactions, or even how they would be perceived if they came to light or to the attention of the public or law enforcement.
- XX. These conceptualisations of unreasonable belief demonstrate that “reasonableness” as an aid in determining honest mistaken belief, imports notions of recklessness and foreseeability into the exercise.¹⁶⁰ The ascertainment of intent and the application of the Defence of Mistake (with its considerations of reasonableness, recklessness and foreseeability) in cases such as these, where knowledge is subsumed within the requirement for intention, should play off of each other, so as to create a watertight and synchronized argument.
- XXI. With regard to whether the Accused's belief was reasonably held, what is striking is the Court's willingness to find the Accused so naive as to be taken in by the Clerk and Security Guard who invited him more than four times to go see Fisher, but whose names he could not remember¹⁶¹ and who in spite of asking him several times for

¹⁶⁰ In determining whether the belief was honest, i.e. "was the Accused's mistaken belief as to the facts, a reasonable belief, and therefore clearly an honest one?", one may determine that "it was *unreasonable* that the Accused did not *foresee* the implications of his actions", or in other words, "the implications of his acts should have been *reasonably foreseeable* to the Accused." Further, one may also determine that the Accused held an unreasonable belief regarding the implications of his acts, because he (*recklessly*) ignored their real implications/was willfully blind to their real implications. The relationship of Reasonableness to Mistake, allows for considerations of recklessness to not be totally sidelined, even where not expressed as part of the Mens Rea.

¹⁶¹ Trial Judgment, p.6; Exhibit B, Accused's statement apparently dated 7th November 2006.

money and pretending to be carrying messages between the Accused and Fisher, never directly or immediately invited him to see Fisher. The Court citing precedent, assessed the validity of mistake on a purely subjective standard thereby deeming the Accused to have indeed been mistaken as to the facts based on these communications. It is submitted that in spite of the precedent cited,¹⁶² that, the value of reasonableness, vis-à-vis Mistake tempers that subjective standard.

XXII. There is no doubt that Wilfulness had it been the requisite mens rea in these circumstances, would have been more easily satisfied since it has been more widely drawn than intent, having been held to include both “intention” in the sense of acting so as to attain a desired outcome, as well as recklessness. Intention or intent on the other hand is generally distinct from recklessness, although arguably the recklessness element of wilfulness is analogous to the accommodation of a knowledge facet in intention. Knowledge may resemble both Caldwell¹⁶³ and Cunningham¹⁶⁴ recklessness in the sense of performing an act, *in the knowledge* that it entails a risk. On the basis of the above review of case law and statutes from Common Law jurisdictions, it would appear that the prevalent standard of knowledge or notice of the materialisation of the crime is an objective standard, more akin to Caldwell recklessness.

XXIII. It is submitted that it might have been helpful for the Prosecution to have drawn attention to the following points, in support of the contention that, a universal tendency in bribery and corruption offences is for trials to focus on the clear delineation of the act alleged, i.e. the actus reus and the relative positions of the offeror and offeree and for less effort to be exerted in ascertaining the presence of Intention. Factors supporting this argument are:

- 1.) The very existence of the presumption of corruption,
- 2.) The fact that corruption offences are in some jurisdictions, strict liability offences,
- 3.) The fact of an attempt to bribe, being criminalised not only as an attempt to commit a crime, but further, criminalised as the actual commission of that crime, and accordingly the downplaying by Courts in their findings, of circumstances such as the question of the acceptance by the offeree of the bribe and the question of whether or not the bribe was effective.
- 5.) The fact that in a corporate context, as concerns both personal or corporate criminal liability, actual and constructive knowledge have played equally major roles as has intention, in terms of being treated as the requisite mens rea.

¹⁶² *R v. Williams* (1987) 3 A.U. E.R. 411.

¹⁶³ The test for Caldwell Recklessness is that; a person is reckless as to whether property is destroyed or damaged where: (1) he does an act which in fact creates an obvious risk and (2) when he does the act he either has not given any thought to the possibility of there being any such risk or has recognized that there was some risk involved and has nonetheless gone on to do it.

¹⁶⁴ The test for Cunningham Recklessness is; Did the defendant foresee the harm that in fact occurred, might occur from his actions, but nevertheless continue regardless of the risk?

- XXIV. The Court found that although the Accused may have been technically guilty, there could be no finding of guilt, since the Prosecution had been motivated by the desire of an individual to demonstrate his own moral rectitude, (that he was "Mr. Clean"), rather than a desire to comply with the underlying legislative intent to combat corruption. In fact, the Court admonished against bringing any such further "time wasting" proceedings. This is problematic, indicating that the Court crossed into the realm of personal attacks instead of simply weighing the facts objectively. Precedents indicate that prosecutorial discretion is often not assessed at all with regard to Corruption offences.¹⁶⁵ Even in general, a Judge has no power to refuse as a matter of policy, to allow a prosecution to proceed, unless the Prosecution amounts to an abuse of process and is oppressive and vexatious; *Connelly v. DPP* (1964) AC 1254.¹⁶⁶ Even though there are apertures enabling judges to import considerations which are not strictly legal, for e.g., importing considerations which may be more political than strictly and literally legal, since they may not derive from the provisions at hand or any other legal provision for that matter,¹⁶⁷ these would *surely not override* authorities prioritizing the language and spirit of highly penal acts. The literal exigencies of statutes are placed on a pedestal precisely to prevent extra legal considerations from becoming overly political and subjective.¹⁶⁸
- XXV. Given the recognition of the devastating problem of corruption by the GOSL, given that according to the most recent TI survey Sierra Leone ranks 119 out of 177 countries surveyed,¹⁶⁹ given that Parliament enacted the ACA 2000 exclusively to deal with corruption and further refined and amended it in 2008, that the ACC was

¹⁶⁵ See, Criminal Justice Section Standards, Prosecution Function, Part 3, Investigation for Prosecution Decision, Standard 3-3.4 Decision to Charge Standard, http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk.html#3.4; "(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the Prosecutor". See also same document, Standard 3-3.9 Discretion in the Charging Decision, http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk.html#3.9; "(a) A Prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the Prosecutor knows that the charges are not supported by probable cause." Prosecutorial discretion is defined by the Legality Principle, a civil law tradition, and the Expediency Principle, a common law tradition. The Legality/Evidential Principle means a decision is made to prosecute where there is sufficient, admissible, substantial and reliable evidence. The Expediency/Opportunity or Public Interest principle means all the surrounding circumstances are considered in deciding whether to bring charges, notwithstanding the strength of the evidence; the determinative question is, "is prosecution required by the Public Interest?" Obvious public interests considerations are deterrence and the gravity of the offence, public policy, public morale and order, the suspect's individual circumstances, the victim's interests and feelings and the interests of the community/nation. Given, that Sierra Leone is a Common Law tradition and given the arguments made below at FN 173, it is submitted that the public interest clearly weighed in favour of a prosecution against *Sambo*, in this instance.

¹⁶⁶ See **Notes** above at p.125. The Privy Council has recognised in the following African cases that where prosecutions amount to an abuse of process, the Court has a duty to intervene emanating from their responsibility to maintain the Rule of Law; see, *Usoke v. Uganda* [1972] E.A. 137, *Director of Public Prosecutions v. Mehboob Akbar Haji & Another Cr. App. No. 28 of 1992 (Unreported/Tanzania)* and lastly from the Botswana case of *Sejammitlwa & Anor v. Attorney-General* [2002] 2 B.L.R. 75 (CA). These authorities maintain that the exercise of discretion to prosecute should always be in accordance with the rule of law, which seems a roundabout way of recognizing the rather malleable public interest consideration.

¹⁶⁷ See **Notes** above at p.125 on judicial notice of facts of common knowledge, judicial notice referring to extraneous sources of information and judicial use of personal knowledge of matters in a locality.

¹⁶⁸ See **Notes** above at p.125 citing *Brutus v. Cozens*. See also *Grant Appeal judgment, Lord Huntingtower v. Gardiner, Britt v. Robinson* and Blackstone's p.2005.

¹⁶⁹ The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be; <http://cpi.transparency.org/cpi2013/results/>

- XXVI. established and empowered to investigate and competently prosecute corruption offences, that the spirit and the purpose of the Acts of 2000 and 2008 are discernible from their preambles,¹⁷⁰ given that both Acts set out the aims of the Commission as investigating, preventing, and punishing corruption,¹⁷¹ given that the need for the Attorney-General's approval for prosecution was done away with by the reformed 2008 act, and given that these factors evince a strong intention on the part of the drafters for prompt and effective prosecution wherever there is sufficient evidence, because this would, *as they formally recognized through enactment*, promote the public interest, given that there have also been numerous other innovations to combat corruption,¹⁷² given that the GOSL since the first enactment of the ACA in 2000 has declared on several occasions that, it takes a zero tolerance approach to corruption and that there will be no "sacred cows", **it is clear that the Court's take on prosecutorial discretion here is seriously called into question.** "In the absence of a compelling and legitimate reason against prosecuting, declining to prosecute would be frustrating the public interest. Indeed, declining to prosecute may very well amount to criminal offence of obstructing the course of justice."¹⁷³
- XXVII. The international instruments here reviewed clearly indicate that the Prosecution here met the appropriate *international standard* for initiating prosecution of a crime. Guideline 14 of the 1990 Guidelines on the Role of Prosecutors adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba provides; "Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an

¹⁷⁰ The ACA 2000 self defines in its preamble as, "an Act to provide for the prevention of corrupt practices and for related matters." The ACA 2008, self defines in its preamble as "an Act to provide for the establishment of an independent Anti-Corruption Commission for the prevention, investigation, prosecution and punishment of corruption and corrupt practices and to provide for other related matters."

¹⁷¹ The ACA 2000 in part 3, s. 5 (1), sets out the object for which the Commission was established as being to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, and to take such steps as may be necessary for the eradication or suppression of corrupt practices. In s. 5 (2) (b), it states that one of functions of the Commission is to instruct, advise and assist any person or authority on ways in which corrupt practices may be reduced or eliminated; in 5(2) (c), to educate the public against the evils of corruption; and in 5 (2) (d) to enlist and foster public support in combating corruption. As s. per 5 (3), the Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with any investigation if the Commission is satisfied that— a. the complaint is frivolous or vexatious; or b. the investigation would be unnecessary or futile. As per s. 5 (4), where the Commission declines to conduct an investigation or proceed further with any investigation into any complaint, the Commission shall inform the complainant, in writing if practicable, of its decision but shall not be bound to assign any reason for its decision.

¹⁷² The Governance Reform Secretariat, the Public Accounts Committee, the Ombudsman, the Human Rights Commission, the Judicial and Legal Services Commission, the Public Sector Reform Unit, the Public Services Commission, the District Budget Oversight Committees, the Auditor General's Office, the Integrated Public Financial Management Reform Program in Central and Local councils, the Integrated Financial Management Information System. Sierra Leone is also a signatory to the UN Convention against Corruption and African Union's Convention on Preventing and Combating Corruption.

¹⁷³ Ndgeva W., (Undated), Open ended Prosecutorial Discretion in the Fight Against Corruption in 3rd World, Kenya Case Study, University of Nairobi, <http://www.liverpool.ac.uk/userfiles/file/Society%20News/Open%20ended%20Prosecutorial%20discretion%20in%20the%20fight%20against%20corruption.pdf>, p.1. This article stresses that the enactment of anti-corruption legislation in developing countries plagued by corruption, indicates a compelling need for prosecutorial discretion to be exercised religiously. The arguments constructed in relation to Kenya can easily be extended to Sierra Leone.

impartial investigation shows the charge to be unfounded.” Article 10 of the 1989 United Nations Economic and Social Council Draft Guidelines on the Role of Prosecutors provides that; "Prosecutors, irrespective whether acting under the principle of legality or opportunity shall not initiate prosecution or shall stay proceedings when the charge appears unfounded or unprovable." Paragraph 4.2 of the International Association of Prosecutors' Statement of Standards of Professional Responsibility of Prosecutors, provides that; "in criminal proceedings, prosecutors will proceed only when the case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence."

XXVIII. It is further submitted that (the Ratio Decidendi of the) judgment, should not include material which is not pivotal to arriving at the findings, for example, the Court reasoned that the Accused did not possess the requisite intent to corrupt since *without*¹⁷⁴ the Clerk and Security Guard, he would not have known of Fisher's impending marriage and address. This approach to reasoning appears immaterial to the findings since the fact that *he would not have known without them*, does not in itself absolve the Accused of intent.

¹⁷⁴ Emphasis added here.

[Trial Judgment:
Isaiah King
Sambo]

The State vs Isaiah King Sambo

ISIAH KING SAMBO

FRIDAY 14TH DECEMBER 07

BEFORE THE HON MR JUSTICE C A ADEMUSU

Case Called

Accused present

A K A Barber prosecuting

C A Osho-Williams for the accused absent

JUDGMENT

The accused faces a two count indictment for the offences of:

1. Corrupting Public Officer contrary to Section 10 of the Anti-Corruption Act No. 1 of 2000 (as amended).

Particulars of Offence

Isaiah King Sambo on 19th day of March 2006 at Freetown in the Western Area of the Republic of Sierra Leone, while having dealing with the Magistrate Court No. 1 A in Freetown gave by delivery to the premises of Magistrate Adrian Fisher 10(ten) crates of soft drinks and 4 (four) bottles of wine of the value of Le390,600 with intent to influence the said Magistrate Adrian Fisher.

2. Offering an advantage contrary to Section 11(2) of the Anti-Corruption Act No.1 of 2000 (as amended).

Particulars of offence

Isiah King Samba on or about the 15th day of March, 2006 at Freetown in the Western Area of Sierra Leone by letter dated 15th day of March, 2007 offered an

advantage to Magistrate Adrian Fisher which the said Magistrate Adrian Fisher is not authorized to receive.

The accused pleaded not guilty on each count.

The prosecution called six witnesses in order to prove the counts as laid. The witnesses called were Adrian Fisher (PW1), Mrs. Doris Fisher (PW2), Mohamed Kargbo Allieu (PW3), Belinda Hebron (PW4) and Ibrahim Bangura (PW5).

The testimony of PW1 is that he knew the accused as somebody who was charged in his court with passport offences. That on the 5th of March 2006, he saw the accused outside his house at about 10:30pm when he did not invite him. He said as he was about to enter his compound he saw the accused accompanied by somebody. He told the Court that he realized that his purpose of being at this house at the hour of the night was not a lawful one. The witness said he sent the watchman to the accused and as a result of the response he told the watchmen to go and tell the accused that he was not keeping Court in his house.

According to PW1 the matter the accused had before him was coming up the next day. He stated that he was aware that the accused visited his premise on two subsequent occasions. Still continuing, he said about two weeks after the first night he came home and found some drinks right outside his front door and inside the container in which the drink were placed. He also found a letter addressed to him and a document to say that it was written by me Isiah King Sambo. That he handed the letter to the C.I.D. The witness identified the drinks.

Under cross-examination the witness denied receiving any money personally from the accused and that nobody gave him money on behalf of the accused.

The next witness was Mrs. Doris Fisher (PW2). Her evidence is very short. She told the Court that on their return from work on the 5th of March 2006 she and her husband (PW1) met the accused at the gate and she asked the husband who the accused was and the husband told her that the accused had a case before him and her husband told the watchman that he did not want to see anybody and the gate was closed and they entered their house. She added that that was her first and only time of seeing the accused.

In cross-examination by Mr. Osho Williams the witness said at that time they were making arrangement for their wedding, such as buying drinks and of hall That is all her evidence.

The next witness was one Mohamed Kargba Allieu who was then Det/Sergeant. The witness told the Court that on the 22nd March 2006 he had cause to interview the accused. The witness produced and tendered the statement he obtained from the accused following that interview as exhibit 'A'.

In exhibit 'A' the accused denied that he went to bribe Mr. Fisher but admitted having a case before him. The statement was made on the 22nd of March 2006. The accused stated inter alia that when his case was called Mr. Fisher adjourned it to the following day. He went to the court on the following day. He went to the Court Clerk whose name he did not know but if seen could be identified. According to the accused it was Mr. Fisher's Security Guard who gave him Mr. Fisher's address and told him to meet him there at 10pm but he failed the appointment and because of that the security started abusing him when he saw him and he told him that Magistrate Fisher was at home waiting to see him. The accused said he explained that he was not feeling well. That it was after that, that the security told him that Mr. Fisher was going to wed and he should give him money and he said he did not have it at that moment.

Still continuing the accused said he went to court the following day and gave the Court Clerk a sum of Le200,000.00 (two hundred thousand Leones) to be

delivered to Mr. Fisher as requested by the Court Clerk. I note that the accused described the Court Clerk in his statement. Accused stated that the Court Clerk told him that the Magistrate was going to wed on the 1st day of April 2006 and he was requesting financial assistance from him. That it was on that note that he gave the Court Clerk the sum of Le200,000.00 (two hundred thousand Leones) to be delivered to Mr. Fisher. According to the accused the Court Clerk assured him that he had delivered the money but that Mr. Fisher said the money was too small. That on the following day he went to court and Mr. Fisher's security called him and he revealed to him that about the money he had given to the Court Clerk and the Security went inside the Court telling him that he was going to confirm from Mr. Fisher whether he received any money from me through the Court Clerk. He said the security came back to tell him that Mr. Fisher had confirmed receiving the money. That the security requested him to buy cell phone top up cards (CELTEL and COMIUM) for Mr. Fisher because he was to call him on the phone but had no unit in his phone. Upon such request he gave the security a sum of Le100,000.00 (one hundred thousand Leones together with cell phone top up cards costing Le24,000.00 (twenty-four thousand Leones). That he handed the money together with the top up cards to the security guard in the presence of one Alhaji Turay of East End of Freetown with a phone No 076 902 024 and Alhaji's brother. Accused said the Security Guard told him after receiving the items that Mr. Fisher had received them and promised to call him.

Still continuing the accused stated further that he waited for two days without receiving a call from Mr. Fisher. When the Security told him that to meet Mr. Fisher at his house at 10:00pm because Mr. Fisher wanted to see him and for that reason he went to Mr. Fisher's house at Sheriff Drive Malama Lumley at 10pm till 12 midnight. The accused said it was Mr. Fisher's security guard who was with him that gave him the address by writing it for him and telling him to go and see Mr. Fisher. In exhibit A the accused also said it was the security guard who advised him to write Mr. Fisher when he did not see Mr.

Fisher and that when he did not write the security guard started telling him that he was not serious. He added that the security though advised him to write and indicate in the letter all his request but he was not very anxious to write such a letter but subsequently wrote one dated 15th March 2006 which he took to Mr. Fisher's residence with ten crates assorted soft drinks and four big bottles of wine for Mr. Fisher's wedding as a gift.

It was on Monday the 19th of March that the accused was invited by C.I.D. Personnel to the Central Police Station where he was detained in respect of this matter. He stated further that he was taken to Court the following day to appeared in a matter he had before Mr. Fisher and Mr. Fisher restricted his bail and sent him to Pademba Road Prison on remand.

That on the 2nd of March 2006 he was withdrawn from Pademba Road Prisons. The rest of the accused's statements lunches and concerns whether what he did was with the intention to bribe Mr. Fisher and which he strongly denied in the following interview:

- (a) Now that Magistrate Fisher have (six) rejected the alleged gift you offered him comprising of ten crates of soft drinks and four bottles of wine and same time Considered it to be bribery.

What have you got to say about that?

Ans. I never considered it to be a bribe and if ever he wanted to reject it considering to be a bribe he should have sent it back to me through those who received it from me, but he should not send it to C.I.D and like it to be an exhibit

Q. I am putting it to you that you gave the aforesaid drinks in crates and bottles to Magistrate Fisher together with the alleged monies you sent to him through his subordinates for him to breach the course of law in your favour for the case you are understanding trial in his court. Is that not correct?

Ans. No it is not correct. I did this based on the request of the subordinate which I honoured in good faith with no criminal intent. I see no reason to bribe him where I have two Solicitors to fight my case through legal procedures. That is all.

On the 7th of November 2006 the accused was charged with the offences. For the benefits of those who thought they had conducted various investigations, I will reproduce his statement which reads as follows:

“ I wish to add further that it was the Court Clerk to Magistrate Fisher and his Body Guard whose names I cannot recall but if seen can be identified that forced me to bring the drinks to the house of the Magistrate. They gave me a wedding invitation card and also wrote house address of Magistrate Fisher and invited me more than four times to go and see the Magistrate. whenever I go there they will tell me the Magistrate is in a meeting, or a press conference. I am also asking the Anti-Corruption Commission if the Police Officer (Body Guard) and the Court Clerk who told me that Magistrate Fisher has asked me to give him some drinks for his wedding have not committed a corrupt practice as well. That is all. See Exhibit B produced and tendered by PW 4 Belinda Hebron. The witness also produced and tendered a photocopy of the letter written by the accused which was marked Exhibit C. In the cross-examination of PW4 the witness said: “I did not confirm that Mr. Fisher was getting married. I was not invited and so I could not attend the wedding that is all.

One Ibrahim Bangura who was Exhibit Officer at the Anti-Corruption Commission was PW5 but only produced and

tendered them as the drinks the accused took to Mr. Fisher's house.

The last witness for the prosecution was one Abu Banba Sesay of 6 Sheriff Drive, Malama, Lumley. His testimony is to the effect that he returned from work one day and found the accused in front of the gate with his car. The witness said the gate was one leading to Mr. Fisher's house where he was working as Mr. Elkana Faux's houseboy. According to the witness the accused told him that he had come with 10 crates soft drinks and four bottles wine for Magistrate Fisher plus an envelope the content of which he did not know. That he received them and placed them in front of Mr. Fisher's door and later on gave the envelope to Mr. Fisher. The letter in the envelope was put in evidence but only photo copy of it was admitted as exhibit C. The purpose of it is a request that the matter be thrown out of court or an adjournment.

This is the prosecution's case. For his defence the accused elected to testify on Oath. His testimony is substantially the same as his statements to the Police. He also produced a copy of the letter he wrote to Mr. Fisher. It is exhibit D. In his testimony the accused was still stressing that what he did was at the instance of Mr. Fisher's Court Clerk and the Security Guard who gave him invitations to the wedding of Mr. Fisher on the 1st of April 2006. Accused said he handed the invitation to the Police. He further disclosed that the Court Clerk went to Mr. Fisher each time he talked to him and would come back to him and say Mr. Fisher had said this or that.

In cross-examination by Mr. Barber the accused disagreed with the suggestion that by nature of exhibit D he was asking Mr. Fisher to do a favour. He admitted that he knew that he had a matter before him but he maintained that Mr. Fisher sent an invitation to him through his Court Clerk and that the Court Clerk was the one who advised him to send a gift for the wedding. That is briefly the case for the defence.

After Mr. Barber had asked for a date to address the Court he and Osho-Williams Esq. subsequently agreed to waive their right of addresses.

The law under which the accused is charged reads as follows:

Section 10 of the Act reads:

"Any person who, while having dealings of any kind with any public body, gives any advantage to a Public Officer or any other person to influence any public Officer is guilty of an offence"

Section 11(2) of the Act reads:

"Any person who offers any advantage to any Public Officer which the public officer is not authorized to receive by law is guilty of an offence etc etc (The underline is mine).

On a careful examination of the above sections and bearing in mind that this is a statutory offence, one it is necessary to take into consideration the provisions of Section 45 of the Act which provides as follows:

“Where in any proceedings for an offence under this Act, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved”.

The section deals with presumption of corruption. It cast the burden of proof upon the accused. The nature of the burden is discussed in *RV Carr-Buant* (1943)29 Cr. App R. 71. The last paragraph of the judgement at page 76 reads as follows:

“In our judgement, in any case where either by statute or at common Law, some matter is presumed against an accused person “unless the contrary is proved, the jury should be directed that it is for them to decide whether the contrary as proved, that the burdens of proof required is less then that required in the hands of the prosecution in proving the case beyond a reasonable doubt; and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish”.

This decision has been followed in many other cases and the burden now has been held to be no more than that which rest upon a party in a civil action, *Sodeman R.* (1936) Z AU.E.R. 1130 and *Rv Patterson* (1962)1 ALL.E.R.340.

With the above principles of law in mind I now turn to consider the accused’s defence. The salient fact emerging from the accused’s defence may be summarized as follows:

1. First and foremost judicial notice must be taken of the fact that Magistrate Fisher got married on 1st April 2011.
2. On the explanation of the accused it is abundantly clear that the accused would not have known about the impending marriage if nobody had told him. Likewise, the accused would not have known Magistrate Fisher's address if he was not furnished with it. The next question to ask: who were the people who pushed the accused to do what he did? The answer is implied, I believe and accept as a fact that it was Magistrate Fisher's Court Clerk and his so-called security who I have no doubt in mind had been milking and sucking the accused's money for their own benefit. The conclusion I have reached is reinforced by the accused's statement where he said inter alia that "I wish to add further that it was the Court Clerk of Magistrate Fisher and his Body Guard whose names I cannot recall but if seen can be identified that forced me to bring the drinks to the house of the Magistrate. They gave me a wedding invitation card and also wrote house address of magistrate Fisher and invited me more than four times to go and see the Magistrate. When ever I go their they will tell me the magistrate is in a meeting or a press conference. Exhibit B refers. It is recalled that whilst the accused was being interviewed by the Police he said in this answer to a question put to him that did what he did because he was seeking favour from magistrate Fisher. He answered that"

"A No. It is not correct. I did this based on the request of his subordinates which I honoured in good faith with no criminal intent. I see no reason

to bribe him where I have two Solicitors to fight my case through legal procedure. That is all”.

In the prosecution of this case, I observe that the prosecution did not bring forward either the Magistrate's Clerk or his security. The accused was represented by two eminent practitioners. I was deprived of the opportunity of seeing these two vital witnesses give evidence and cross-examined. I think it is worthy to note that throughout the trial at no time was any evidence adduced to the effect that these two people were shown to the accused whether or not they were the ones described and more importantly there is no shred of evidence before me that they were unfounded with the allegations made by the accused persons. There is a common saying that justice must not only be done but must be seen to be done. In the case in hand, I am far from satisfied that justice was done to the accused. This view of mine is re-inforced by what happened to the accused before he was brought for trial in the court. In this regard, I refer to the accused's narration of what transpired before he was indicated for these offences.

According to the accused on Monday the 19th of March 2006 he was invited to the C.I.D. at the Central Police Station where he was detained in respect of the matter. That he was taken to Court the following day before Magistrate Fisher and Magistrate Fisher restricted his bail and sent him to Pademba Road Prison remand and was there until the 22nd of March when he was withdrawn from there. The accused all along strongly maintained that he never considered what he gave as a wedding gift was a bribe.

This is a convenient stage to observe that the of the prosecution's case with regard to culpability was that the accused was expected to know that what he did was unlawful. In my own

considered opinion there is room for the issue of genuine mistake of fact to be a live one in this case. In Rv Williams (1987)3 Au.E.R. 411 it was positively laid down that where in an appropriate case the issued of genuine mistake of fact arises in criminal trial the test as to guilt or innocence is subjective and not objective.

On the facts and accuracies of the case, it is my considered opinion that the accused may be technically guilty but I am constrained to state that I do not fell this is the type case that the legislative or the makers of the law would cherish to bring to Court in aid of the campaign to wipe out corruption. This type of case can only be described as a design to make a name that I am Mr. Clean. Be that as it may for the foregoing reasons, I find the accused not guilty charged on each count. Accused is acquitted and discharged. We are asking that the exhibit be returned to the accused.

Mr. Barber I think the accused should have the exhibit.

Court I feel strongly that this type of matter which has wasted the precious time of he Court should not be encouraged in the future.

Restitution Order. The exhibits are to be returned to the accused.

Case Report:
Edward Mohamed
Allieu

THE STATE v. EDWARD MOHAMED ALLIEU

THE HIGH COURT OF SIERRA LEONE

JUSTICE S A ADEMUSU

6th June 2008

Corrupting a Public Officer – Entrapment – Misrepresentation by an ACC Officer – Soliciting an advantage by an ACC Officer – Internal contradictions in principal witness’ testimony – Absence of express evaluation of witness testimony on which ratio is based – Whether lack of specificity in charges enables Accused’s argument that his actions ill-fit the charges – Anti-Corruption Act 2000 (as amended), ss.8 & 10 - Anti-Corruption Act 2008, s. 28(1), 28(2) & 28(3)

Held

The Prosecution failed to satisfy the Judge that it had proved the Accused’s guilt beyond reasonable doubt. The Accused was acquitted and discharged, and the Defence’s application for the return of Le500, 000¹⁷⁵ to the Accused granted.

Ratio Decidendi

The Court adopted the Defence’s reasoning as its own, on the issue of the disconnect between *on one hand*, the Accused’s alleged offer of Le500,000 to influence PW1¹⁷⁶ during the SLRTC¹⁷⁷ investigation, and on the other, the fact that the Accused himself was not being investigated, but it was rather the SLTRC that was. The Court favoured the Accused’s argument regarding his lack of motive to bribe PW1 since the investigation into the SLTRC revealed no financial irregularity in the Accused’s accounts,¹⁷⁸ neither was there any allegation of financial misconduct against the Accused.¹⁷⁹ The Court recognised that DW1’s¹⁸⁰ evidence was unchallenged by the Prosecution and treated it as cogent, coherent and totally truthful.

The Court reasoned that no reasonable tribunal would convict upon the evidence of PW1 since it was replete with contradictions and inconsistencies. These led the Court to conclude that PW1 had been less than truthful. *Firstly*, PW1 had waited until February 2006 to report the incident which dated 8th November, hardly qualifying the aforementioned monetary offer as “a bribe”. Similarly, the Court rejected the evidence of PW2¹⁸¹ that *even* after he PW2, had cautioned the Accused, the Accused *still* admitted giving the amount in question as a bribe. *Secondly*, the Court deemed PW1’s denial of ever having gone to the Accused’s house and of not knowing the Accused’s wife as a lie. In contrast, the Court accepted the Defence’s argument that PW1 had entrapped the Accused by inducing him to part with his money and the Court determined that these facts supported a finding of “*badly planned entrapment*.” The Court took into account the Defence’s

¹⁷⁵ Trial Judgment, p. 5 states the money is admitted as exhibit C.

¹⁷⁶ Abdul Karim Sheriff, an ACC Intelligence Officer.

¹⁷⁷ The Sierra Leone Road Transport Corporation.

¹⁷⁸ It is submitted that what is meant here is, “*SLRTC accounts as maintained by the Accused*” and not the Accused’s own personal accounts, given the context, and the phrase which immediately follows, which focuses on the Accused’s own personal conduct and activities.

¹⁷⁹ Trial Judgment, p. 6; Exhibit B; Accused’s statement; p. 10, Q.28.

¹⁸⁰ Wife of the Accused, Cecilia Allieu.

¹⁸¹ Mr. Alfred Brima Banya; ACC Investigator.

argument that the money displayed as an exhibit had been *changed* to various denominations and noted how PW1 could not explain the absence of the book where he allegedly entered the monetary denominations of the notes, *so as to enable a comparison between the denominations of the notes presented and the denominations originally recorded*.

Notes

A restitution order is designed to restore goods which have been stolen or otherwise unlawfully removed to the person entitled to them; it may be made in combination with any other sentence; *Blackstone's*, p. 1947. A restitution order should not be made unless based on clear evidence given before sentencing; *Church* (1970) 5 Cr App R 65. The Judge has the power to call a witness whom neither the Prosecution nor the Defence choose to call; *Wallwork* (1958) 42 A Cr App R 153; that power should be sparingly exercised; *Roberts* (1984) 80 Cr App R 89; and should not be used to circumvent the restrictions on the Prosecution reopening its case; *Cleghorn* (1867) 2 QB 584. Alternatively, a judge may force counsel to call a witness; *Sterk* (1972) Crim LR 391.

After cross examination, a witness may be re-examined by the party who called him: *Wong* (1986) Crim LR 683; in re-direct/re-examination, except with leave of the Judge, questions should be confined to matters arising in cross; *Prince v. Samo* (1838) 7 A & E 627. Testimonial evidence about facts which the witness claims to have personal knowledge of is direct evidence; 1998. The particulars provided in the indictment or elsewhere, must make clear to the Defence the nature of the case which it must meet; *Teong Sun Chuah* (1991) Crim (1991) LR 463.

Lies may be relied upon by the Prosecution as evidence supportive of guilt; *Goodway* (1993) 4 A1 ER 894; and as such, need to be deliberate, relevant to a material issue, have no innocent motive; and the lie must be established by evidence other than that of the witness who is to be corroborated; *Lucas* (1981) QB 720. The lie must directly relate to the offence or figure largely in the case; *Tucker* (1994) Crim LR 683 and must be proven beyond reasonable doubt; *Burge* (1996) 1 Cr App R 163.

It is an offence at common law to bribe the holder of a public office and it is an offence for any such office holder to accept a bribe; *Whitaker* (1914) 3 KB 1283. Any improper and unauthorised gift, payment or other inducement offered to a public officer is likely to be considered corrupt *Blackstone's*, p. 711. No bargain need be struck between the parties involved for the gift to be considered corrupt; *Andrews-Weatherfoil Ltd* (1972) 1 WLR 118. An offer of a bribe to a Mayor was held to amount to a corruption offence even though the motive was supposedly to expose the Mayor as corrupt; *Smith* (1960) 2 QB 423; cf, where a bribe is offered to a public officer who purports to accept it for the purpose of exposing the offeror, or procuring evidence against him, so that the public officer would neither be acting corruptly himself, nor inducing another to so act; *Mills* (1978) 68 Cr App R 154.

There is no substantive defence of entrapment; *McEvilly* (1973) 69 Cr App R 150. Although, the court has a general discretion to admit or exclude evidence; *Lobban v The Queen* (1995) 1 WLR 877; it may not exercise its discretion to exclude evidence based simply on its having been obtained as the result of the activities of an agent provocateur, even where the act would not have been committed but for this; *Sang* (1980) AC 402. In general, evidence is admissible as long as it is sufficiently relevant; the Court is not concerned with how it was obtained, except, where there

are requirements attaching to statutory offences, where its prejudicial effect outweighs its probative value and where such evidence is an admission/confession which the Accused has been unfairly induced to produce, since then the rule against self-incrimination is likely to be infringed; *Sang* (1980) AC 402. Regarding the admissibility of evidence, the standard of the burden of proof the Defence must meet is that of the balance of probabilities; *Mattey* (1995) 2 Cr App R 409; while the Prosecution's is proof beyond reasonable doubt; *Sartori* (1961) Crim LR 397. The question of admissibility therefore, turns on fairness; *Apicella* (1985) 82 Cr App R 295. Note that more recent UK cases on this issue apply section 78 (1) of the PACE 1984 which is consistent with the earlier *Sang*, since it requires the exclusion of evidence where there is a real risk of unfairness, since the improper means to obtain it may have affected its reliability. Where an Accused can show entrapment, the court may either stay the proceedings as an abuse of process or it may exclude evidence which it deems unfair; the former is the more appropriate; *Loosely* (2001) 1 WLR 2060.

In assessing the fairness of admitting "agent provocateur evidence", the Courts have considered whether the conduct of the police was so seriously improper as to bring the administration of justice into disrepute; *Loosely* (2001) 1 WLR 2060. Factors to be considered in seeking to assess this are; whether the policeman behaved like an ordinary member of the public, and did no more than would have been expected from others in the circumstances; *Ridgeway v The Queen* (1995) 184 CLR 19, or whether the agent provocateur enticed the Accused to commit an act he would otherwise not have committed, thereby causing the offence as opposed to simply providing an opportunity for its commission; *Smurthwaite* 1994) 1 All ER 898. It is generally acceptable for the police to conduct test purchases; *DPP v Marshall* (1988] 3 All ER 683.

Summary of Facts

The Accused, an SLRTC Accountant, was charged under section 10 of the ACA 2000 (as amended) with one count for Corrupting a Public Officer. He is alleged on 8th November 2005 at Freetown to have given an advantage of Le500, 000 to Abdul Karim Sheriff, an ACC Intelligence Officer¹⁸² to influence him.¹⁸³

The Prosecution called 4 witnesses. *PW1 testified* that sometime in 2005, he made "enquiries" at the SLRTC regarding the misappropriation of public funds and served on the SLRTC General Manager, Mr. J. T. Amara, 19 notices requesting financial documents.¹⁸⁴ However, in cross examination, PW1 does admit to the incongruous fact that at the material time, he was personally not investigating any matter.¹⁸⁵ PW1 told the Court that prior to SLRTC enquiries starting in 2005,

¹⁸² PW1.

¹⁸³ Trial Judgment at p.1. It is not clear in what way the Accused would have sought to influence PW1, that is to say, the desired outcome motivating the alleged criminal conduct. The background to the events is course, the ACC investigation into the SLRTC, but given that the Accused was not at any stage (during the investigation into the SLRTC and at the time of this trial), implicated in any wrongdoing, it would have enhanced the Prosecution case to clearly state in the charges the precise reason for which the Accused sought to influence PW1. A statement that there was an ongoing investigation into the Accused's employing organization, that the Accused served as an Accountant for that organization and that the Accused gave a sum of money to an ACC Intelligence Officer to influence him, does not meet the standards of sufficient coherence normally expected of an indictment charge, unless there were more details in the indictment than are reproduced in this judgment.

¹⁸⁴ Trial Judgment, p.1.

¹⁸⁵ Trial Judgment, p.3, cross-examination.

he had nothing to do with the Accused.¹⁸⁶ PW1 testified that as a rule, ACC investigators had to record their activities, so he recorded serving these notices in “the ledger”.¹⁸⁷ PW1 left his mobile and land phone numbers with Mr. Amara and witnessed the latter pass on these numbers to the Accused.¹⁸⁸ PW1 said this was the first time he met the Accused.¹⁸⁹ Consistent with this, he says that he first met the Accused on 8th November 2005, but changed to say that he could not remember when he first met the Accused.¹⁹⁰ PW1 denied ever meeting Cecilia Allieu or asking her for the Accused’s phone number. PW1 denied that he had been running after the Accused, denied having financial problems and denied making any request to the Accused or having any discussion with him. PW1 denied the suggestion that on 6th November he went to the Accused’s home and received Le500, 000 from the Accused.¹⁹¹

PW1 testified on 8th November 2005, returning home from work, he received an urgent call from the Accused on his, PW1’s mobile phone asking PW1 to meet the Accused in his, i.e. the Accused’s office, because he, the Accused, had got the documents requested.¹⁹² PW1 went to the SLRTC, where he met the Accused, who took PW1 to his office and told him that the papers requested were not yet ready,¹⁹³ although PW1 says that the Accused did “send” some way bills for government buses, but not other requested documents¹⁹⁴ PW1 tendered copies of the relevant pages of the Way Book.¹⁹⁵

PW1 testified that the Accused said he had something to give to PW1 for ACC Investigators on the case and offered PW1, 2 bundles of Le5000 which totalled to Le500,000,¹⁹⁶ in the absence of any other person¹⁹⁷ although later in further cross-examination, PW1 admitted to going to the Accused’s Office with James Babin.¹⁹⁸ “In one breath,” PW1 said he received the money from the Accused between 5 and 6 pm, but also put the time down to between 5 and 7 pm.¹⁹⁹ PW1 denied making an offer to the Accused.²⁰⁰ PW1 says he immediately *cautioned* the Accused that he was not obliged to say anything and whatever he said would be given in evidence; told him he had committed an offence and that he, PW1 was going to report the matter to his immediate

¹⁸⁶ Trial Judgment, p.3, cross-examination.

¹⁸⁷ Cross-examination. Exhibit A; the record of notices served.

¹⁸⁸ Trial Judgment, p. 2; direct.

¹⁸⁹ Trial Judgment, p. 3, cross-examination.

¹⁹⁰ Trial Judgment, p. 4; under further cross-examination after being recalled by Defence.

¹⁹¹ Trial Judgment, p. 3, cross-examination. This sentence is an attempt to condense a seemingly disconnected sequence of denials by Witness, since it is unlikely that the Accused would ever have denied receiving the sum that forms the subject of the charges; “*The Witness did not recall 6th November and denied ever being to the Accused’s house. He denied the suggestion that the Accused ever gave him Le500, 000.*” Also Trial Judgment, p. 4, in further cross-examination, he “strongly denies going to the Accused’s wife.”

¹⁹² Trial Judgment, p. 2; direct, and p. 3: cross-examination.

¹⁹³ Trial Judgment, p. 2; direct.

¹⁹⁴ Trial Judgment, p. 3; cross-examination. Since PW1 uses the word “send”, it can be assumed the way bills in question were not made available at the concerned meeting, although it is not clear from the Judgment precisely how and when such way bills were sent.

¹⁹⁵ Trial Judgment, p. 3; redirect: Exhibits A1 to 4.

¹⁹⁶ Trial Judgment, p.2; direct.

¹⁹⁷ Trial Judgment, p.3: cross-examination.

¹⁹⁸ Trial Judgment, p. 4; under further cross-examination.

¹⁹⁹ Trial Judgment, p. 4; under further cross-examination.

²⁰⁰ Trial Judgment, p.3: cross-examination.

supervisor.²⁰¹ PW1 said he recorded the serial numbers of the monies, and that his immediate supervisor Mr. Foday Kamara gave the money to the ACC Head of Investigations.²⁰² PW1 tendered the alleged bribe for identifications, and the latter was admitted in evidence.²⁰³ PW1 denied the Defence's suggestion that Exhibit C was not the money given to him, but when confronted with Exhibit B, he admitted that the denominations had now changed.²⁰⁴

PW1 further testified that the next day, the ACC instructed PW2 to meet the Accused to verify the allegation about the Le500, 000. PW1 said that the Accused, in the presence of PW1 and PW2 admitted making the payment to PW1,²⁰⁵ a fact also testified to by PW2 who added that the Accused even admitted that he, the Accused had said that the money was meant for ACC investigators on the case.²⁰⁶ PW1 and PW2 contradicted each other since PW2 testified that PW1 was in charge of the investigation, whereas PW1 testified that he was an Intelligence Officer, but not in charge of the investigation.²⁰⁷

PW2 testified to seeing the investigation documents,²⁰⁸ saying they were dated 31st August 2005 and 23rd October 2005, and he denied going to the Office of the SLRTC General Manager.²⁰⁹ PW3²¹⁰ testified that on 13th March 2006, he interviewed the Accused in the presence of the Senior Investigator, Augustine Ngobie. The Court noted that said statement of the Accused²¹¹ was a total denial of the allegation and that the Accused stated therein that PW1 did not disclose to him any financial irregularity in his accounts that would have warranted an attempted cover up by way of a bribe and that as an ordinary employee of the SLRTC, it was not for him to offer bribes for the SLRTC's corrupt practices.²¹² PW4 testified to having the alleged bribe in his custody and tendered it in evidence.²¹³ PW4 said on 28th February 2006, 4 exhibits were handed to him by Mohamed Koroma.²¹⁴

In the Defence case, the Accused relied on his statement and only called his wife, Cecilia Allieu, as a Witness. The testimony of Cecilia Allieu which was the most pivotal piece of evidence in this

²⁰¹ Trial Judgment, p.2; direct.

²⁰² Trial Judgment, p. 4; under further cross-examination: PW4, Festus Robbin Taylor.

²⁰³ Trial Judgment, p. 4, states that; "It was tendered by the witness for identifications marked Z." Therefore given that the money is later admitted at p. 5 (see FN 175) as exhibit C, it appears that a note of identified serial numbers of the monetary bills, is what is admitted as exhibit Z. This could have been more clearly stated.

²⁰⁴ Trial Judgment, p. 4; under further cross-examination.

²⁰⁵ Trial Judgment, p.2; direct and p. 3, cross, where PW1 continued to maintain that the Accused admitted giving him, Le500, 000.

²⁰⁶ Trial Judgment, p.4.

²⁰⁷ Trial Judgment, p.4.

²⁰⁸ Presumably documents requested from SLRTC by the ACC although it is unclear precisely which documents are meant. One can only be certain that the said documents are not witness statements pertaining to an investigation into the allegations against this particular Accused, given their dates.

²⁰⁹ Trial Judgment, p. 4.

²¹⁰ Bashiru Konneh; ACC Investigator.

²¹¹ Exhibit B.

²¹² Trial Judgment, p. 5; Exhibit B, answer to question 40.

²¹³ See FN 175. Trial Judgment, p. 5

²¹⁴ Trial Judgment, p. 5; cross-examination. There is no other indication as to Koroma's role in these events or his designation. It can only be assumed that the 4 exhibits in question are the alleged bribe, the two documents provided by the SLRTC (FN 208), and the Accused's statement to Investigators.

case was not set out, but only snippets of its most relevant pieces were mentioned in the Court's reasoning process.

Application of Law

The fact that the trial resulted in an acquittal grounded in an evaluation of the facts, in non-acceptance of the Prosecution evidence and the adoption of the Defence evidence, hardly explains why there was not a more express application of the Law. The Court appeared to be of the view that the case as contoured by its accepted choice of facts was so starkly in favour of the Accused, that there was no need to apply the Law to the facts and hence no need for clarification of legal questions in and of themselves or, legal questions that arose as in relation to the facts. It is submitted that even where the facts directly point to the innocence of the Accused, a summary application of the Law to the facts can be carried out, if only to briefly articulate why the facts do not fit the charges. The Court's reasoning while it sets out evidential inconsistencies and describes issues of evidence coherence, does not at all consider the inapplicability, as *it* would have it, of the charges.

Therefore, the Judgment did not reproduce the relevant charging provision, i.e. section 10 of the ACA 2000 (as amended), entitled; "*Corrupting a Public Officer*" which is reproduced ad verbatim below:

"Any person who, while having dealings of any kind with any public body, gives any advantage to a public officer or any other person to influence any public officer is guilty of an offence."

It should be noted that Section 10 has been replaced with section 28 (1) of the ACA 2008, although this was not applicable in the present instance. Section 28 is hereby reproduced;

"28. (1) A person who, whether in Sierra Leone or elsewhere, without lawful authority or reasonable excuse, gives, agrees to give or offers an advantage to a public officer as an advantage or reward for or otherwise on account of such public officer -

- (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;*
- b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or*
- (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, commits an offence.*

The ACA 2008 is more thorough, in that it also approached the liability of the Public Officer who may be responsible for actually seeking an advantage in the first place, (*as it was revealed by the Court's piecing together of the evidence in this instance*), in the same provision. The liability of a Public Officer who does seek an advantage in return for his action or inaction is encapsulated in section 28 (2) of the ACA 2008.²¹⁵ The same penalties are imposed both for the member of the

²¹⁵ Section 28 (2) of the ACA 2008 covers the acts of **public officers who solicit, accept, or obtain or agree to accept or attempt to obtain for themselves an advantage** without lawful consideration or for a consideration which they know or have reason to believe to be inadequate.

public and for the public officer who *initiate* the interchange, as is made clear from subsection 3; “a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.” In the ACA 2000, the liability of the Public Officer who seeks or accepts an advantage is addressed in separate provisions as opposed to being integrated in the same provision addressing the liability of the individual offeror, hence section 8 of the ACA 2000 on the soliciting and accepting of an advantage by a Public Officer.

Other provisions which would have been applicable to the facts as revealed by the Court here, i.e. *that the ACC Investigator as the initiator of the idea behind the transaction could have been the Accused*, are as follows: Section 7 of the ACA 2000, covering the corrupt acquisition of wealth by a public officer, mirrored in section 26 of the ACA 2008; section 33 of the ACA 2008, which appears duplicitous since it concerns a person who gives an advantage to a public officer to influence him or her; section 34 of the ACA 2008 is phrased in a like manner but concerns a *more restricted sphere of “influence-able” activities* of the public officer and these are delimited in subsections 1 (a) to (c), whereas section 34 (2) of the ACA 2008, concerns *the liability of a public officer* who seeks an advantage for his action or inaction in *the same delimited spheres of activities*, i.e. sections 34 (2) (a)-(c) of the ACA 2008. In the same vein, section 42 of the ACA 2008 covers a situation wherein a public officer uses his office *to confer improperly an advantage* on himself. Other relevant provisions are section 47 of the ACA 2008 on receiving a *gift* for a corrupt purpose and section 52 of the ACA 2008 on the soliciting or acceptance by a public officer of *gifts*, as an inducement or reward for his action or inaction.

It is interesting to note that the Presumption of Corruption found in section 45 of the ACA 2000 and sections 28 (4) and 97 of the ACA 2008, is not addressed in the Judgment. In this instance money by the admissions of either parties, did change hands and it was the Accused person who “gave” the advantage in question, i.e. Le500, 000 to a public officer. However, there is no attempt to demonstrate how and why the Presumption, (that where the Accused provides an advantage to a Public Officer, he or she does so in order to induce action or inaction on the part of the Public Officer), is rebutted in this case.

Critique

The Court’s application of the concept of Entrapment, a concept whose definition varies 1.) from covering *any* opportunities presented by a law enforcement officer to commit crimes, 2.) to, *strongly compelling inducements* made by an officer to the Accused is worthy of note. According to the former, entrapment in and of itself is not impermissible, while according to the latter, entrapment refers to those acts going beyond the legally permissible. The former definition is prevalent in Common Law jurisdictions, given that, entrapment does not automatically render evidence inadmissible and because certain crimes are often difficult to detect and shrouded in secrecy, so that some leeway is granted to officials in criminal investigations to resort to deception, although the use of legal trickery or fraud is generally outside the bounds of the permissible; *Fox* (1986) AC 821. As per the former definition, entrapment means the idea behind the crime originates from the official, the Accused is persuaded into its commission and was not ready to do so prior to contact with said official. The status of the concept varies depending on the jurisdiction; it is not a substantive defence in the UK although it is in Canada. Where it is a defence, depending on the jurisdiction, the burden of proof may be on either party, with the usual attached standards; whether there is proof beyond reasonable doubt or on a balance of probabilities that the Accused

would not have committed the crime had it not been for the inducement; *R v Byrne* [2003]. *Browns v. HMA*- Scotland.

Pushful behavior by officials becomes unacceptable since it is likely to artificially increase the incidence of crime, thereby creating a need for lawful supervision, to deter the actions of the state in this regard, so that investigative techniques are not oppressive or corrupt. In Common Law Jurisdictions, the Court exercises this supervisory role by *either* 1.) staying/discontinuing proceedings where to prosecute in such circumstances would be an abuse of the court's process; *Loosely* (2001) 1 WLR 2060 *or* 2.) excluding Prosecution evidence likely to have an unfair effect on proceedings. The general rule in Common Law jurisdictions,²¹⁶ is that an irregularity in obtaining evidence (unlawful, improper or unfair obtention), does not render it inadmissible; *Jeffrey v Black* (1978) QB 490.²¹⁷ This includes evidence obtained by agents provocateurs; *Sang* (1980) AC 402. Admissibility turns on relevance; *Kuruma*. Inadmissibility depends on the potential of the evidence to adversely affect the fairness of proceedings, and this applies to the evidence of the agent provocateur; *Shannon* (2001) 1 WLR 51. The assessment of fairness is framed in terms of whether the conduct of the police was so seriously improper as to bring the administration of justice into disrepute; *Sang*.

One central consideration behind either the decision to stay proceedings or to exclude evidence is whether the crime was state created; *Sorrells v. United States*, 287 U.S. 435 (1932). The Court as such, considers whether the police for example, what type of crime was being investigated; did no more than present the defendant with an unexceptional opportunity to commit crime; was the idea implanted in the Accused's mind by the officer; was the inducement forceful and persistent as to cause the Accused to commit a crime he would otherwise not have committed; *Smurthwaite* (1994) 1 All ER 898; would an average person have been so induced; how many attempts at inducing the Accused were there; the type of inducement (fraud, reward, threats); did the Accused express a desire not to go ahead; what were the Accused's circumstances, including his vulnerability; was the investigation carried out in good faith, e.g. whether there was reasonable grounds for suspecting the Accused, even though good faith can exist even where there are no such grounds; *Williams v. DPP* (1993) 3 All ER 365.

The Police's inducement should be comparable to an ordinary temptation likely to be encountered in the course of criminal activity. The mere presentation of a favorable opportunity by the police to the Accused for commission of the crime, is therefore not unlawful. Naturally, the more difficult it is to uncover a crime, the more intense will be the Police's inducements, and in these circumstances the Court assesses the justification of such intensity.

In the US, some states use a subjective test where Entrapment as a defence can only work where the Accused has no predisposition to commit the crime; *Sherman v. United States* (356 U.S. 369 (1958)), while others use the objective test considering only whether the state's actions would have caused a normally law-abiding person to commit a crime. However, if UK caselaw is taken as prime example of the Common Law approach it appears that it cannot be argued that the Accused had a predisposition to commit the crime, where the Police's conduct was strongly compelling.

²¹⁶ Refer to **Notes** above at pp. 159-160.

²¹⁷ Except if prescribed by statute for a conviction; *Scott v. Baker* (1969) 1 QB 659.

This would mean that the Accused's history or criminal record is only relevant when arguing that the investigation was grounded in reasonable suspicion of the Accused.

Where the inducements are either severe or cannot be justified by the circumstances, the fact of entrapment may amount to a violation of the right to a fair trial; *Teixera de Castro v. Portugal*. Dicta from Lord Bingham in *Teixera* best illustrates the litmus test for police conduct:

“On the one hand it has been recognized as deeply offensive to ordinary notions of fairness if a defendant were to be convicted and punished for committing a crime which he only committed because he was incited instigated, persuaded, pressurized or wheedled into committing it by a law enforcement officer. On the other hand it has been regarded as objectionable if a law enforcement officer an opportunity to break the law, of which the defendant freely takes advantage, in circumstances where it appears that the defendant would have behaved in the same way if the opportunity had been made by anyone else.”

The Court in *Edward Allieu* appears to have approached the issue of entrapment in a confused manner. Rightfully approached, it would have clearly enunciated its approach, i.e. whether in accordance with Common Law practice, it had chosen to order a stay of proceedings, or, whether it chose to exclude the Prosecution evidence due to its unfairness stemming from the nature of the entrapment. Instead, the Court seemed to approach the argument advanced by the Defence of entrapment as a substantive defence, which in Common Law jurisdictions it typically is not, in that it does not negative intent; (*R v Sang*). Firstly, where the Defence raises entrapment it should do so prior to the Prosecution's presentation of its case, so that the Court might enquire into the circumstances surrounding the gathering of the evidence and the commission of the offence, and make its decision before ever the Prosecution gets to present its case. It is evident from the judgment that Prosecution and Defence evidence had been presented since Prosecution is evaluated in the body of the judgment. It is unclear whether the Defence raised entrapment as a defence, since it is only said to have “posed the question whether this was not a case of entrapment.”²¹⁸

The Court delivers an acquittal, based on the Prosecution's failure to meet its burden of proof, mentioning in the same paragraph that “this is indeed a case of entrapment which was badly planned.”²¹⁹ This seems to suggest that the Prosecution failed to meet its burden, precisely because this was a case of entrapment. It is submitted that this is an erroneous approach, which fails to clearly discern the characteristic Common Law approach to handling arguments of Entrapment. An acquittal, as in this case, is neither a stay of proceedings, nor a decision to exclude evidence. Rather, the issue of entrapment is treated here as a defence negating mens rea and therefore the crime. This is actually similar to the Canadian approach where the question of entrapment is only considered after there has been a finding of guilt, so that a finding that the accused was entrapped, results in a stay of proceedings, which better late than never, simply means the sentencing stage will not be proceeded onto. The effect therefore is similar to an acquittal.

Most striking is that the evidence of the only defence witness, DW1 on which the verdict hangs is mentioned in passing. The evidence of DW1 which is deemed by the Court as truthful, can only be

²¹⁸ Trial Judgment, p. 6.

²¹⁹ Trial Judgment, p.7.

glimpsed at by the denials made by PW1 in Cross which concern her. What seems apparent is that the DW1 testified that she knew or had met PW1, that PW1 had visited the Accused's house, and that PW1 had at some point asked DW1 for the Accused's phone number. Also implied in PW1's cross, and on the basis of the Court's statements apparently supported by DW1's evidence, is that PW1 had made it known that he was having financial problems and had made requests of the Accused to this end (whether directly to DW1, or indirectly through the Accused, this cannot be discerned); it should be noted that the term put to PW1 in Cross is "running after the Accused." To avoid an overt and thorough discussion of the most critical source of evidence of entrapment, is to accord a diminutive role to written judgments of the ACC.

**[Trial Judgment:
Edward
Mohamed Allieu]**

The State vs Edward M. Allieu

JUDGEMENT

EDWARD MOHAMED ALLIEU

FRIDAY 6TH JUNE 2008

Before the House of Justice S A Ademusu case called

Accused present

S P Sambalemba for the State

C F Edward for the accused but now appears

The accused faces a one-count indictment for the offence of corrupting Public Officer. Contrary to Section IV of the Anti-Corruption Act 2000 (as amended)

Particulars of Offence

Edward Mohamed Allieu on 8th November, 2005 at Freetown in the Western Area of the Republic of Sierra Leone, while having dealings with the Anti-Corruption Commission, gave an advantage of Le500,000 (Four hundred thousand leones) to Abdul Karim Sheriff, an Intelligence Officer of the Anti-Corruption to influence him.

In an attempt to prove the offence the Prosecution called the following witnesses: PW1 Abdul Karim Sheriff; PW2 Alfred Brima Banya; PW3 Bashiru Konneh and PW4 Festus Robbin Taylor. At the close of the prosecution's case the accused relied on his statement to the Police and called one witness for his defence.

The 1st Prosecution witness who was the officer who was alleged to have been given an advantage testified as regards what allegedly transpired between him and the accused persons but he was rigorously cross-examined by the Defence Counsel. In order to appreciate his evidence and to avoid me being accused of

not evaluating his evidence adequately I will state his evidence as far as I consider it relevant. He told the court that sometime in the year 2005, he was doing some enquiries on Sierra Leone Road Transport Corporation (SLRTC) with respect to misappropriation of public funds for which purpose he served series of Notices requesting for financial documents. He said that on the 8th of November 2005, he received an urgent call from the accused and the call was through the mobile phone.

According to the witness, he served section 19 Notices on the General Manager, Mr J T Amara and left both his cell phone number and the land line with him. He said in his presence Mr Amara gave the number to the accused person who was the Accountant of SLRTC.

Still continuing with his testimony, the witness said after receiving the phone call he went to SLRTC and that on arrival there he met the accused standing on his office veranda. That they exchanged greetings after which the accused led him to his office where he told him that in krio and which in English that the papers requested were not yet ready but that he had something to give him for the people dealing with the case and there and then he was offered two bundles of Le5,000.00 (five thousand leones amounting to Le500,000.00). The witness said he immediately cautioned this that he was not obliged to say anything and whatever he said would be given in evidence and added that he told him that he had committed an offence and was going to report the matter to his immediate supervisor and which he did. He told the court that one Foday Kamara was his immediate boss. That on the following day the Commission instructed one Mr Banya (PW2) a colleague of his to meet the accused to verify the allegation about the Le500,000.00 and that when both of them went to the accused and in his presence the accused admitted giving him the Le500,000.00. This is the evidence-in-chief of PW1.

Under cross-examination by Mr Quee, PW1 told the court that they started the enquiries sometime in the year 2005 and prior to that he had nothing to do with the accused. He denied knowing any lady by the name of Cecelia Allieu and added he had nothing to do with her. He said his first time of meeting the accused was when he served the Section 19 Notice on the General Manager. He denied meeting with Cecelia Allieu, the accused wife. He denied the suggestion that he asked her for the accused's phone number. He also denied having financial problems. He also maintained that the accused admitted giving him the Le500,000.00. He denied having any discussion with the accused. He also denied making a request to the accused. He denied ever being to the accused's house. He said he was on his way home after work when the accused called him on his cell phone and asked him to meet him in his office because he had got the documents requested. He denied making an offer to the accused but he agreed that he admitted the accused's offer and no one was present. He denied that he had been running after the accused. He stated that it is the rule that they should record their activities and he did not record the Notice he served and added that it was recorded in ledger. He denied the suggestion that he had been soliciting funds from the accused. The record of the Notices served is in evidence as exhibit A. The witness admitted that he was not investigating any matter. The witness admitted knowing one James Babin. He agreed that the accused sent some way Bills for government buses but that other documents were not sent. The witness did not recall 6th November and denied ever being to the accused's house. He denied the suggestion that the accused ever gave him Le500,000.00

In re-examination, the witness tendered copies of the relevant pages of the Way Book, marked Exhibit A 1 to 4. This is the evidence of the witness. But after Mr Quee had been dropped as counsel for the defence Mr Edward's replaced him. On coming to the matter he successfully applied to recall the witness for further cross-examination. Therein the witness further told the court that the money

received from the accused was in the custody of one Festus Robbin Taylor after being handed to the latter by Mr Foday Kamara his Line Manager. It was tendered by the witness for identifications marked Z. According to the witness he said he recorded the serial numbers of the monies pursuant to his alleged caution. He denied the suggestion that that was not the money given to him. When confronted with exhibit B he said the denomination was different when further cross-examined the witness said his first time to meeting the accused was on the 8th of November 2005 and changed to say that he could not remember when he first met the accused.

The witness admitted that he went to the accused's office with James Babin whose names had earlier been suggested to him by the defence. In one breath PW1 said he received the amount in question from the accused between 5 and 6pm but changed to say that he received it between 5 and 7pm. He strongly denied going to the accused's wife.

Turning to the testimony of PW2, Alfred Brima Banya, the witness told the court that he accompanied PW1 on unknown or stated date to the accused in order to enquire from the accused whether the accused gave PW1 the sum of Le500,000.00 as alleged by PW1, and he said the accused confirmed it and said it was meant for those investigating in their office.

The witness said PW1 was in charge of the investigation whereas PW1 himself had said he was not but he was only an Intelligence Officer. The witness stated that he saw the documents about the investigations and one should be the 31st August 2005 and the second on the 23rd of October 2005. The witness denied going to the office of the General Manager. This is the totality of the witness' evidence.

One Bashiru Konneh was the next witness (PW3). He was the Investigating Officer at the ACC. It was on the 13th of March 2006 that he had cause to see the accused in connection with the matter. That he interviewed him contemporaneously and that the Senior Investigating Officer in the person of Augustine Ngobie witnessed the statements. The statement was tendered as exhibit B.

In exhibit B which is a total denial of the allegation but I take important notice of the answer to question 40 which reads thus:

"Ans: Yes. One thing to note is that Mr Abdul Karim Sheriff did not disclose to me any financial irregularity in my Accounts that would have warranted me to give him money for a cover-up. In any case, I am in no position as an ordinary employee of the company to offer hard notes for corrupt practices in the corporation".

The last but not the least witness was Mr Festus Robin Taylor who was the Head of the Investigation Department at ACC. The witness told the court that the exhibit in the matter was in his custody and he produced and tendered the sum of Le500,00.00 as exhibit C.

Under cross-examination, the witness said 4 exhibits were handed over to him on the 28th of February 2006. That it was given to him by one Mohamed Koroma. This is the case for the Prosecution.

Defence: Accused relied on his statement exhibit B and called his wife Cecelia Allieu as a witness. I observe that her evidence is cogent and coherent. It was un-introverted or challenged by the Prosecutor.

At the close of the defence case both counsel for the defence and the prosecution addressed me, Counsel for the defence contention is the prosecution has failed to prove their case against the accused beyond reasonable doubt. Mr Edwards drew my attention to the accused's statement in exhibit B. He submitted that the ingredient of the offence of giving Le500,000.00 to influence PW1 was not substantiated because it was not the accused that was being investigated but the SLRTC and I will add that even that the accused raised a very salient point that no financial irregularity was discovered in his Account and posed the question that what would have given him cause to influence PW1. The question remained unanswered. Mr Edwards also submitted that if the amount had been a bribe PW1 would have reported. That the evidence revealed that it was sometime in February 2006 that PW1 reported. He drew attention to the fact that the money brought here as exhibit has been changed to various denominations. I note that PW1 could not explain the absence of the book where he allegedly entered the numbers of the notes. Mr Edwards posed the question whether this was not a case of entrapment. PW1 have induced the accused to part with the money. He urged the court to acquit and discharge the accused.

In his reply, Mr Barbar referred to Question 28 and the answer thereto in order to assist the court as an officer of the court vis a vis Mr Edwards' submission regarding entrapment. I refer to Question.28 at page 10 of exhibit B and the answer to it. They read as follows:

Q.28 What did he tell you at the second time of meeting with him?

Ans He told me that he was investigating some issues relating to the operations of the corporation but that as a friend and brother of the same tongue, he must approach me first before meeting the General Manager.

Mr Barbar posed the question that why should the accused be interested in greasing the palm of the investigator when there is no allegation against him.

This indeed is the crux of the matter and it leaves the question unanswered. I am grateful to Mr Barbar for his conclusion

In my own judgement whilst I agree with Counsel on both sides I find the evidence adduced by PW1 to be replete with many contradictions and inconsistencies that I hold the view that no reasonable tribunal convict upon it. The evidence of PW1 leaves me in no doubt that he refrained from speaking the whole truth on the matter. The evidence of the accused's wife (DW1) leaves me in no doubt that she was a witness of Links and spoke the truth. I accept it that there is no link in the evidence of PW1 which is that he did not know the accused's wife and for that he had never been to the accused's house. I believe and hold as a fact that there is a blatant lie. I also reject without any hesitation the evidence of PW2 which is that the accused admitted giving the amount in question as a bribe more so after he himself had allegedly cautioned him. Only a fool will believe that and as I am not one I reject it.

I share the view that this indeed is a pure case of entrapment which was badly planned. I hold that the prosecution has failed to satisfy me that they have proved the offence as laid against the accused person. They are far from proving it and for all the foregoing reasons I find the accused not guilty. I acquit and discharge him.

Mr Edwards. We are asking for the return of Exhibit C the money Le500,000.00

Court: Application granted. Accused to have his money returned to him.

Signed

Case Report:
Kalokoh

THE STATE v. SANTIGIE ABU KAI KALOKOH

THE HIGH COURT OF SIERRA LEONE

JUSTICE M SEY J

29^h January 2009

Soliciting an advantage - Accepting an advantage - Necessary duration of retention of advantage by Accused to constitute acceptance – Definition of Entrapment - Discussion of term Agent Provocateur – Treatment of Entrapment and Agent Provocateur as correlative - Effect of threats and intimidation by investigators on interview notes of the Accused - Effect of Duress and Coercion on elicitation of evidence- Reversal of Burden of Proof by Defence of Insanity and other exceptions provided by statutorily defined crimes and defences - Principles governing Court acceptance and dismissal of witness testimony and statements - Relation between agent provocateur, entrapment and incitement - Whether entrapment negates commission of an offence - Decision to grant Attorney General’s application for trial by Judge alone - Judicial intervention to call crucial witness/es - Failure of Defence to object to admission by Prosecution of contested statement - Whether it is necessary for Officers of the Law to explain to the Accused the legal definition of terms used to bring charges especially where they may differ from the lay understanding of the terms- Anti-Corruption Act 2000 (as amended), ss. 8(1), 8 (1) (b) & 41- Act No. 15 of 2002 - Anti-Corruption Act 2008, s. 28 (3)- Criminal Procedure Act No. 32 of 1965, s.144 (2) - Criminal Procedure and Amendment Act, No. 11 of 1981, s.3.

Held

The Accused was convicted of Count 1, as the Prosecution proved beyond all reasonable doubt that PW1²²⁰ and PW2²²¹ had not entrapped the Accused.²²² The Accused was sentenced to a fine of Le 3m in respect of Count 1, to be paid immediately, or alternatively, to one year imprisonment.²²³ However, the Accused was acquitted on Count 2, as the Prosecution failed to prove beyond all reasonable doubt that the Accused “accepted” money from PW1 in the true sense of the word.

Ratio Decidendi

The Judge accepted PW1 and PW2’s evidence in respect of Count 1, instead of the Accused’s, because, although the Accused testified to not understanding the word “soliciting”, the Judge believed he would have, given he had O and A levels and was Higher Executive Officer in the PSC,²²⁴ and did not believe that upon his enquiry, ACC Officers told him not to ask questions. Secondly, the Judge did not believe the Accused’s admission to soliciting, was secured by threats from the ACC Officers, PW1 and PW2. Thirdly, the evidence did not show entrapment, as it did not show that PW1 and PW2 incited or instigated the Accused to solicit the advantage, or that they were Police Officers/informers; even if they had approached the Accused as “agent provocateurs,”

²²⁰ Arthur Caulker, Journalist for “The Exclusive” newspaper.

²²¹ Raymond Bai Kamara, (no indication of profession in judgment).

²²² Applying the definition in *Regina v. Loosely*, (2001) UKHL 53.

²²³ The Court took into consideration the mitigating circumstances that the Accused pleaded; that he had no previous convictions, was the sole breadwinner of a family of 2 wives and many children, and was remorseful.

²²⁴ Public Service Commission.

that would not diminish the criminality of Accused's conduct, or weaken the probative value of the evidence.²²⁵

Although, the Accused claimed his statement²²⁶ was obtained under threats, he signed on each question and answer sheet after being duly cautioned by PW4. The Accused did not, as would have been expected, object to the Prosecution tendering his statement²²⁷ in evidence. In it, he explained how would use the money, repeating his alleged initial break down of figures;²²⁸ Le50,000 to MoHS²²⁹ Clerks, Le 50,000 for transportation and Le50,000 for paying officials who would process PSC Form 8.

Regarding Count 2, the act of "accepting an advantage" was not complete, as PW1 states that although the Accused took the money and placed it on the table, he, PW1 re-took the money, returning it to its owner Yusuf Sesay. PW1 and PW2 should have left the money for ACC officers to retrieve from the Accused, so that there would be no doubt about "acceptance". Further, the Accused was to be given the benefit of the doubt raised by inconsistencies in the evidence of PW1 and PW2 regarding Count 2.²³⁰

Notes

The Court has a duty to make sentence conform to facts consistent with verdict; *Ralf* (1989) 11 Cr App R (S) 121. The sentencer must not pass a sentence appropriate to a more serious charge of which the offender has been acquitted; *Gillespie* [1998] 2 Cr App R (S) 61. If the Prosecution appear to be exercising the discretion [not to call a witness] improperly, it is open to the trial judge to interfere and in his discretion in turn to *invite* the prosecution to call a particular witness, and if they refuse there is the ultimate sanction in the judge himself calling that witness; *Oliva* [1965] 1 WLR 1028. The Prosecution may call a witness simply for cross examination by the Defence; Blackstone's p. 1421. *Voir Dire's* are held to determine their admissibility of disputed confessions which are objected to; p. 1428 Blackstone's, see also *Minors* [1989] 1 WLR 441. Disputed confessions do not always give rise to a need for *Voir Dire's*; where the issue is whether there was a confession at all, rather than whether it was improperly obtained, is for determination during the closing of the trial; *Flemming* (1987) 86 Cr App R 32. The test for exclusion of evidence in the UK for example, is whether, admission would adversely affect the fairness of the proceedings; *Keenan* [1990] 2 QB 54. Breaches of due process rights may be apparent from the custody record, in which case the prosecution will likely admit or based on accusation of the Accused only. If the Prosecution admits to such breaches, determinations on admissibility can be had without a *Voir Dire*. Where only the Accused can establish the allegations, *Voir Dire's* are necessary; *Keenan*, Blackstone's, p. 1429.

Confessions might be unconvincing because they lacked the incriminating details to be expected of a guilty and willing confessor, because they were inconsistent with other evidence, or because they

²²⁵ See **Application of Law**, at p.182.

²²⁶ Exhibit D.

²²⁷ The Accused's interview, Exhibit D was tendered through PW4, Musa Jamiru Bala Jawara, Investigating Officer at the ACC.

²²⁸ Exhibit D, Accused's answer to question 8, was to repeat what PW1 and PW2 claimed he'd told them in his office.

²²⁹ Ministry of Health and Sanitation.

²³⁰ See **Summary of Facts** at p.180.

were otherwise inherently improbable; *Wood* [1994] Crim LR 222. Where an incited act/offence is committed, the inciter becomes a secondary party to that offence. For penalties on incitement, judges must have regard to the penalties applicable in respect of the offence incited.²³¹ To be guilty of incitement, one must ordinarily intend that the offence incited will be committed although as with attempt, recklessness as to circumstances may sometimes suffice; *DPP v. Armstrong* [2000] Crim LR 379. The purposes behind the incitement, for e.g. exposing the laxity of a system is immaterial as long as the incited intended the incitee to commit the offence with the requisites mens rea; *Shaw* [1994] Crim LR 365.

A sentence of three and a half years was reduced to 18 months, taking into account personal mitigation, including the break-up of his family, the loss of his home and his business; *Wilson* (1982) 4 Cr App R S 337. It is an offence at Common Law punishable in the same way, to bribe a holder of a public office and it is similarly an offence for any such office holder to accept a bribe, *Whitaker* [1914] 3 KB 1283, *Lancaster* (1890) 16 Cox 737. If the offer of a bribe is not accepted, the offeror might be guilty of an attempt to commit the Common Law offence. Any improper or unauthorized gift, payment or other inducement offered to any public officer is likely to be considered corrupt; Blackstone's p.690. Motive in offering a bribe is irrelevant, for e.g. to expose corruption, *Smith* [1960] 2 QB 423. However, in the inverse scenario, it is not corruption to accept a bribe for the purpose of exposing a briber; *Mills* (1978) Cr App R 154. It is possible that a payment intended as a corrupt gift could be received innocently by the recipient, i.e. without him understanding it to be a reward or inducement, so that only the giver would be guilty of corruption; *Millray Window Cleaning Co. Ltd* [1962] Crim LR 99. Buckley (1999) 163 JP 561, Fingerprint evidence, like any other evidence, is admissible, if it tends to prove the guilt of the Accused. It may be excluded in the exercise of judicial discretion, if its prejudicial effect outweighs its probative value; *Buckley* (1999) 163 JP 561; Blackstone's Criminal Practice, 2003, p.2321.

Cases referred to in Judgment

Woolmington v DPP (1935) AC 462 (HL)

Regina v. Loosely (2001) UKHL 53

R v. Sang (1980) AC 402

Summary of Facts

The Accused was charged on Counts 1 and 2 under sections 8 (1) and 8 (1) (b) of the Anti-Corruption Act 2000 (as amended),²³² with the offences of **soliciting** and **accepting an advantage** respectively, i.e. Le150,000 from Arthur Caulker and Raymond Bai Kamara on 7th May 2009 at Freetown, **as an inducement** to expedite an application to secure the enrolment, of their purported sister, as a nurse in the MoHS. The Accused is alleged to have solicited and accepted the advantage in his capacity as a Public Officer i.e. a Higher Executive Officer, attached to the PSC.

PW1 testified that on 7th May 2008, he and PW2, approached the Accused at his Office, and explained that PW1's sister was a nurse resident in Makeni and that she wanted to be accredited as a civil servant. PW1 testified that the Accused confirmed he was the right person to see and that he

²³¹ For an elaboration on Incitement, see the **Critique** section below, at pp.185-190.

²³² Henceforth referred to as the ACA 2000. The provision mirrors section 28 (2) and 28 (2) (b) of the ACA 2008.

said he could expedite an otherwise long process, if PW1 provided Le 200, 000. PW1 testified that a sum of Le150,000 was agreed on, and the Accused broke the figures down as: Le50,000 being destined for the Permanent Secretary at the MoHS, Le 50,000 being destined for undisclosed officials and Le50,000 for the Accused's own transportation.²³³ On this point, *the Accused* testified that the process was not to charge fees for processing the forms²³⁴ and that what he told PW2 was that the PSC only gave out forms when a vacancy was advertised and that the MoSH was responsible for processing forms. *PW1 testified* that he and PW2 left and returned 10 minutes later, giving the requested sum to the Accused, which he placed on top of his table. The Accused then gave PW1, a Form 8 and a specimen form.²³⁵ *PW2* also testified that the Accused asked them for Le 150, 000 and gave them 2 types of forms. *PW1 said that* he took the money from the table while the Accused's back was turned, returned it to its rightful owner, so that he could not produce it at the ACC, as confirmed by PW4.²³⁶ *PW2 testified* that the changing hands of the money from PW1 to the Accused was photographed by Yusuf Sesay and that PW1 *snatched the money from Accused's hands*, after the Accused had received it. *The Defence argued* the element of "acceptance" was absent as PW1 retrieved the money; that there was no exhibit demonstrating acceptance; pointing out that the photograph PW2 speaks of, was not produced. *The Accused maintained that* PW1 and PW2 did not offer him money and that PW1 got annoyed with him and left PW2 behind, who then threatened the Accused.²³⁷ The Accused said that PW1 returned with 3 ACC Officers who arrested him and accused him of receiving Le 150,000 from PW1.

The Accused testified that the term "solicited" was not explained to him, and the ACC Officers told him not to ask questions, so that he simply affirmed the term in his statement.²³⁸ PW4 agreed with the Defence contention that "soliciting" was a technical term, and accepted that he did not explain its meaning.²³⁹ *The Defence argued* PW1 and PW2 were "*agents provocateur*", so that there could be no soliciting, and that the Accused was *entrapped*. Further, the Accused claimed that he signed his statement as a result of intimidation by PW1 and the ACC Officers, without reading it²⁴⁰ and that he did not personally write down the sentence, "*certify that it is true and correct.*"²⁴¹

²³³ The Accused on this point testified that when PW2 asked him to assist in getting and processing Form 8, he told PW2, that he did not have that capacity, and that the forms were under "lock and key", with the Secretary of the Commission.

²³⁴ PW3 testified that the correct vacancy application procedure entailed him issuing Form 8 only when vacancies arose, to his Staff Superintendent, who passed them to the Accused, through whom Applicants could access them. For vacancies of senior positions, the forms were passed directly to the Accused; Trial Judgment, p. 9. (PW3's name is missing, Trial Judgment missing page 8.) In Cross, the Accused confirmed what PW3 said about the procedure concerning the obtention of PSC forms; Trial Judgment, p.12.

²³⁵ The PSC, its photocopy and the specimen form were admitted, without objection as exhibits A, B and C respectively and the Accused identified Exhibits A, B, C as application forms that can be obtained from any Ministry and are issued to Applicants when there are vacancies in Ministries.

²³⁶ PW4 testified that he found no Le150,000 in the Accused's Office and that PW1 said he'd taken the money from the Accused, but PW1 could not produce the money.

²³⁷ PW2 asked the Accused if he had ever been involved in a government problem, and when the Accused responded with a "No"; PW2 told the Accused that PW2 was going to "*today*", change the place where the Accused laid his head; Trial Judgment, p. 11; "Today, he is going to change my place of sleeping".

²³⁸ Statement of Accused, Exhibit D, Accused's answer to question 6.

²³⁹ The Defence closing address argued that the term would be interpreted differently by the ordinary man.

²⁴⁰ The Accused alleged that they threatened him in their Office, by telling him he would not sleep in his house for 5 days.

²⁴¹ As written in the statement, preceding his signature.

Application of Law

The Court ordered on 11 July 2008, pursuant to an application made by the Attorney-General and Minister of Justice, for the Accused to be tried by Judge alone instead of by Judge and Jury in accordance with section 144 (2) of the Criminal Procedure Act No. 32 of 1965, as repealed by section 3 of the Criminal Procedure and Amendment Act, No. 11 of 1981.²⁴²

The Prosecution bears the legal burden of proof beyond reasonable doubt of every element of an offence, qualified only by the defence of Insanity and by statutory exception/s. The Accused should be given the benefit of any reasonable doubt created by the Prosecution or the Accused's evidence, which subsists to the end of the trial, even if the Court does not find the Accused's own version of events credible. Such doubt should result in an acquittal; *Woolmington v DPP* (1935) AC 462 (HL).

Section 8(1) of the ACA 2000, provides that:

*“any Public Officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented the performance of an act, whether by himself or by any other Public Officer, in his capacity as a Public Officer...is guilty of an offence.”*²⁴³

In order to prove Counts 1 and 2, the offence of soliciting and accepting an advantage under section 8(1) and 8 (1) (b) of the ACA 2000, the Prosecution must prove that the Accused was a Public Officer; who solicited or accepted an advantage; such advantage being an inducement to or reward for his expediting the performance of an act, in his capacity as a Public Officer.

The Accused and PW3 testified that the Accused was employed as Higher Executive Officer at the PSC and the Accused's statement admits this.²⁴⁴ The Accused was therefore a Public Officer. Secondly, the Accused has admitted to *soliciting* Le150,000 from PW1 and PW2.²⁴⁵ This admission is deemed by the Court to be genuine and to have been made of his free will. The Accused's allegation that he was intimidated by PW1, PW2 and ACC Officers into making the statement, was discounted as was his claim that he did not understand the word. Thirdly, it was a reward for expediting the performance of an act, as the Accused named his initial price and

²⁴² Refer to the **Application of Law** section in the trial of *The State v. Alimu Bah* below at pp.360-361.

²⁴³ As quoted from Trial Judgment, p. 2. Section 8 (1) actually states ad verbatim; *Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his— a. performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer; b. expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or c. assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body; is guilty of an offence.* Section 28 (2) states that: “ Any public officer who solicits, accepts, or obtains or agrees to accept or attempts to obtain for himself without lawful consideration or for a consideration which he knows or has reason to believe to be adequate, any advantage as an inducement to or reward for or otherwise on account of his...”

²⁴⁴ Exhibit D, questions 12-17.

²⁴⁵ Exhibit D, Accused's answer to question 6: “...in order assist their relative, to secure the PSC Form 8 which would enable the relative to be enrolled at the Ministry of Health and Sanitation.”

eventually consented to a lesser sum, and explained how he would use the amount.²⁴⁶ Lastly, the Court held the Accused *did not* “accept” an advantage, applying the legal definition of the word; “to receive with consent.” In turn, it relied on the definition of the word “to receive”, which means, “to voluntarily take from another, what is offered.”

The Defence submitted that the evidence demonstrated “*entrapment*” of the Accused by “*agent provocateur*”, but the Court ruled that entrapment did not exist as a substantive defence in English Law. Supporting dicta was quoted found in *R v. Sang* (1980) AC 402:

*“many crimes are committed by one person at the instigation of others. The fact that the counsellor or procurer is a policeman or police informer, although it may be of relevance in mitigation of penalty for the offence, cannot affect the guilt of the principal offender: both the actus reus and mens rea of the offence charged are present in this case.”*²⁴⁷

And in *Regina v. Loosely* (2001) UKHL 53:

*“Entrapment occurs when an agent of the state – usually a law enforcement officer or a controlled informer – causes someone to commit an offence in order that he may be prosecuted.”*²⁴⁸

In reaching its sentence, the Court was guided by section 41 of the ACA 2000 as amended by Act No. 15 of 2002, otherwise known as, the Anti-Corruption Amendment Act, 2002. Section 41 of the ACA 2000 provided that: “*Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection (1) of section 11, section 12 or section 13, shall be liable on conviction to a fine not exceeding thirty million Leones, or to a term of imprisonment not exceeding 10 years, or to both such fine and imprisonment.*”²⁴⁹

For the purposes of clarity, the provisions of the Anti-Corruption Act amending section 41 are reproduced here. The Anti-Corruption Amendment Act, 2002, being an Act to amend the Anti-Corruption Act, 2000, stated the following in its section entitled; “*General Penalty for Corrupt Practices – The Anti Corruption Act 2000 is amended - (j) by the repeal and replacement of section 41 with the following:- 41. Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection 1 of section 11, section 12 or section 13 shall be liable to conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding 10 years or to both such fine and imprisonment; and in addition the Court shall order the forfeiture of the advantage corruptly acquired.*”

It is then followed by a provision which bears no counterpart in section 41 of the ACA 2000, in a section entitled *Penalty for Obstruction of Commission*. This amends section 41 of the ACA 2002, through “*(k) by the insertion immediately after section 41 of the following:- 41A. Any person who willfully obstructs or otherwise interferes with the Commission or any of its members or staff in the*

²⁴⁶ Trial Judgment, p. 19; although this strand of dicta, i.e. that he named his price and gave a breakdown of figures, is not expressly stated to be in support of that element of Count 1, i.e., inducement but rather it is implicit in the fact that the Court was assessing in a sequential manner, the presence of all the elements of the offence in Count 1, see Trial Judgment, pages 16-20.

²⁴⁷ Lord Diplock in *R v. Sang* (1980) AC 402, at p. 432.

²⁴⁸ Lord Hoffman in *Regina v. Loosely* (2001) UKHL 53.

²⁴⁹ Identical to section 28 (3) of the ACA 2008.

discharge of their functions under this Act, is guilty of an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment."

Section 41A is not relevant and was never applied in *Kalokoh*. The only amendment to section 41 other than the addition in 41A, is the ability of the Court to order forfeiture.

Critique

Questions are raised about why the Court chooses to believe PW1 and PW2's evidence regarding the act of soliciting, but rejected their evidence concerning the act of acceptance. It is true that there is no reason why Count 1 cannot exist separately of Count 2; the acts of soliciting and acceptance are separate and the named witnesses may provide evidence which clearly inculpatates the Accused on one count, *because the evidence is unambiguous, credible and reliable*, whereas the evidence of the same witnesses concerning another count, may be insufficient to inculcate the Accused and may be dismissed in that particular regard. *However, the crux of the criticism here is that, there appears to be no reason why the evidence of the named witnesses is deemed to be more credible and reliable with regard to Count one, but not with regard to Count two, why PW1 and PW2's testimony was accepted at face value with regard to Count 1 and not Count 2.* The evidence of PW1 and PW2 was dismissed in relation to Count 2, the charge of acceptance, since the money held to have been solicited was not retrieved by investigators from the possession or office of the Accused and since the inconsistencies in PW1 and PW2's evidence regarding the issue of acceptance,²⁵⁰ are treated by the Court as creating doubts which operate in favour of the Accused. However, *it is odd that* inconsistencies between PW1 and PW2's evidence concerning Count 2, considered by the Court as creating doubts in relation to Count 2, (despite other more general points of synchronicity), would not *also* create reasonable doubts regarding these witnesses' testimonies *in general*, thereby rendering conviction on Count 1 also unsafe.

PW1 and PW2's testimony concerning Count 1 was found to be valid, even though it was only corroborated by firstly, PW1 and PW2's production of the forms²⁵¹ allegedly provided by the Accused in exchange for the inducement sought by said Accused, and corroborated secondly, by the Accused's admissions in his interview notes taken by ACC officers. There appears to be no reason why the production of these forms and the Accused's admissions could not also substantiate Count 2, or go some way toward doing so.²⁵² Also, noteworthy is that the ACC Officers who were

²⁵⁰ Trial Judgment, p.20; "With regards to Count 2 . . . I have my doubts as to the guilt of the Accused. This is due mainly to the inconsistencies I had earlier referred to in the evidence of PW1 and PW2." See also, Trial Judgment, pp.5 -6; "PW1 further testified that, he gave the Accused Le 150,000 which he received and placed it on top of his table. He said that the Accused then took the Public Service Commission Application Form from his cabinet and gave it to him...PW1... said he took the money from the table and gave it to the rightful owner". Trial Judgment, p.7; "However, there was inconsistency between the evidence of PW1 and PW2 as to how the money was removed from the Accused. PW1 stated that he took the money from the table where the Accused had placed it...the money was on the table...I took the money...he didn't notice the money was gone." Trial Judgement, p. 10; "PW2 on the other hand, stated that PW1 snatched the money from the hands of the Accused after he had received it."

²⁵¹ Trial Judgment, p. 6 ;"Both the original PSC Form and the photocopy were produced and tendered without objection and admitted as Exhibits A and B respectively . . . The Specimen form . . . was . . . admitted as Exhibit C."

²⁵² In his interview notes the Accused admits to soliciting the alleged inducement, but there is no mention in the Judgment about whether he also admits in these interview notes to, accepting the inducement. If he did, it could have

brought along by PW1 who arrested the Accused on suspicion of having solicited and accepted Le 150,000 from PW1 and PW2, arrested him purely on the basis of their accusations and the forms.

Aside PW1 and PW2's testimony, PW1 and PW2's production of the forms and the Accused's statements of confession, there is no further evidential corroboration of the charge in Count 1. It is submitted that there was a need for further corroboration given the paradox of believing the named witnesses' testimonies with regard to Count 1 and disbelieving them, with regard to Count 2. Where it is argued that PW1 and PW2's evidence was not disbelieved as such with regard to Count 2, but rather that it needed to be bolstered with tangible evidence as Count 1 had been, the retort is that the conviction for Count 1 rests mainly on testimonial evidence, since the forms could have been obtained from elsewhere,²⁵³ unless of course the prints of the Accused were found thereupon and even then, that is less than determinative of the issue. It is unclear why the testimonies of PW1 and PW2 and the admissions would not suffice for a conviction on Count 2, but would suffice for a conviction for Count 1.²⁵⁴ The Court does not make explicit that PW1 and PW2 testimonies, demeanour and method of delivery simply come across as more credible than the Accused's.

Corroboration is especially important given that, *the credibility and reliability of PW1 and PW2 could be seen as questionable* since firstly, they talk about taking a photo of the transaction/exchange of cash, but apparently fail to make it available. It is curious that the Prosecution does not adduce this in evidence or that the Court does not invite or order the Prosecution to adduce it, given its criticality. A photo of the sort would seem highly unlikely to have been misplaced by the named witnesses or ACC investigators or to have been overlooked in trial preparation. Secondly, PW1 and PW2's credibility could also be challenged on the fact that they could probably have audio recorded the exchange by use of the same mobile phone, but did not do so. Thirdly, it is curious that PW1 and PW2 allege that they returned the money to its rightful owner, but that this rightful owner appeared to have never been called as a witness by the Prosecution or even interviewed by ACC investigators, neither was his consent sought in order to use the money as an exhibit. In light of this, it does not appear as if witnesses were critically selected by the ACC or that other material evidence was ever sought to buttress the crucial evidence on which the verdict was reached here. Fourthly, it is odd that PW1 and PW2 would have rushed to repossess the "bribe", knowing that they would immediately afterward be bringing ACC Officers or would be making a report. It is odd that they did not construct a plan which would have included one of them staying behind to stall, while ACC officers were being hailed by the other.²⁵⁵

UK Law generally defines soliciting as *asking, enticing, or requesting* of another to provide a financial (or other) advantage, intending that the performance of a relevant function should be

been used to justify a conviction on Count two. Trial Judgment, p.16; "I have carefully perused Exhibit D and I believe that *all the admissions made in it are true*...Indeed I solicited the sum of one hundred and fifty thousand leones from them in order to assist their relative."

²⁵³ Trial Judgment, p. 12; "...the Accused said ... these forms are usually obtained from any Ministry as far as civil servants are concerned . . ."

²⁵⁴ It seems to just be a case of the Accused's word as against those of PW1, PW2 and PW4.

²⁵⁵ This oddity which calls into question the credibility of the Accused/likelihood of the veracity of their account, is noted in not so many words by the Court, in dismissing Count 2, see Trial Judgment, p. 21; "Perhaps it would have been prudent for PW1 and PW2 to have left the money with the Accused and then wait for the ACC Officers to have retrieved it from him."

performed improperly, i.e., pursuant to the provision of the advantage.²⁵⁶ The crime of solicitation only requires for a bribe to have been solicited; solicitation can subsist without the consummation of the act whose performance is sought, neither is it necessary that the Defendant profit from said act.²⁵⁷ It is then an inchoate offence of sorts since a person cannot be punished for both solicitation and the crime solicited. In the United States, the term solicitation means *the inducement of another to commit a crime* and attaches the specific intent that the person solicited commit the crime.²⁵⁸ Defined in those terms, the US definition of the crime of solicitation when applied to acts of bribery, would encompass both the offer of, and request of a bribe, since both are forms of encouragement to commit a crime. Simply put, it refers to the act of prompting a crime and in this sense captures the crimes of instigation or incitement. However, in *Kalokoh*, the meaning that attaches is the act of requesting (an advantage), so that it becomes possible for the Defence to contemplate at least in theory, the incitement of a request without this amounting to tautology. The question is where did the idea stem from and was the initial idea accompanied by persuasive pressure.

The evidence that was elicited does not demonstrate that the Accused's soliciting was prompted by the request for help from PW1 and PW2 since initiating a discussion with the Accused seeking his help does not in and of itself amount to an incitement of the crime of soliciting an inducement (does not mean they encouraged him to ask). However, the judgment would have benefited from added clarity if the judge or Prosecutor had sought to eliminate any doubt that PW1 and PW2 may have suggested, even subtly, the offer of a sum, to establish that there was never any hint of incitement, instigation, encouragement or prompting on the facts.²⁵⁹ Conversely, the Defence could have tried to establish that the degree of insistence they exerted when seeking help amounted to instigation or incitement to commit the offence of soliciting a reward/inducement. The Defence might also have tried to clarify whether PW1 and PW2 ever in their interaction with the Accused acknowledged that they were seeking a "favour", or whether the Accused at all during their meeting changed his mind due to their insistence, from restraint and reservation concerning the act, to acquiescence, i.e. *was he persuaded*. Surprisingly, there does not appear to be any attempt by the Defence to develop these points even as pleas in mitigation.

The Court ruled that there was no evidence of entrapment, instigation or incitement by PW1 and PW2 of the Accused to solicit the advantage. The Court also ruled that even if they had approached the Accused as "*agent provocateurs*," that would not diminish the criminality of Accused's conduct or weaken the probative value of the evidence. The Court correlates the meanings of "entrapment", with those of "agent provocateur", intimating that entrapment is definitive of the term "agent provocateur". In *Regina v. Loosely* [2001] UKHL 53 it was stated; *An*

²⁵⁶ Holman Fenwick Willan, (2013), *UK Bribery Act*, <http://www.hfw.com/UK-Bribery-Act-Articles>, article originally printed in, Port Strategy, (2011), www.portstrategy.com.

²⁵⁷ US Legal Inc., (2013), *Solicitation and Attempted Bribery*, <http://bribery.uslegal.com/solicitation-and-attempted-bribery/>

²⁵⁸ <http://en.wikipedia.org/wiki/Solicitation>, accessed on 29.12.013; Where the substantive offence is not committed, the charges are drawn from incitement, conspiracy, and attempt. Where the substantive offence is committed, the charges are drawn from conspiracy, counselling, procuring and joint principals (common purpose).

²⁵⁹ The question is, did they incite, egg on, prompt, provoke the commission of, instigate, support, spur, set off, originate, motivate, encourage, promote, "whip up", coax, push, activate the commission of the crime of soliciting an inducement or reward?

agent provocateur is "a person who entices another to commit an express breach of the law which he would not otherwise have committed, and then proceeds or informs against him in respect of such offence."²⁶⁰ Generally, an agent provocateur tries to bait another into committing a crime, so as to gather evidence against them; this is the defining feature of entrapment as opposed to simple incitement and instigation, the latter two being used mostly interchangeably.

Common Law incitement in the UK was abolished on 1 October 2008 by Section 59 of the Serious Crimes Act.²⁶¹ As the English Common Law definition of incitement still applies in Sierra Leone by virtue of the Courts Act of 1965,²⁶² what follows is an elaboration of the doctrine's definitive principles under the Common Law of England and Wales. An inciter is one who reaches and seeks to influence the mind of another to the commission of a crime; *R v. Whitehouse*, [1977] QB 868. The Prosecution bears the burden of proof concerning incitement; *Walsh v Sainsbury* [1925] HCA 28. Incitement is the urging or spurring on through the advice, persuasion, encouraging, instigating, pressuring, or threatening another so as to cause them to commit a crime; *Race Relations Board v Applin* [1973] HL. Incitement or solicitation may transpire through words as well as acts; *R v. Higgins* (1801) 2 East 5. The actus reus of incitement may be implied; *Invicta Plastics Ltd v Clare* (1976) QBD. It may be a suggestion, proposal or request that is communicated; *R v. Fitzmaurice*, [1983] QB 1083. Also, incitement has been defined as when one person counsels, procures or commands another to commit a crime; *R v. Higgins* (1801) 2 East 5. Although counseling and procuring were later adopted as forms of accessory liability,²⁶³ these definitions still apply to an application of the Common Law doctrine of incitement in Sierra Leone by virtue of the Courts' Act of 1965.²⁶⁴ To procure means to produce by endeavour; *AG's Reference (No. 1 of 1975)* [1975] QB 773. Common Law incitement required the knowledge, belief or suspicion that the crime incited would be performed with the requisite mens rea and whether or not the incitee actually did possess the requisite mens rea is irrelevant; *R v. Claydon* (2005) EWCA Crim 2817, countering the now defunct *R v. Curr*, 2 QB 944 (1968). It is also irrelevant that the incited crime was not performed²⁶⁵ or that an alternative offence was committed.²⁶⁶

An incitement which is motivated purely for revealing gaps in a system cannot incur guilt; *R v. Shaw* (1994) CA. The impossibility of the incited acts constituting a crime precludes a charge of incitement; *R v. Whitehouse*, *R v. Claydon*, *R v. Pickford* [1995] QB 203. However *DPP v. Armstrong* [2000] Crim LR 379, 1999 EWHC 270 (QB) which is a more recent application of Common Law incitement directly counters the impossibility principle.

²⁶⁰ *Regina v. Loosely* [2001] UKHL 5, para. 49.

²⁶¹ The Serious Crimes Act abolishes the common law offence of incitement and in its place creates new offences of intentionally encouraging or assisting crime and encouraging or assisting crime believing that an offence, or one or more offences, will be committed.

²⁶² Section 74 of the Courts' Act 1965 states; "Subject to the provisions of the Constitution and any other enactment, the common law, the doctrines of equity, and the statutes of general application in force in England on the 1st day of January, 1880, shall be in force in Sierra Leone."

²⁶³ Section 8 of the Accessories and Abettors Act 1861.

²⁶⁴ Refer to FN 262 above.

²⁶⁵ Crown Prosecution Service, (2014), *Inchoate Offences*; http://www.cps.gov.uk/legal/h_to_k/inchoate_offences/#P20_588. See also Australian case of *R v Dimozantis*

²⁶⁶ Thomson Reuters, (2012), *What is Incitement*; http://www.findlaw.co.uk/law/criminal/crimes_a_z/500491.html

The application of English Common Law in Australia has spawned the following definitions of incitement. To incite means; to rouse; to stimulate; to urge or spur on; to stir up; to animate, command, request, propose, advise, encourage, authorize, to instigate; *Young v. Cassells* (1914) 33 NZLR 852 and *R v. Eade* [2002] NSWCCA 257. What constitutes incitement depends upon the context; *R v Massie* [1999] 1 VR 542.

It appears as if instigation is practically akin to incitement, a stronger form of incitement since the instigator practically induces the Accused into the commission of the offense.²⁶⁷ The difference between solicitation and incitement is that a solicitor need not be present at the scene, while an inciter is generally present at the scene. Solicitation is more concretely, a step toward the commission of a crime.²⁶⁸

Entrapment defined in strictly legal terms refers not to scenarios simply involving intervention from and contact by the Accused with, state agents, which is not de facto impermissible, but rather, refers to set ups where the conduct of state agents goes beyond that which would expected by others, (non state agents), in the circumstances. This is supported by *Loosely* which cites *R v. Sang* that "entrapment", in a generalized sense, does not nullify intent. Accordingly, in *Sang*, it was held that the Court did not have the discretion to exclude evidence on the ground that the offence had been procured by entrapment/unfairly obtained.

Properly defined Entrapment is the instigation or incitement through coercion, inducement or persuasion by state agents of the Accused to commit a crime. That is to say, entrapment occurs when state agents present the Accused with more than an ordinary opportunity to commit a crime. The Court must determine whether the state agent in offering the opportunity to the Accused behaved as an ordinary member of the public would; *Loosely* and *Nottingham City Council v Amin* [2000] 1 WLR 1071.²⁶⁹ This is in essence a test for attributing causality of the crime to state agents; in other words did the state agents cause the Accused to commit a crime which she previously had no intent to commit. The determination of instigation is a factual question; *Loosely*. This test of whether the state agents behaved as ordinary members of the public would poses problems where the set up involves grave offences seen as demonstrating high levels of criminality; *Loosely*.

Under US law, entrapment is a substantive defence,²⁷⁰ but under English Law, it may be a mitigating circumstance for sentencing; *Sang*, *Loosely* and see *R v Latif* [1996] 1 WLR 104, 112. *Sang* makes it clear that the Common Law remedy for entrapment is a stay of proceedings, based on the rationale that to prosecute individuals where the state itself which had lured them into committing illegal acts would amount to an abuse of process and compromise the integrity of the

²⁶⁷The Find Law Team, (2012), *What is incitement? And how is it a criminal offence?*; <http://www.findlaw.com.au/articles/4516/what-is-incitement-and-how-is-it-a-criminal-offenc.aspx>

²⁶⁸The Editors of Encyclopædia Britannica, (2014), *Solicitation*; <http://www.britannica.com/EBchecked/topic/553250/solicitation#ref289675>

²⁶⁹Offering more than an ordinary opportunity that an ordinary member of the public would offer, would be overstepping the line between crime detection and crime creation.

²⁷⁰Legal Information Institute, (Undated); <http://www.law.cornell.edu/wex/entrapment>; American caselaw has stated that the reason for the existence of the law of entrapment is that a distinction must be made between trapping the unwary innocent, as opposed to the unwary criminal.

criminal justice system,²⁷¹ the principle is that the state should not create crime, i.e. instigate the commission of criminal offences. According to *Latif* [1996] 1 WLR 104, cited in *Loosely*, a stay is necessary or justified where, the judge in "weighing countervailing considerations of policy and justice", determines that to bring a prosecution "amounts to an affront to the public conscience."

The Court also has a discretion to exclude evidence resulting from the activities of the agent provocateur on the ground that its admission would have an adverse effect on the fairness of the proceedings; *Loosely*.²⁷² This remedy is less than ideal where what the Accused actually seeks is to not be tried at all. However, if on the aforementioned principles a stay cannot be justified and the trial proceeds, with the issue of state involvement later cropping up, the exclusion of evidence may become relevant and an application for exclusion should then be treated as a belated application for a stay; *Loosely*.

State involvement in creating the set up to facilitate a crime should only occur so as to obtain evidence of criminal acts that are ongoing or about to be committed (apart from regulatory offences); *Taunton Deane Borough Council v Brice* (DC unreported 10 July 1997) *R v Mack* (1988) 44 CCC (3d) 513, 553. "Entrapment" set ups in the absence of suspicions and/ or unsupervised, amount to an abuse of state power. In *Loosely* it was stated that, lack of supervision "carries great danger, not merely that they will try to improve their performances in court, but of oppression, extortion and corruption." In the UK "entrapment" scenarios are only undertaken where the desired result cannot be achieved by other means.²⁷³ Bribery and consensual offences such as dealing in unlawful substances lacking victims fall under this category.

The underlying principle that there can be no plea of Entrapment where the state agent does no more than to offer a favorable opportunity to a person ready and willing to break the law, applies in the US as well. In the US, as in the UK, in determining the validity of a plea of Entrapment, the focus is on ascertaining intent prior to inducement and whether there was overbearing conduct from state agents as against the Accused;²⁷⁴ *US v. Young* 470 U.S. 1, (1985), *United States v. Skarkie*. US states may employ either a subjective or an objective standard to ascertain Entrapment. Under an objective standard, it must be determined whether the actions of the state agent would have induced a normally law-abiding person to commit a crime. Under a subjective standard, it must be determined whether the Defendant had a predisposition to commit the crime so that the inducement is irrelevant.²⁷⁵ Use of the objective standard results in only the determination

²⁷¹ According to *Loosely*, a stay should be granted not because the accused was not guilty or because he could not receive a fair trial or to discipline the police but to protect the integrity of the criminal justice system.

²⁷² In *Loosely*, this discretion to exclude evidence was based on section 78 of the UK Police and Criminal Evidence Act 1984.

²⁷³ Undercover officers may be used only in connection with national security or serious crime and in cases in which the desired result cannot reasonably be achieved by other means: test purchasers are used in support of investigations where reasonable grounds have been established to suspect that such an offence is being committed. The authorizing officer must also be satisfied that the desired result of the test purchase cannot reasonably be achieved by other means; *Loosely*, para. 61 citing, the *Undercover Operations Code of Practice* issued jointly by all UK police authorities and HM Customs and Excise.

²⁷⁴ Unnamed, (2013), *Entrapment*; <http://www.lectlaw.com/def/e024.htm>; In the case of the US, caselaw identifies overbearing conduct as undue persuasion, badgering, coercion, coaxing or cajoling, importuning, repeated entreaties, lies, threats, harassment, fraud, or even flattery, used to induce defendants to commit crimes.

²⁷⁵ Employs of a subjective test for entrapment, enables the prosecutor to offer evidence of the Accused's predisposition to commit the crime; lengthy rap sheet, eagerness etc. to participate, quick response to the offer.

of whether the entrapment occurred. Use of the subjective standard results in the determination of entrapment with defendant disproving a predisposition, then the subjective test which shifts the burden of proof beyond a reasonable doubt back to the Prosecution.²⁷⁶ If predisposition is proven even in proven circumstances of coercion and threats, the entrapment defense fails.

Under US law, law enforcement may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute; *Jacobson v. United States* 503 U.S. 540 (1992) Supreme Court. However, this still to only establishes loose and vague constraints on police procedure, especially since contrary to UK practice, law enforcement in the US does not need *any* level of suspicion to initiate undercover operations. In the US in 1973, the Supreme Court innovated an *outrageous government conduct defence*, which means that despite the presence of predisposition, the conduct of the state was nonetheless so outrageous as to be a breach of fundamental fairness.²⁷⁷

Private entrapment, for e.g. entrapment by undercover journalists,²⁷⁸ exists neither under US or UK law, since defendants cannot argue abuse of process. In the UK case of *R v Shannon (aka Alford)* [2000] EWCA Crim 1535, the Court of Appeal stated that only unfair conduct from state agents can result in the exclusion of evidence where a crime was committed as a result of incitement. This is because under Common Law, the exclusion of evidence, or a stay of proceedings, can only be warranted by state conduct. Therefore, under the Common Law, conduct from private entrappers even where more extreme than that of state agents, and even where capable of meeting the "offence to public conscience" standard employed for classifying state conduct as unacceptable, cannot give rise to the same remedies. Private entrapment at best can be a mitigation plea.

Similarly, in Australia, Entrapment is only a mitigation plea, although it is for the Court to consider all the circumstances where the commission of an offence has been procured by the state or others, in determining guilt; *Ridgeway v The Queen* (1995) 78 A Crim R 307. *Ridgeway* which did result in a stay treated the state agents involved in the entrapment as having also committed an offence. It stated that no "no government in a democratic state has an unlimited right to test the virtue of its citizens" and create a "police state mentality."²⁷⁹

Here, in *Kalokoh*, the Court determined conclusively that the Accused was guilty of soliciting since it was he and not the witnesses who originated the breakdown of figures regarding the solicited funds. Derived from a weighing of the totality of evidential indicators which all point in the same direction, to infer guilt from the breakdown of figures proffered by the Accused, can be convincing approach. However, hypothetically, the fact of originating the breakdown of figures would not in theory counter an argument that the Accused was incited to solicit, since the Accused could simply have responded to such an incitement by providing the details of a more elaborate scheme. The Court appears to imply that the provision of a breakdown of figures by the Accused signifies his contemplation of, and premeditation upon the commission proper, in other words that

²⁷⁶ Bergman P., (2014), *What is Entrapment?* ;<http://www.nolo.com/legal-encyclopedia/entrapment-basics-33987.html>

²⁷⁷ Johnson J., (01 November 1996), *Law Enforcement by Deceit?: Entrapment and Due Process*; http://www.fee.org/the_freeman/detail/law-enforcement-by-deceit-entrapment-and-due-process#axzz2pHgRBT7p

²⁷⁸ Sleight D., (24 June 2010), *The law regarding entrapment*; <http://www.lawgazette.co.uk/55972.article>.

²⁷⁹ The Find Law Team, (2014), *Is entrapment available as a defence under Australian law?*; <http://www.findlaw.com.au/articles/4449/is-entrapment-available-as-a-defence-under-austral.aspx>

a somewhat complex scheme emanating from (the deliberation of) the Accused manifests intent. If this was the case, then this point would have benefited from added clarity, by the Court.

The Accused calls into question the veracity, authenticity and accuracy of his statements made in the ACC Office, admitted into evidence which are relied upon by the Court in convicting the Accused for soliciting. The Accused alleges that these statements and the admissions and confessions therein were made under threats and intimidation from PW1, PW2 and the ACC Officers.²⁸⁰ It appears that that these confessions from the Accused were taken at face value and that the Accused's allegations of foul play in securing those confessions were not examined in detail, in spite of their very serious nature. The Court appears to simply have taken for granted the word of the investigators as against the word of the Accused and to have assumed that ACC Investigators were not capable of the alleged misconduct. The Court also appears to have placed some premium on the fact that even though the Accused alleged that his statement was obtained as a result of threats²⁸¹ that *the Accused had signed on each question and answer sheet after being duly cautioned by PW4*. This statement by the Court lacks value, since the fact of signing does not nullify the possibility of the Accused having been threatened to sign. Against the backdrop of the Accused's allegations, being duly cautioned to sign could well have amounted to being threatened or intimidated.

The Accused did not, as would have been expected, object to the Prosecution tendering his statement²⁸² in evidence. This appears to be the only cogent reason ascertainable as to why the Court accepted Prosecution witnesses' evidence over the Accused's evidence. It is shocking that the Accused would leverage such accusations against the ACC and not object to the admission into evidence by the Court of his statements. Where the Defence accusations were made during the trial and not as closing submissions, indicating the possibility of lack of diligence or professional negligence from the Defence in its failure to object to the admission of the Accused's statements, it is submitted that the Court could have enquired from the Defence about its position on admission of said statements, at that juncture.

A perusal of ACC case law indicates a less than consistent approach to the issue of "*failing to openly contest contentious pieces of evidence*." In *Taju-Deen*, the Trial Judge inferred guilt from the Accused's silence when faced with inculpatory evidence that he had corruptly acquired *the satellite dish and receiver* and when faced with the presumption of corruption in s. 45 attaching to proven receipt, since the Accused's silence on how he acquired them²⁸³ meant he failed to rebut the evidence. The Appeal Court deemed this an error of fact and law, since the Accused was "absolutely within his rights not to say anything" and his silence could not infer guilt since the Defence already provided evidence in support of its own account. The burden of proof could only

²⁸⁰ Trial Judgment pp. 12-13; "Under Cross examination . . . he said that even though he signed the statement he still maintained that he was (intimated), intimidated by Arthur Caulker and the ACC Officers who made threats to him at the time he was still in the office".

²⁸¹ Exhibit D.

²⁸² The Accused's interview, Exhibit D was tendered through PW4, Musa Jamiru Bala Jawara, Investigating Officer at the ACC.

²⁸³ "From the statement, the only inference which can be drawn is that the satellite dish belongs to him but because he has unpoluted explanation as to his acquisition of them, the conclusion then is that it was acquired by him corruptly...The evidence is that they were given to the Accused as an inducement or reward. The Accused gave no explanation to rebut this": Page 263 Vol. 2, Records of Appeal, lines 19-17.

shift to the Accused where the Prosecution had proved the ingredients of the offence charged, (for e.g. acceptance), which had not happened. However in *The State v. Emmanuel O. Leigh*, the Court construed the Defence failure to challenge incriminating evidence from PW7 in cross-examination as acceptance of its veracity,²⁸⁴ and authorities from the UK do support this stance.²⁸⁵

The Court reasons that there was no acceptance of an advantage since the act was not complete,²⁸⁶ raising the question as to what stage the act of acceptance of an advantage becomes complete. Although, the Court has up to this point, accepted PW1 and PW2's testimonies, it seems to have dismissed the testimony of PW1 that the Accused took the money and placed it on the table.²⁸⁷ The Court appears to reason that this in itself was simply not enough to constitute acceptance and indicates a preference for the retrieval of the sum from the possession of the Accused. Terms related to acceptance include; obtaining, acquiring, to receive willingly, the act of taking or receiving something offered, or to undertake something offered/a responsibility, to assume an obligation, the consenting to, taking on, replying in the affirmative, responding favorably to, to confirm or affirm an offer . Conceived of literally, acceptance of a bribe would then mean both agreeing to receive a bribe and the act of receiving it. Note that certain laws simply criminalize the asking for and agreeing to receive a bribe upon an agreement or understanding that his or her official action would be influenced thereby (see for example e.g. California's Penal Code section 86).

Contractual analogies may illuminate the general legal position on acts constituting acceptance of a bribe and their point of coalescence into acceptance. Bribery simply is an effort to contract on wholly illegitimate terms. In Contract, the act of acceptance is a manifestation of an assent either directly by words or impliedly by conduct, (belying an intention/unequivocal willingness) by the offeree to be bound by the terms of an offer: *Saskatchewan Crop Insurance Corp. v. Greba*, (1997) 11379 SK QB. Contractually, acceptance must be accompanied by consideration; in Bribery, the quid pro quo facet. Temporally, acceptance is complete, when the parties involved are of one mind but temporal precision of acceptance being difficult, it is the whole transaction that should be evaluated, i.e. the sum of evidence of acceptance: *Clarke v. Dunraven* [1897] AC 59 (Australia) *Krakana v. Boultron* (1955) 5 DLR 134 (Ontario). The test for acceptance is that the parties had each from a subjective perspective engaged in conduct manifesting their assent, a subjective belief determinable by objective conduct; *Lucy v. Zehmer*, 196 Va 493 84 S.E. 2d 516. The test is whether a reasonably bystander would regard the conduct of the offeree including his silence as signaling to the offeror that his offer had been accepted; *Empirnall Holdings Pty Ltd v. Machon Paull Partners Pty Ltd* (1988) 14 NSWLR 523, Court of Appeal Supreme Ct NSW. Acceptance must be communicated; *Powell v. Lee* (1908) 99 L.T. 284, and a mental decision to accept is not sufficient, although acceptance could then be inferred from conduct; *Brogden v. Metropolitan Railway Company* (1877) 2 App. Cas. 666. Silence or inactivity on the part of an offeree will not amount to acceptance; *Felthouse v Bindley* [1862] EWHC CP J35. It is sufficient if the offer was

²⁸⁴ Trial Judgment, pp. 7-8. It was in his closing arguments that the Accused tried to contest that piece of evidence.

²⁸⁵ See **Notes** section in *The State v. Emmanuel Leigh*, at p.64 above.

²⁸⁶ Trial Judgment, p. 20, I have perused the legal definition of the word, "accept", and it means "to receive with consent." I also looked up the word "receive" and it means, "voluntarily to take from another what is offered." From the evidence adduced, I am of the considered opinion, that the Accused did not take the money from PW1 in the true sense of the word, "accept". . . the act of accepting an advantage was not complete.

²⁸⁷ Trial Judgment, p. 5.

one of the reasons for the offeree acting in the way s/he did, even if not the dominant reason; *R. v. Clarke* (1927), 40 CLR 227 (Australia).

Trial Judgment:
Kalokoh

The State vs Santigie Kalokoh

MEMORANDUM

TO: D/LL&P

FROM: Ibrahim Bangura (Court Admin) *Ibrahim Bangura*

CC: CIO

ATT: Commissioner

DATE: 5th February 2009

SUBJECT: JUDGEMENT ON THE MATTER STATE VS
SANTIGIE KALOKOH

I hereby submit copy of the judgement on the matter **State Vs Santigie Kalokoh** which was delivered on the 29th January 2009 by Justice Mary Sey in the High Court.

The state

Vs

Santigie Abu Bai Kalokoh
Thursday, 29th January, 2009 Before the Hon Mr.
Justice M. Sly J.

Case called
Accused present
S.P. Sembalemba for the state
C.F. Edwards for the accused

Judgment

The accused Santigie Abu Bai Kalokoh is charged on a 2 Count Indictment in the offence of Soliciting an advantage and Accepting an advantage contrary to section 8(1)(b) of the Anti-Corruption Act 2000 (as amended).

The statement of offence under Count 1 reads "Soliciting an advantage as an inducement, contrary to Section 8(1)(b) of the Anti-Corruption Act 2000 (as amended). The particulars of offence are that "San Abu Bai Kalokoh on the 7th day of May at Freetown, in the Western Area of Sierra Leone, being a Public Officer attached to the Public Service Commission, Higher Executive Officer did solicit an advantage consisting of the sum of Le 150,000.00 from Arthur Caulker

(2)

and Raymond Bai Kamara, he said in being an inducement to expedite an application from a purported sister of the said Arthur Caulker and Raymond Bai Kamara, to secure enrolment as a nurse in the Ministry of Health and Sanitation."

The same wording is replicated in Count 2 except that the words "Accepting an advantage" and "did accept an advantage" are substituted for "Soliciting an advantage" and "did solicit an advantage."

Section 8(1) of the Anti-Corruption Act, 2000 provides that "Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his —

(b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; —

is guilty of an offence."

Pursuant to an application made by the Attorney-General and Minister of Justice, this Court made an order on the

(3)

the 11th day of July 2008 for the accused to be tried by Judge alone instead of by Judge and Jury in accordance with Section 144(2) of the Criminal Procedure Act No. 32 of 1965, as repealed and replaced by Section 3 of the Criminal Procedure Amendment Act No 11 of 1981. As this Court is sitting both as the Tribunal of fact and as the Tribunal of law, it is mindful of the legal requirement, that, in all criminal cases, it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence with which the accused is charged, and that legal burden of proof lies upon the prosecution throughout the trial; see *Woolmington v. DPP* (1935) A.C. 462 (H.L.)

"Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence

(4)

given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

Even if the court does not believe the version of events put forward by the defence, the court must give the accused the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. In the event there is any doubt in my mind, as to the guilt or otherwise of the accused, in respect of any of the charges in the indictment, then I have a duty to acquit and discharge the accused of that charge or charges.

To prove their case the prosecution called four witnesses. P.W. Arthur Cauter testified that he is a journalist reporting for the Exclusive newspaper. He said on the 7th day of May 2003 he had received an information and

(5)
that he together with Pw2 Raymond Rai Kamara approached the accused person at his office and told him that Pw1's sister is a nurse and that she lives in Takeri and that she wanted to be accredited a document for her to become a civil servant. Pw1 said the accused told him that he was the right person but that it would take a long process, but to cut the matter short, he should come with a sum of Le 200,000. Pw1 said he begged the accused to reduce the amount to Le 150,000 to which the accused agreed and told him that he would give Le 50,000 to the Permanent Secretary at the Ministry of Health, another Le 50,000 to other officials whose names he did not disclose and that the balance of Le 50,000 he would use as transportation to expedite the process. Pw1 said further that he told the accused he was going for the money and that he went for ten minutes and then came back with Raymond (Pw2) and one Yusuf who had given him the Le 150,000. Pw1 testified further that he gave the accused Le 150,000 which he received and placed it on top of his table. He said the accused then took the public service commission application form

from his cabinet and gave it to (b) him and said he should photocopy it. He said he did so. Both the original PSC form and the photocopy were produced and tendered without objection and admitted as Exhibits A and B respectively.

PW1 said further that the accused also gave him a specimen form and told him that he should give it to the lady to follow "all the sample or information on this form". The specimen form, bearing the name of Memunath Kiran with a photograph attached thereto, was produced and tendered without objection and admitted as Exhibit C.

PW1 was cross examined by Counsel for the accused as to what happened to the money. He said he took the money from the table and gave it to the rightful owner. He said the Acc asked him for the money but he did not produce it at the Acc office. He maintained that he gave the accused money.

PW2 Raymond Bai Kamara's evidence was similar to that of PW1 in respect of the information they had received, the fact that the accused asked them for Le 150,000 and gave them

(7)
two types of forms. However, there was inconsistency between the evidence of PW1 and PW2 as to how the money was removed from the accused. PW1 stated that he took the money from the table where the accused had placed it. When cross examined on this point PW1 said:—

"The documents were handed over to me after he had received the money. He turned his back to me. The money was on the table. When he turned back I did not look at him. At the time he was giving me the documents the money was on the table. After he had handed over the documents to me, I took the money. He didn't notice that the money was gone."

PW2, on the other hand, stated that PW1 snatched the money from the hands of the accused after he had received it. PW2 said:—

"Upon our arrival at the office of Mr. Kalokoh, Yusuf Seay was having a camera phone which was used to snap the process while Arthur Cault was handing over the money to Mr. Kalokoh. When Arthur Cault was

⑨
P13 confirmed that it was the application form he was referring to as Form 8. He further stated that Form 8 and other forms are all in his office under lock and key. He said he issues them intermittently when vacancies occur and the applicants access these forms through the staff superintendent Mr. Isahak Conteh who in turn would pass the forms to the accused. He said that in respect of senior positions the forms are passed directly to him and he issues them. P13 was not cross-examined by Counsel for the accused.

W4 was Musa Taniyu Bala Jamaru, an investigation officer of the ACC. He narrated what he did by way of investigation into the allegation he received from P11, of soliciting and accepting an advantage, made against the accused. W4 tendered in evidence the recorded interview of the accused as Exhibit D. Under cross examination P11 said that when he went to the office of the accused he did not explain to him about the word "soliciting". He said he was not aware that P11 had gone to Mr. Kalokoh's office to trap him. He also said P11 did not give him Le 150,000 and he agreed that no Le 150,000 was found in Kalokoh's office. He said he had asked P11 for the money and that P11 had said he

(10)
he had collected the money from the
accused person. When it was put to
him that the word "soliciting" is a very
technical word he said "of course the
word 'soliciting' is a very technical
word."

At the close of the prosecution case
the accused gave evidence on oath.
He testified that on the 7th day of the
2008 he was employed by the RUC
and whilst he was in his office
he had cause to see PW1 and PW2.
He said he had returned from prep
and he was told they were waiting
for him. He said that was the first
day he met them and that they
introduced themselves when they
entered into his office. He further
testified that Raymond (PW2) told
him that he got an information
that he should assist him in getting
an application form which is RSC
Form 8 and that at the same time
he was to process the form for him.
The accused said that he told
PW2 that he was not in "the Capital"
or giving out that form neither for
it to be processed because these
application forms are under lock
and key with the Secretary of the
Commission and that he could
not help. He said that secondly he

(11)

He told him that the PSC was not in operation since 26th September 2007. He further testified that he patiently explained to them that the PSC only gives out that Form when there is a vacancy advertised and so they should go to the Ministry to get the application form processed for them. He said on giving them all that information, Pw1 got annoyed and he went out of his office and left Pw2 in his office. The accused said Raymond asked him if he had ever been involved in a government problem and he said "no" and Raymond then told him that "today he is going to change my place of sleeping." He said before Raymond told him that no gift or money was made to him. He said later on Arthur (Pw1) returned to his office with three gentlemen and they introduced themselves as Anti corruption officers and they told him that he was under arrest. He said he asked them what happened because he did not know the cause of his arrest, and they said that he had received £150,000 from Arthur and that he should search himself. He said he had £1,700 with him so he put it on his desk together with his phone. He said his office was searched but nothing was found.

(12)

In being shown exhibits A, B and C the accused said these are application forms issued to applicants when there are vacancies from any Ministries. He said these forms are usually obtained from any Ministry as far as civil servants are concerned. He said that when his office was searched he does not know whether documents were taken from his office.

When he was shown exhibit D, the accused said he signed that statement at the tail end. He said he was intimidated. He said he made the statement at the Acc office. He said the officer did not explain to him what he meant by "Solicited" and that he just answered question b in the affirmative. He said he did not receive the sum of Rs. 150,000 from Arthur and that he did not tell Arthur he was going to complete the form to expedite things.

Under cross examination the accused agreed with Pw3 as to what he said about the procedure of how PSC Forms are obtained. He agreed that there is no fee charged for the processing of the Forms. He also agreed that he made a state-

ment at the Acc office but said he did not read the statement before signing it. He said that even though he signed the statement he still maintained that he was intimidated by Arthur Cautley and the Acc. officers who made threats to him all the time he was in the office. He said they had told him that he would not sleep in his house and that he would sleep somewhere else for five days. He said he did not understand the word "solicit" because it is a technical word. He said he asked the Acc. officers at the time and they told him he should not ask them anything. When questioned about his level of education the accused said it is O-level and A-level. In answer to a question from his Counsel during re-examination, the accused said the time the statement was obtained from him was around 7.35 p.m. and that he signed it but did not write down the bit about "certify that it is true and correct".

(14)
In his closing Address to the Court, Defence Counsel Mr. C.F. Edwards submitted that the word "soliciting" has not been proved by the prosecution. He said it is a technical language which to an ordinary man will carry a different meaning. He also submitted that PW1 and PW2 were Agents provocateurs and the conduct of the accused cannot therefore, amount to soliciting. He referred to Exhibit 1 and he submitted that even though the accused admitted in Question 6 that he "solicited" the word was not explained to him.

Counsel further submitted that from the totality of the evidence it is a case of entrapment and that the accused cannot be found guilty of the offences as charged. Counsel submitted further that the prosecution has usefully failed to prove the ingredient of accepting an advantage. He said Arthur Caulton himself said that he took back the money and so there is no acceptance of an advantage. Counsel referred to the testimony of PW4 and he submitted that a search was conducted but nothing was found and that there has been no exhibit that the accused solicited and receive

(15)
the sum of Le 150,000. Counsel submitted that no photograph was produced before the Court to show and prove that the accused did receive and he was snatched.

On Count 1, for the offence of soliciting an advantage as an inducement under section 8(1)(b) of the Anti-Corruption Act 2000 (as amended) the prosecution must prove the following ingredients beyond reasonable doubt:—

- (a) the accused must be a public officer;
- (b) he must solicit an advantage;
- (c) the advantage must be an inducement or a reward for or otherwise on account of his expediting the performance of an act in his capacity as a public officer.

As to whether the accused was a public officer, PW3 testified that the accused was one of his support staff employed as Higher Executive Officer at the Public Service Commission. His evidence was corroborated by the accused's own testimony and his answers to questions 13, 14, 15, 16 and 17 in Exhibit D.

With regards to the element of soliciting an advantage, I have carefully perused Exhibit D and I believe that all the admissions the accused made in it are true. I do not accept the story put forward by the accused that he was intimidated by PH1 and PH2 as well as by the Acc officers. I do not believe that they made any threats to him. I believe that he gave the interview voluntarily and of his own free will. I do not believe his testimony that he did not understand the word "solicit" and that when he asked the Acc officers at the time they told him he should not ask them anything. I have examined the answers the accused gave to question 6 in Exhibit D. And I believe that admission as true. For ease of reference I would reproduce it hereunder viz:

"Ans: Indeed I solicited the sum of one hundred and fifty thousand leones from them in order to assist their relative to secure the Public Service Commission (PSC) Form 8 which will enable the relative to be enrolled at the Ministry of Health and Sanitation".

It is pertinent to note that the accused did not object to the tendering of Exhibit D by the prosecution at the trial. It is also in evidence that he was duly cautioned by PW4 and that he signed on each question and answers sheet in Exhibit N. I find it strange that, by virtue of the accused's qualifications of 'D' and 'A' levels and the fact of his holding the post of Higher Executive Officer in the Public Service Commission, the accused could not understand the word "soliciting". I do not accept his version of events. Rather I believe the evidence of PW1 Arthur Cauter and PW2 Raymond Bai Kamara in respect of Count 1.

Learned defence Counsel submitted that they had acted as "Agent provocateur" and that they had entrapped the accused. It is a well known principle that entrapment does not exist as a substantive defence in English law. In *R v Sane* (1980) AC 462, Lord Diplock, at p. 432, noted that "many crimes are committed by one person at the instigation of others. The fact that the counsellor or procurer

is a policeman or a police informer, although it may be of relevance in mitigation or penalty for the offence, cannot affect the guilt of the principal offender: "both the physical element (actus reus) and the mental element (mens rea) of the offence with which he is charged are present in this case."

A further point of principle was noted by the House of Lords in the case of Regina v. Loosely (2001) UKHL 53. Lord Hoffmann stated that: -

"Entrapment occurs when an agent of the state - usually a law enforcement officer or a controlled informer - causes someone to commit an offence in order that he may be prosecuted."

(19)

Judging from the definition in Regina v Kosoff, I believe and hold as a matter of fact that Pw1 and Pw2 had not entrapped the accused. The evidence does not show that they were police officers or controlled informers of the police. Even if they had approached the accused as "agent provocateur" (as alleged by the defence) that, to my mind, did not diminish the criminality of the conduct of the accused or weaken the probative value of the evidence. It has not been shown from the totality of the evidence adduced that they incited or instigated the accused person to solicit the advantage. He named his initial price of Le200,000 and eventually consented to the sum of Le150,000. I find as a matter of fact that he even went on to explain to Pw1 and Pw2 how he was going to use the amount. Furthermore, in his answers to question 8 in Exhibit D he narrated as follows: "That I will give the clerks at the Ministry of Health and Sanitation Le50,000, my transportation fee Le50,000 and the remaining Le50,000 for payment to officials involved in processing the PSC Form 8."

(20)

In the whole, I hold that the prosecution has proved its case, beyond all reasonable doubt in respect of count 1 in the indictment. I thus find the accused guilty on count 1 and convict him accordingly on count 1.

With regards to count 2, i.e. accepting an advantage as an inducement contrary to Section 8(1)(b) of the Anti-Corruption Act 2000 (as amended), I have my doubts as to the guilt of the accused. This is due mainly to the inconsistencies I had earlier on referred to in the evidence of Pw1 and Pw2. The question for my determination is whether or not the accused accepted an advantage?

I have perused the legal definition of the word "accept" and it means "to receive with consent." I also looked up the word "receive" and it means "voluntarily to take from another what is offered." From the evidence adduced, I am of the considered opinion, that the accused did not take the money from Pw1 in the true sense of the word "accept." Pw1 states that the accused took the money

(21)
and placed it on the table but
that he later took the money
and returned it to the owner
Jusuf Sesay. In my considered
judgment, the act of accepting
an advantage was not complete.
Perhaps it would have been prudent
for PW1 and PW2 to have left the
money with the accused and to
wait for the ACC officers to have
retrieved it from him. Had that
option been pursued there would
have been no doubt in my mind
that the accused had accepted
an advantage as an inducement.
As it is, I would give the accused
person the benefit of the doubt since
the prosecution has failed to satisfy
me that it has proved the case
in respect of Count 2 beyond all
reasonable doubt.

For all the foregoing reasons I find
the accused not guilty on count 2
and I hereby acquit and discharge
him on count 2.

Jey J.
29/1/09

Court: Any known about the accused?

Sembalemba: No previous conviction recorded my lord.

Allocutus: C.F. Edwards in mitigation.
C.F. Edwards: My lord the accused has been found guilty and we accept the verdict of the court. My lord I wish to point out that the accd is a first offender, he has two wives & many children. He has been the sole bread winner of the family and now he has lost it all. My lord I ask that your lordship tempers justice with mercy. The accd shows signs of remorse. Urges court not to impose a custodial sentence on the accused.

Court: The sentencing provisions are contained in Section 41 of the Anti Corruption Act 2000 as amended by Act No. 15 of 2002. It provides as follows:
"Any person who is guilty of an offence under subsection (1) of section 8, section 9,

Section 10, subsection (1) or section 12 or section 13 shall be liable on conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

Counsel's mitigation has been taken into consideration and I have also taken into consideration the state prosecutor's statement that no previous convictions have been recorded for the accused. In the circumstance I hereby sentence the accused to a fine of 3M in respect of Count (1) in the indictment. Alternatively the accused will go to prison for one year. The fine shall be paid immediately.

Jey. J.

29/1/09.

**Case Report: Alex
Sesay**

THE STATE v. ALEX SESAY

THE HIGH COURT OF SIERRA LEONE
JUSTICE M SEY
23 February 2009

Impersonation - Absence of express definition of the charges/counts - Absence of express definition of the elements of the statutory offence - Absence of express evaluation of the facts alleged by the Prosecution - Absence of express evaluation of the Prosecution's legal arguments as against, the facts alleged – The manner of presentation of Judgments where the Accused enters a guilty plea - Need for express judicial pronouncements to contribute to case law - Protection of the rights of the Accused - Pleading circumstances in mitigation - Anti-Corruption Act, s. 76.

Held

The Accused was convicted on Counts 1 and 2 and sentenced to a fine of Le5m on each Count. The Accused's application for payment of the fines by instalment was rejected and the fine was due to be paid immediately. In default of the fine, the Accused was subject to a concurrent term of imprisonment of 6 months.

Ratio Decidendi

There was no evaluation of the Prosecution's case; no assessment of the veracity of the Prosecution's allegations, measured against the evidence adduced by the Prosecution; and measured against any objective appraisal of the circumstances. Neither was there any assessment of how well the Prosecution's *legal arguments* married the evidence it adduced.²⁸⁸ The conviction and sentencing of the Accused appeared to be based solely on the Accused's guilty plea. The Court acknowledged that it had taken into consideration the Accused's pleas in mitigation in arriving at its sentence.

Notes

Criminal impersonation is the assumption of a false identity *with intent to defraud another*.²⁸⁹ This false identity may be that of a representative of another person or an organization, and is assumed with an intent to benefit from the scope of action normally and legitimately available to the person whose identity is assumed and which the impersonator would not, but for his impersonation, be able to secure. In Common Law jurisdictions, the requisite mens rea for impersonation is knowledge of the factual circumstances/incorrectness of one's actions, i.e. that one is assuming a false identity. The actus reus is i.) the commission of an act which had it been committed by the person falsely impersonated, would have resulted in their being penalized; ii.) the commission of an act with the intent to unlawfully gain a benefit, or injure or defraud another.²⁹⁰ Some constructions of the crime of false impersonation are contingent upon the misrepresentation having been made to a Law Enforcement Officer so as to obscure the ascertainment of the information sought. Additionally, there is the crime of Police impersonation which in most

²⁸⁸ See **Critique** at pp.221-224.

²⁸⁹ Therefore, the assumption of a false identity is not sufficient in and of itself.

²⁹⁰ For a generalized illustration of this approach, refer to the Revised Code of Washington, or RCW, Section 9A.60.040 on Criminal impersonation in the first degree and Section 9A.60.045 on Criminal Impersonation in the second degree. This section was amended by 2004 c 11 § 2 and by 2004 c 124 § 1.

countries carries a custodial sentence.²⁹¹ Often such deception enables the culprit to be able to carry out an even graver crime. This impersonation can be accomplished through a declaration or by one's conduct which is intended to convey the impression of being a law enforcement officer to any reasonable person.²⁹² The same principle is applicable to Impersonation in a general sense, especially in light of the definition of Deception (see below).

Deception can be viewed as a sub-offence of Impersonation, since to deceive is to induce another to believe that a thing is true which is false; *Re London and Globe Finance Corporation Ltd* (1903) 1 Ch 728; *DPP v. Ray* (1974) AC 370. Deception need not involve the making of false representations; the Accused's conduct could induce a false belief in another's mind. The threshold is further lowered by extending the definition to encompass the false persuasion of another that something *only may be true*; *Metropolitan Police Commissioner v. Charles* (1977) AC 177 and *Lambie* (1982) AC 449. Deception may be legal or factual, reckless or deliberate, by words or by conduct; UK Theft Act 1968 section 15(4); For Deception by conduct see; *DPP v. Stonehouse* (1978) AC 55 and *Williams* (1980) Crim LR 589.

Summary of Facts

The Accused was employed by the Ministry of Agriculture and Food Security. He was charged with Counts 1 and 2,²⁹³ with the offence of impersonating an Officer of the ACC, contrary to section 76 of the ACA 2008. He pleaded guilty and pleaded in mitigation of his sentence, that he avoided wasting the Court's time, had lost his job, had a family of 4 young children and was a remorseful first offender. He also pleaded for the sentence to be reform-oriented.

Application of Law

Section 76 of the ACA 2008 states that; "*Any person who impersonates an officer of the Commission commits an offence and shall, on conviction be liable to a fine not less than Le3m or to imprisonment for a term not less than 6 months or to both such fine and imprisonment.*"

²⁹¹ For example under the Criminal Law of New York State, Police Impersonation is defined as pretending to be a member of the police, for the purpose of deception.

²⁹² The Criminal Law of New York State contains the crimes of Criminal Impersonation in the first degree which is impersonating a Police Officer and Criminal Impersonation in the second degree, which is impersonation in a general sense.

²⁹³ The Judgment does not spell out the difference between Counts 1 and 2.

Critique

Given the relative novelty of the law on corruption, the considerable degree of ongoing legal reform in Sierra Leone, the paramount need for development of Sierra Leonean Law, and the increased recognition of, and attempts to promote and protect individual rights a fuller discussion of the issues in this case would have been of great benefit. Even a summary discussion of both law and facts, or at the very least, facts, would feed into the process of reform. As it stands, one does not even know what the basic building blocks of this case are. Key questions that come to mind and would have enabled at least a basic understanding of the case and why and how the crime of Impersonation was fitting are; in what capacity was the Accused employed by the Ministry of Agriculture and Food Security? Did the Accused's employment facilitate his Impersonation? Was he even employed during the commission of the offence? When had the Accused acted as a Juror and was his performance of jury duty in any way connected to the issue of Impersonation, etc, etc. In a similar vein, the charges in Counts 1 and 2 are not differentiated, even though their elements are bound to differ somewhat, in a way that one can never glean from the Judgment. A discussion becomes even more pressing considering that the definition of the offence in the ACC statute itself is scanty. A summary discussion of the kind proposed would enhance future deliberation and adjudication by Judges in similar cases and would provide guidance to the Prosecution and Defence in laying similar cases in the future. It is submitted that it is preferable for a discussion of Law to demonstrate whether and how and whether the application of the Law to the present instance, deviates or conforms with the Law as conventionally applied and understood.

The need for further elaboration is especially important as a judgment is the Court's official pronouncement of the law and thereby is expected to clearly resolve all the contested issues inhering the rights and obligations of the parties. This is clearly not the case here as the Court has simply pronounced a verdict and a sentence, without any overt analysis or adjudication of the facts as framed within the parameters of the Law. Even the Accused's voluntary assumption of responsibility for the charges, cannot be taken to mean that every detail of the Prosecution's case is accurate, even where the Prosecution is acting *bona fides*. The rights of the Accused must be seen to be protected; the expectation is that the machinery of the administration of Justice will protect the Accused's potential vulnerabilities. In a perfect world, *Justice must be seen to be done*. Without a transparent process of weighing the facts, there can be no assessment of whether the rights of the parties have been protected. This is why in the US, Summary Judgments are available only in civil and not criminal cases, since the Defendant possesses a constitutional right to a jury trial.

This Judgment is not based on any evidence, but on the Accused's Guilty Plea. A Guilty Plea must be entered by the Accused personally and not by the Defence Counsel, otherwise it has no validity; *Ellis* (1973) 57 Cr App R 571. This rule cannot be derogated from; *Williams* (1978) QB 373. A Guilty Plea must be entered voluntarily; the absence of free choice in pleading, renders the plea a nullity; *Turner* (1970) 2 QB 321. It is possible for the advice of Defence Counsel to be so forceful as to take away the free choice of the Accused; *Peace* (1976) Crim LR 119. Indeed, the Prosecution are released from their obligation to prove the case, where the Accused does plead guilty, so that the Accused is thereby convicted by virtue of his own admission; a guilty plea entitles the Court to proceed with sentencing. Blackstone's refers to a situation where the determination of a sentence necessitates the Prosecution's calling of evidence in support of its own version of facts, due to the existence of a dispute between the parties about the precise facts of the

offence, which may potentially impact the sentence. In the alternative, the Prosecution could allow the sentence to be based on the Defence's version. Even in such cases, the Prosecution's evidence goes to how the offence was committed, not whether it was committed.²⁹⁴ The Court can actually reject a guilty plea, but as per the authority, the Accused would need to have offered an inconsistent Defence; Hazeltine (1967) 2 QB 857.

Where the Judge has found that there is a case to answer, the Prosecution is obliged to call evidence, as to discontinue without leave would be an abuse of process.²⁹⁵ A Judge who disagrees with the Prosecution's decision to call, or not to call evidence, following a Guilty Plea as in this case, could decline to proceed with the case, until the Prosecution consults and gains the approval of the Director of Public Prosecutions or the Attorney-General, at which point, the Judge cannot impede the Prosecution's action.²⁹⁶ Where the Prosecution has opted not to do so; where the Accused has pleaded guilty, the decision to call evidence is within the exclusive domain of the Prosecution and not the Judge's; Grafton (1993) QB 101.²⁹⁷

This Judgment cannot be considered a Judgment on the Merits, but is more akin to a Summary Judgment, i.e. a judgment entered by a Court, in favour of one party as against the other party summarily, i.e., without a full trial.²⁹⁸ Summary Judgments are more economical in allowing better human, time and monetary resource management. The suitability of Summary Judgments in these circumstances is questionable as discussed above, but also because in Common Law systems, Judges are expected to flesh out the Law. A party may move for a Summary Judgment where there are undisputed facts that indicate that a judgment must be entered in its favour. The Court may go on to deliver one, where it finds that there are no disputes of "material" fact needing to be resolved at trial, and that these undisputed facts and the law indicate that one of the parties clearly comes out on top. Type A summary-judgment motions requires the moving party to produce evidence in support of each and every essential element of the claim or Defence;²⁹⁹ Type B, requires the Defendant to attack only one essential element of the plaintiff's claim.³⁰⁰

Alternatively, this judgment presents similarities with a consent judgment, i.e. a final decision that is entered on agreement of the litigants. It is examined and evaluated by the Court, and, if sanctioned by the Court, becomes a binding judgment.³⁰¹

Other similar judicial processes are those concerning Summary Offences, which are usually less

²⁹⁴ Blackstone's Criminal Practice (2004), Oxford University Press, p. 1355.

²⁹⁵ Blackstone's Criminal Practice (2004), Oxford University Press, p. 1374.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ It is however possible for a Summary Judgment to be based on the merits of the case. In the USA, Summary-Judgment Motions are regulated by Rule 56 of the Federal Rules of Civil Procedure; a party seeking a Summary Judgment may in its motion refer to any evidence that would be admissible at trial, depositions, confessions, witness affidavits etc.

²⁹⁹ Type A Motions can be made by either party, Defendant or Plaintiff.

³⁰⁰ Type B Motions can only be made by a Defendant.

³⁰¹ Consent judgments are generally rendered in domestic relations cases after the Husband and Wife agree to a divorce settlement.

serious statutory offences triable summarily only by Judge and not by jury with penalties of a lesser severity.³⁰² Those offences requiring trial by a judge *and* jury, should a plea of not guilty be entered, are termed Indictable Offences.

Yet another process that presents similarities in terms of its summary nature, is that of Committals without Consideration of Evidence. A Committal is a preliminary inquiry into the charges proffered and can be of two sorts; with or without evidence. **In a Committal with Consideration of the Evidence**, the Accused pleads not guilty or declines to indicate a plea at the Magistrates' Court, thereby challenging the evidence. This makes it incumbent on the Magistrate/s to examine the evidence and to hear submissions from both parties, although the Defence is not entitled to present any evidence at all. The Magistrate then decides whether there is a *prima facie* case of any indictable offence, not necessarily on the basis of the original charge/s i.e. sufficient evidence to put the Accused on trial by jury. The onus is on the Prosecution to show that there is a *prima facie* case. If there is, the Accused is committed to stand trial. If not, the Accused is discharged. Committals serve the purpose of enabling the Defence to assess the strength of the Prosecution case; in a way acting as a form of pre-trial discovery for the benefit of the Defence. Examining Justices have an inherent jurisdiction to refuse to commit where there has been a delay, on the grounds that to do so would be an abuse of process. If the Prosecution fails to satisfy the very low threshold of having the case committed to the Crown Court for trial, the Defence may move that there is, *No Case to Answer*. In R v Galbraith [1981] the Court said that if there was no evidence that the Accused committed the crime alleged by the Prosecution the Court should stop the case forthwith and agree with a Defence submission of "no case to answer". The Court can refuse to commit on the grounds of abuse of process; In R v Telford Justices ex parte Badhan [1991] 2 QB 78.³⁰³

In a Committal without Consideration of the Evidence,³⁰⁴ the Accused/ Defence Counsel agrees that the Court may, *without considering the evidence*, proceed as if it had considered the evidence, concluding it to be sufficient to put the Accused on trial. Therefore, logically, a Committal Without Consideration is made where the Accused intends to plead guilty, or simply accepts that there is a *prima facie* case against him, although he intends to plead not guilty. Its greater convenience and speed make it appropriate for the use of the Defence,³⁰⁵ unless there is a specific reason for having the evidence considered. All the evidence before the Court must consist of written statements, the Accused must necessarily have a solicitor, and Defence Counsel must not have requested the justices to consider a submission that the statements disclose insufficient evidence to try the Accused. At a Committal without Consideration of the Evidence, the Court

³⁰² Traffic offences and petty crime. This is why in the United Kingdom, trials for summary offences are heard in one of a number of types of lower Court; Magistrates' Court, Sheriff Court or District Court etc.

³⁰³ It was held to be Abuse of process for prosecution to be brought so long after commission of the alleged offence, so that it could no longer be possible for Accused to have a fair trial irrespective of whether the Prosecutor was to blame for delay. The onus was on the Accused to show on balance of probabilities, that a fair trial was no longer possible.

³⁰⁴ Section 6(2) of the Magistrates' Courts Act 1980; also known as "*Paper*" committals.

³⁰⁵ This procedure is provided for in the U.K. Criminal Justice Act 1967, Section 1 and the U.K. Magistrate's Court Act 1980, Section 6(2).

does not even have to read or have read to it the written evidence tendered. The documents are simply handed in by the Prosecution.³⁰⁶

The Court kept with the provisions of S. 76 ACA 2008 in rendering a sentence. A fine must reflect the offender's means and should not be a fine on the family; *Charambous* (1984) 6 Cr App R (S) 389. The punitive pressure applied to the Accused is not to be seen only in the amount requiring payment, but can be seen in the fact that the sum is to be paid immediately; this time pressure exerted reflects the seriousness of the offence. This sentence is not unduly severe as imprisonment is imposed only in default of payment of the fine. On the other hand, where a sentence seems unduly severe in the absence of explanation, reasons should be given; *Newton* (1979) 1 Cr App R (S) 252. The existence of significant mitigation, such as the offender's guilty plea, should normally preclude the imposition of a maximum fine.³⁰⁷ Relevant considerations, in setting a fine, as quoted in Blackstone's are, according to *Yorkshire Water Services* (2002) 2 Cr App R (S) 37: i.) the degree of culpability involved in the commission of the offence; ii.) the spacial and temporal ambit of the damage done and its physical and economic ill effects; iii.) the offender's previous record, including failure to heed warnings; iv.) the need to strike a balance between fitting punishment and avoiding counter-productive effects on the offender; and v.) the offender's plea, attitude and performance after the event.³⁰⁸

Where the mitigating circumstances pled, are inconsistent with other facts of the case, Defence Counsel has the discretion to call witnesses/evidence supporting his plea in mitigation; *Gross v. O'Toole*. Facts adduced by the Defence in mitigation, in so far as they concern the immediate circumstances of the offence, should be accepted by the Court or disproved by the Prosecution beyond reasonable doubt; *Newton* (1982) 77 Cr App R13; *Tolera* (1999) 1 Cr App R 29. Where the facts adduced by the Defence, concern matters external to the circumstances of the commission of the offence, the Defence has the onus of satisfying a judge on the Defence on a balance of probabilities; *Kerr* (1980) 2 Cr App R (S) 54; *Ogunti* (1987) 9 Cr App R (S) 325; *Guppy* (1994) Crim LR 614; *Broderick* (1993) 15 Cr App R (S) 476. Whether the Defence calls evidence in support of mitigating circumstance or, whether the Prosecution fails to disprove of mitigating circumstances, the Court is nonetheless entitled to them.

³⁰⁶ As regards the United Kingdom, for example, the procedure to be followed for a Committal without Consideration of the Evidence is set out in the U.K.'s Magistrate's Court Act 1980, Section 5 A (2) and (3).

³⁰⁷ Blackstone's Criminal Practice (2004), Oxford University Press, p. 1935.

³⁰⁸ *Ibid.*

[Trial Judgment:
Alex Sesay]

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

ALEX SESAY

JUDGEMENT

Monday, 23rd February 2009

Before the Hon. Mrs Justice M Sey J

Case called

Accused present

SP Semalemba with him Ansu Lansana and C Manisebo for the State

CF Edwards for the accused

Charge read to the accused

Plea taken

Count 1 - guilty

Count 2 - guilty

Conviction

Alex Sesay you are hereby convicted on your own plea of guilty as charged. Do you have anything to say in mitigation before sentence is passed.

Mitigation

C.F. Edwards: My Lord the accused has not wasted the Court's time. The offences for which the accused has been charged can be given alternative sentence. I urge your Lordship not to impose a custodial sentence on the accused. My Lord the accused was employed by the Ministry of Agriculture and Food Security and he was also a juror. He has lost all or that now. He is a family man with four children. My Lord the accused has been responsible for his children who are still young and he is still responsible for them. My Lord I ask that you temper Justice with mercy. The main objective of punishment is reformatory and the accused has been very remorseful and he will not do anything to offend the law in the future.

S.P Semalemba: My Lord as far as we are aware the convict has no previous convictions.

Sentence

The accused has been charged with the offence of impersonation of an officer of the Anti-Corruption Commission, contrary to Section 76 of the Ant-Corruption Act 2008. The said Section 76 provides that:

"any person who impersonates an officer of the Commission commits an offence and shall, on conviction be liable to a fine not less than three million Leones or to imprisonment for a term not less than six months or to both such fine and imprisonment."

The accused is a first offender and by pleading guilty he has not wasted the time of the court. These factors and the other mitigating circumstances outlined by his counsel will therefore be taken into consideration by the court.

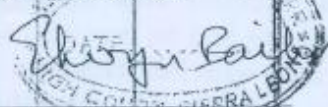
In the result the accused is hereby sentenced to a fine of Le 5 million on count 1 and to a fine of Le5 million on count 2 , making a total of Le10 million. In default of payment of the said fine the accused shall be imprisoned for a term of six months on each count which said term of imprisonment should run concurrently.

23/02/09

CF Edwards: My Lord I wish to apply for the fines to be paid by installment.

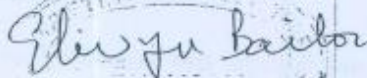
Court: Counsel's application for the fines to be paid by installment is hereby refused. This fines should be paid immediately.

BY THE COURT



MASTER AND REGISTRAR

CERTIFIED TRUE COPY



MASTER AND REGISTRAR

Case Report:
Isatu Conteh

THE STATE v. ISATU CONTEH

THE HIGH COURT OF SIERRA LEONE
JUSTICE M SEY J
16 February 2009

Absence of express definition of the charges/counts - Absence of express definition of the elements of the statutory offence - Absence of express evaluation of the facts alleged by the Prosecution - Absence of express evaluation of the Prosecution's legal arguments as against, the facts alleged - The presentation of Judgments where the Accused enters a guilty plea - Need for express judicial pronouncements to contribute to case law - Protection of the rights of the Accused - Circumstances that can be pleaded in mitigation - Anti-Corruption Act (Amendment), No. 15 of 2002, s. 41.

Held

The Accused was sentenced under section 41 of the ACA (Amendment), No. 15 of 2002, to a fine of Le20m to be paid immediately, in default of which, she would be subject to a 2 year term of imprisonment. She was also ordered to repay the money within a month.³⁰⁹

Ratio Decidendi

There was no evaluation of the Prosecution's case; no assessment of the veracity of the Prosecution's allegations, measured against the evidence adduced by the Prosecution; and measured against any objective appraisal of the circumstances. Neither was there any assessment of how well the Prosecution's legal arguments married the evidence it adduced.³¹⁰ The conviction and sentencing of the Accused appeared to be based solely on the Accused's guilty plea.

Notes

Theft consists of four elements, 1.) A dishonest 2.) appropriation 3.) of property belonging another 4.) with the intention of permanently depriving the owner of it; *Lawrence* [1971] 1 QB 373, approved in the House of Lords, sub nom; *Lawrence v. Metropolitan Police Commissioner* [1972] AC 626. Theft can be committed against people other than the "owner" of the property in question; Blackstone's, p. 257. Coins and banknotes are property which can, therefore, be stolen; *Davis* (1988) 88 Cr App R 347. "Money" does not cover accounts held with banks and building societies; a bank or building society account may be property which may be stolen by virtue of its being a thing in action. Personal property includes tangible personal property; and refers to the piece of printed paper on which a cheque is written; this is because personal property includes choses in action and a cheque represents the chose in action *Preddey* 1996 AC 815, pp. 257-258. A cheque may be stolen regardless of the state of the account upon which the cheque is drawn; *Duru* [1974] 1 WLR 2. The other person to whom the property belongs need not be an individual but may be a corporation such as a company, a legal entity separate from its members; Blackstone's p. 258. Appropriation means any assumption of any of the rights of the owner; *Ngan* [1998] 1 Cr App R 331 and does not entail that a taking is required; *Gomez* [1993] AC 442, *Morris* 1984 AC 320 Dishonesty is a question of the Accused's state of mind and may be inferred from his conduct,

³⁰⁹ Trial Judgment, p. 2, which makes it clear that the issue of repayment is distinct from payment of the fine imposed. This passing reference to repayment, illustrates the need for even a summary presentation of the facts, for the benefit of the reader.

³¹⁰ See **Critique** in *The State v. Alex Sesay* (2009), pp. 221-224.

even though conduct is not determinative of his mens rea; *Ingra* Crim LR 457 and *Boggeln v. Williams* [1978] 1 WLR 873. Dishonesty is ascertainable using the 2 stage test set out in *Gosh* [1982] QB 1053; whether the act was dishonest according to the ordinary standards of reasonable and honest people and if so, whether the defendant realized that what he was doing was by the standards of reasonable and honest people dishonest. Refer also above to **Notes** in *The State v. Alex Sesay* (2009).

Summary of Facts

The Accused aged 42 started working as a Clerk and rose to the position of Sub-Accountant. The Accused pleaded in mitigation that she had not wasted the Court's time, that she was ready to repay the State, that she was a single Mother with 3 children, and that she had no previous convictions. **There are however, no facts presented in the Judgment which form the basis of the allegations.** The reader can only assume from the nature of the Accused's job and the section under which she was charged, that she accepted/obtained or, that she agreed to accept, or that she attempted to obtain, an advantage in consideration for her co-operation in concealing an offence of a fiscal nature.

Application of Law

In reaching its sentence, the Court was guided by section 41 of the Anti-Corruption Act (Amendment), No. 15 of 2002, otherwise known as, the Anti-Corruption Amendment Act, 2002. It states as follows: "*General Penalty for Corrupt Practices – The Anti Corruption Act 2000 is amended - (j) by the repeal and replacement of section 41 with the following:- 41. Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection 1 of section 11, section 12 or section 13 shall be liable to conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding 10 years or to both such fine and imprisonment; and in addition the Court shall order the forfeiture of the advantage corruptly acquired.*"

It is then followed by a provision which bears no counterpart in section 41 of the ACA 2000, in a section entitled *Penalty for Obstruction of Commission*. This amends section 41 of the ACA 2000, through "(k) by the insertion immediately after section 41 of the following:- 41A. Any person who willfully obstructs or otherwise interferes with the Commission or any of its members or staff in the discharge of their functions under this Act, is guilty of an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment."

Section 41 of the ACA 2000 had provided that: "Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection (1) of section 11, section 12 or section 13, shall be liable on conviction to a fine not exceeding thirty million Leones, or to a term of imprisonment not exceeding 10 years, or to both such fine and imprisonment."³¹¹ The only difference between Sections 41 of the Anti-Corruption Act 2000 and the Anti-Corruption Amendment Act 2002 is that the latter makes an order of forfeiture by the Court of the advantage corruptly acquired possible.

³¹¹ Identical to section 28 (3) of the ACA 2008.

Although section 41 of Anti-Corruption Amendment Act 2002 does amend slightly the ensemble of the penalties attached to the sections of the Anti-Corruption Act 2000 that it cites by name by name, neither section 41 Anti-Corruption Amendment Act 2002, nor the entire Anti-Corruption Amendment Act 2002 amends those named sections. Those named sections are replicated here below for convenience and to underscore the fact that it is unclear which of these the Accused was charged with. One can only speculate in light of the Accused's statements that she was ready to pay the State, the fact that the judgment made it clear that the issue of repayment was distinct from the issue of the payment of the fine imposed as a penalty and in light of the fact that the 2002 Act was applied which allows for forfeiture of the advantage corruptly acquired (although the ACA, had been signed by May 2008), that the charges were founded on sections 12 and 13 as set out below; Misappropriation of public funds or property and Misappropriation of donor funds or property respectively.

As per the ACA 2000; section 8 (1) of states: *Any public officer who **solicits or accepts any advantage as an inducement to or reward** for or otherwise on account of his—*

- a.) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;*
- b.) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or*
- c.) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body;*
is guilty of an offence.

As per the ACA 2000, section 9 (1) states; *Any person who, whether in Sierra Leone or elsewhere, **offers an advantage to a public officer as an inducement or reward** for or on account of such public officer giving assistance or using influence, or having given assistance or used influence in—*

- a.) the promotion, execution, or procuring of any contract or subcontract with a public body for the provision of any service, the doing of anything or the supplying of any article, material or substance; or*
- b.) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract referred to in paragraph (a)*
is guilty of an offence.

Section 9 (2) approaches the "advantage – influence exchange" from the perspective of criminalising the behaviour of the public officer. It states: *any public officer who, whether in Sierra Leone or elsewhere, **solicits or accepts any advantage as an inducement to or reward** for or otherwise on account of his giving assistance or using influence or having given assistance or used influence in—*

- a.) the promotion, execution or procuring for; or*
- b.) the payment of the price, consideration or other moneys stipulated or otherwise provided for in, any such contract or subcontract as is referred to in subsection (1), is guilty of an offence.*

Section 10: *Any person who, while having dealings of any kind with any public body, **gives any advantage to a public officer** or any other person **to influence any public officer** is guilty of an offence.*

Subsection 1 of section 11 states: *Any person who **solicits or accepts any advantage for or on behalf of any public officer** is guilty of an offence.*

Subsection 1 of section 12 states that: *Any person who **misappropriates public revenue, public funds** or property is guilty of an offence.*

(2) A person misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a public corporation or a local authority is deprived of any revenue, funds or other financial interest or property belonging or due to the Government, the public corporation or local authority.

Section 13 states: *Any person who, being a **member or an officer** or otherwise in the management of any organization which is a public body, **dishonestly appropriates 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 is guilty of an offence.*

Critique

Refer to **Critique** in *The State v. Alex Sesay* (2009) above.

[Trial Judgment:
Isatu Conteh]

The State vs Isatu Conteh

THE STATE VS ISATU CONTEH

JUDGEMENT

Monday 16th February 2009

Before the Hon Mrs. Justice M Sey J

CASE CALLED

Accused present

S. P. Semalemba for the State

DB Quee with him S A J Jamiru for the accused

Charge read to the accused

plea ÷ guilty

BRIEF FACTS:

S P Semalemba: My Lord the brief facts are as per the summary of evidence and the particulars of offence.

CONVICTION:

Accused is hereby convicted on her own plea of guilty as charged.

MITIGATION:

D B Quee: My Lord the accused has not wasted the court's time and she is ready to pay the amount to the state. The accused is aged 42 years. She started as a clerk and through her industrious activities she is now a sub-accountant. We are asking the court kindly not to impose a custodial sentence on the accused. My Lord we beg for leniency. She is a single mother with two children.

S.P. Semalemba: My Lord as far as we are aware there are no previous convictions by the accused.

SENTENCE:

Section 41 of the Anti-Corruption (Amendment) Act No 15 of 2002 provides that "any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection 1 of section 11, section 12 or section 13 shall be liable on conviction to a fine not exceeding thirty million Leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.....".

The accused Isatu Conteh has been convicted on her own plea of guilty as charged. Counsel has mitigated on her behalf and those mitigating factors will be taken into account especially considering that the accused has not wasted the time of the court in any way. In the circumstances the court will be lenient and will not impose a custodial sentence.

The accused is hereby sentenced to a fine of Le20 million to be paid immediately.

In default of payment of the said fine two years imprisonment.

COURT: On the issue of repayment of the money the prosecutor has agreed that the money should be paid back within one month. It is hereby so ordered.

16/2/09

BY THE COURT

Master and Registrar



CERTIFIED TRUE COPY

Master and Registrar



Case Report:
Wellington and
Cole

**THE STATE v ERNEST JOSEPH KASHO WELLINGTON and MRS MADONNA
DRUSCILLA COLE**

HIGH COURT OF SIERRA LEONE
N.C. BROWNE-MARKE
25 May 2009

Misappropriation of Public Revenue – Definition of a Public Corporation – Definition of Public Revenue/Funds – Definition of Public Official-Receipt of public revenue by a Public Officer for use as rent for public corporation- Conversion of funds by public officer into local currency and failure to follow established practice of depositing donations into bank account – Unlawful transfer of public revenue by Accused/ failure of Accused to follow established procedure for transfer³¹² - What constitutes wilfulness – Whether the crime of misappropriation under the Anti-Corruption Act 2000 comprises a mens rea element of dishonesty - Whether it is unnecessary for the Prosecution to establish that the Accused benefitted from his/her act causing the deprivation in order to establish the crime of Misappropriation – Whether the Prosecution need not demonstrate the deprivation/loss of the entire sum allegedly misappropriated -Whether a Witness not charged in the indictment may also be the subject of a ruling and a penalty in the Judgment – The Anti-Corruption Act 2000 (as amended), s. 1; 12 (1) &12 (2) – The Anti-Corruption Act, 2008, s. 89 (1), The Constitution of Sierra Leone 1971, s. 111 (2) – The Constitution of Sierra Leone 1971, s.32– The Constitution of Sierra Leone 1991, s. 70 (e)- Companies Act, Cap. 249 - Interpretation Act 1971, s. 4 (1) – National Commission for Privatisation Act 2002, s.27 (1) - United Kingdom Theft Act 1968- UK Children and Young Person's Act 1933- The Criminal Procedure Act 1965, s. 144 (2) s.194.

Held

The Prosecution proved beyond a reasonable doubt that the SLBS lost a sum of money as a result of the wilful actions of both Accused, and that PW2³¹³ received the sum of Le30m. The 1st Accused was sentenced to a term of 5 years imprisonment or a fine of Le5m and the 2nd Accused was sentenced to a term of 2 years imprisonment or a fine of Le3m. PW2 was ordered to refund Le30m, to the SLBS immediately.

Ratio Decidendi

It has held that although tried jointly, there must be evidence inculcating each individual Accused. The finding of guilt on the part of both Accused was based on the Trial Judge's assessment that the evidence adduced by the Prosecution substantiated the constituent elements of the crimes charged with regard to both individuals. Circumstantial evidence evinced that both Accused had no intention to properly account for the money, and accordingly had acted dishonestly. These indicators included that; the donation from the BBC was not deposited into the SLBS' bank accounts; that there was no proper acknowledgement of its disbursement; that the 1st Accused personally converted the sum into Leones; that the 2nd Accused did not record her receipt of

³¹² See **Critique** below, at pp.242-243 on this point.

³¹³ Alimamy Lahai Mansaray, then Deputy Secretary of the Ministry of Information.

Le63m;³¹⁴ and that the 2nd Accused prepared no voucher in giving part of the donation to PW2, as would have been the practice. Part of the legal reasoning supporting a finding of guilt, was a minor assessment of the duties of an employee in relation to their employer and it was stated that *giving one's employers' money away in an improper manner is incompatible with the duties of an employee*.³¹⁵ Further questions of law addressed by the judgment were that the Accused could not be exculpated by the fact that they may not have benefited from the amount misappropriated and neither could they be exculpated by the fact of the Trial Judge's disbelief in PW8's account,³¹⁶ an individual implicated in the act by the Accused. Further, the fact that the Prosecution was only able to prove that part of the overall sum alleged, was in fact misappropriated, did not exculpate the Accused, as the Accused's inability to produce documentation detailing expenditure of the balance sum of Le27m, did not establish a presumption that it was also misappropriated, but rather, established a presumption of sorts, operating in their favour, that it was not.³¹⁷ This favourable outcome for the Accused, regarding the balance unaccounted for, was due to judicial notice being taken of the Accused's removal from their offices which was extensively reported.³¹⁸

Notes

The UK Court of Appeal has criticized the imposition of a fine, where the gravity of the offence is such that the only proper penalty is an immediate custodial sentence: *R v. Sisodia*, 1 Cr. App. R. (S) 291, CA. For the dangers of allowing affluent offenders to escape custodial sentences by payment of fines see: *R v. Markwick*, 37 Cr. App. R. 125, CA; *R v. Lewis* [1965] Crim. L.R. 121, CA. Note in light of **Critique** below,³¹⁹ Corruption as interpreted per section 1(1) of the (UK) Public Bodies Corrupt Practices Act 1889, means not dishonesty, but purposely doing an act which the law forbids as tending to corrupt: *Cooper v Slade* (1857) 6 H.L.Cas. 746. *R v. Wellburn* 69 Cr. App. R. 254, CA. *R v. Harvey* [1999] Crim. L.R. 70, CA. Further, only relevant to the offence of Corruption was the intention to corrupt and motive was irrelevant; *R. v. Smith (John)* [1960] 2 Q.B. 423, 44 ER. App. R, 55, CCA. In *R v Harvey* [1999] Crim L.R. 70, CA; it was held that dishonesty is not an element of the offence; and that the word corruptly for the purposes of the section is to be construed as meaning deliberately. Knowledge includes "wilfully shutting one's eyes to the truth": *Warren v. Metropolitan Police Commissioner* [1969] 2 A.C. 256. On the issue of why no witnesses were called regarding the Kailahun station, note that although the Judge can call a Witness not called by either parties, in the interest of justice; *R v. Chapman* (1838) 8 C. & P. 558, the power of Judge to call a Witness must be sparingly and rarely exercised; *R v. Baldwin*, The Times, May 3, 1978, CA. With regard to the 2nd Accused's opting for an unworn statement, the general criminal law rule is that the testimony of a witness to be examined, viva voce, in a criminal trial, is not admissible, unless he has previously been sworn to tell the truth; *R v. Kelly* (1848) 3 Cox 75 *R v. Tew* (1855) Dears 429.

³¹⁴ In exhibit M, the 2nd Accused said that the 1st Accused took le63m to her office, that she did not issue a receipt, she recorded how it was spent in a sheet attached to a ledger as the book was full, and she spent money according to instructions, Trial Judgment, pp. 17-18.

³¹⁵ Refer to **Critique** below, pp.242-243.

³¹⁶ Professor Septimus Kaikai, then Minister of Information.

³¹⁷ Note the word "presumption" is not used in the judgment on this issue.

³¹⁸ In exhibit J, the 1st Accused states that he was virtually driven out of his office. In exhibit G, he says he was "booted out of office," Trial Judgment, pp. 15-16. In exhibit L, the 2nd Accused says that she never took financial docs from the SLBS, Trial Judgment p.17.

³¹⁹ Refer to **Critique** below, at p.242.

Cases referred to in Judgment

The State v. Manneh and Another

Lawrence v. Metropolitan Police Commissioner [1971] 2 All ER 1253.

R v. Gomez [1993] 1 All ER 1.

Morris [1983] 3 All ER 288.

Sinclair v. Neighbour [1966] 3 All ER 988.

Sheppard [1981] AC 394.

Ghosh [1982] 2 QB 1053, [1982] 2 All ER 689.

Koroma v. R [1964-66] ALR SL 542.

Garber v. R [1964-66] ALR SL 233.

Sahr M'Bambay v. The State Cr. App 31/74 CA unreported.

Woolmington v. R.

Kargbo v. R [1968-69] ALR SL 354 C.A.

Bob-Jones v. R [1967-68] ALR SL 267.

Seisay and Siafa v. R [1967-68] ALR SL 323.

Samuel Benson Thorpe v. Commissioner of Police [1960] 1 SLLR 19.

Franklin Kenny v. The State, Supreme Court Cr App 2/82.

Summary of Facts

The Accused were jointly charged with one count of Misappropriation of Public Revenue contrary to Section 12 (1) of the *Anti-Corruption Act 2000*³²⁰ as amended, for misappropriating \$ 22, 000 received by the 1st Accused from the BBC on behalf of the SLBS.³²¹ On the 24 November 2008, the Accused pleaded Not Guilty. Both claimed in their statements and their testimony, that in the presence of PW1,³²² they had given le36m, out of the overall converted sum of le63m, to PW2, for him to give to PW8, who had requested it to repair the SLBS' Kailahun Station.³²³ PW2, on the other hand, said that the 1st Accused gave him the money as payment for an *Alpha man*³²⁴ and for PW2's own per diem to that end. He denied that the money was given to him to hand over to PW8 and says that the 1st Accused told him to collect the money from the 2nd Accused who gave him le30m, for which he signed a paper acknowledging receipt.³²⁵ Both Accused denied giving money to PW2 for an *Alpha Man* and said that the balance of le27m was used to pay staff salaries, maintenance and repairs.³²⁶ PW8, for his part denied requesting and receiving any part of the

³²⁰ Henceforth referred to as the ACA 2000.

³²¹ PW7, Patrick Martin George, Legal Officer, of the Anti-Corruption Commission (ACC), tendered exhibit F; a photocopy of a fax, sent by the BBC evidencing the receipt by the 1st Accused of USD22,000 on 30th January 2007, Trial Judgment, p.14. PW4, George Emmanuel Mason, Sales manager SLBS, tendered exhibit A1, a copy of an invoice for payment of USD8,200 by the BBC to SLBS on 13th May 2006, for use of facilities at Leicester peak and as technical fees, Trial Judgment, p.11. This apparent discrepancy in the figures is not examined in the Trial Judgment.

³²² Abdul Karim Sheriff, the Director of Engineering Services, denied witnessing the transaction, and denied knowledge of PW8's request for money to be passed to on to him.

³²³ The 1st Accused elected to testify under oath under s. 194, CPA 1965, and said that he gave le36m to PW2 through 2nd Accused for PW8 in the presence of PW1 for Kailahun station, which was fixed between February and March 2007. The 1st Accused said under cross examination that the balance was used to pay freelance staff. PW1 testified that the 1st Accused had told him that PW2 had collected le36m for payment to PW8, Trial Judgment, p. 9.

³²⁴ A sorcerer/wizard.

³²⁵ In her unsworn statement in the dock, the 2nd Accused also confirmed giving PW2 le36m which she "receipted for", on a piece of paper found on her desk, Trial Judgment, p. 19.

³²⁶ In exhibit G, the 1st Accused says that the donation of 21, 000 USD, was used to pay for fuel purchases, maintenance of fuel and vehicles, to pay staff, the Transitional Management Team (TMT) and given to PW8 to service

monies in question or being involved in the Kailahun Station repairs. The SLBS possessed Bank of Sierra Leone accounts for its TV station; account No. 1100621 and for its FM99 station; account No. 1100618.³²⁷ Unlike the BBC donations, there were 2 separate payments of donations from RFI, one for Euros11, 390, the other for USD4, 475, made into account no. 1100618 in March 2007.³²⁸

Application of Law

The Prosecution must prove beyond a reasonable doubt all elements of the offence and any doubt as to the guilt of the Accused operates in favour of an acquittal: *Woolmington v R*; *Kargbo v R* [1968-69] ALR SL 354 C.A.; *Bob-Jones v R* [1967-68] ALR SL 267; *Seisay and Siaffa v R* [1967-68] ALR SL 323; *Samuel Benson Thorpe v Commissioner of Police* [1960] 1 SLLR 19; *Franklin Kenny v The State*, Supreme Court Cr App 2/82. The offence as spelt out in the ACA, required the entity that was the subject of litigation to qualify as a public corporation. Section 1 of the Anti-Corruption Act 2000, defines a “public corporation” as “a corporation established by an Act of Parliament or out of **moneys provided by Parliament** and includes a company which is wholly owned by the Government or in which the Government is a major shareholder.”³²⁹ The SLBS was held to qualify as a public corporation as it was being controlled and supervised by the National Commission for Privatization, which under section 27(1) of the National Commission for Privatization Act 2002, **was to be funded by monies appropriated by Parliament.** The moneys in question needed to be qualifiable as public revenue, a nomenclature which, according to section 1 of the ACA 2000, means; “moneys paid for from funds appropriated by Parliament from the consolidated fund under section 111(2) of the Constitution.” However, in this context, the monies qualified as “public revenue”, as they were a donation to a public corporation, although this issue was not expressly addressed.³³⁰ It was also necessary for the Prosecution to prove that the 1st Accused, the Director General of the SLBS, and the 2nd Accused, the Accountant of SLBS, were public officials. The answer to this question is not spelt out, but seems to have been impliedly addressed, through express recognition of the SLBS as a Public Corporation.³³¹

Under Section 12 (2), the Actus Reus of the crime of misappropriation is the commission of an act by the Accused causing the government/Public Authority/Public Corporation to be deprived of its revenue/funds/or other financial interest/property. The Accused may act on his own, or through another person. There is no requirement as with appropriation for the Accused to have assumed ownership rights,³³² consent of the owner is irrelevant: *Lawrence v Metropolitan Police Commissioner* [1971] 2 All ER 1253 and *R v Gomez* [1993] 1 All ER 1 and the crucible is **the**

the Kailahun Station and to repair the vehicle in Kailahun, Trial Judgment p. 15. PW3, Abdul Razak Tejan-Jalloh, then Director at the National Commission for Privatization *also* talks about how salaries were paid to the TMT, Trial Judgment p. 11. PW1 testifies to making requests for fuel from the 1st Accused who would provide cheque or cash via the 2nd Accused, Trial Judgment p. 8.

³²⁷ Exhibits C, bank statement of SLBS’ account no. 1100621 and Exhibit D, bank statement of account no. 1100618, for the period of 2005-2008, reveal that fuel was purchased using the funds mainly in account no. 1100618, Trial Judgment, pp.13-14.

³²⁸ Exhibit D, Trial Judgment, p.14.

³²⁹ The Constitution of Sierra Leone 1991, s. 70 (e) refers to the President’s power of appointment of members of the governing body of any corporation established by an Act of Parliament, a statutory instrument or *out of public funds*.

³³⁰ Trial Judgment, p.3.

³³¹ Trial Judgment, pp. 2-3.

³³² As per the UK Theft Act 1968.

causing of deprivation or loss; *The State v Manneh and Another*. The *Mens Rea* requirement for this form of Misappropriation is wilfulness, which was deemed to comprise of intention and a type of recklessness,³³³ the latter described, with reliance on *Sheppard* [1981] AC 394, as acting with knowledge of the risk of a consequence or acting in the absence of knowledge due to not caring. Further, dishonesty was incorporated into the interpretation of Misappropriation, by adopting the test from *Ghosh* [1982] 2 QB 1053, [1982] 2 All ER 689; which is an assessment of whether the act was dishonest according to the standards of reasonable and honest people and whether the Defendant realized that it was.³³⁴ Although the judgment refers to *Sinclair v Neighbour* [1966] 3 All ER 988, in the context of Dishonest Appropriation, it simply extricates reasoning which is *framed* in terms of a *breach of duty*, i.e. that the taking money out of a till, for example, is *incompatible/inconsistent with one's duty in one's place of employ or as a manager*.³³⁵

Critique

The Judgment includes an admission that Section 12 does not set out “dishonesty” as being one of the composite elements of the Offence of Misappropriation, but that it would be inconceivable to convict an Accused of this offence in the absence of proof of dishonesty.³³⁶ It is submitted that “dishonesty” was incorporated into the interpretation of the offence, to allow for the possibility that there may be *instances of deprivation* which even though *intentioned* or occurring *as a consequence of inadvertence*, occur in the *absence of a dishonest frame of mind*. It is further submitted, in this line of reasoning, that an act that is deliberate and intentioned to cause deprivation, may occur for what Accused may have believed were legitimate/lawful reasons. Likewise, there may be acts resulting from Cunningham and Caldwell³³⁷ type recklessness, which may occur in the absence of a dishonest frame of mind. However, it is submitted that it is a Defendant that falls within the Cunningham bracket that has *less* leeway to argue that he acted in the absence of a dishonest frame of mind.³³⁸ The infusion of a “dishonesty” requirement, therefore, in this sense, gives the offence, the semblance of a special intent offence.³³⁹

It is submitted that in the absence of more explicit terms in section 12 of the ACA 2000, addressing the above described complexity behind the need for the importation of dishonesty in the interpretation of this offence, more clarity would have been achieved by employing the Judgment to define the concepts of loss and deprivation in this context. It is suggested that there should have been an elaboration of these concepts to the effect that: an act causing loss or deprivation to an owner/public corporation of its property, *should be characterized by its occurrence in the absence of legitimate authority/authorisation for such a transaction or transfer*; that it *should have occurred without following the established procedure for such a transaction*; and that *an act causing loss/deprivation, in the absence of proof that the funds/properties in question were not transferred/or have not been invested for the benefit/use of the owner, will give rise to a presumption that there was no such intention behind the said transaction*.

³³³ Relying on 2002 Blackstone's Criminal Practice.

³³⁴ Where both limbs of the test are met, there can be no moral justification for the act.

³³⁵ This appears to murkily equate breach of duty to dishonesty.

³³⁶ Trial Judgment, p. 5.

³³⁷ Where a consequence was not foreseen but ought to have been. It is arguable that this more than other scenarios, will fit into the scheme of acting in the absence of a dishonest frame of mind.

³³⁸ See **Notes** above, at p.239 above for authorities that contradict the Trial Judge's approach to dishonesty as a mental element required for offences concerning corruption.

³³⁹ Refer to **Notes** above, at p.239.

With regard to the approach taken to the evaluation of evidence, it is submitted that the Trial Judge employed tried and tested principles, such as the assessment of PW8's demeanour, and the discernment of the commonality in varied but largely similar accounts, to get to the heart of the matter and employed such principles in the weight it gave to the overwhelming circumstantial evidence against the Accused, which collectively gave rise to a reasonable inference of the Accused's guilt. These include; that the period between the date of receipt of the donation³⁴⁰ and the date of disbursement,³⁴¹ suggest failed opportunities to deposit the money into bank accounts as was the practice;³⁴² that there were minor discrepancies in the account of the 1st Accused about the amount received;³⁴³ that the testimony of PW2, that he and his driver packed the money into an empty rice bag in the 2nd Accused's Office and that only the 2 of them were in the office, smacks of illegitimacy; that the 2nd Accused said that she did not follow the usual procedure of approval from PW3, because she was told by the 1st Accused that it was a Minister's request³⁴⁴ and that she made no receipt;³⁴⁵ the fact that no evidence was offered by either Accused regarding the Kailahun station fix up; and lastly, the paucity of PW2's evidence regarding the Alpha man whom he dubiously acknowledged as his uncle and PW2's discrepancies regarding the sum he received.³⁴⁶ There could perhaps been more judicial intervention for the sake of clarity, for example a question from the Judge seeking the providence of PW1's breakdown of the figures:³⁴⁷ USD8,200 for Leicester Peak³⁴⁸ USD7,000 for Bo Station and USD 7,000 for Kenema Station.

The Prosecution's initial application to amend the sum USD22, 200 to read "USD22, 200 currently equivalent to Le63m", was refused on the ground that this was not "an either or" situation. The case was allowed to proceed on the basis that either USD\$22,200 was misappropriated, or that the sum of Le 63,000,000 was misappropriated. The rationale behind this appears to be the need for certainty, to avoid the Prosecution moulding its case as and when evidence became available to it, and the Defence having adequate notice of charges framed with sufficient specificity. The entitlement to be able to adequately prepare, so as to answer the charges, is part of a larger principle of fairness and equality of arms and the right to a fair trial.

³⁴⁰ On January 30, 2007, based on exhibit F, Trial Judgment, p. 14.

³⁴¹ In February/March 2007, based on testimony of 1st Accused, Trial Judgment, p. 19.

³⁴² In exhibit K, the 2nd Accused says, that rent money was usually paid into Bank of Sierra Leone accounts and PW4 would make payments, Trial Judgment, p. 16.

³⁴³ In exhibit H, the 1st Accused said that he converted 21,000 USD to facilitate disbursement and did not deposit it into the Bank of Sierra Leone accounts, due to an oversight, Trial Judgment, p. 16. In exhibit J, the 1st Accused said that he received USD22, 000, Trial Judgment, p. 16.

³⁴⁴ In exhibit K, the 2nd Accused said that there was no written request from PW8 for the le36m, and that she prepared no payment voucher, as was the practice, Trial Judgment, p. 17.

³⁴⁵ In exhibit L, the 2nd Accused said she made no receipt for the transfer of le36m, Trial Judgment, p. 17.

³⁴⁶ PW2 says the Alpha man wanted le20m and that the le10m was for his per diem; he says he gave the Alpha man le25m, and kept the le5m. In Cross, he states that the Alpha man said he wanted at least le20m and that 1st Accused should further add le10m. The Trial Judge assessed PW2's evidence as not credible, firstly because his account was totally incompatible with his duties and rank as a senior civil servant, because with regard to the Alpha man, his account lacked detail and *because his demeanor demonstrated anxiety*, Trial Judgment, pp. 9-11. Due to the discrepancy between the amount allegedly received by PW2, le30m, and what the 1st Accused says he transferred to PW2, le36m, the Trial Judge, limited the sum, it ordered PW2 to refund, to le30m, Trial Judgment, p. 21.

³⁴⁷ Trial Judgment, p. 8.

³⁴⁸ PW4 confirms this, putting the date of receipt at 15 May 2006, Trial Judgment, p.11.

**Trial Judgment:
Wellington and
Cole**

The State vs Ernest J. K. Wellington
& Madona O. Cole

THE STATE

VS

ERNEST JOSEPH KASHO WELLINGTON

MRS MADONNA DRUSCILLA COLE

C MANTSEBO Esq for the State

M. GARBER Esq for 1st Accused

D G THOMPSON Esq for 2nd Accused

JUDGMENT

INTRODUCTION

1. ERNEST JOSEPH KASHO WELLINGTON and MADONNA DRUSCILLA COLE are both charged jointly, in a one Count Indictment, with the offence of Misappropriation of Public Revenue Contrary to Section 12(1) of the Anti-Corruption Act, 2000 as amended. The particulars of the charge are that both accused persons on a date unknown between the 30th January, 2007 and the 8th October, 2007 at Freetown in the Western Area being Public Officers, to wit: Director-General and Accountant of Sierra Leone Broadcasting Services respectively, MISAPPROPRIATED a sum of USD22,200 being Public Revenue received from the British Broadcasting Corporation on behalf of the Sierra Leone Broadcasting Services as rent for the use of radio facilities at Leicester Peak. The Charges are laid under Section 12(1) of the Anti-Corruption Act, 2000. It provides that "any person who misappropriates public revenue, public funds or property is guilty of an offence." Though the word "property" is not here preceded by the word "public" as in the case of the other two things which could be misappropriated, I do not apprehend that non-public property will form the subject matter of an Indictment brought under this Act.

THE LAW

2. Section 12(2) tells us what "Misappropriate" means in Section 12(1). It states that: "*A person Misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a Public Corporation or a local authority is deprived of any revenue, funds or other financial*

Interest, or property belonging to the Government, the public corporation or local authority."

1. Section 1 of the Act defines a "public corporation" as "a corporation established by an Act of Parliament or out of moneys provided by Parliament and includes a company which is wholly owned by the Government or in which the Government is a major shareholder." Further down the same Section of the Act "public funds" are defined as "...moneys paid from funds appropriated by Parliament from the consolidated fund under Section 111(2) of the Constitution." Section 4(1) of the Interpretation Act, 1971 tells us, inter alia, that "In every Act.. unless a contrary intention appears....."Government" means the Government of Sierra Leone (which shall be deemed to be a person) and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case." Also, that a "Corporation" includes a Statutory Corporation as defined in Section 32 of the Constitution (i.e. the 1971 Constitution).....a Company formed and registered under the Companies Act (Cap249)..." The term "Statutory Corporation" is no longer in use since 1991. The Constitution of Sierra Leone, 1991 in Section 70(e) thereof refers obliquely to the new terminology in providing that "The President may appoint..... the Chairman and other members of the governing body of any corporation established by an Act of Parliament, a Statutory Instrument, or out of public funds...." From the evidence led, it seems that at the time the offence was alleged to have been committed, the SLBS was being supervised and controlled, not directly by the Ministry of Information and Broadcasting, but by the National Commission for Privatisation which was established by an Act of Parliament, eponymously named, the National Commission for Privatisation Act, 2002 - Act No. 12 of 2002. According to Section 27(1) of the Act, "the activities of the Commission shall be financed by a fund consisting of (a) any monies appropriated from time to time by Parliament for the purposes of the Commission.....; and (b) any monies otherwise accruing to the Commission in the course of its activities." It is clear therefore, that the funds of this Commission are partly provided by Parliament. As shall later appear, when dealing with the evidence of PW3, ABDUL RAZAK TEJAN-JALLOH and PW4 GEORGE EMMANUEL MASON, the SLBS fell within the purview of the NCP; and also derived part of the funds for its operations, particularly the purchase of fuel, from the Government. Government derives its revenue from monies paid into the Consolidated Fund established by and Authorised by Parliament; and the annual

Appropriation Act passed by Parliament, authorises the disbursement of parts of this revenue to the several Government Ministries, Department Corporations and entities such as the SLBS. It follows, therefore that the SLBS falls within the description of a "Public Corporation" in Section 1 of the Anti-Corruption Act.

4. The prosecution must also prove that the Accused persons were Public Officers within the meaning of the Act, since it is alleged they committed the acts alleged, in their respective capacities as Director-General, and Accountant, SLBS, respectively.
5. The other elements of the offence are that: i) the Accused must have acted wilfully, whether by himself or herself, with or through another person; and ii) that these acts must have caused the Public Corporation to be deprived of revenue, funds or other financial interest, or property belonging to the said public corporation.
6. Here, the prosecution is alleging that both 1st and 2nd Accused, in their respective capacities as Director-General and Accountant, SLBS respectively, by their various acts and declarations, wilfully deprived SLBS of the total sum of USD22,200 (later amended to read LE63m) That the Accused persons did not commit the alleged criminal acts together, or at the same time, or at the same place, is clear from the evidence. According to the evidence led, 1st accused committed the offence by firstly, not paying-in into either of the SLBS's Bank Accounts held at the SLBS, the sum received as rent for use of its facilities at Leceister Peak; secondly, by converting the said money into Leones, and by holding on to the same; and thirdly, by instructing the 2nd accused, to hand over some part of the total amount converted into Leone, to PW2, ALIMAMY LAHAI MANSARAY. It is alleged that the 2nd accused committed the offence by paying-over to PW2 some part of the money converted without lawful authority: there was no requisition for the amount paid over to PW2; nor was it properly documented or receipted. Nor was there any statement accounting for the balance not paid over to PW2. However, Section 12 of the Act, provides that an Accused person could commit the offence by himself, or through another person, and there is no requirement that they should have agreed to commit these criminal acts together; nor that they should have acted together unlawfully, at the same place, and at the same time, as is usually the case in a non-continuous offence. The offence is committed where the unlawful acts of an Accused committed in one location, results in the public

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corporation losing funds in another location, through the acts of another person, provided both persons acted wilfully.

7. As regards the term "Misappropriates" in the Act, I shall rely on, and adopt what I said in my Judgment in the case of *THE STATE v MANNEH & ANOTHER*: "Misappropriate" is not in my view, a term of art. It is much wider than "appropriation" in the United Kingdom Theft Act, 1968. Appropriation in that Act involves the assumption of the rights of the owner by the Accused. Here, the wilful commission of any act which results in the owner losing funds belonging to it, amounts to misappropriation. There is Misappropriation also whether the owner of the funds consented or not to the deprivation of funds. The consent of the owner is irrelevant as was pointed out by the House of Lords in *LAWRENCE v METROPOLITAN POLICE COMMISSIONER* [1971] 2 All ER 1253, and in *R v GOMEZ* [1993] 1 All ER 1, both of them cases dealing with theft, where it had been argued unsuccessfully by the respective Appellants, based on the speech of LORD ROSKILL in [1983] 3 All ER 288 at Page 295 where he appeared to suggest that appropriation in the circumstances of that case involved not just the substitution of price labels by the accused, but also that such an act must also "adversely interfere with or usurp the right of the owner...", that the owners in each of those cases had consented to parting with their respective properties. In *LAWRENCE* it was an extra sum of £6; in *GOMEZ*, it was the delivery by the owner of electrical goods to a third party, paid for by stolen cheques, to the knowledge of, and through the machinations of Gomez. I also seek support in the words of SELLERS, LJ in a civil case: *SINCLAIR v NEIGHBOUR* [1966] 3 All ER 988 at 989 paras C-D. There, the Respondent was dismissed because of dishonest appropriation of money. In considering the right test to apply in these circumstances he said, inter alia, "*it was sufficient for the employer, if he could, in all the circumstances, regard what the employee did as being something which was seriously inconsistent-incompatible with his duty as a manager in the business in which he was engaged. To take money out of the till in such circumstances is on the face of it incompatible and inconsistent with his duty.*"
8. Further, the act which causes deprivation of funds, must be wilful. The Learned Editors of the 2002 Edition of *BLACKSTONE'S CRIMINAL PRACTICE*, have at paragraph A2.8 suggested the relevant meaning of 'wilful.' They submit that it is now a "composite word to cover both intention and a type of recklessness." They cite the explanation given by

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LORD DIPLOCK in SHEPPARD [1981] AC 394, where, in a case of child neglect, he said that 'wilful' in the context of the UK Children and Young Persons Act, 1933 involved the actus reus of failing to provide the child with medical aid; and the mens rea of the parent, that of being aware of the risk to the child's health if not provided with medical aid, or that the parent's unawareness of this fact was due to his not caring whether his child's health were at risk or not. The Editors submit further that, 'wilfulness' requires basic mens rea in the sense of either intention or recklessness, and that even in the absence of the word 'wilfully' this is the mens rea which will normally be implied by the courts for serious criminal offences in the absence of any other factor indicating a wider or narrower basis.'

Though dishonesty is not specifically stated to be an element of the offence under Section 12, it is my view that it would be inconceivable to convict an accused of this offence in the absence of proof of dishonesty. In GHOSH [1982] 2 QB 1053; [1982] 2 All ER 689, the Court of Appeal held that dishonesty should be determined in two stages: i) the tribunal of fact should decide whether, according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that should be the end of the matter and the prosecution fails; ii) if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must have realised that what he was doing was by [by the standards of reasonable and honest people] dishonest. The Court said further, that *"it is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did."*

BURDEN AND STANDARD OF PROOF

9. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused persons, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused persons of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused persons

have not only committed the unlawful acts charged in the Indictment, but that each of them did so with the requisite Mens Rea: i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "*sacrosanct or absolutely necessary*" as was pointed out by SIR SAMUEL BANKOLE JONES, P in the Court of Appeal in *KOROMA v R* [1964-66] ALR SL 542 at 548 LL4-5. What is required is that it is made clear by or to the tribunal of fact, as the case may be, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed: see also *GARBER v R* [1964-66] ALR SL 233 at 239 L27 -240 L14 per AMES, P; *SAHR M'BAMBAY v THE STATE* Cr. App 31/74 CA unreported - the cyclostyled Judgement of LIVESEY LUKE, JSC at pages 11-13. At page 12 LUKE, JSC citing *WOOLMINGTON v R* says, inter alia, that "*if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal*," *KARGBO v R* [1968-69] ALR SL 354 C.A. per TAMBIAH, JA at 358 LL3-5: "*The onus is never on the accused to establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insanity*." There, the accused pleaded self-defence. See further: *BOB-JONES v R* [1967-68] ALR SL 267 per SIR SAMUEL BANKOLE JONES, P at 272 LL21-39; *SEISAY and SIAFA v R* [1967-68] ALR SL 323 at 328 LL20, 23 and at 329 LL12-18; and *SAMUEL BENSON THORPE v COMMISSIONER OF POLICE* [1960] 1 SLLR 19 at 20-21 per BANKOLE JONES, J as he then was. The point was again hammered home by AWOONOR-RENNER, JSC in *FRANKLIN KENNY v THE STATE* Supreme Court Cr App 2/82 (unreported) at pages 6-7 of her cyclostyled judgment.

10. I must also bear in mind, and keep in view at all times the fact that though both Accused persons are tried jointly, the case against each of them has to be treated separately. At no time must I treat evidence which is only applicable to, or which inculpates only one Accused person, against the other Accused person. Each Accused person is entitled to an acquittal, if there is no evidence, direct or circumstantial, establishing his guilt, independent of the evidence against his co-Accused.

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PRELIMINARIES

11. Before turning to the evidence which was led in support of the Prosecution's case, I shall first deal with the preliminary issues which arose before the Trial commenced. Both accused persons first appeared before me on 24 November, 2008 when their pleas of Not Guilty were taken. MR SEMALEMBA, who then appeared for the prosecution, drew the Court's attention to the Anti-Corruption Commissioner's FIAT dated 11 November, 2008 authorising himself, MS GLENNA THOMPSON, and MR CALVIN MANTSEBO, to prosecute this matter pursuant to the powers conferred on the Commissioner by Section 89(1) of the Anti-Corruption Act, 2008. The Court acknowledged the propriety of the FIAT. He sought and obtained an adjournment of the matter to 11 December, 2008. On the latter date, he informed the Court that the matter had been specifically assigned to MR MANTSEBO who was away at the time, and he sought another adjournment to 25 January, 2009 when it was expected, MR MANTSEBO would have returned to the jurisdiction. Because of MR MANTSEBO's late return to town, the Trial only actually took off on 3 February, 2009.
12. In the interim, by Application dated 25 November, 2008, the Attorney-General and Minister of Justice, in the exercise of the powers conferred on him by Section 144(2) ^{CDA 1405} applied to this Court for the Accused persons to be tried by Judge alone instead of by Judge and Jury. On 3 February, 2009 I made the Order as of course, on the Application being brought to my attention by MR MANTSEBO for the prosecution.
13. On that same day, MR MANTSEBO applied for the Indictment to be amended in line 2, for that line to read ".....on a date unknown between" instead of ".....on unknown dates between.....". Also, subject to my direction, he applied that the sum "USD22,200" be deleted in figures and words from ^{line} 5 of the charge, and the sum "Le63,000,000" inserted in its stead. I granted both Applications. MR MANTSEBO had initially applied, as regards the sum involved, that the charge be amended to read "USD22,200 currently equivalent to LE63,000,000" but I refused this part of his Application on the ground that this was not "an either or" situation. I would only allow the case to proceed on the basis that USD22,200 was misappropriated; or that the sum of Le63,000,000 was misappropriated. Thereafter, MR MANTSEBO opened the case for the prosecution, and proceeded to take witnesses.
14. PW1 was ABDUL KARIM SHERIFF, the Director of Engineering Services on contract, at the SLBS. He knew the accused persons. His duties were

- to supervise the engineering staff; he was also a member of the Management team. He was present when money was given to the 1st accused, which he the 1st accused signed for. They were called to the Presidential Lodge. There, a cheque was handed over to 1st accused by BBC representatives.
15. He was cross-examined extensively by MR GARBER for 1st accused. In answer to him, the witness said inter alia: "...my day to day activities were to make sure the Station was functional..." He would make sure fuel is provided for the several locations at Leceister Peak and at New England.
- Requests for fuel were made to 2nd accused, as Accountant. When Government allocations of fuel were exhausted, he would make requisitions directly to 1st accused, who would give him cash or a cheque with which to purchase the fuel. Between 2006 and 2007, fuel was paid for in cash. Cash was requested from 2nd accused through 1st accused. Receipts were given for cash received. His signature was required for such requests for fuel. Electricity was in short supply in 2007 and so there was a heavy dependence on generators at both locations. The Leceister Peak generator consumed about 10-20 gallons of fuel per day. There were other Stations, outside Freetown, at Bo, Kenema, Makeni, Kono and Kailahun. They were off when there were faults. Each Station would require repairs at different points in time. He would go to a particular Station to see that the fault was repaired. He said further, that the Kailahun Station was not operating at a point in time - this was in 2007. It had housing and generator problems. He gave a breakdown of how the rent paid by the BBC was utilised: USD8,200 Bo Station - *Leceister Peak*
USD7,000; and Kenema Station USD7,000 also. He said this money was used for the running of the establishment, particularly for fuel, equipment, and other expenditure, which he did not enumerate. According to him, SLBS is supervised by the Ministry of Information and Broadcasting. Reports are sent to the Ministry when queries are raised, or information is requested by the Ministry. PROFESSOR KAI KAI was the Minister at the time, and he was in touch with him almost every day. PROF. KAI KAI was aware of the problems in the establishment. He was aware of the fault at the Kailahun Station. He also interacted with the then Deputy Secretary in the Ministry, ALIMAMY MANSARAY, who later testified as PW2. SLBS did not run at a profit. It is a service to the Government, but Government did not give sufficient allocation; the Station therefore had to survive on what it collected.

16. Crucially, for the 1st accused, the witness said he was not aware of a request made by the Minister for funds to be passed onto him. He was intimidated by 1st accused that up to Le36m was paid to the Minister, and that PW2 had collected the money, but he did not himself, witness the transaction. He ended by saying 1st accused was friendly with PW2.
17. It seems to me that PW1's evidence establishes the following facts: that rent in the sum of USD22,200 was received by 1st accused; monies collected were used for the upkeep and running of the various Stations.
18. PW2 was ALIMAMY LAHAI MANSARAY, Acting Director, Human Resource Office, formerly, Establishment Secretary's Office. Between January and October, 2007, he was Deputy Secretary, Ministry Of Information. He developed a close and cordial relationship with 1st accused, when 1st accused was seeking to become Director-General of Broadcasting. He got to know 2nd accused in the course of executing his duties as Deputy Secretary. On a particular Saturday, he called on 1st accused at his office at New England Ville. 1st accused, according to him, told him he needed the services of an ALPHA MAN as he was facing pressure at the office. PW2 told him he would go to Kabala in search of one. He said he went to Kabala, and returned with the good news that he had found one, and that this particular ALPHA MAN wanted Le20m to do the job. He said 1st accused agreed to give him this amount, and an additional sum of Le10m to cover his, PW2's per diem allowance, and incidentals. 1st accused told him to collect the money from 2nd accused; he did so, and 2nd accused gave him the total amount of Le30m in different denominations. The money was put in a bag, and he signed a piece of paper given him by 2nd accused acknowledging receipt of the money.
19. He returned to Kabala with the money. He gave the ALPHA MAN Le25m, and kept the balance of Le5m for himself. On his return, he told 1st accused that he had given the ALPHA MAN the money, and that he had commenced work.
20. Under cross-examination by MR GARBER, the witness said that he used to visit the SLBS frequently, because of the many problems which arose there. He said the 1st accused would at times take him out to lunch. He did not meet frequently with the Minister, Prof Kai Kai, they met when there was work to be done. He said he was uncomfortable with the arrangements for receiving the sum of Le30m from 2nd accused. He denied that the money was given to him for him to hand over the same to the Minister. He agreed that in his statement to the ACC he had said the ALPHA MAN was his Uncle.
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1. PW2 was also extensively cross-examined by D G THOMPSON ESQ for the 2nd accused. He said the offices of the 1st accused and of the 2nd accused were far apart and in separate buildings. 2nd accused was not in 1st accused's office when he went there. 1st accused called her on his mobile phone and told her to come to his office; she went there. She went very close to 1st accused, and they spoke, but not to his hearing. When he went to her office, her office was locked though she was inside. She opened the door, and was alone in the office, though members of staff were coming and going all the time. He went to her office about 30 minutes after she had left 1st accused's office. The money was ready for him to collect, and he signed a piece of paper acknowledging receipt of the same. The money was in packets, but easy to count.
22. He said 1st accused came down from his office, and that they met by the Canteen. He told 1st accused he had received the money. He called on his Driver for assistance in packing the money in 2nd accused's office. The money was packed in an empty rice bag. He had gone prepared to collect the money that day, as 1st accused had told him he would be doing so that day. He collected the money a week after leaving Kabala the first time. He reiterated that the Alpha Man had said he wanted at least Le20m, and that 1st accused should add to that sum a further sum of Le10m. 1st accused agreed to this. He said he dated the acknowledgement he signed, but he could not recollect the month he did so. He signed on a sheet of A4 paper. Only the two of them were in the office.
23. PW2's evidence is not only strange, but defies all belief and logic. That he, if he is to be believed, a Senior figure in the Government Administrative Service could leave his job and go on a private errand to Kabala for a week, without being queried and/or reprimanded, shows how low discipline is in the civil service. In any event, I do not believe his evidence. He did not strike me as a truthful witness. I asked him, at the close of cross-examination, what he actually said to the Alpha Man, bearing in mind that the Alpha Man did not know 1st accused; nor did he, the witness say, he went along with a picture of 1st accused to show the Alpha Man, the person who required the exercise of his mysterious powers. He said he merely told the Alpha Man, that a friend of his needed assistance. With such a vague brief, he readily parted, according to him, with Le25m. And he again readily confessed to appropriating to himself, the sum of Le5m belonging to the Government of Sierra Leone. I watched him while he was testifying in the witness box; he appeared very uneasy and cagey. He was not sure whether, inspite of the assurances

given him by the ACC, of immunity from prosecution, the Court would not pounce on him with great force in order to inculcate him. If I were to believe his evidence, I might as well believe that pigs can fly. The conclusion I have reached, is that he did collect a certain sum of money from 2nd accused, be it Le30m or Le36^m, as the 1st accused claims; that he misappropriated that sum since PW8 Prof KAI KAI denies that either sum was handed over to him; and that he must at least refund to the SLBS the sum which he admits receiving, that is the sum of Le30m.

24. PW3 was ABDUL RAZAK TEJAN-JALLOH, a Director at the National Commission for Privatization. Between January and October, 2007, he was a Financial Analyst at the NCP. He got to know 1st accused through his work at the Commission, as part of the Commission's mandate was to oversee the operations of the SLBS through the Transitional Management Team (TMT). He said the remuneration which should have been paid to the team by the SLBS was not paid until 2006 though the team had commenced its monitoring work in 2005. In 2006 they were given the sum of Le2m; later that same year, they were again paid the sum of Le1.5m each.

25. In answer to MR GARBBER the witness said that each member of the team was entitled to an allowance of Le250,000. No separate fund was allocated by Government for this purpose. 1st accused was a member of the team. SLBS suffered from lack of funds, but the team pleaded with 1st accused for payment of allowances. The team encouraged him to be patient with Government. As a result of the non-payment of allowances, there was a lot of grumbling, directed at SLBS as an institution, but not at the person of 1st accused. He was not cross-examined by MR THOMPSON.

26. PW4 was GEORGE EMMANUEL MASON, Sales Manager, SLBS between January and October, 2007. His duty was to generate revenue for Government. He knew both accused persons. He was responsible for preparing invoices. He tendered an Invoice Book as exhibit "A", and a copy of an invoice in that book, No. 4123 dated 15 May, 2006 as "A1." He was not cross-examined. "A1" tells us that on 15 May, 2006 the BBC paid to the SLBS the total sum of USD8,200 for use of facilities at Leicester Peak, and as technical fees.

27. PW5 was WINSTON EBINKULE CAMPBELL, a Store Clerk at the SLBS between January and October, 2007. His duty was to supply fuel to vehicles, to the generators and to render assistance in the Transport Section. He was based at New England. There were two ways of procuring

fuel. When there was an allocation from Government, PW5 would first prepare a request Form which he would take to the Director of Engineering, or in his absence, to the 1st accused, for approval of supply of fuel for the day. Thereafter, the Accountant would prepare a fuel chit which the witness would take to the Petrol Station for fuel. If there was no allocation available, the Accountant would give him cash, or a cheque to take to the Petrol Station to purchase the fuel. Allocation fuel was and is fuel for which Government provides money. After purchasing the fuel, the witness would take the fuel to the various locations, where one of the personnel present would sign acknowledging receipt of the fuel. Fuel supplies for vehicles were collected by the respective Drivers. Fuel supplied was entered, and receipted for, in a blue Ledger which he tendered as exhibit "B". In the case of fuel purchased by cheque, a receipt is usually issued to the witness, which he would take to the Accountant, though not always. Between January and October, 2007 the witness purchased fuel by cash and by cheque, and SLBS received no allocation. Only fuel purchased by way of allocation is entered in exhibit "B". Non-Allocation fuel is not entered in any book. In 2007, SLBS suffered from severe power outages. Fuel had to be bought on an almost daily basis. He said that there were no allocations for 1 May, 2007, 9 May, 2007; none between 18-24 May, 2007; none between 2nd and 26th June, 2007; and between 20 July and 11 August, 2007, though he could not rule out the possibility that fuel was purchased on those days. He ended by saying that SLBS could not exist without fuel, and tendered as "B1" a photocopy of exhibit "B."

28. Under cross-examination by MR GARBNER, PW5 said that PW1 was responsible for monitoring fuel consumption at the SLBS, and that he only had to go to 1st accused for this, when PW1 was away from the office. He said 1st accused would either give him cash or a cheque, for the purchase of the fuel; but that he had no written evidence of fuel purchases he made. He said he could not have made an error in exhibit "B" because he kept the chits. A dipping stick was used to measure the fuel requirements for the day. He said fuel could also be obtained on credit terms, and that the amount of credit obtained, was deducted from the allocation, and not repaid in cash or by cheque.

29. Under cross-examination by MR THOMPSON, PW5 said that the request form is usually counter-signed by the Accountant on its face. He would normally give receipts obtained for purchase of fuel, to the Accountant, but he had no book in which such receipts were recorded. Fuel chits were

prepared in triplicate. He ended by saying that the last Audit exercise was carried out three years ago; and that he did not have to refer to any other Officer after supplying fuel. The sum total of his evidence was that, fuel consumption was quite high at the SLBS, due to the need to supply the generators constantly with it, as a result of power outages. It appears also, that there was no way of actually monitoring the purchase and disbursement of fuel other than to place reliance on the witness' own integrity. Based on evidence which follows, his evidence is important with respect to the 1st accused's account of how the money received as rent from the BBC, was spent. According to PW5, save for the days mentioned in paragraph 27 above, fuel was purchased on all the other days between January and October, 2007. My examination of Exhibit "B" confirms that this is indeed so. On the other hand, a careful scrutiny of exhibits "C" and "D" would reveal that fuel was indeed purchased using the funds in, mainly, account No. 1100618. In his closing address, MR MANTSEBO for the Prosecution has highlighted the various draw-downs made on account No. 1100618 in respect of fuel purchases, and I have been able to verify that they accord and correspond with what is recorded in "D." What is noticeable about account No. 1100621 is the withdrawals of substantial amounts of money e.g. the sum of Le9,887,125 on at least 5 occasions: once in May, June and July, 2007 respectively; and twice in August, 2007. There is no evidence of what these amounts of money were used for; 1st accused says that he was pushed out of Office, and could not therefore lay hands on documents which would show how monies were disbursed by him. The 2nd accused says the same thing, and the prosecution has not disputed that indeed both accused persons were forcibly removed from Office. As this is a criminal trial, I would have to give the benefit of the doubt to both accused persons when it comes to considering whether the amount outstanding after handing over to Le36m to PW2, was used in a lawful manner or not.

30. PW6 was ALFRED BASITH WONNEH SAMMAH, Senior Manager, Human Resources Department, Bank of Sierra Leone. At the relevant time, he was Manager, Banking Operations, and in this capacity, met the 1st accused when 1st accused visited the Bank. He said the SLBS operates two accounts at the Bank: one, the SLTV account No. 1100621; the other, the SLBS FM99 account No. 1100618. As a result of a Request made by the ACC, in 2008 he presented to the ACC, financial documents relating to these two accounts. The statement of account in respect of account No. 1100621 was tendered as exhibit "C pages 1-10"; and that in respect of

account No. 1100618 as exhibit "D" pages 1-16." He also tendered 25 BSL cheques as exhibits "E 1-25." When cross-examined by MR GARBER, the witness said that exhibits "C" and "D" respectively, covered the years 2005-2008. What is worthy of note is that in exhibit "D" is recorded payments credited to account No.1100618 by Radio France International twice in March,2007 in the respective sums of Euro11,390 and USD4,475. None is recorded in respect of the BBC.

31. Of the 25 cheques tendered in evidence by PW6, the following were drawn in favour of NP Filling Station, Campbell Street: BSL Nos. 485481, 485484, 485497, 485492, 485494, 485499, 485498, 503212, 503217, 503218, 503220, 503221, 503223, 503227 and 503230; those drawn in favour of 1st accused were: BSL Nos.: 472005, 472077 (a photocopy), 472085, 485450, 485486, 485489, 485493, 503206, 503215 and 503231. Of the 10 drawn in favour of 1st accused, 472005, 472077, 472085, 485450, 485489 in the sum of Le3,016,080 being perhaps two months salary, i.e Le1,508,040 x 2; 503206, 503215, 503231 were in respect of monthly salary; it is not clear what cheques Nos. 485493 in the sum of Le275,000 and 485486 in the sum of Le1m, both drawn in 1st accused's name, were actually used for. What they do show is that 1st accused's monthly salary was paid once in February, twice in March - 472005 and 472085 both drawn on account No. 1100621; once in April; doubly in June - cheque No. 485489 in the sum of Le3,016,080; twice in July, 503206 and 503215 and once in October, 2007. There are no cheques in respect of the months of August and September, 2007; but in view of the double payment in June and in July, 2007 it is not clear whether these constituted payment of salary in advance, or arrears of salary carried over from the previous year.
32. Next to take the stand as PW7 was PATRICK MARTIN GEORGE, Legal Officer, ACC, and one of the Investigators in this matter. He first, tendered in evidence, exhibit "F" which was a photocopy of a fax sent by the BBC evidencing the receipt by 1st accused on 30 January, 2007 of the sum of USD22,200 in respect of the Stations in Freetown, Bo and Kenema respectively. This amount was paid as relay fees for varying periods ending in December, 2007. He also tendered the first recorded interview of the 1st accused as "G"; the second one as "H"; and the third one as "J". The first statement of the 2nd accused, was tendered as "K"; her second one as "L"; the third one as "M"; and the last one as "N". He was not cross-examined by Defence Counsel.

STATEMENTS OF ACCUSED PERSONS

33. In exhibit "G" the 1st accused says he was virtually driven out of the SLBS on 8 October, 2007. He explains the workings of the SLBS, the problems he encountered both in human resources and in material; and the unpopular decisions he had to take in order to get things moving. He said that the bulk of monies the SLBS had was used to pay for fuel purchases, repairs to, and maintenance of equipment and vehicles respectively. On page 4, he says the sum of USD21,000 received from the BBC was used to "service the Kailahun Radio Station. The amount for the Kailahun Radio Station was lodged with Prof KaiKai (physical disbursement) in cash.... the amount of USD21,000 was given to me physically on behalf of the BBC in cash. part of that money was used to repair vehicles which were un-roadworthy. We had a backlog of payment for fuel. We also used the money to pay contract staff....."and on page 5, "....the USD was paid to me in the presence of the Director of Engineering Services by the name of Abdul Sheriff.....I signed for the money because the people met me at State Lodge. I gave some of this money to Prof Septimus KaiKai. I cannot remember the actual amount. I believe that the Accountant should know. This money was meant to refurbish the Kailahun Radio Station and to repair a vehicle in Kailahun that was given on loan to the SLBS by UNFPA. That money was used to pay Le2m each to the TMT. There was no budget allocation for the TMT and so that money was used to pay for their sitting fees." This last bit corresponds with the evidence of PW3. On the important issue of how he came to pay money to Prof Kai Kai, he said on the same page: "....we knew the condition of the Stations up country. We discussed (myself and the Director of Engineering Services) with the Minister and we arrived at providing that amount to the Minister. It was not a decision by the TMT to give the money to the Minister." To the question whether the Minister gave him a receipt, he replied: "No, he did not give any receipt. I did not personally take the money to Prof KaiKai. I believed at the time that the money was taken to his office by an Officer of the Accounts Department and that person would not have done it without the instruction of the Accountant. Contrary to what I said earlier, I am now saying that I cannot tell whether a receipt was issued for the amount that was given to Prof Kai Kai. The reason is that it has taken a long time and I do not have records with me to make references...." Again on page 6, with reference to his transactions with the Minister, the 1st accused said: "....obviously the Minister was not going to do the work himself. I suppose that he

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demanding the money because he came from Kailahun and he was travelling back to Kailahun to make sure the repairs were effected. Meaning he had to pay for the engineers to do the repairs on the radio station. That included a backlog of salaries for the Kailahun staff as well." I have quoted extensively from this statement as it is the 1st accused's first response when confronted with the matter at hand. It seems incomprehensible to me that having worked for so many years at the SLBS before going to live abroad in the USA, the 1st accused could honestly say that he believed it was a Minister's business to disburse the funds of the SLBS in the manner described, when the SLBS had an Accountant and other technical and administrative staff. The handing over of such an amount of money to a Political head savours more of a sweetener than anything else.

34. In exhibit "H" the 1st accused was further questioned about the money received from the BBC. At page 3, he says, ".....I cannot remember whether the instruction to give the money to Prof Septimus Kai Kai was documented.....the amount that was signed for by Mr Mansaray was Le36,000,000 and that Mr Mansaray collected the money in the presence of Mr Sheriff the Director of Engineering Services. I found out later on that the money was not only used for the Kailahun Station, but it was shared among staff of his Ministry authorized by the Minister (Prof Septimus Kai Kai) himself." This late discovery by the 1st accused is unsurprising. But PW1 denies that he was present when money changed hands, as alleged by 1st accused in this statement. When asked on page 5 why he converted the USD received into Leones, he said "I decided to do this to facilitate disbursement." When asked on page 6, why he did not deposit the sum of USD21,000 received by him, into the Bank of Sierra Leone account, he replied, "it was an oversight."

35. In "J" the amount received was confirmed by 1st accused to be USD22,200 and not USD21,000 as had earlier been recorded. He also reiterated that he had no accounting documents relating to his time at the SLBS with him, because, to use ^{his} own words, he was "booted out of office."

36. Exhibit "K" is the 2nd accused's first statement. She confirms that monies paid for use of SLBS facilities are normally paid into the Service's accounts at the Bank of Sierra Leone, and that these payments are effected through PW4. The monies received were used by the SLBS to pay staff salaries, purchase fuel, repair vehicles, and for maintaining the Service's properties. Contrary to what was said by 1st accused in exhibits

"G" and "H" respectively, the 2nd accused says in this statement that the SLBS was at the relevant time being run by the TMT of which PW3 was a member. Vouchers prepared at the SLBS were taken to the National Privatisation Commission's office at Tower Hill for approval. PW3 would approve payment; she would prepare the cheque, and take it back to PW3 for signature before she signs, and then 1st accused signs. She denies the general accusation that she misappropriated monies belonging to the SLBS. At page 9, she confirms that "...thirty six million Leones (Le36,000,000) was given to me by the DG, Mr Kasho Wellington which I then gave to the former Minister of Communications and Broadcasting, Prof Septimus Kai Kai. This money was not in United States Dollars." At page 10, she says, "...the DG informed me verbally that the money was meant for refurbishing the Kailahun Radio Station and repairing the Kailahun vehicle. When asked what proof she had that this money was given to the Minister, she said on the same page, ".....the proof is that the then Minister of Information and Broadcasting Prof Septimus Kai Kai sent the then Deputy Secretary of Information one Mr E. Mansaray to collect the money in my office...the Deputy Secretary....signed for that money and then collected it on behalf of the then Minister..... I got it (meaning the money) from Mr Kasho Wellington.." When asked why she did not comply, in this instance with the laid down procedures she had herself earlier explained, she said at page 12 that "he (referring to 1st accused) told me at the time that this was a Minister's request. This was why the requisition form was not prepared." She says also that no receipts were given to the Accounts section at the SLBS in respect of the sum of Le36m given to Prof KaiKai.

37. In exhibit "L" she says that she thought the 1st accused got the money from the BBC. We of course know from the 1st accused himself that this was so. She says also that she never took financial documents away from the SLBS. She could not produce the receipt for the sum of Le36m because it was not in her possession.

38. In exhibit "M" 2nd accused says the sum of Le63m was given to her by the 1st accused in cash. He took the money down to her office. PW1 was present when he did so. But tellingly, she says she did not "make any entry about the receipt of that money." On the same page 5, she says that "I have no reason why I did not make entry in the book of records relating to the Le63,000,000 received from Mr Kasho Wellington." But according to her, she made entries of how the money was spent. She made them, curiously enough, on a piece of paper and attached it to a

Ledger book. The ledger book was full, so she could not make entries in it. I find this very hard to believe. She ended by saying she spent the money "according to the instructions I was given."

39. In exhibit "N" she was questioned extensively about how the balance of Le27m was spent. She made clear that she could not tell whether some of the cheques paid as monthly salary to 1st accused, were so paid as current salary or arrears. She also explained that the two cheques tendered, and which were not in the name of the 1st accused, were in respect of repairs to 1st accused's vehicle, and payment of income tax, respectively. As I stated above, in the absence of documents to prove or disprove what 2nd accused says about how the sum of Le27m was disbursed, she is as much entitled to the benefit of the doubt, as the 1st accused.

PROF KAIKAI' EVIDENCE

40. The last witness for the prosecution, was the man to whom the accused persons alleged the sum of L36m was eventually paid, PRO SEPTIMUS KAIKAI, PW8. In short, PW8 denied that he ever received the sum of Le36m from 1st and 2nd accused or through PW2; nor was he involved in repairs to the Kailahun Station. MR GARBER tried valiantly and persistently to break him down in cross-examination, but sad to say, he was unable to dent the witness's equanimity and self-control. He said he did not have meetings with the 1st accused in connection with the Kailahun Station, though it was possible he was present when he held meetings with his administrative staff about the Station's problems. He denied requesting the sum of Le36m from 1st accused. As ~~he was~~ PW8 was not cross-examined by MR THOMPSON, his evidence ended at this stage, and the prosecution closed its case.

SECTION 194 CPA, 1965

41. I explained to each of the accused persons, his and her rights under Section 194 of the Criminal Procedure Act, 1965 and put each of them to their election seriatim. 1st accused elected to testify on oath, which he did on 5 March, 2009.

EVIDENCE OF 1ST ACCUSED

42. In his evidence, 1st accused gave his professional background and the reasons why he returned to the SLBS in 2005 having left the Service in 1985. It is clear, he was and is eminently qualified for the job of

Professional Head of the Service. He was diligent in his duties notwithstanding the parlous conditions of service and of the work environment. He explained to the Court all the difficulties he faced: absence of electrical power; dependence on generators; inability to carry out repairs to the several Stations and to vehicles and equipment. In 2007 he met frequently with the Minister, PW8. His relationship with PW2 was strictly official. He confirmed making exhibits "G" "H" and "J". He confirmed disbursing the sum of Le36m to the Minister through 2nd accused, whom he instructed to make the payment, and PW2 to whom the money was paid by 2nd accused. He says PW1 was present when this took place. PW1 has denied this. He said he was specifically requested by the Minister "to do something about the Kailahun Station" which had been off the air for some time, as elections were approaching. The Station was eventually fixed between February and March 2007. He confirmed that he received the sum of USD22,200 from MARTIN DAVIES on behalf of the BBC at State Lodge. He converted the sum into Leones and handed the same over to 2nd accused. He telephoned the Minister to tell him the good news. PW8 told him he would send PW2 to collect the money. He said a budget for the Kailahun project had previously been agreed. He denied giving the money to PW2 for the purpose of hiring the services of an Alpha man as claimed by PW2. He also denied misappropriating the said amount of money.

43. Under cross-examination by MR MANTSEBO he said the balance remaining after giving Le36m to PW2 was used to pay free lance staff. The rest of the cross-examination dealt with his relationship with the Minister, and the Ministry itself. My assessment is that 1st accused's evidence merely confirms what he had already said in his respective statements. The goal posts did not move even under cross-examination. At the close of his evidence, he said he had no witnesses. I then put 2nd accused to her election. She elected to make an unsworn statement from the Dock in addition to relying on her statements made to the ACC.
44. Her unsworn statement was very brief. She could not produce any financial documents because she was on leave when she was invited to the ACC to make a statement. In respect of the sum of Le36m paid to PW2, she said that "he issued the receipt on a piece of paper he found on my desk." That 2nd could say blithely that she disbursed public funds to the tune of Le36m without so much as a written request, and without even preparing a voucher, shows how bad things were at the SLBS. This substantial amount of money was receipted for on a piece of paper found

on her desk. Not even a proper receipt was issued. The rest of the money, according to her was used for payment of backlog salaries and for vehicle maintenance and repairs. She had no witnesses, and closed her case at the end of her statement.

ADDRESSES

45. MR GARBER addressed the Court orally, and also submitted a written synopsis. Both MR MANTSEBO and MR THOMPSON submitted written addresses. I commend both MR GARBER and MR THOMPSON for the adroitness and tenacity they have exhibited in their courageous and professional attempts to exculpate their respective clients. Regrettably, I am not persuaded by their arguments. MR GARBER punctuated his written submissions quite dramatically with exclamation marks and bullet points; whilst both himself and MR THOMPSON waxed mathematical. In paragraphs 5-9 supra, I have explained the requirements of the Law. A sum of money was clearly lost to the SLBS, and this was as a result of the wilful actions of both accused persons. Both Defence Counsel have emphasised that the two accused persons were not dishonest, in that they had no alternative but to comply with the Minister's demands in respect of the sum of Le36m.

FINDINGS

46. I do not think so. They both had sufficient experience in the Public Service to guide them in what they were to do when confronted, as they claim, by a Political Head's unwarranted claims. A voucher could have been prepared to support the transaction. That this was not done; and that 1st accused did not pay the money received into the Bank, as was the case with, for instance, the two sums of money received from Radio France International, shows that he never had the intention of properly accounting for this money. Thus, he himself converted the sum received into Leones, rather than passing the money in specie on to the 2nd *and 1st* Accountant or PW4 for that purpose. The 2nd accused likewise had a duty to pay the amount of Le63m received from 1st accused into either of the Service's Bank accounts held at the SLBS. This she did not do. Nor did she record the receipt itself. The probability that both of them according to their respective accounts may not have benefited from any part of the amount misappropriated, does not exculpate them. This may perhaps mitigate their punishment. Giving your employer's money away in an improper manner is incompatible with the duties of an employee in the

SINCLAIR v NEIGHBOUR sense. Such action is also dishonest in the GHOSH sense. It was also wilful. And it matters not that the prosecution are only able to prove that part of the amount allegedly misappropriated was in fact misappropriated. As I have indicated above, in the absence of any documentation, I am prepared to accept the accused persons' respective explanations that they cannot provide such documentation because of the manner in which they were removed from office individually. I take Judicial Notice of that fact, as the scenario at the SLBS at the time was extensively reported in the local press.

CONCLUSION

47. PW8 denies that he received the money from PW2. But there is incontrovertible evidence that it was paid to PW2. I do not quite believe PW8, that he did not receive any part of the money, but the state of my belief or unbelief does not affect the culpability of the accused persons. Luckily for him, he was not on trial. I believe and I so hold, that the prosecution has proved the case against each of the accused persons beyond all reasonable doubt. I also believe that the prosecution has proved beyond all reasonable doubt that PW2 received the sum of Le30m. I do not believe that he gave any part of it to an Alpha Man. PW2 must refund this amount of money, Le30m to the SLBS immediately.


N. C. BROWNE-MARKE

Justice of Appeal

25 May, 2009.

Case Report:
Kemokai

THE STATE v. CAPTAIN E. M. KEMOKAI AND FIVE OTHERS

THE HIGH COURT OF SIERRA LEONE

09 June 2009

Misappropriation of Public Revenue – Consideration by Court (ex proprio motu), of modes of commission not pled – Doctrine of Common Agreement – Dependence of categorisation of forms of collaboration on differing mens rea- Extemporaneous materialisation or formulation of a criminal plan – The compatibility of the requisite mens rea of the mode of commission with the mens rea of crime charged-Whether the agreement required for a criminal enterprise may be implied or express- Omission as a form of tacit agreement – Whether alternative forms of collaboration/ co-perpetrator liability/ complicity are fitting- Pleading charges in indictment with sufficient precision- Acceptance of reward as an advantage by a Public Officer-Presumption in favour of accepting or giving an advantage – Burden of proof where several Accused jointly charged – Need for actual evidence as opposed to speculations -Need for Prosecution evidence to support the charges- Requisite standard for circumstantial evidence- Formal Designation versus Material ability- Whether practical to examine internal constitutive instruments governing the exercise of power - Need for more lucid and coherent expression of factual and legal findings- Need to expressly define the source of the unlawfulness of potentially lawful transfers- Whether the evident culpability of some among multiple Accused or other persons exculpates remaining Accused – Whether the assessment of liability of evidently culpable Accused or other persons bears on the assessment of the liability of remaining Accused – The Anti-Corruption Act 2000 (as amended), s. 1; 12 (1) & 45, Ports (Amendment) Act, 1991, s. 3.

Held

As the 1st Accused³⁴⁹ was deceased, all counts against him abated.³⁵⁰ The 2nd, 3rd, 4th and 5th Accused, are acquitted of Counts 1-3. The 3rd Accused is acquitted of Count 4. The 4th Accused is acquitted of Count 5. The 5th Accused is acquitted of Count 6. Finally, the 6th Accused is acquitted of all charges against him, as the Prosecution conceded that they did not have evidence against him. The Prosecution failed to meet its burden of proof regarding each of the Counts as alleged against each individual Accused.³⁵¹

Ratio Decidendi

➤ The 1st Accused

Although now impossible to convict the 1st Accused and PW2³⁵², as the former was deceased and the latter was not indicted, *they* were in reality, the ones who, by signing, endorsed the 3 separate transfers in the indictment.³⁵³ Further, under section 3 of the Ports (Amendment) Act, 1991, it was the General Manager who ran the SLPA and had the power to administer and manage the SLPA.³⁵⁴ Therefore, the 2nd to 5th Accused could not be held culpable for Counts 1-3.

³⁴⁹ Patrick E M Kemokai, General Manager of the SLPA.

³⁵⁰ Trial Judgment, p. 1 states that upon his death, all 3 Counts against the 1st Accused abated.

³⁵¹ The names of 2nd-6th Accused are not stated in the Trial Judgment.

³⁵² Mr. French, SLPA Chief Accountant.

³⁵³ Testimony of PW2, see also FNs 335, 357 and 358 below.

³⁵⁴ Refer to **Application of Law** at p. 277.

➤ The 2nd Accused

In addition, the Prosecution adduced neither direct evidence tying the 2nd Accused to the misappropriation of \$ 66,000³⁵⁵ in Count 1, nor circumstantial evidence which “irresistibly showed” his participation in its misappropriation. Regarding Count 2, the evidence showed that the 2nd Accused chaired a meeting of the SLPA Board of Directors,³⁵⁶ but not that he participated in authorizing the transfer of \$50,000: there was no evidence that the 1st Accused and PW2 consulted the 2nd Accused to secure his approval before signing authorisation of transfer of the \$50,000.³⁵⁷ Regarding Count 3, the transfer of \$3325 was effected by PW2 and the 1st Accused³⁵⁸ and there was no evidence implicating the 2nd Accused. An additional consideration was whether the 2nd Accused could be convicted under the Doctrine of Common Interest, based on an agreement to pursue a common object,³⁵⁹ but there was no evidence to show that the 1st Accused and PW2, met with the 2nd Accused, with a view to committing acts amounting to misappropriation, before they actually issued the authorities to transfer the 3 sums in the indictment.³⁶⁰

➤ The 3rd Accused

Likewise, the 3rd Accused had nothing to do with the transfers set out in exhibits D, E and F,³⁶¹ which were authorised by the 1st Accused. Additionally, PW2 confirmed the Defence’s assertion that in any event, the 3rd Accused had already left the SLPA on the dates on which the transactions cited in Counts 1-3 were made.³⁶² The 3rd Accused could not be convicted on the basis of evidence which did not substantiate the acts charged in the indictment, i.e. signing an authorisation for a transfer \$150,000,³⁶³ where the evidence did not show that the 3 separate sums allegedly misappropriated formed part of the \$150,000 approved on 13th February 2001.³⁶⁴ This was confirmed by PW2’s testimony that the sums of money in Counts 1-3 were not specifically mentioned in the minutes of the board of 13th February 2001.³⁶⁵ Based on the 3rd Accused’s

³⁵⁵ Exhibit D; authorization of transfer of \$66,000, signed only by the 1st Accused and PW2.

³⁵⁶ Exhibit C. The particular meeting referred to here is dealt with in the **Summary of Facts**, at p.273, specifically FNs, 376, 377, 380.

³⁵⁷ Exhibit G; authorization of transfer of \$50,000 signed only by the 1st Accused and PW2.

³⁵⁸ Exhibit E: authorization of transfer of \$3,325 signed only by the 1st Accused and PW2.

³⁵⁹ Refer to **Critique** below, pp. 281-285.

³⁶⁰ There is no further consideration of whether elements of the mode of commission under the *Doctrine of Common Interest* would be met, if applied to the other Accused, but in light of the Court’s overall evaluation of the Prosecution evidence presented, it would seem that the Court’s reasoning vis á vis the 2nd Accused also holds good in relation to the rest of the Accused persons.

³⁶¹ Trial Judgment at p. 8, refers to the transfers being authorized by exhibits D, E and F, but doesn’t say which particular transfer was effectuated by exhibit F, whereas Trial Judgment, at p. 6 refers to the transfer of \$50,000 being effected by Exhibit G.

³⁶² PW2, SLPA Chief Accountant, testified that the 3rd Accused left the SLPA in February 2001 and that he, PW2, took up his position as, SLPA Acting Head of Finance Division.

³⁶³ Exhibit H.

³⁶⁴ The Trial Judgment refers to “approval” of the sum of \$150,000 at pp. 3,4,7, 9 and 13, the “allocation” of \$150,000 for the purchase of a forklift at p. 7 and the “transfer” of \$150,000 at p. 7.

³⁶⁵ It is worth cross-referencing this aspect of PW2’s testimony, with FN 380 below.

statement,³⁶⁶ that he was not a member of the Board,³⁶⁷ the Court inferred that he could not bear any responsibility for decisions of the Board, as he could not vote for those decisions.³⁶⁸

As regards the 3rd Accused's responsibility for Count 4, in the absence of cogent Prosecution evidence rebutting the 3rd Accused's proffered reason for receiving a cheque of Le5m from Soufan,³⁶⁹ and in the absence of Soufan's own evidence explaining the reason for the cheque, the Court cannot assume it was in respect of an advantage. What is more, the indictment refers to a sum of Le5m in the form of cash not as a cheque, whereas, (in order to found a conviction in this instance), it would have been necessary for the indictment to specify that the transaction concerned a "cheque", since this is what the evidence adduced supports.³⁷⁰

➤ The 4th Accused

The 4th Accused had nothing to do with the sum of monies in Counts 1-3; the 1st Accused and PW2 were responsible for those transfers. The 4th Accused, was not even a member of the SLPA's Board of Directors, although he did concur with its decision to transfer \$150,000. *However, as had been previously discussed, that \$150,000 was not the subject of the indictment.* As regards Count 5, the Prosecution's case is weakened by the inconsistencies in PW11's evidence. He first claims to have obtained the cheque from the 4th Accused and puts the 4th Accused down as being the final recipient of the proceeds of the cashed cheque, but later, testifies that he got the cheque from the 6th Accused, who was the final recipient of the cashed proceeds in the presence of the 4th Accused.³⁷¹ This evidence *taken in conjunction with* the Prosecution's submission that it had no evidence implicating the 6th Accused on Count 5³⁷² resulting in the 6th Accused's acquittal, meant that the 4th Accused cannot be implicated in Count 5.

➤ The 5th Accused

There was no evidence to link the 5th Accused to the transfer of funds in Counts 1-3, exhibits D, E and G having been signed by the 1st Accused and PW2.³⁷³ Regarding Count 6, the Court reasoned that in criminal cases, only hard and clear evidence, whether direct or circumstantial can be used to found convictions and *the evidence did not reveal* that on 16 May 2001, FAR Soufan rewarded the 5th Accused with a car, *as opposed to*, said car being the subject of a commercial transaction. As such, the evidence adduced could not found a conviction for Count 6. The Prosecution did not call Soufan, the supplier of the car, who would have been the best person to provide such evidence.

➤ The unlawfulness of the SLPA Board's transfers/payments to FAR Soufan.

³⁶⁶ Statement of 3rd Accused; Exhibit V.

³⁶⁷ The 3rd Accused stated that he attended Board meetings in his capacity as Divisional Head of Finance, *only* to answer questions raised.

³⁶⁸ Trial Judgment, p. 8: "which could mean that he could not vote for the decision of the Board. Hence, he could not be held responsible for the Board's decisions."

³⁶⁹ The 3rd Accused explained that the cheque was a refund for payments he'd made for the purchase of a generator from Soufan.

³⁷⁰ See **Application of Law** at p.277 and **Critique** at p. 285.

³⁷¹ See **Summary of Facts** at p.274.

³⁷² The Prosecution submitted it had no evidence against the 6th Accused in respect of all the counts initially charged against him.

³⁷³ See **Critique** at pp. 281-284.

The Court reasons that it was necessary to call the suppliers of the forklift as state witnesses,³⁷⁴ to establish *the Prosecution's case that the Accused paid more than the actual price, although the Judgment itself, never made clear that that one of the allegations against the Accused persons was that of having paid more for said forklift, than its actual price.*³⁷⁵ In the same vein, the Court reasoned that it was essential that the monies referred to in Counts 1-3 be money that was *"paid extra"* in respect of the forklift.³⁷⁶ However, again, *the Judgment never made clear that the transfers stipulated in Counts 1-3 were made in respect of a forklift.*³⁷⁷

Notes

The Accused is not liable for the act of a co-perpetrator if it is of a fundamentally different kind from any that the Accused foresaw: *R. v. Gamble*, (1989) NI 268. Foresight/recklessness as the mens rea requirement for secondary parties to a joint enterprise, results from the need to maintain the accessory principle, since Joint Enterprises tend to escalate into the commission of greater offences; the requisite mens rea for primary offenders within a joint enterprise is intention; *R v. Powell and R v. English* [1999] 1 AC 1, *R. v. Uddin*, [1987] 2 S.C.R. 692. Smith and Hogan distinguish between the unintentional commission of a crime, which by virtue of its unintentionality is a foreseeable risk, and the intentional commission of a crime not within the joint enterprise, which by virtue of its intentionality, is unforeseeable. Hence, the notion of conduct "fundamentally different from what the Accused or indirect perpetrator foresaw".³⁷⁸ Ordinarily, there is no liability for omissions, unless the Law specifically imposes such a duty upon a particular person. It is mostly regulatory statutory provisions which specifically impose liability for omissions; often through failure to discharge one's official duties or contractual obligations; *Pittwood* (1902) 19 TLR 37 and *Dytham* (1979) BB 722. Circumstantial evidence works cumulatively in geometrical progression, eliminating other possibilities and together creates a strong conclusion of guilt; *DPP v. Kilbourne* (1973) AC 729. In order to infer the Accused's guilt from circumstantial evidence, there should be no other co-existing circumstances which would weaken or destroy the inference; *Teper v The Queen* (1952) AC 480. Initially, if case depended wholly or substantially on circumstantial evidence, the circumstances had to be consistent with the Accused having committed the offence and inconsistent with any other rational conclusion; *Hodge* (1838) 2 Lew CC 227, but later, it sufficed that the Jury should be convinced of the guilt of the Accused beyond reasonable doubt, so that there is under English Common Law, no longer a

³⁷⁴ Although it does not name the suppliers of the forklift.

³⁷⁵ Trial Judgment, at pp. 9 and 10. See also **Critique** at pp. 278-280.

³⁷⁶ Trial Judgment at p. 10. For a discussion, on the Trial Judgment's lack of clarity regarding the issue of "unlawful" deprivations, see **Critique** at pp. 278-280 and below at FN 377.

³⁷⁷ The Trial Judgment at p. 2 refers to the 3 transactions forming Counts 1-3, without citing their purpose, at p. 4 states that \$66,000 was transferred to Soufan but does not say why, at p. 6, says the \$50,000 was transferred to Soufan, but again provides no reason, at p. 6 refers to the transfer of \$3,325 but does not even mention Soufan. Further, even though the Trial Judgment makes clear that the transfers forming the basis of Counts 1 and 2 were for Soufan, it is not spelt out that Soufan was the supplier of the forklift, and the Trial Judgment, seems to expect the uninformed reader to simply make the relevant connections and fill in the blanks where necessary. We know, by contrast from pp. 7 and 13 that the \$150,000 was for the forklift, which may explain the term, "extra". We know from p. 14 that Soufan is the supplier of the car that is the subject of Count 6, and from pp. 10 and 11 that he provided the cheques that formed the basis of Counts 4 and 5. We cannot simply assume that because Soufan was the source of the alleged advantages, that the act of the Public Officers he sought to reward was related to payment for the provision of a forklift.

³⁷⁸ Hamdorf K., *The Concept of JCE and Domestic Modes of Liability for Parties to a Crime*, Journal of International Criminal Justice 5 (2007), p. 223.

requirement that the facts proved be inconsistent with any other reasonable conclusion; *McGreevy v. DPP* (1973) 1 WLR 276.

Failure of the facts to fall precisely within the particulars of the offence pleaded in an indictment is not fatal; *Moses* (1991) Crim LR 617. All that is necessary is for reasonable information as to the nature of the charge; *UK indictments act 1915 s. 3(1)* and for all the essential elements of the offence to be disclosed; *UK Indictment Rules, 6 (b)*. Failure to disclose an essential element may be disregarded if the Accused is not thereby prejudiced; *Teong Sun Chuah* (1991) Crim LR 463,

Cases referred to in Judgment

Woolmington v. DPP [1935] AC 462, HL.

Temper v. R (1952) ac u80 per Nu Privy Council.

Kanu v. R (1957-60) ACR – SL 331.

R vs. Isaac (1965) Crim L R 174.

Okethi Okale 7 Ors v. Republic (1965) E A 555, East African Court of Appeal.

Terra Mukindid, East African Court of Appeal.

Summary of Facts

Initially, the Prosecution charged³⁷⁹ all 6 Accused with Counts 1-3, under Section 12 (1) of the ACA 2000 (as amended), which alleged Misappropriation of Public Funds. Count 1 alleged the misappropriation of the sum of \$66,000 on 3rd April 2001; Count 2, the sum of \$ 50,000 on 11th May 2001 and Count 3, the sum of \$3,325 on the 25th April 2001. Counts 1-3 were alleged to have occurred in Freetown and the source of the misappropriated funds was said to be, the SLPA's funds. It is alleged that the 2nd Accused as Chairman of the SLPA Board, knowing the ceiling of expenditure set by the Board, i.e. 10m,³⁸⁰ and knowing that any amount *in excess of that ceiling*, needed the Board's authorisation, was guilty of Counts 1-3, for omitting to prevent the three aforementioned transfers. The Defence countered that the SLPA was not financed by public funds,³⁸¹ and described the 2nd Accused as having a limited role in the SLPA, since he was merely a “*Non-Executive Chairman*” and *not* an SLPA employee or officer, involved in the daily running of the SLPA. The Defence argued that the 2nd Accused participated by simply chairing the meeting where the payment of \$150,000 was approved.³⁸² The 3rd Accused was present at the said meeting³⁸³ and is alleged along with the 1st and 2nd Accused to have signed the transfer of \$150,000 *as an advance payment*.³⁸⁴ PW1³⁸⁵ testified that the Board did indeed approve the use of \$150,000 to purchase the

³⁷⁹ The Prosecution called 15 witnesses, while the Defence called none. The Accused did not testify, but relied on their statements to ACC investigators.

³⁸⁰ Exhibit C. Trial Judgment at p.3 refers simply to the sum of 10m. This report is premised on the grounds, that this amount means Le 10m.

³⁸¹ There appears to be no further substantiation of this particular Defence argument.

³⁸² The meeting where the ceiling of expenditure was set, and the meeting where the \$150,000 was approved and its transfer authorized, appears to be one and the same, which raises the question as to whether the Trial Judgment is trying to state that what was set at that meeting was the SLPA's overall ceiling of expenditure, see FN 377 above and a set figure for the purchase of the forklift. This would mean that the Prosecution adduced evidence concerning the approval/transfer of \$150,000 and the meeting of 13 February 2001, to show that the transfers forming the bases of Counts 1-3, where unlawful as they were “extra” or in surplus of the originally agreed amount. See **Critique** at pp. 278-280.

³⁸³ Exhibit C.

³⁸⁴ Exhibit H.

³⁸⁵ Dr. Sheku Gassama, Director of the SLPA.

forklift.³⁸⁶ The Defence for the 3rd Accused countered that the Counts as set out in the indictment did not concern the transfer of \$150,000 from a bank account and that the 3rd Accused could not be held responsible for the transfers in Counts 1-3, as they were *effected after he had left* the SLPA, a contention supported by PW2's testimony that he took up the 3rd Accused's position as the SLPA Acting Head of the Finance Division in February 2001.³⁸⁷ PW2 further testified that the 3 sums of money in the indictment, were not mentioned in the meeting of 13 February 2001, but it was the \$150,000 that was approved from the counterpart fund. With regard to the 4th Accused, a World Bank Expert and an Economist, the Prosecution argued that he acknowledged giving his concurrence to the transfer of \$150,000.³⁸⁸ Finally, the Prosecution argued that the 5th Accused, Permanent Secretary in the Ministry of Transport and Communication, and an SLPA Board of Directors member, failed to supervise *SLPA property* and should have stopped³⁸⁹ the "illegal"³⁹⁰ payments set out in the indictment.³⁹¹

The 3rd Accused was also charged with Count 4 under Section 8(1) of the ACA 2000,³⁹² for accepting on or about the 1st February 2001 in Freetown, an advantage, i.e. Le5m from FAR Soufan as a reward, for having performed an act in his capacity as a Public Officer.³⁹³ The 3rd Accused admitted receiving a cheque worth Le5m from Soufan, but says it was to refund his earlier payments to Soufan for a 2nd hand generator.³⁹⁴ The Defence for the 3rd Accused argued that the charges as framed in the indictment against the 3rd Accused, stipulated hard cash, not a cheque, so that the 3rd Accused's admission of receipt of said cheque could not substantiate the charges.

The 4th and 6th Accused were charged with Count 5 which concerned the acceptance on or about the 24th April 2001, in Freetown, of an advantage i.e. Le 9,750,000, from FAR Soufan, as a reward, for having performed an act in their capacities as Public Officers.³⁹⁵ The Prosecution later asked for the acquittal of the 6th Accused. The Prosecution relied on section 45 of the ACA and the evidence of PW11 to implicate the 4th Accused. Section 45 in short establishes a presumption in favour of the Prosecution, in terms of establishing the commission of the offence of accepting an advantage as a reward, where it has been proven that the "object" said to constitute the advantage, was indeed accepted.³⁹⁶ PW11's evidence was self-contradictory however. He admitted in direct examination to obtaining a cheque from the 4th Accused, cashing it, and handing the 4th Accused, the Le9.75m. By contrast in cross examination,³⁹⁷ PW11 said he got the cheque from the 6th Accused in the 4th Accused's presence, but he doesn't remember whom the cheque was issued to, that he gave the money to the 4th Accused and they went to 6th Accused's office, where the 4th Accused handed over Le10m *or* Le15m to the 6th Accused. The Defence argued that the 4th

³⁸⁶ Trial Judgment, p. 7.

³⁸⁷ Note the three transfers set out in the Indictment, are alleged to have happened in April and May 2001.

³⁸⁸ Statement of 4th Accused; Exhibit Y.

³⁸⁹ Liability for omissions rather than for actions.

³⁹⁰ For the reason/s for illegality see FN 382 above and **Critique** at pp- 278-280.

³⁹¹ Exhibit C.

³⁹² Part 4, section 28 (2) (a) of the ACA 2008.

³⁹³ The alleged act is not described, but rather implied.

³⁹⁴ PW15's evidence was that he recorded the 3rd Accused's statement, which is Exhibit X, and in which the 3rd Accused set out his own explanation of the events.

³⁹⁵ The alleged act is not described.

³⁹⁶ See **Application of Law** at p.277.

³⁹⁷ In Cross, PW11 was confronted with his statement to the ACC; Exhibit DW1.

Accused was incapable of committing the offence as he was a World Bank Consultant and not a Public Officer, as was confirmed by PW15.³⁹⁸

The 5th Accused was charged with Count 6, under Section 8(1) of the ACA, for accepting, a Mercedes Benz 2000,³⁹⁹ from FAR Soufan, as a reward for having performed an act as a Public Officer.⁴⁰⁰ The facts were that the 5th Accused effected the transfer of the car (documents pertaining to which, were in the names of FAR Soufan), close to the date when \$50, 000 was transferred by the SLPA to Soufan. The Prosecution's evidence dates the actual transfer as 16 May 2001.⁴⁰¹ Here also, the Prosecution relied on section 45 of the ACA to establish a presumption in favour of establishing the commission of the offence of accepting an advantage as a reward, since the "object" said to constitute the advantage, appeared to have been accepted. The Defence countered that the 5th Accused had started paying for the car even before joining the Ministry of Transport and that the transaction involving the car predated even the approval of the \$ 150,000.⁴⁰² The 5th Accused affirmed making 3 payments,⁴⁰³ confirmed by PW15's testimony that PW15 secured 3 receipts indicating that the 5th Accused had fully paid for the car.⁴⁰⁴

Application of Law

In its evaluation of the facts and in reaching its findings, the Court employed the following legal principles.

The standard of the Prosecution's burden of proof is that of proof beyond reasonable doubt and **any doubt** in the Prosecution's evidence as to the Accused's guilt, should result in an **acquittal** of the Accused: *Woolmington v. DPP* [1935] AC 462, HL. Where there are multiple defendants, the Prosecution must adduce evidence to prove each count charged against an Accused, and the **Court must consider whether the Prosecution has proved each count that is alleged against an Accused**. The Prosecution can prove its allegations by either direct or circumstantial evidence.⁴⁰⁵ Where the Prosecution seeks to rely on circumstantial evidence, the inculpatory facts must be inconsistent with the innocence of the Accused and incapable of any other explanation save, the guilt of the Accused: *Temper Vs R* (1952) ac u80 per Nu Privy Council. The Court, instead of using weaknesses in the Defence case, **to bolster an otherwise weak Prosecution case**,

³⁹⁸ PW15, ACC Investigator, testified that the 4th Accused was employed by the World Bank as an Economist and stationed in the Ministry of Finance and was not an SLPA Board of Directors member or a GOSL employee.

³⁹⁹ Registration Number AAW 262.

⁴⁰⁰ The alleged act is not described.

⁴⁰¹ Trial Judgment p. 13. PW7 who handled the paper work for the transfer of the car from Soufan to the 5th Accused said she dealt with the transfer in May 2001. The indictment alleges the transfer of the \$50,000 took place on 11th May 2001.

⁴⁰² Again, Trial Judgment does not expressly state that the \$150,000 went to Soufan, because although it does state that the \$150,000 was for the purchase of the forklift, it does not expressly state that Soufan was the supplier of the forklift. On a logical appraisal, the mere fact that the payment of the car predated even the approval of the \$ 150,000 would appear immaterial.

⁴⁰³ 5th Accused's statement; Exhibit D5.

⁴⁰⁴ Exhibit GG1 is dated 3 January 2001, GG2 is dated 4 January 2001 and GG3 is undated.

⁴⁰⁵ Circumstantial evidence is evidence from which an inference can be drawn which enables one or many conclusions of fact. Where more than one conclusion can be inferred, it means that in order to draw a salient inference in overwhelmingly in favour of one conclusion, there needs to be several pieces or forms of circumstantial evidence, which together form corroborating evidence. Direct evidence does not give rise to inferences but directly supports a conclusion.

should base its conviction on cogent Prosecution evidence.⁴⁰⁶ Criminal convictions are based on weight of actual hard and clear evidence adduced, whether direct or circumstantial and not on theories or assumptions or attractive reasoning; *R vs. Isaac* (1965) Crim L R 174 ; *Okethi Okale 7 Ors vs. Republic* (1965) E A 555, *East African Court of Appeal*. ***Suspicion alone is no evidence to found a conviction.***⁴⁰⁷

The Court considered whether, apart from assessing whether the elements of the offence under section 12(1) had been met under the mode of direct commission inherent in section 12 (1), liability for Counts 1-3 against the 2nd Accused could be established under an alternative mode of commission, i.e. the ***Doctrine of Common Interest***,⁴⁰⁸ even though the said doctrine was never part of the indictment, or part of the ACA 2000. It drew on the concept as defined in; *Kanu vs. R* (1957-60) ACR – SL 331:

“If several persons are present together and preferred to pursue a common object...And one of them in furtherance of the common object does a criminal act, then all of them are responsible for the act whether it was originally contemplated or not...”

Although the Court only considers this Doctrine as against the 2nd Accused, it may be inferred, that its reasoning applies by extension to the remaining Accused persons.⁴⁰⁹

The Court briefly considered the definition of a Public Officer under Section 1 of the ACA 2000: “A Public Officer means a holder of public office.” Public Office in the same section is defined as; “an office in the service of the Government of Sierra Leone...Armed Forces, Police Force, a Public Corporation or on board thereof and...” This definition although mentioned by the Court was not at all employed by the Court in reaching its final conclusions as to the guilt or innocence of the Accused.

With regards the Counts 1-3, the findings of innocence of the 2nd-5th Accused were based on the fact of the **3 alleged transfers being signed solely by the 1st Accused and PW2, and on the disconnect between the transfer of \$150,000 on one hand, signed by the remaining Accused, and on the other hand the transfers forming part of Counts 1-3.**⁴¹⁰ The acquittal of the Accused on Counts 1-4 also ignores section 1 of the ACA 2000, with acquittal on Count 4, being based on the inadequacy of Prosecution evidence, and a flawed pleading in the indictment; acquittal on Count 5, being based on the inadequacy of Prosecution evidence, and on the Prosecution’s according of a clean slate to one of the Accused who had been implicated by the Prosecution’s version of events and lastly, acquittal on Count 6 being based on the existence of

⁴⁰⁶ Trial Judgment, p. 3. See **Critique** at p. 285.

⁴⁰⁷ In this context, this could be interpreted to mean that prima facie responsibility for an act, based on one’s de jure powers, or official/formal capacity, is not enough to establish liability, since it is only the actual exercise of powers, or the non-exercise of powers actually possessed and exercisable, that can give rise to criminal liability; see **Critique** at p.280-281.

⁴⁰⁸ Trial Judgment, p. 5.

⁴⁰⁹ For a more thorough discussion of this Doctrine and its applicability in these circumstances, see **Critique**, at pp. 281-285.

⁴¹⁰ The principle that emanates therefore, is not that one cannot, in support of a charge, adduce evidence not forming part of the charges, or even not mentioned in the indictment at all. The principle is rather simply, that the evidence must support the charges; which in this instance means the links between the two, must be demonstrable.

proof of payment for the receipt, of what the Prosecution had alleged was an advantage. In none of these scenarios, did an express assessment of the applicability of section 1 play a role.

With regards to pleading the appropriate particulars in an indictment or with sufficient specificity, the Court affirmed that where the offence in question concerns the issue of a cheque instead of cash, then the particulars of the offence should refer to a cheque and not to cash: *Terra Mukindid, East African Court of Appeal*.

The Court briefly referred to *section 3 of the Ports (Amendment) Act, 1991*, which it describes as giving the General Manager wide powers to administer and manage the SLPA. However, the most relevant part/s of this provision is/are not analysed in cross reference to the events in question and the ways in which the 1st Accused is alleged to have participated in them. Neither is section 3, used to show how, by contrast, the remaining Accused exercised less significant decision making powers. It is simply given a passing mention, to reinforce the Court's finding.⁴¹¹

The Prosecution attempted to rely on section 45 of the ACA 2000⁴¹² to establish its case as regards the 4th Count, alleging that the Le5m that the 3rd Accused received came for FAR Soufan,⁴¹³ and likewise to establish its case as regards Count 5, alleging that the 4th Accused and the 6th Accused accepted Le9.67m from FAR Soufan,⁴¹⁴ and similarly under Count 6, that the 6th Accused accepted a car from Soufan. This attempt by the Prosecution to rely on section 45 failed. This is because section 45 does not come into play, as the Prosecution did not prove its prerequisite, which is the **giving** or **receiving** of the "object" by the Accused person; "*It is my considered view that Section 45 came (comes) into play only after the Prosecution has proved either the giving or the receiving of an advantage by the Accused person first, then that's when Section 45 makes such giving or acceptance as an advantage.*"⁴¹⁵ This is because none of the adduced facts attest to the "giving" (i.e. without Consideration) of the Le5m, Le9.7m and the car in question. Only where such "giving" without Consideration is established, can the Presumption that the transaction is that of giving and acceptance of an advantage, also be established.

⁴¹¹ See **Critique** at p.280.

⁴¹² Section 28 (5) of the ACA 2008.

⁴¹³ Trial Judgment, p.2

⁴¹⁴ Trial Judgment, p.2. See also the **Application of Law** section in *The State v. Isaiah King Sambo*, pp. 128-129 Sambo which makes it clear that all the Accused has to do to rebut said presumption is to establish on a balance of probabilities that object given or received did not constitute an advantage.

⁴¹⁵ Trial Judgment, p.14.

Critique

- The Judgment is short - facts have been summarised with possible adverse impact on clarity of the reasoning process. Neither the recounting of the facts, nor the reasoning process, explicate on facts which considerably influence the outcome. There are sparse references to facts which appear to be the lynchpin of the verdict.
- There is a lack of clarity regarding what renders the transfers into Misappropriation; i.e. why they are characterised as “unlawful”. SLPA does have funds at its disposal and does have the authority to use its funds on the approval of its Board of Directors. The question arises therefore as to where the unlawfulness or illegitimacy lies.⁴¹⁶ The Judgment states that the 2nd Accused knew management’s ceiling of expenditure i.e. 10,000,000, *without* stating the precise currency.⁴¹⁷ The Judgment states that any amount exceeding the above, had to be authorized by the Board, on which the 2nd Accused served as Chairman. If what was meant was Le10m⁴¹⁸, the transfer of \$150,000⁴¹⁹ had indeed been authorised by the Board. The transfer of \$150,000 would not need to be further considered as part of this analysis, (as it does not form part of the charges), but for two reasons; i.) Evidence of the transfer of \$150,000 is adduced by the Prosecution in support of the charges. The Prosecution should have made it crystal clear why it adduced evidence of the \$150,000 in support of charges which concern 3 other transfers, to demonstrate the unlawfulness of the latter three. ii.) Moreover, at page 3, the Judgment reads; “*It was therefore Mr Tumwusigye’s contention, if I understood him correctly that A2 knew the ceilings which the Management could spend (up to 10,000,000) and that anything above had to be authorised by the Board of which he was Chairman, that he omitted to prevent any authorised payment in excess USD 150,000 approved by the Board.*”⁴²⁰ This could have been phrased more clearly, making it clear that what the 2nd Accused was charged with was the omission of the prevention of payment of sums other than, and exceeding that which had already been authorised by the Board, i.e. \$150,000. The Judgment’s phrasing creates the impression that it is the \$150,000, which is unauthorised and does not make it clear that an “unauthorised” payment is simply one which *has not been approved by the Board*.⁴²¹

⁴¹⁶ In the fact of the transfers being made above the ceiling of expenditure or, in transfers being made in excess of a sum already approved for the same purpose.

⁴¹⁷ Trial Judgment, p. 3.

⁴¹⁸ Le10m equates to \$ 2,409.64 as per the exchange rate of 17 September 2011, see <http://www.xe.com/ucc/>.

⁴¹⁹ \$150,000 equates to Le 622,500,000 as per the exchange rate of 17 September 2011, see <http://www.xe.com/ucc/>.

⁴²⁰ Trial Judgment, p.2.

⁴²¹ This could create the impression that the unlawfulness or illegitimacy that lies at the heart of the Prosecution’s case was the approval by the board, (among whom were present all the Accused), of the \$150,000, since it was above the ceiling of expenditure and that the subsequent 3 separate transactions forming the basis of the charges of Misappropriation inherit the unlawfulness of the first sum, since they are drawn from it. It is easy to misinterpret the facts in this way, especially as the Prosecution adduces evidence of the 1st transfer in support of the charges. This interpretation however falls apart, in considering that the 3 sums which form the subject matter of the charges, when added up, do not directly correspond with the \$150,000. The question of why a remainder sum of \$ 31,675 was not mentioned, puts this interpretation to rest. A minor variation of the latter interpretation or rather misinterpretation, would be; that the Board’s approval of the stipulated sum which was above the ceiling of expenditure, was not unlawful in and of itself, since the approval was meant for legitimate reasons: it was not destined to line the pockets of the Board Members for example, it was destined for the purchase of equipment, the agreement/plan of which would have presumably, have had to have gone through a process of approval. In this alternative scenario, unlawfulness,

- The Court says much later on that unlawfulness needed to have been demonstrated by showing that the 3 transactions were above the actual cost of the container handler; that the Prosecution's case was that the Accused persons paid more for the said forklift, than its actual price and that "it was essential that the money allegedly misappropriated on the dates mentioned in the indictment, was (be) the amount of money paid extra in respect of the Container Handler."⁴²² Therefore, the unlawfulness of the 3 transfers of \$66,000, \$50,000 and \$3,325 appears to be derived from being payments additional to what was originally approved for the forklift purchase, and/or from the fact that they may not have been authorised by the Board as a whole and might therefore be considered "unauthorised" transactions, being above the Le10m agreed ceiling.⁴²³
- Dicta to the effect that the money in Counts 1-3 needed to be money that was paid extra for the forklift, may be interpreted to mean, that whereas the facts showed that money for the purchase of the forklift was the \$150,000⁴²⁴ approved on 13th February 2001, the Prosecution did not adequately demonstrate that the subsequent transfers were destined for the purchase of the forklift. What can be gleaned from the judgment is that the \$66,000⁴²⁵ and \$50,000⁴²⁶ were transferred to FAR Soufain. The Judgment does not even expressly state that the transfer of \$3,325⁴²⁷ was destined for Soufain, neither does it state the reasons for which the 2 transfers of \$66,000 and \$50,000 were made to him. As a result, there is no indication from the judgment that the 3 transfers in the charges were monies paid in excess of the price of a forklift, even though this is what the Court makes the charges out to mean.⁴²⁸ Further, although the Judgment makes clear that the \$150,000 was intended for the purchase of the forklift,⁴²⁹ it does not state that the suppliers of said forklift and the recipient of the \$150,000 was FAR Soufain. It is possible the Prosecution's evidence established all these links and the judgment simply failed to set them out clearly.⁴³⁰ These critical points were only treated in passing, whereas the relationship between each of these facts should have been spelt out clearly, if the Prosecution's case and the Judges reasoning process was to be easily digested. Note that the approval of the \$ 150,000 for the purchase of the forklift was

could only then be demonstrated by establishing a fictitious purpose behind the disposal of funds, or an unapproved destination of funds or lastly, failure to comply with the standard internal procedure/policy regarding procurement.

⁴²² Trial Judgment, pp. 9-10.

⁴²³ If the SLPA's limit of expenditure had been fixed at \$10,000,000 all the financial transfers discussed in the Judgment and charged in the indictment would fall well within it.

⁴²⁴ Note that even this is simply stated as being *the sum approved for purchase of a forklift*, as opposed to being *the price for purchase of a forklift as agreed between the SLPA and the seller*.

⁴²⁵ Trial Judgment, p.4.

⁴²⁶ Trial Judgment, pp. 6 and 13.

⁴²⁷ Trial Judgment refers to transfer of \$3,325 at pp. 2, 5, 6, 7 & 8.

⁴²⁸ Regarding the fact that the Trial Judgment never made clear that the transfers forming the basis of the allegations in Counts 1 to 3, were for the forklift, see Trial Judgments at p. 2, where it simply talks about the misappropriation of the three stipulated sums; at p. 4, where it talks about the approval of \$150,000 for the container handler states and at pp.5-6, where it states that the three stipulated transfers were authorised by 1st Accused and PW2. Proving payments were in excess of the actual price of the forklift would require looking at the contract and possibly receipts and the bank statement of the supplier. It would also have enhanced clarity to elaborate on the legitimate circumstances for award of government contracts, possibly found within the SLPA's internal regulatory instrument.

⁴²⁹ Trial Judgment, pp. 4 and 7.

⁴³⁰ Trial Judgment, p. 2.

more than simply an approval, pending action.⁴³¹ It was an actual transfer as the Judgment deems it an “advance payment.”⁴³²

- From the Judge’s evaluation, the Prosecution’s failure is mainly an evidentiary one. The element of unlawfulness needed to be clearly demonstrated.⁴³³ The Prosecution fails to connect the 3 latter transfers to the larger sum.⁴³⁴
- Also encompassed by the tendency to not expound on issues raised and follow them through to their conclusion, the Defence’s argument that *the SLPA did not have public funding and that the funds in question were not public funds*,⁴³⁵ is abandoned without further investigation. We know from the Court’s treatment of the case, that they were public funds, but the Judgment does not address this contention, neither does it map any attempt by the Defence to establish provenance of the funds.
- Regarding the 2nd Accused’s liability, the Defence⁴³⁶ argued that he was not a Public Officer as he was a Non-executive Chairman of the SLPA and was therefore not involved in the daily administration of the SLPA *and* that his role was limited to simply chairing and participating in meetings. The Court summarily accepts this argument, apparently endorsing a stance that there is no automatic guilt based on one’s formal/official position. It is submitted that the role of Non-executive Chairman, should have been more thoroughly assessed and the question of whether the latter in anyway possessed material and decision making powers should have been addressed with reference to a definition of the role in a related legal instrument.⁴³⁷ Therefore, the Court’s reliance on the authority that “convictions are based on weight of actual evidence adduced and not on theories, assumptions, or attractive reasoning”⁴³⁸ as a reason to exculpate the 2nd Accused, is not followed through to its natural conclusion, which would have been actual evaluation of role of Non-executive Chairman.
- The Court seems to have completely misconstrued the Prosecution’s case with regard to the 2nd and 5th Accused.⁴³⁹ The Prosecution’s charges were based on liability for omissions rather than positive action, i.e. the allegation was not one of active participation in the endorsement/approval of the transfers, but rather, one of failing to act to prevent the transfers. The Court’s reasoning in

⁴³¹ Trial Judgment, p.7 and exhibit h.

⁴³² Trial Judgment p. 7.

⁴³³ The Judge simply phrases this as the fact that the Prosecution had demonstrated the Accused’s participation, endorsement or approval of the transfer of 150,000, whereas what it needed to prove/demonstrate was the Accuseds’ participation, endorsement or approval of the 3 latter transfers. Trial Judgment, p.6: Exhibit F: authorization of transfer of \$50,000 and Exhibit G; Letter signed by the 1st Accused and PW1 approving transfer of \$50,000.

⁴³⁴ It adduces no evidence to show that the 3 transfers which are the subject of the charges are drawn from the larger sum.

⁴³⁵ Trial Judgment, p 4, as per Tejan-Cole.

⁴³⁶ Trial Judgment, p. 4, as per Tejan-Cole.

⁴³⁷ There is no such assessment and it is not apparent from the Judgment whether any material concerning the powers of a Non-executive Chairman was submitted by either of the parties before the Bench and helped in forming the conclusion in this case.

⁴³⁸ Trial Judgment, p. 6. Enabling questions the Court could have posed were what was the role of the Non-Executive Chairman, what formal powers and duties did he possess, what material powers did he possess, how were such powers usually exercised by previous Non-Executive Chairmen, what were the expectations attaching to the position.

⁴³⁹ Permanent secretary, Ministry of Transportation and Member of the Board of Directors SLPA.

assessing their liability is clearly flawed and porous; its conclusion appears summarily arrived at. The Court fails to address liability for omissions.⁴⁴⁰ The Court does not address whether the 2nd and 5th Accused were in positions where they were *knowledgeable* or *should have known* about the 3 transfers charged, neither does the Court attempt to determine whether their roles *conferred actual powers*, and created an ensuing material obligation to act to prevent the said transactions.⁴⁴¹ The Court fundamentally erred in basing its findings with regard to the 2nd Accused on the absence of Prosecution evidence implicating the 2nd Accused in those 3 transfers as the 3 proofs of transfer were authorised exclusively by the 1st Accused and PW2.⁴⁴² *It was not incumbent on the Prosecution to prove the active involvement of these Accused in the transfers, as that was not the case it aimed to put forth.*⁴⁴³

- The Court appears to have been more concerned with demonstrating its thoroughness in assessing possible available avenues for liability than with focusing on every element of the Prosecution's charges. In a bid to somehow attach liability to the 2nd Accused, it, on its own initiative goes on to consider whether the elements of a mode of commission not pled by the Prosecution, are met. Even this assessment, at least in so far as the written judgment is concerned, appears swift and superficial. It is submitted that, to introduce the Doctrine of Common Interest is a fundamental methodological error, since whilst the Prosecution seeks to impute liability for omissions rather than for positive acts, the Doctrine of Common Interest is based on the imputation of liability for the commission of an offence through action. Even where the Doctrine makes it possible to attach liability to an Accused who was not the actual perpetrator of the offence, liability continues to be contingent upon positive action as opposed to omission, since it seeks to impute liability to the Accused *for the acts of the perpetrator* and since the Accused can be said to be responsible through *his contribution to the perpetration of the offence, through collusion*, such collusion being an agreement to pursue a common object. By contrast, the Prosecution's allegation was that the 2nd Accused did not stop these acts from happening not that he colluded with others to make it happen.
- The authority employed to elaborate on the Doctrine of Common Interest is incompletely quoted; *"If several persons are present together and preferred to pursue a common object...And one of them in furtherance of the common object does a criminal act, then all of them are responsible for the act whether it was originally contemplated or not..."*⁴⁴⁴ Understandably, only those aspects of the excerpt deemed relevant may have been cited by the Judge. However, against the backdrop of an awareness about the contributory formative role of ACC Judgments to Sierra Leonean

⁴⁴⁰ Trial Judgment, p. 2; "That he omitted to prevent any unauthorised payment in excess of USD 150,000 approved by the Board."

⁴⁴¹ In which case, a material obligation to act to prevent the said transactions would have been based on their being either "unauthorised" by the Board as a whole, or in excess of the ceiling of expenditure, or additional to a sum already approved for the same purpose.

⁴⁴² Trial Judgment, p. 8: Exhibits D, E, F.

⁴⁴³ What the Prosecution could have done however, would have been to present evidence of these Accuseds' formal/official powers and their real powers, by highlighting for example, incidents from the past where they used their powers and what sort of practice obtained in similar institutions. It does not appear from the Judgment's brief perusal of the Prosecution evidence that it did do this, although there is no categorical indication that it did not.

⁴⁴⁴ Trial Judgment, p. 5.

Jurisprudence and given the general complexity of the law on liability for forms of complicity,⁴⁴⁵ this quote should have been reproduced in its original form; this could have easily been done in a reference section of some sort. As it stands, it is impossible to ascertain whether, what have been left out are elements of the concept, which would enable a comprehensive analytical classification under the various modes of complicity. Admittedly, this may not be the case, although if it is, it reduces the value of the judgment.

- It is unclear from the quote, whether the common object need or need not be a criminal end goal. The quotation goes on to say, that other members of the pact, can have liability for acts taken by a member of the pact, in pursuance of the common object,⁴⁴⁶ whether that act was contemplated or not. The question is whether the run on lines represent a further elaboration on a requirement that the crime needed to be foreseeable or would have been foreseeable had the Accused directed his mind to the question, i.e. foreseeable if due diligence had been exercised. We can never be sure as the quote is incomplete.
- The focal point of the application of the Doctrine in of Common Interest in this instance is the discernment of whether there was a meeting between the 2nd Accused and the signatories of the 3 transfer slips.⁴⁴⁷ Rightfully, a meeting is indeed a requirement of the Doctrine as per the quote above, or in the alternative of a single event where all concerned are physically present, an express “meeting of minds”. The Court’s finding based on the evidence, was that there was no meeting, prior to the issuing of the 3 slips, where the deprivation from the SLPA’s coffer of the 3 sums was agreed upon.⁴⁴⁸ An additional basis for dismissing the Doctrine of Common Interest was that the 1st Accused and PW2 were out of the picture.⁴⁴⁹ *It is submitted that the death of the 1st Accused and the failure to indict PW2 should not have constituted cause for discontinuing further examination of whether the factual circumstances fit the Doctrine, now that it had already been introduced. The possibility of an agreement being reached at the meeting of 13th February 2001,⁴⁵⁰ by the 2nd Accused and the signatories, for the purpose of carrying out said deprivations, was not examined by the Court.* In this alternative scenario, the fact that the 1st Accused later dies and that PW2 was never indicted, would be immaterial to any consideration of whether a common interest agreement existed. *Had the Court considered this latter alternative scenario and the fact that the approval/meeting of 13th February 2001 involved all the Accused, the Doctrine of Common Interest would have been applied to each Accused and not just to the 1st Accused. Only after considering this alternative scenario, could the involvement of the 1st Accused and PW2 in the Doctrine, have been legitimately struck out.*

⁴⁴⁵ The similarly constructed Doctrine of Joint Criminal Enterprise discussed below, is described as being “quite vague, unclear, open to many interpretations and predisposed to abuses”, as per Pjanic J., “Joint Criminal Enterprise, New Form of Individual Criminal Responsibility,” p. 1, located at: http://www.okobih.ba/files/docs/Jasmina_Pjanic_ENG_i_BHS.pdf

⁴⁴⁶ Trial Judgment, p. 5: “And one of them in furtherance of the common object does a criminal act, then all of them are responsible for the act whether it was originally contemplated or not...”

⁴⁴⁷ The 1st Accused and PW2.

⁴⁴⁸ Trial Judgment, p. 5; “In the present case, there is no evidence he gave to show me that, the 2nd Accused, PW2 and the late Kemokai, met before issuing the authority on the 3rd day of April 2001 that they should misappropriate the USD 66,000”.

⁴⁴⁹ Trial Judgment, p. 5; “In any case, Mr. Kemokai passed away before the completion of the case and PW2, is not even indicted with the offence.”

⁴⁵⁰ Note the meeting where payment of \$150,000 for the purchase of the forklift was reached.

- Whatever the temporal locus of a potential agreement, the death of the 1st Accused and the failure to indict PW2, should not mean that their respective potential roles in a Common Interest pact should not be examined. This is because, for one, if the alternative proposed scenario above cannot be ruled out (above), and the possibility of both these Accused's liabilities cannot be eliminated; then the possibility exists that the process of examining their liabilities, would more clearly delineate the bounds of the 2nd (and other) Accuseds' criminal liability. Even placing the 2 signatories out of the picture, does not decrease the chances of finding the 2nd Accused guilty, as the agreement could have been reached with other parties who may have influenced or induced the signatories to sign. Even outside of the scope of the Doctrine of Common Interest, given that it was the nature of 1st Accused's liability which served to exculpate the rest of the Accused, the 1st Accused's liability should have been, in general, more thoroughly discussed.
- The Doctrine of Common Interest is akin to Joint Criminal Enterprise (JCE) in International Criminal Law. Both closely approach a theory of guilt by association, i.e. JCE essentially requires the Prosecution to prove: that a group of people had a common plan, design, or purpose which amounted to or involves the commission of a crime, that the defendant participated in some way in the plan and that the defendant intended the aim of the common plan be realized.⁴⁵¹ Both allow a Court to hold criminally liable persons who did not physically perpetrate the criminal act, but who helped make it possible for the perpetrator to carry out that criminal act. They are both forms of Co-perpetrator Liability, where to hold indirect perpetrators responsible only as aiders and abettors might understate the degree of their criminal responsibility. Whereas the aider or abettor wants to assist the commission of the crime, the co-perpetrator in a JCE (or in this case, DCI) acts to facilitate the common plan. It is where the aider or abettor shares the intent of realizing the common plan, that they become a co-perpetrator within a JCE/DCI⁴⁵², each of the co-perpetrators contributing to the fulfillment of the plan so that each contributes to the actions on the others. Co-perpetrators are considered as direct perpetrators and principals.
- As per the quote, it is unclear, whether, the agreement between the parties, needs to be express or can also be implicit; since it uses the word "preferred to pursue a common object", which does not spell out whether the preference in the parties' minds, needs to be expressed out loud. The common plan of a JCE/DCI need not have been previously arranged or formulated and may materialize ad hoc.
- Assessing the 2nd Accused's liability for omissions via the prism of DCI would mean that his failure to act becomes his own contribution towards the common plan. Since the Accused needs to have been in agreement with the Common Plan, it is necessary to ascertain either his express agreement or tacit approval⁴⁵³ of a common plan. Where the 2nd Accused was not expressly in agreement with the Common Plan, **the omission itself could be construed as being a form of**

⁴⁵¹ Pjanic J., (Undated), "Joint Criminal Enterprise, New Form of Individual Criminal Responsibility," p. 1, located at: http://www.okobih.ba/files/docs/Jasmina_Pjanic_ENG_i_BHS.pdf

⁴⁵² *Prosecutor v. Kvočka*, IT-98-30/1-T, Trial Judgment, 2 November 2001.

⁴⁵³ The common plan need not be explicitly discussed between the co-perpetrators; it can also be a tacit common understanding.

tacit agreement. Should omissions be treated as the Accused's agreement of and contribution toward the Common Plan:

- i. The omission as a form of tacit approval may well be intentional
- ii. The omission as a form of tacit approval may well result from wilful blindness, or forms of recklessness which involve a standard requiring the avoidance of foreseeable risks through the exercise of due diligence or reasonable foresight.

It is submitted that after ascertaining the presence of the elements necessary for a DCI, the next step would be to ascertain whether the mental elements of the omission as construed above, are aligned with the mental element for the crime of Misappropriation, sets out in Section 12 (2) of the ACA 2000, (that is Wilfulness), since it is the omission that is the causal act resulting the Misappropriation. It is further submitted that, the mental states accompanying the omission as set out in i. and ii., are aligned with the meanings accorded to "Wilfulness", in the context of the ACA 2000.⁴⁵⁴

- It is submitted that although the definition of Wilfulness under the ACA does allow for wilful blindness, a finding that an omission in and of itself could constitute a tacit agreement appears implausible. Further, if there is no requirement that members of the pact, other than the actual perpetrator of the act in question, need to have acted, as apparently, as per the authority cited by the Court, logic would appear to dictate that the agreement would need to be express, since to hold a person liable for silently concurring without personally acting, would be to impose liability strictly for frames of mind, fundamentally in opposition to the core tenets of Criminal Law.⁴⁵⁵
- It should be noted that in the domestic setting, co-perpetration requires intention as opposed to recklessness and negligence. In contrast in International Criminal Law, there are three distinct categories of JCE liability differentiated on the basis of the Accused's possession of different types of Mens Rea.⁴⁵⁶ In JCE 1, all co-defendants, intentionally contribute to the fulfillment of the common plan, and intend the end result. In JCE 3, the crime in question is outside the common design, but was nevertheless a natural and foreseeable consequence of the common plan.⁴⁵⁷ Therefore, the Doctrine of Common Interest as articulated in this Judgment falls more in line with JCE 1.

⁴⁵⁴ This discussion raises the question of why the mens rea requirement in the ACA does not encompass Criminal Negligence, (where the fault lies in the failure to foresee and so allow otherwise avoidable dangers to manifest), which given the nature of the obligations in Civil Law, i.e. that they are of a fiduciary nature of, (breaches of duty committed by Public Officers, in a position of trust vis á vis the Public), would reasonably be expected.

⁴⁵⁵ Van der Wilt H., (2007), *Joint Criminal Enterprise, Possibilities and Limitations*, Journal of International Criminal Justice 5, p. 107.

⁴⁵⁶ Pjanic J., (Undated), "Joint Criminal Enterprise, New Form of Individual Criminal Responsibility," p. 4, located at: http://www.okobih.ba/files/docs/Jasmina_Pjanic_ENG_i_BHS.pdf. There can be no analogy with JCE 2, since it involves the existence of an organized system to commit the crimes alleged.

⁴⁵⁷ Marston Danner A. and Martinez J.S, (2005), *The Concept of a Joint Criminal Enterprise and Domestic Modes of Liability for Parties to a Crime: A Comparison of German and English Law*, 5 Journal of International Criminal Justice 5; the same principle of willingly taking a foreseen risk as a type of Criminal Enterprise is recognized in the Common Law; R v Chan Wing-Siu [1985] 1 AC 168 and DPP for Northern Ireland v. Maxwell (1978) 3 All ER 1140. See also Prosecutor v. Tadic (IT-94-1), Appeals Chamber Judgment, 15 July 1999, The Prosecutor v. Vasiljevic IT-99-32-T, Trial Judgment, 29 November 2002, *Prosecutor v. Miroslav Kvocka et al.* IT-98-30/1-T, *Trial Judgment*, 2 November 2001.

- The attempt to attach liability via the DCI should have equally given rise to consideration of other forms of collaboration. Domestic modes of liability for parties to a crime roughly substitutable in place of JCE or the DCI are variations of Accessory liability such as: incitement, instigation, counseling or procuring, conspiracy, aiding, abetting.⁴⁵⁸ The Accessory's liability does not depend on the mens rea of the direct perpetrator and the Accessory must know the nature of the act committed by the direct perpetrator, or, all the relevant facts that make the perpetrator act a crime. (In contrast, generally, the indirect perpetrator need not know all the details of the offence.) Instigation is to intentionally induce another to commit an unlawful act. Aiding is intentionally rendering aid to another in that person's intentional commission of an offence, with knowledge.⁴⁵⁹ Abetting is encouragement at the time of the offence, and Counseling is encouragement given previously. Procurement is the most general and covers all acts producing the offence. The procurer does not have to be present at the actual commission of the crime, but the causal link between the act of procurement and the offence must be proved.⁴⁶⁰ It is submitted that these general modes of liability that normally apply in Common Law could have been equally considered where the DCI was treated.
- Noteworthy is that although the indictment talks about "the sum of Le5m"⁴⁶¹ and does not mention the form of the sum, i.e. whether in cash or cheque, the Court nevertheless accepts the Defence's interpretation of the indictment's reference to "the sum of Le5m" as meaning that the amount in question had to be in the form of cash and not cheque.
- Also noteworthy is the Court's statement that a weakness in the Defence case should not, in evaluating whether the Prosecution has met its burden of proof, be interpreted by the Court as a strength in the Prosecution case. This would seem to imply that the Prosecution's attempt to meet its burden of proof can only be strengthened, if a weakness in the Defence case is an opportunity expressly seized upon and further developed by the Prosecution.
- The Judgment says that there is no circumstantial evidence which "irresistibly shows", that the 2nd Accused misappropriated / participated in the misappropriation of \$66,000. Again, the Prosecution's allegation is of omission to act and not actual action/participation. As to whether this is the appropriate standard against which to test circumstantial evidence, note that, "it does not necessarily follow that, the weight to be attached to circumstantial evidence will be less than that attached to direct evidence."⁴⁶² This is especially the case, where there is a variety of circumstantial evidence leading in the same conclusion. Common Law Authorities establish a very ambiguous standard in this regard.⁴⁶³

⁴⁵⁸ Hamdorf K., *The Concept of JCE and Domestic Modes of Liability for Parties to a Crime*, Journal of International Criminal Justice 5 (2007), p. 219.

⁴⁵⁹ Hamdorf K., *The Concept of JCE and Domestic Modes of Liability for Parties to a Crime*, Journal of International Criminal Justice 5 (2007), p. 219; "Accessory liability for aiding, abetting and counseling does not require the proof of a causal link between the accessory's act and the principal offence."

⁴⁶⁰ Millward (1994) Crim LR 527: D instructed his employee, P, to drive on a road a vehicle which D knew, but P did not know, was in a dangerous condition. The condition of the vehicle resulted in a collision causing death. P was acquitted of the charge of causing death by reckless driving, but D was convicted of procuring the actus reus of reckless driving.

⁴⁶¹ Trial Judgment, p.10.

⁴⁶² Blackstone's Criminal Practice, 2004.

⁴⁶³ See **Notes** at p. 272- 273.

- Note the expunging of the testimony of a witness who did not turn up for Cross examination.⁴⁶⁴ In Common Law, the practice is that otherwise admissible Prosecution evidence can be expunged only by the inherent power of the judge, due to his overriding duty to ensure that the Accused receives a fair trial. If in her opinion, the evidence has a prejudicial effect which outweighs its probative value, she must exclude it.⁴⁶⁵ The discretion is a general one, that is, to be decided on a case by case basis.⁴⁶⁶ These principles should be contrasted with the fact that the judgment omits any evaluation of the credibility or reliability of the witnesses concerned or precursory inquiry into the reasons for their failure to finish testifying.
- Lastly, the Court did not address the unusual and striking nature of the coincidence of purchasing a 2nd hand generator and a car from one's official business partner and the question of why the 3rd Accused would need to have his payment for the generator refunded.

⁴⁶⁴ PW13

⁴⁶⁵ *Noor Mohamed v. The King* (1949) AC 182; *Christie* (1914) AC 545.

⁴⁶⁶ *Sang* (1980) AC 402

[Trial Judgment:
Kemokai]

The State vs Capt. E.M. Kemokai
& Five others

JUDGEMENT

CAPTAIN E M KEMOKAI AND FIVE OTHERS

The accused persons were initially six in number. They were all indicted on 3 counts of Misappropriation of Public Funds; Section 12(1) of the Anti-Corruption Act, 2000, (as amended), herein after referred to as "ACC Act", and in addition A3, A4, A5, and A6 were variously indicted on a further 3 counts of Accepting an advantage Section 8(1) of the ACC Act.

Unfortunately during the hearing of this case, A1, Patrick E M Kemokai passed away and the case against him abated on all the first three counts. Secondly at the end of the proceedings, the Prosecution offered no further evidence against A6, and prayed that the court, should acquit him. The court obliged and A6, was acquitted in all charges against him and was discharged.

What we have now are 4 accused persons, A2, A3, A4 and A5 facing the six counts in the indictment.

Also worth noting is that some prosecution witnesses never completed their testimonies and their evidence became useless and were struck out and expunged from the records which included PW 13, who never turned up for cross-examination.

Also, exhibits Pages 1 – 36, which were statements of A1, since deceased. They were also expunged from the records.

At this juncture, irrespective of the final outcome of this case, I would like to commend counsel from both sides, for the . . . and industry they portrayed in their respective cases. Please keep it up while conducting other cases in future.

I now turn to the merits of the case against the remaining accused person. All the remaining 4 accused persons are indicted on the first three counts for misappropriation of public funds Section 12(1) of the Acc Act, 2000, (as amended).

It is alleged in the first count that, on the 3rd day of April, 2001, in Freetown in the Western Area of Sierra Leone they misappropriated a sum of USD 66,000 being an amount from funds of Sierra Leone Ports Authority (SLPA) by which Act SLPA was deprived of the said funds.

The second count is in similar form, except that the alleged misappropriation was committed on the 11th May 2001.

The amount misappropriated is said to be USD50,000. The third count, involves the same accused persons, this time they are alleged to have misappropriated a sum of USD 3,325. This was on the 25th April, 2001.

On the other hand, A3, A4, and A5, are indicted on the 4th, 5th and 6th counts of Accepting an Advantage: Section 8(1) of ACC Act. It is alleged in the 4th count, that A3, on or about the 1st day of February 2001, in Freetown in the Western Area of Sierra Leone, accepted as an advantage from FAR Soufan the sum of Le5,000,000 as a reward for having performed an act in his capacity as a public officer.

In the 5th count, it is the prosecution's case that, A4 & A6 on or about the 24th day of April, 2001, in the western area, accepted from FAR Soufan, the sum of Le9,750,000 as a reward for having performed an act, as a public officer.

Lastly, A5 is indicted in the 6th count under Section 8(1) of ACC Act, for accepting from FAR Soufan, a Mercedes Benz 200 car, as a reward for having performed an act as a public officer.

As is usually the case, in criminal cases the burden of proof is always on the prosecution to prove the case against all the accused persons beyond reasonable doubt. The accused person on their part have no duty to prove their innocence.

In case the court finds any doubt in the prosecution evidence as to their guilt, then the court has no choice but to acquit them.

The court has to rely on the cogent evidence as adduced by the prosecution to found a conviction, but not to use any weaknesses in the defence case, to bolster an otherwise weak prosecution case.

(see the famous case of WOOLMINGTON VS DPP BY THE HOUSE OF LORDS)

In cases, involving a multiplicity of accused persons and counts, the court has to consider the case as proved by the Prosecution against each accused separately and on each count.

In order to prove its case, the prosecution called a total of 15 witnesses. The accused person on their part chose to say nothing in court but relied on their statements made to the ACC Investigators.

I will now endeavour to review the evidence as adduced by the prosecution in the light of each accused person and on each count of the indictment.

I will start with A2 on the 1st count

As I have already pointed out above, A2 and his colleagues are alleged to have misappropriated a sum of USD 66,000. This was allegedly done on or about the 3rd April 2001. Mr Tumwusigye, the learned counsel for the prosecution submitted to the effect, that, A2 had attended and chaired the Board of SLPA, where the ceiling of expenditure were set (see exhibit 'C' page 3). It was therefore Mr Tumwusigye's contention, if I understood him correctly, that A2 knew the ceilings which the Management of SLPA could spend (up to 10,000,000) and anything above had to be authorised by the Board of which he was the Chairman. That he omitted to prevent any unauthorised payment in excess USD 150,000 approved by the Board. He

therefore blamed him for all the amounts mentioned in counts 1, counts 2 and counts 3 of the indictment.

On the other hand Mr Tejan Cole, was of a view that, A2 as a non-executive Chairman of the SLPA, was not a servant or officer, employed by SLPA and was therefore not involved in the day to day running of the SLPA. That apart from chairing and participating in the meeting. Much approved USD 150,000 for the forklift (container handler), he did nothing else.

Mr Tejan Cole also alluded to the funding of SLPA, not being public funds, which Mr Tumwusigye had said it was.

As I have already stated hereinabove, the prosecution has the burden of adducing evidence to prove to each count against the accused person.

In the first count, it is alleged that, A2 on the 3rd of April 2001, together with his co-Accused, misappropriated a sum of USD 66,000, the property of SLPA. The Prosecution can prove the allegations either by direct or circumstantial evidence. However, it is to rely on circumstantive evidence such evidence must be of such nature that, the inculpatory facts are inconsistent with the innocence of the accused person and are incapable of any other explanation save the guilt of the accused.

(See TEMPER VS R(1952)ac u80 per Nu Privy Council)

It appears from the record that there is no direct evidence from the prosecution witness linking A2 to the misappropriation in the 1st count, i.e that on the 3rd April 2001, he and his co-Accused misappropriated a sum of USD 66,000. According to PW2, it was the Chief Accountant, and the late Kemokai, as the General Manager who had issued the instructions to the Bank to transfer the UDS 66,000 to one S Soufan (see exhibit "D"). This was on the 3rd April 2001.

Nothing is said by any of the prosecution witness about the role played by A2 on that day. I also find no circumstantial evidence from the records, which irresistably show that, A2 on the 3rd April 2001, misappropriated or participated in the misappropriation of USD 66,000.

In my view, if anything, it is the General Manager who ran the SLPA and had power to administer and manage SLPA (See Section 3 of the Ports (Amendment) Act, 1991. Under this section the General Manager has wide powers. Hence it would probably have been the General Manager (Mr Kemokai) and the Chief Accountant (Mr French – PW2), to face the music, as they are the people who endorsed exhibit “D” authenticating the transfer of USD 66,000 in the 1st count, and USD50,000, in 2nd count USD 3325 3rd count. Can it then be said that there was common interest between A2 and PW2 and the late Kemokai to commit the offence? This concept was elaborated upon by the West African court of Appeal in the **case of KANU VS R (1957-60) ACR – SL 331**

The court has the following to say

“If several persons are present together and preferred to pursue a common object.... And one of them in furtherance of the common object does a criminal act, then all of them are responsible for the act whether it was originally contemplated or not...”

In the present case, there is no evidence he gave me to show that, A2, PW2 and the late Kemokai, met before issuing the authority on the 3rd day of April 2001 that they should misappropriate the USD 66,000. In any case, Mr Kemokai passed away before the completion of the case and PW2, is not even indicted with the offence. Putting everything into consideration, I find that the Prosecution has failed to prove the 1st count against the accused person beyond reasonable doubt and I find him not guilty of the same and acquit him.

As to the 2nd and 3rd counts, I am afraid it is the same in the 2nd counts, it is alleged that A2, and his co-accused, misappropriated a sum of USD 50,000. This was supposed to have taken place on the 11th May, 2001. The evidence adduced against A2, is that, he participated in the meeting of the Board of Directors of SLPA, as Chairman (See exhibit 'C'). Apart from that, there is no other evidence to show that, he participated in the issuing of the authority to transfer USD 50,000.00 on that day. As we have already ascertained, the people who effected this transfer were the late Kemokai as General Manager, and PW2 Mr French, as the Chief Accountant. It was only the people who were signatories of the letter (exhibit "G") authorising the transfer of USD50,000 in Soufan. There is no evidence before me to show that, they had consulted A2 and secured his approval before writing the letter (exhibit "G").

I would in the premise also find that the prosecution has failed to prove the 2nd counts, against A2 beyond reasonable doubt and I find him not guilty and I acquit him on the same. This goes also to 3rd counts, where I find no evidence implicating A2 in transferring USD 3325 on the 25th April 2001. This was again done by the General Manager and the Chief Accountant by letter exhibited as "E".

I find that, the Chairman of the Board of Directors had nothing to do with it. It must be pointed out that such suspicion alone is no evidence to found a conviction. In criminal trials, convictions are based on weight of actual evidence adduced and not on theories or assumptions or attractive reasoning. **(See R Vs ISAAC (1965) Crim L R 174 and OKETHI OKALE 7 Ors Vs REPUBLIC (1965) E A 555, this one a decision of East African court of Appeal)**. I have no doubt that the above principle is also applicable here in Sierra Leone.

In the premises, therefore I find A2, not guilty of the charges in the 3rd count and acquit and discharge him of the same.

I now turn to A3, he is also indicted first on 3 counts of misappropriation of Public funds together with the other co-accused persons. It is also alleged by he prosecution that he on the 3rd of April, 2001, in Freetown misappropriated a sum of USD 66,000 the property of SLPA and thereby deprived it of the same. This is the first count.

The main thrust of the prosecution's case against A3, includes the following, that he attended the SLPA Board meeting held on the 13/2/01, where a sum of USD 150,000 was allocated to be used to buy the second hand, forklift (container Handler). This is evidenced by exhibit "C". This meeting among others was also attended by PW 1, Dr Sheku Gassama as a Director. He told court, that, the Board approved the use of USD 150,000 to purchase the container handler.

According to PW2, the Chief Accountant, A3, left SLPA in February 2001, and he PW2 became the Acting Head of the Finance Division of SLPA, a post previously held by A3. In cross examination he also told court that the sum of money mentioned in the indictment of USD 66,000, 50,000 and 3325, were not specifically mentioned in the minutes of the Board held on the 13/2/01 (exhibit 'C'). What was approved was USD 150,000 from the counterpart fund and used to purchase the container handler.

It is further the prosecution's case that by signing exhibit 'H' attaching a transfer of USD 150,000 as an advance payment, he and the late Kemokai must have committed the offences under the first three counts of the indictment.

In reply, Mr Michael learned counsel for A3, submitted that, there is no charge before the court , where the amount of USD 150,000 was transferred from the bank's account as stated in exhibit "H".

He also submitted that all other transfers effected and named in the first 3 counts of the indictment were effected after A3, had left SLPA.

I have carefully considered all the evidence before me. A2 is indicted in the first 3 counts, with misappropriation of USD, 66,000 USD 50,000 and USD 3325, respectively. The particular of these offences are there, in the first count, he is supposed to have committed the offence on or about the 3rd April 2001, in the second count, it was supposed to have taken place on the 11th May 2001, and for this USD 3325, A3 is supposed to have misappropriated that sum on or about the 25th April, 2001.

However, on those date, PW2 told court that A3, had already left the SLPA and that it was him together with the General Manager, the late Kemokai, who had authorised the transfers as exhibited by "D" "E" and "F". Hence in my view A3, had nothing to do with those sums.

As for exhibit "H", I tend to agree with Mr Michael that, A3 and indeed the rest of the accused persons are not indicted for misappropriation of that amount of money. There is also no evidence to show that the three services mentioned in count 1, 2, and 3 formed part of the USD 150,000 authorised in exhibit "H". The burden of proof is upon the prosecution to prove that A3, participated in the transfer of the money shown in the indictment which they have in my view failed to do.

In any case, in his statement (exhibit "V") A3 stated that he was not a member of the SLPA Board of Directors, but used to attend the meetings in his capacity as Divisional Head of Finance, just to answer any queries if raised by the members of the Board. Much could mean that he could not vote for the decision of the Board. Hence, he could not beheld responsible for the Board's decisions.

Be it as it may, I find that the prosecution has fail to prove the 1st, 2nd and 3rd counts of the evidence against the 3rd counts of the indictment against the 3rd accused beyond all reasonable doubt and I find him not guilty of committing the same and I accordingly acquit him on all three counts of misappropriation of public funds.

I now turn to A4 in respect of the 1st, 2nd and 3rd counts of the indictment. A4 was a World Bank expert and he is an Economist. The main thrust of the prosecution's case against him is that in his statement (exhibit "Y"), he acknowledged giving his concurrence on the USD 150,000.

I have carefully reviewed the evidence on record. It is clear that, A4 had nothing to do with any of the sum of money mentioned on the 3 counts of the indictment. As I have already pointed out, above, those responsible in my view, were the General Manager and Mr Kemokai allied the Chief Accountant, Mr French (PW2). What A4 concurred with was USD 150,000 which was approved by SLPA Board of Directors of Directors of which he was not even a member and as such is not a subject of indictment in the case.

I would acquit him on all the three counts. For A5, who was the Permanent secretary in the Ministry of Transport and Communication during he time under review was also a Board member of SLPA (see exhibit "C"). The prosecution's case against him, as far as the first three counts are concerned, is that, he failed to supervise SLPA property and that he should have stopped the illegal payments mentioned in the indictment being misappropriated.

After a careful review of the evidenced adduced against A5, it is clear that there is no evidence on record to link him to the transfer of the funds effected on the 3rd April, 2001, on this 1st counts, on the 11th May 2001, in the second count and on the 25th April 2001 in the third count.

By looking at exhibits "D", "E", and "G", this was done by Mr Kemokai and Mr French. In the circumstances therefore I would acquit him on all the three counts in the indictment in respect of misappropriation of public funds

Before taking leave of the case regarding the first three counts of the indictment, it is my considered view that, it was necessary to establish the actual case of the

container handler, by calling the suppliers as state witnesses and then prove beyond reasonable doubt, that the accused persons paid more than that actual price.

Secondly, it was essential that the sum of money alleged misappropriated on the dates mentioned in the indictment was the amount of money paid extra in respect of the container handler. Having said that, I now turn to the 4th counts of the indictment where it is alleged that A3, on the 1st day of February 2001 in Freetown western area, accepted as an advantage, from FAR Soufan, the sum of Le5,000,000 as reward for having performed an act in his capacity as a public officer.

In attempting to prove these allegations, the Prosecution has relied on the evidence of PW15 who recorded a statement for A3 (exhibit "X") whereby he acknowledged receiving a cheque from Fahid Abou Fatina Songah, worth Le5,000,000. On the other hand, Mr Michael for the defence submitted to the effect that his client was not indicted with receiving a cheque but was indicted of receiving hard cash.

Secondly that A3 explained what had actually happened in his statement exhibit "X". I have carefully considered the evidence before me. It is clear that the count of the indictment refers to a sum of Le5,000,000 in cash form, not in cheque form. In East Africa, in a somewhat similar situation, the East Africa court of Appeal held that, if a cheque was issued not instead of cash, then the particular of the offence should refer to a cheque and not shillings (in Sierra Leone) (see the case or **TERRAH MUKINDID**.....)

I have no reason to believe that the law in Sierra Leone is different. This court has also held earlier during the hearing of the case, that the cheques, not cash should have been mentioned in the particulars, it was the cheque which was subject matter of the count 4 of the indictment.

Secondly from the accused's own interview, exhibit "X" it appears, he explained that, the cheque was in respect of deposits he had paid earlier on to Soufan, in respect of a second hand generator. There is no cogent evidence on the records to indicate

that this was not the position. In my view the best person to have implicated A3 should have been Mr Soufan vividly, who could have told court why he issued the cheque. The court can not assume that, it was in respect of an advantage for A3 (see the **case of R vs ISAAC (1965) Crim LR 174 above**)

In the premise therefore, I find that, the prosecution has failed to prove the count against A3, beyond reasonable doubt and I find him not guilty of the same and I acquit and discharge him accordingly.

Now I turn to the 5th counts where A4 and A6, had been indicted for accepting an advantage; Section 8(1) of the ACC Act, in that, on or about the 24th day of April, 2001, they accepted as an advantage from FAR Soufan in a sum of Le9,750,000 as a reward for having performed an act on public officers

As noted earlier, the prosecution conceded that they did not have evidence against A6 and the court had acquitted him of all charges in the indictment. This however left A4 on the indictment on the 5th count.

According to the prosecution, PW14, implicated A5 in the crime, as he had cashed a cheque for A4 and had handed him the sum of Le9,750,000. The learned counsel also relied on Section 45 of ACC Act.

In his defence A4's counsel submitted that his client was incapable of committing the crime, as he was a World Bank Consultant, hence not a public Officer. The definition of a public officer is genuinely Section 1 of the ACC Act 2000, as amended

"Public officer" means a holder of a public office

Public Office is defined by the same section as follows (only relevant part are quoted)

"Public Office means an office in the service of the Government of Sierra Leone armed forces, police force, a public corporation or on board thereof and"

PW15, who investigated the case, told court that A4 was not in employment of he Sierra Leone Government and was not a member of SLPA Board of Directors.

PW15 stated further that his investigation had revealed that, A4 was an employee of the World Bank stationed in the Ministry of Finance. He was employed as an Economist and paid by the World Bank.

The above clearly puts A4 outside the ambit of section 8(1) of ACC Act, as it is necessary to be a public officer if one has to be indicted under Section 8(1) of the ACC Act, 2000.

On the other hand, PW11, who is said to have cashed the cheque he had obtained from A4, stated in his examination in chief that A4 had handed the cheque which he took to this bank, cashed it and counted the money, which he found to be Le9,750,00 which he had handed to A4.

However, during cross-examination, when he was confronted with his statement to the ACC, (EXHIBIT DW1) he recanted on his evidence in chief, where he told court that he had infact got the cheque from A6, the then Minister in presence of A4 that he went to the bank, brought the money to A4 that they went together to A6 office, where A4 handed the money to A6. He said he did not recall the exact amount of money he had got or to whom the cheque had been issued to. He said the amount he got from the bank might have been ten or fifteen million leones. This clearly throws a lot of doubt on the prosecution case. First of all, A6 was acquitted on all counts after the prosecution submitted that they had found no evidence implicating him on all charges. Then if this was the case and according to PW11 the cheque and the money was his, then how could A4 be implicated as alleged in count 5 of the indictment?

All in all, I find that the prosecution has failed to prove the 5th count of the indictment against A4 beyond reasonable doubt and I find him not guilty and is accordingly acquitted.

I now turn to the 6th and last count, where it is the prosecution's case that on or about the 16th day of May, 2001, in Freetown, A5 accepted as an advantage from FAR Soufan a Mercedes Benz 200 motor car which registration number AAW 262, as a new car for having performed an act as a public officer.

It is the prosecution's case that A5 had got the car from FAR Soufan because, he is the one who effected a transfer of the vehicle, though the papers were in the names of F A R Soufan; and that, this was conspicuously close to the date when a sum of USD 50,000 was transferred in favour of FAR Soufan.

On the other hand, Mr Michael the learned counsel for A5, submitted to the effect that, the transaction involving his client and Soufan, was genuine and prodated, even the meeting SLPA Board held on the 13th February 2001, which a sum of USD 150,000 was approved by the Board regarding the container handler.

Secondly, that A5 had started paying for the vehicle in question even before he had joined the Ministry of Transport.

I have carefully considered all the evidence before me. PW7 is the person who handled the paper work during the transfer of the vehicle from Soufan to A5.

According to PW15, who investigated the case, he had received 3 communications which were in receipt form indicating that, A5 had paid fully the amount of money in respect of a Mercedes Benz car. (see exhibit "G"1-3). This is in line with A5 statement (exhibit D5, the dates on exhibits "GG1" is 3rd January 2001, that on "GG2" on 4th January 2001, and the last one is not dated.

PW7 told court that she had dealt with the transfer for the vehicle in May 2001. The transfer appears to have been effected on the 16/5/2001.

The question now before the court is does the evidence reveal a sale of the car, or reveal a gift from Soufan to A5?.

After carefully reviewing the evidence before me, I find that there is no confirmed evidence showing that, on the 16th May 2001, FAR Soufan, rewarded A5 with the vehicle in question.

It is my view that in criminal cases, hard and clear evidence whether direct or circumstantial must be adduced to prove the allegations in the indictment beyond reasonable doubt. As I have already pointed out above, a conviction can only be based on actual evidence adduced but not received the car in question as a reward from F A R Soufan. The best person to show what happened should have been the supplier of the vehicle. He was not called by the prosecution and the defence has no legal duty to prove that A5 was innocent.

Mr Tumwüsigye for the learned counsel seems to rely on Section 45 of ACC Act. It is my considered view that Section 45 came into play only after the prosecution has proved either the giving or the receiving of an advantage by the accused person, first, then that when Section 45 makes such giving or acceptance as an advantage.

Be it as it may, I find that the prosecution has not proved beyond reasonable doubt that the Mercedes Benz car was given by FAR Soufan as a gift or reward to A5, in his capacity as public servant for work done.

Case Report:
Gabbidon

THE STATE v. FRANCIS GABBIDON

THE HIGH COURT OF SIERRA LEONE
JUSTICE SEY
09 June 2009

Misappropriation of Public Revenue- Prosecution's burden of Proof- Proof beyond Reasonable doubt does not equate to certainty-Definition of Public funds/revenue/property-Wilfulness-Falsification of signatures on pay cheques- Misrepresenting to the State that named individuals were employees of the Ombudsman's Office- Endorsing pay cheques in the names of persons not employed by Office- Use of an inflated staff list to secure more funds than entitled to- Whether National Courts have jurisdiction to try an Ombudsman- Whether there are guidelines established by case law for making a No Case to Answer submission- Criminal Procedure Act 1965, s. 144(2) & s. 194- Criminal Procedure Amendment Act 1981, s. 3- Anti-Corruption Act 2000 (as amended), s.1, s. 12(1) & 12(2) - The Ombudsman Act 1997, s. 2(2) & s. 20 - The Constitution of Sierra Leone, s. 111(2) & s. 171- Public Officers Protection Act 1960, Cap. 172, s. 2(1) & 2(2) - The Limitation Act 1961- Interpretation Act 1971, s. 4- The Laws of Sierra Leone 1960, Cap. 172.

Held

The Prosecution proved its case beyond all reasonable doubt in respect of the 164 Counts charged, but Counts 165-168 were dismissed as the Prosecution adduced no supporting evidence. There was ample proof that alleged acts complained of were not a mistake, but were systematic, deliberately planned and executed to deprive the Sierra Leone Government. The acts were done by the Accused and through others, i.e. PW5⁴⁶⁷ and PW6,⁴⁶⁸ as instruments to further the grand plan. The Accused acted in a dishonest manner and knew what he was doing was wrong; the signatures were forgeries for which he was responsible and he used an inflated list to secure more money than his office needed.

Ratio Decidendi

The Trial Judge dismissed the Accused's theory of events based on the following reasons. Firstly, the Accused's awareness of his wrongdoing is evident as in his cross-examination of Messrs. Melron Nicol Wilson and Christopher Peacock, he never contested that the signatures on the paid up vouchers were those of the named witnesses, as opposed to a forgery, but he instead sought to bully them by emphasizing the good relationship they once enjoyed. Further, the Accused used varying terms such as employment, engagement, and "quasi-employee" to describe his relationship with them. The Accused's office endorsed payment vouchers to Wilson and Peacock and the Accused admitted to signing the Vote Service Ledger,⁴⁶⁹ against the amounts given by the Accountant General's Department. The Accused also self-contradicted by saying he sent PW5 to pay Wilson monthly, whilst also saying that he, the Accused, took Wilson's salary to him, by himself. Additionally, the Accused confirmed in his statement and under cross examination, that Peacock and Wilson were never given appointment letters, which gave rise to the inference that the

⁴⁶⁷ Alieu Badara Gibril, then Accountant in the Office of the Ombudsman.

⁴⁶⁸ Marie Dumbuya, then Confidential Secretary in the Office of the Ombudsman.

⁴⁶⁹ Exhibit E.

appointment letter that was drafted for Wilson, was done so, purely for appearances.⁴⁷⁰ The Trial Judge found incredible the Accused's explanation of a confidential employment agreement with Peacock, in light of the risks such an agreement would have posed to him. The Trial Judge also found it incredible that Wilson who did admit to having a good relationship with the Accused, would deny making charitable donations. Moreover, the Accused confused the names of the charities, which he said Wilson donated his salary to and provided no record of such payments to charities.

Notes

It is a common law misdemeanour to act or embark upon a course of conduct, which has a tendency to, and is intended to pervert, the course of justice: *R v. Vreone* (1891) 1 QB 360, CCR; *R v. Andrews* [1973] Q.B. 422, CA. The offence of interfering with witnesses may be committed, even though the means of persuasion used against a potential witness is not in itself unlawful: *R v. Toney*; *R v. Ali*, 97 Cr. App. R. 176, CA. Regarding Perjury, its punishment should be commensurate with the gravity of the offence for which the person, in whose interest it was committed, is on trial: *R v. Knight*, 6 Cr. App. R. (S) 31. There should be evidence of more than one Witness as to the falsity of the statement said to have been made: *R v. Carroll*, 99 Cr. App. R. 381, CA. A lie as told by a defendant can only strengthen or support evidence against that Defendant, only if a) the lie was deliberate b) it relates to a material issue c) there is no innocent explanation for it, as per *R v. Lucas* (R) [1981] Q.B. 720, 73 Cr. App. R. 159, CA, cited in this judgment. Note that the UK Perjury Act of 1911, section 1 allows for a maximum term of imprisonment of 7 years. With regard to the offence of forgery, note its definition as per section 1 of the Forgery and Counterfeiting Act 1981: A person is guilty of forgery if he makes a false instrument with the intention that he or another *shall use it to induce somebody to accept it as genuine and by reason of so accepting it, to do or not to do some act of his own, or any other person's prejudice*. This has been affirmed in *R v. More*, 86 Cr. App. R. 234 HL and *R v. Campbell*, 80, Cr. App. R. 47, CA which define the requisite intention as an *intention to secure something/to get the other to act on it/to try to get something out of it*. A further description is that for an instrument to be false, it must tell a lie about itself, in the sense that, it purports to be made by a person, who did not make it, or purports to be made in circumstances in which it was not made: *More* ante; confirmed in *R v. Lack*, 84 Cr. App. R. 342, CA which states that the document must not simply tell a lie, it must tell a lie about itself.

Cases referred to in Judgment

Woolmington v. DPP [1935] AC 462, HL.

Miller v. Minister of Pensions [1947] 2 All ER 372.

R v. Galbraith (73 Cr. App. R. 124, CA)

R. v. Gomez (1993) 1 All ER 1.

Lawrence v Metropolitan Police Commissioner (1971) 2 All ER 1253.

R v. Ghosh (1982) 2 All ER 689.

R v. Lucas (1981) QB 720, 73 Cr. App. R. 159 CA.

R. Sheppard [1981] AC 394 HL

⁴⁷⁰ Wilson denied ever receiving *his* Letter of Appointment, Exhibit F, although PW6 said she typed up such letters, but that she personally never received one.

Summary of Facts

The Accused applied for a preliminary jurisdiction objection before the High Court, which was overruled.⁴⁷¹ The Accused then applied to the High Court for a stay of proceedings, which was refused and it was ordered that the case proceed. At the stage of delivery of the judgment, the ruling on the preliminary jurisdictional objection had been appealed before the Court of Appeal and an application for stay of proceedings had been lodged before the Supreme Court.⁴⁷² The Accused denied all 168 counts against him for misappropriation of public funds. The Prosecution alleged that the Accused who was appointed in April 2000, as Sierra Leone's first Ombudsman, from 2001 to 2007, misrepresented to the government that Messrs Christopher Peacock and Nicol Wilson were employed by the Office of the Ombudsman, the former as a Lawyer and the latter as an Investigator.⁴⁷³ The Prosecution alleges that the Accused would sign monthly salary vouchers produced in their names, triggering the release of quarterly funds to his office and that the salary vouchers would be inscribed to acknowledge receipt of such salaries.⁴⁷⁴ The Accused alleged that it was PW5 who would secure the signatures of recipients on vouchers. PW5 testified that the Office operated under the instructions of the Accused, and that the Accused signing pay cheques meant payment was done on his instructions.⁴⁷⁵ PW5, on the other hand, testified that the Accused would sign the endorsements found on cheques, certifying that salary recipients were genuine employees, and accepting personal liability in the event that they were not,⁴⁷⁶ and further testified that the recipients of salaries would also have to sign the paid up vouchers. PW5 testified that the Accused would have to approve pay vouchers *after ensuring that each member of staff had signed for his or her salary*, in order for the vouchers to be finally taken to the Accountant General's Department.⁴⁷⁷

The Accused denied falsifying the signatures on the pay vouchers, asserting that the signatures were those of Messrs. Peacock and Wilson⁴⁷⁸ and that he had worked with Wilson and Peacock, contradicted by PW5 and PW6 who said the Accused had no relationship with the Office of the Ombudsman. Peacock and Wilson denied ever seeing the vouchers let alone signing them. Wilson denied ever working for the Office of the Ombudsman, receiving payments from that office or donating such payments to charities. Peacock also denies ever having been employed by the Office

⁴⁷¹ The objection was premised on the ground that the entire action covering all the 168 Counts was entirely time barred in terms of section 2 (1) and (2) of the Public Officers Protection Act, Cap. 172 of the Laws of Sierra Leone. The High Court dismissed the preliminary jurisdictional objection on the ground that, the Accused cannot take umbrage under the statutory protection given to public officers under section 2 (1) and (2) of the Public Officers Protection Act, Cap. 172 of 1960 as amended by the Limitation Act, No. 51 of 1961, Trial Judgment, p.3.

⁴⁷² There is only a reference to, but no detailed discussion of these applications; Trial judgment, p.19.

⁴⁷³ As per exhibit J6: the salaries approval and verification form from the Accountant General's Department.

⁴⁷⁴ PW4, civil servant in the Accountant General's Office, testified that, since 2001, the Government of Sierra Leone made payments into the account of the Ombudsman at the Sierra Leone Commercial Bank Account Number 1009292 either quarterly or on a monthly basis and that the money was used for salaries, Trial Judgment, p. 7.

⁴⁷⁵ PW5 would also sign the pay cheques.

⁴⁷⁶ Exhibit G58 and G59, Trial Judgment, p.10.

⁴⁷⁷ The Accused's witness, Abdul Babatunde Gillen, said that the Budget Oversight Committee did not look beyond what was presented to them by the Ombudsman in justification of its budgets. He says they did spot checks during the year, visited the Office of the Ombudsman, saw his staff list which contained a lot of names, but did not investigate how the money allocated was being spent.

⁴⁷⁸ Exhibit G1, payment voucher for the month of March 2003, has signatures against the names of both Messrs Peacock and Nicol Wilson.

of the Ombudsman, or being paid by it,⁴⁷⁹ and did not recognize the signature appended against his name. The Accused attributed Peacock's testimony to his annoyance, because the Accused had broken their employment agreement which was to be kept confidential for tax avoidance reasons. The Accused said Wilson had asked that his salary be donated to charities and that PW5 would make these donations to the Blind and Amputees. PW5, for his part refuted the Accused's contention that he was given monies monthly to take to Wilson and that the latter would ask for it to be donated to charities, saying that it was the Accused who would pay salaries.

On 29th January 2009, at the close of Prosecution's case, the Defence made a No Case to Answer submission⁴⁸⁰ and argued that only a Tribunal appointed by the President had jurisdiction to try the case and that the Ombudsman should not be sued or prosecuted in the Courts of Law as a matter of Public Policy.⁴⁸¹ On 9th February 2009, the Trial Judge held that Accused had a case to answer and that none of the issues raised by the Accused in his Defence, addressed the question of his culpability for the acts charged,⁴⁸² including the argument that everything he did after his first term ended in 2004, was unconstitutional and null and void because he was not sworn in, violating the Ombudsman's Act and the Parliamentary Procedure and Approval Act. The Trial Judge held that what mattered was that at all material times, the Accused acted as and answered to the title of Ombudsman.

Application of Law

The Trial Judge in her discussion of the law, described Misappropriation as the wilful commission of any act which results in the owner losing funds belonging to it, *R. v. Gomez* and making clear, that the consent of the owner was irrelevant, *Lawrence v Metropolitan Police Commissioner*. Wilfulness was interpreted here, drawing on *R v. Sheppard*, and on the 2002 Edition of Blackstone's Criminal Practice, as comprising common law recklessness and deliberateness; action/omission with knowledge of the risk of a consequence or the not caring about the risk of a consequence. Additionally, dishonesty was incorporated into the interpretation of Misappropriation, by adopting the test from *Ghosh* [1982] 2 QB 1053, [1982] 2 All ER 689: whether the act was dishonest according to the standards of reasonable and honest people and whether the Defendant realized that it was.⁴⁸³ Dishonesty here, seems to have been accorded the status of an element of the crime, with it being "inconceivable to convict the Accused (of Misappropriation), in the absence of proof of dishonesty."⁴⁸⁴

⁴⁷⁹ PW6, Confidential Secretary stated that Messrs Peacock and Nicol Wilson were not employees of the Office of the Ombudsman and was not aware that they were paid monthly from April 2000, to December 2007.

⁴⁸⁰ The Prosecution argued the Defence had not complied with the relevant guidelines for a No Case to Answer Submission, as set out in *R. Galbraith* (73 Cr. App. R. 124, CA), but the Trial Judge, did not further address this issue; Trial Judgment, pp. 19-20.

⁴⁸¹ The Prosecution responded that these issues merely repeated the Defence's submissions in their preliminary jurisdictional objection, Trial Judgment, p.19.

⁴⁸² The Accused's arguments included that; his office was not provided with enough space, staff and funds by the government and that financial questions had never been raised by his office before whether by staff or governmental bodies, such as Parliament and the Accountant General's Office.

⁴⁸³ Where both limbs of the test are met, there can be no defence of moral justification for the act.

⁴⁸⁴ For a discussion on this approach, refer to the **Critique** in the Case Report of "*The State v. Ernest Joseph Kasho Wellington and Mrs. Madonna Druscilla Cole*", High Court of Sierra Leone, 25 May 2009, pp. 242-243.

The Trial Judge considered whether all the ingredients of the offence under section 12(1) of the ACA had been met. Firstly, it found that *the Ombudsman qualified a Public Office* under section 2(2) of The Ombudsman Act 1997, which stated that: “The office of the Ombudsman shall be a public office but shall not form part of the public service” and under section 171 of the Constitution, which states that a public office is one which receives monies from the Consolidated Fund or from Parliament.⁴⁸⁵ As to whether the monies allegedly misappropriated qualified as *public funds*, Section 1 of the Anti-Corruption Act 2000 (as amended) defines public funds as: “any monies paid from the funds appropriated by Parliament from the Consolidated Fund or any fund under subsection (2) of section 111 of the Constitution.” Under section 20 of the Ombudsman Act, the office of the Ombudsman is to be funded by government funds and salaries are to be charged on the Consolidation Fund.⁴⁸⁶ *The Trial Judge therefore found that the funds allegedly misappropriated by the Accused were public funds.* Although the Prosecution submitted that section 12 ACA 2000, did not make it a requirement that the Accused be a public officer at the time of the offence, it did contend that the Accused was a public officer at the time of the commission of the offence, as per the ACA 2000, as a public officer is a holder of public office, which the Office of Ombudsman was.⁴⁸⁷

Critique

It is submitted that the Trial Judge’s assessment of the overwhelming evidence inferring guilt on the part of the Accused’s is accurate. Firstly, the Accused’s cross of PW5-PW8, could not dent their credibility and reliability; the fact that the Accused never registered employees of the Office of the Ombudsman for Nassit payment;⁴⁸⁸ the almost inconceivable assertion by the Accused that PW5 would prepare all vouchers, set salaries and reviewed salaries, which was contradicted by Accused’s statement that the Accountant worked under his direction and that he, the Accused was the head of office; the fact that the Accused self-contradicted by saying that the amount paid to Peacock ranged from le200,000 to le350,000 and later accepts that it was le500,000; that either or both Peacock and Wilson, could have been employees of the Office of the Ombudsman from 2001-2007, with no-one but the Accused knowing.

It is however, suggested that the element of “dishonesty” could have been imported in a less abrupt manner, with a minor discussion of its necessity in the interpretation of section 12 of the ACA 2000.⁴⁸⁹

⁴⁸⁵ This is supported by s. 20 of the Ombudsman Act and by PW4 and PW5, who testify that the budget came from the Consolidated Fund.

⁴⁸⁶ Further, PW4’s evidence demonstrates that the Office of the Ombudsman has always been funded by the Government of Sierra Leone.

⁴⁸⁷ Trial Judgment, pp. 36-37.

⁴⁸⁸ As per the evidence of PW9 and as per exhibit DD.

⁴⁸⁹ Refer to **Application of Law** and **Critique** sections in the Case Report of “*The State v. Ernest Joseph Kasho Wellington and Mrs. Madonna Druscilla Cole*”, High Court of Sierra Leone, 25 May 2009, above at pp. 241-242 and 242-243 respectively.

[Trial Judgment:
Gabbidon]

The State vs Francis Gabbidon

CRN 76/08

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

FRANCIS GABBIDON

Accused present
P. Thompson for the State
F. S. Bangura with L. Jenkins
Johnston for the Accused

JUDGMENT

The Accused Francis A. Gabbidon stands charged with 168 counts of Misappropriation of Public Funds contrary to Section 12(1) of the Anti-Corruption Act 2000 (as amended). The charges are laid under Section 12(1) of the Anti-Corruption Act 2000 which provides that "any person who misappropriates public revenue, public funds or property is guilty of an offence." Section 12(2) states that: "A person misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a public corporation or a local authority is deprived of any revenue, funds or other financial interest, or property belonging or due to the Government, the public corporation or local authority".

The substance of the charges is that the Accused as the former Ombudsman of Sierra Leone misappropriated public funds to the tune of seventy million, two hundred and twenty six thousand, six hundred and forty two Leones

(Le70, 226, 642.00). It is alleged on each of the said 168 counts that the Accused, on a date unknown between a two month period, being the Ombudsman, misappropriated a particular sum which had been entrusted to him for payment to either Christopher Peacock or Melron Nicol Wilson as monthly salary having falsely represented that they were both employed by the Office of the Ombudsman.

The charges were put to the Accused and the plea taken on the 15th day of July 2008. Thereafter, this Court made an Order as of course for trial by Judge alone instead of by Judge and Jury pursuant to an application in writing made by the Attorney-General and Minister of Justice under Section 144(2) of the Criminal Procedure Act NO. 32 of 1965, as repealed and replaced by Section 3 of the Criminal Procedure Amendment Act NO.11 of 1981. In the circumstances, therefore, throughout the trial, this Court proceeded both as a Tribunal of Fact and as a Tribunal of Law.

However, before the trial itself commenced, certain preliminary matters had to be dealt with as can be seen from the following sequence of proceedings. On the 18th day of July 2008, Ms Glenna Thompson made an opening statement for the Prosecution outlining the method of execution of the Prosecution case. Then Counsel Mr. J. B. Jenkins Johnston, who led the defence team, applied for an adjournment on the basis that the defence team had not had enough time to study all the papers served on them only within the past forty eight hours. The application was granted and, taking into consideration the long vacation of the Court, the case was

adjourned to the 18th of September 2008. On that day aforesaid, Dr. Jabbi, who now led the defence team, raised a preliminary jurisdictional objection premised on the ground that the entire action covering all the 168 counts is entirely and absolutely time barred in terms of Section 2, subsections (1) and (2) of the Public Officers Protection Act, Cap. 172 of the Laws of Sierra Leone. Submissions were made by both Dr. Jabbi and Ms Glenna Thompson and the matter was reserved for Ruling. On the 9th day of October 2008, this Court delivered a Ruling dismissing the preliminary jurisdictional objection on the ground, *inter alia*, that the Accused cannot take umbrage under the statutory protection given to public officers under Section 2 subsections (1) and (2) of the Public Officers Protection Act, Cap. 172 of 1960 as amended by the Limitation Act, No. 51 of 1961. Thereafter, Dr. Jabbi announced their intention to appeal against the Ruling and craved the Court's discretion to grant a stay of proceedings as to the trial pending the hearing and determination of the appeal. Needless to say, the State vehemently opposed the said application on the ground that the High Court does not have an inherent jurisdiction to grant a stay of proceedings in criminal matters. On the 16th day of October, 2008 I delivered a Ruling refusing the defence application for stay of trial proceedings and I ordered that the case against the Accused Francis A. Gabbidon on charges of misappropriation of public funds contrary to Section 12(1) of the Anti-Corruption Act, 2000 as amended, shall proceed forthwith. Thereafter, the Prosecution began leading evidence on the said 16th day of October, 2008.

It is the State which brings this case and it bears the burden of proving beyond a reasonable doubt every element of the offence with which the Accused is charged and it is for the State to satisfy the Court so that it is sure of the Accused person's guilt. This burden of proving the guilt of the Accused rests with the State and continues throughout.

The leading authority is the case of Woolmington v. DPP [1935] A.C. 462, HL wherein it was stated that "throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt (subject to the qualification involving the defence of insanity and to any statutory exception). If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained." (per Viscount Sankey L.C. at pp. 481-482).

On the standard of proof, Denning J. in Miller v. Minister of Pensions [1947] 2 All E.R.372 at pp. 373-374 stated that: "It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law will fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice".

To prove its case the State has relied on the evidence of 9 witnesses as follows:

- PW1 – Sheku Kamara
- PW2 – Issa Dauda Kanu
- PW3 – James Kamara
- PW4 – Haroun Alraschid Sheriff
- PW5 – Alieu Badara Gibril
- PW6 – Marie Elaine Dumbuya
- PW7 – Melron Nicol Wilson
- PW8 – Christopher James Peacock
- PW9 - Victoria Aminata Mansaray

The State also tendered in evidence various documents such as Exhibits A1-A161: The recorded interview given by the Accused; Exhibits B1-B12: Status Report on the office of the Ombudsman of Sierra Leone; Exhibit C: Letter of Appointment as Ombudsman; Exhibit D1-D3: Curriculum Vitae of Christopher J. Peacock; Exhibit E: Accountant General Vote Service Ledger; Exhibit F: Letter addressed to Mr. M Nicol Wilson Re: Appointment as an Investigator; Exhibits G1-G62: Salaries of Staff - The Office of the Ombudsman; Exhibits H1-H3: Accountant General's Department - Payment to the Office of the Ombudsman; Exhibits J1-J18: Accountant General's Department - salaries verification and approval Form; Exhibit P: Letter written by Christopher J. Peacock to the Editor Peep News Magazine; Exhibit Q: Letter from Francis A. Gabbidon to the Spectator Newspaper; Exhibit R: Peep Magazine dated Friday November 9, 2007; Exhibit S: Letter from C.J. Peacock Esq. to Francis A. Gabbidon Re: Demand for a written disclaimer in a local tabloid having wide circulation and readership - Reply to Letter dated 7th December 2007; Exhibit T: Letter from

Francis A. Gabbidon to C.J.Peacock; Exhibit U:The Spectator News Paper dated 21-11-07; Exhibit V: Awoko Newspaper dated Friday November 16, 2007; Exhibit W: Peep newspaper dated Friday December 14, 2007; Exhibit X: Recommendation made by Francis A. Gabbidon on behalf of C.J. Peacock and Exhibit DD which is a Letter from NASSIT to the Ombudsman dated 19thAugust 2005 Re: Non Registration of Employees for Social Security.

The facts of this case as presented by the Prosecution can be seen through the evidence of PW4, PW5, PW6, PW7 and PW8 together with Exhibits A1-58, B, E, F, G1-62, H and J. Briefly put, it is the prosecution's case that Exhibits G1-62, which are the paid-up salary vouchers, were signed month after month from 2001 to 2007 with the names of Messrs Christopher Peacock and Melron Nicol Wilson who were said to have been employees at the Office of the Ombudsman and with an inscription to acknowledge receipt of the said salaries; that at the end of each month, the Accused will claim to have paid both Mr. Peacock and Mr. Nicol Wilson who he had represented to Government were employees of the Office of the Ombudsman; that the Accused would sign the paid up salary vouchers, thereby attesting to that fact and by so doing triggering the release of quarterly funds to his Office. Both Messrs Christopher Peacock and Melron Nicol Wilson denied ever having seen the vouchers let alone signing them. In so far as it was put to the Accused that the signatures were put there by him, the Accused denied it, but went on to state that he believed they were the signatures of Messrs Nicol Wilson and Peacock.

PW4 Haroun Alraschid Sheriff testified that he is a civil servant attached to the Accountant-General's office and he confirmed that since the inception of the Office of the Ombudsman sometime around 2001, it received quarterly allocations from the Government of Sierra Leone through his department. He produced in evidence the salary verification and approval forms (Exhibits J1-18) and the records of payment to the Office of the Ombudsman (Exhibits H1-3). He stated further that payments were paid into Sierra Leone Commercial Bank account number 1009292 which is the account of the Office of the Ombudsman. He said these payments were made on quarterly basis but sometimes when there is a cash problem in the country they pay on a monthly basis. He further testified that in 2006 all four quarters totaling Le129, 000,000.00+ were paid and in 2007 for the first three quarters, the sum of Le108, 139,308.00 was paid as salary grant to the Office of the Ombudsman. He gave evidence of other similar payments made since 2001. This evidence shows categorically that the money used for salaries was from the Government of Sierra Leone. Further in his evidence he was able to explain to the Court the process involved in getting the salary allocation from government. He also referred to Exhibit J6 and he stated as follows:

"There are names on that document. Under Accountant the first name is Mr. Christopher Peacock and a basic salary of Le1, 650,000 is stated. Deductions were made and the net payment is for Le1, 574,313. The name immediately below retired civil servant is Mr. M. Nicol Wilson and his basic salary is

Le1, 099,998 and deductions were made and the net was Le1,188,062. Below Mr. Peacock's name the designation is "Lawyer" and below Mr. Nicol Wilson the designation is "Investigator" and below there is a stamp and signature of the Ombudsman".

It is pertinent to note that PW4's evidence was not challenged by the Defence at all as he was not cross examined.

PW5 was Aileu Badara Gibril the Accountant in the Office of the Ombudsman. He was able to give an overview of how the accounting system worked in the office. He stated that the office was run by the Accused who was the vote controller and under whose instructions he operated. He said his responsibility was to sign cheques, prepare payment vouchers, prepare commitment forms and write up payment vouchers for other charges to be taken to the Accountant General's department. He said he signed the cheques together with the Accused and that at times the Accused instructed him to just sign blank cheques. He stated that salaries were paid to the staff by the Accused and they were asked to sign on the paid up vouchers and that the names on the vouchers were never rejected by the Accountant General's department because the procedure was followed and they did the correct presentation to the Accountant General's office. He referred to Exhibit G1 as the payment voucher for the month of March 2003. He said he recognized his name and that he had signed against it. He then stated as follows:

"The name after that is Mr. Peacock with a basic salary of Le500,000 and a net pay of Le408,333. There is a signature against Mr. Peacock's salary and it implies that he has already received his salary. Number 4 is Mr. M. Nicol Wilson with a basic salary of Le333, 333. His net pay is Le283, 333 and there is a signature there. On the next page the computation for March 2003 amounts to Le5, 687,500. I prepared it and it was approved by the Ombudsman Mr. Francis Gabbidon...."

Testifying further, PW5 said there were 12 names on the vouchers every month and those vouchers included the names of Christopher Peacock and M. Nicol Wilson. He said he did not know these two as staff members in the Office of the Ombudsman. He said he had never seen Mr. Nicol Wilson or Mr. Peacock in the Office of the Ombudsman although he knew who they were. He stated that neither Mr. Peacock nor Mr. Nicol Wilson operated from their office nor did either of them have any relationship with the office. In fact, under cross examination he stated that he knew their names from the salary paid up vouchers. He denied ever taking salary to Mr. Nicol Wilson or ever telling the accused that Mr. Nicol Wilson had declined his salary and had instead asked for it to be paid to charities. When the Accused put it to him that every month during the period in question he had given him monies to give to Mr. Nicol Wilson as salaries, PW5 emphatically yelled out the words "No, not in my life". He went on to state that he prepared vouchers with their names on it but that it was the Accused who made all the payments and whenever the Accused paid salaries, he would claim that he was going to pay the other staff at

their various places of work. He referred to Exhibit G58 and after pointing out the names of Mr. Christopher Peacock and Mr. M. Nicol Wilson and their salaries he read out the following words:

"and I hereby certify that each of the above positions exist during the period stated and the employment was duly authorised by the Ombudsman".

PW5 explained that this was the endorsement before the words "approved by Francis Gabbidon". He then referred to Exhibit G59 and he said the names on number 2 and number 4 are Mr. Christopher Peacock and Mr. M Nicol Wilson respectively. Their signatures are attached and these words appear:

"Also we hereby certify that each of the above named persons have been employed in the capacity and during the period stated and that the employment was duly authorised. We will personally be held liable if a Name in the voucher is not a genuine Staff".

PW5 said the endorsement was signed by himself and Mr. Francis Gabbidon. He said he signed first and later it was approved by the Accused. He emphasized that the procedure for approval is that one cannot take these vouchers down to the Accountant General's department without both of them signing and the Accused approving after ensuring that each member of staff has signed for his/her salary. He confirmed that this was the pattern followed since 2001 to date.

Under cross examination, by the Accused in person, PW5 maintained that Mr. Peacock had no relationship with the office. He said he only knows that Mr. Peacock's name and that of Mr. Nicol Wilson's were on the vouchers and that that had been the case for the past eight years. He categorically denied the suggestion by the Accused that every month he had given him monies to give to Mr. Nicol Willson and that Mr. Nicol Wilson had always said he would rather give the salaries to charities.

Let us pause at this stage and take a brief look at Exhibits G1-62 and the endorsement at the back of each voucher. The following words appear:

"TOTAL AMOUNTING TO THE SUM OF
AND I HEREBY CERTIFY THAT EACH OF THE
ABOVE POSITIONS EXISTED DURING THE
PERIOD STATED AND THAT THE EMPLOYMENT
WAS DULY AUTHORISED BY THE OMBUDSMAN".

Below these words appear two signatures:
"Prepared by A. Gibril" (PW5) and "Approved by
F. Gabbidon" (the accused).

This the prosecution submitted shows clearly that it was done on the instructions of the Ombudsman whose approval not only appeared but was the most important signature there. PW5 worked under the direction of the Ombudsman and therefore the vouchers were prepared under his directives.

Pw6 was Ms Marie Dumbuya. She was the Confidential Secretary, first to the Accused during his legal practice and she was later

subsumed into the Office of the Ombudsman. She said she started working for the Accused in 1980 and in April 2000 the Accused switched over her appointment to the Office of the Ombudsman. She testified that she was never given a letter of appointment by the Office of the Ombudsman even though the Accused had given her letters of appointments, including hers, to type. She stated further that salary vouchers for typing were given to her by Mr. Gibril to whom they had been passed by the Accused. As far as she could recollect, since the Office started in April 2000 she could remember the staff as follows: Mr. Francis Gabbidon was the head of the Office and the Vote Controller, Mr. Gibril was the Accountant, she was the Confidential Secretary, Mr. Saidu Bangura the messenger and one Mr. Isdand Baimba whom she said left between 2003 -2004. She said when Mr. Baimba left there were only three members of staff until May 2008. PW6 went on to state that she is aware of the close personal relationship the Accused has with both Mr. Nicol Wilson and Mr. Peacock, but she maintained that they were not employees of the Office of the Ombudsman. She said she was not aware that monies were sent to Mr. Nicol Wilson and Mr. Peacock on a monthly basis from April 2000 to December 2007. PW6 identified Exhibit G3 and then went on to state inter alia:

"I see Exhibit G3. My name is there. No 2 is Peacock and No 4 is Nicol Wilson; Of the 12 names I recognize Mr. Gibril the Accountant, Saidu Bangura the Messenger, Isdand Baimba the other Messenger and my name as Confidential

Secretary. These are the people I recognize as being staff members of the Office of the Ombudsman. I see signatures against their names but these two, i.e. Peacock and Nicol Wilson, to my knowledge, were not staff members"

She was randomly showed different other Exhibits such as G30, G59, G1, G60, G2 and G3 and she said these were the sort of vouchers that they signed month after month on the receipt of salaries. She further testified that in each case, every month she would see 12 names on the list. She said that she typed the salary vouchers and she got the information through Mr. Gibril who in turn had got the information from the Accused.

Under cross examination the witness confirmed that the office was very tight and she recalled that letters had been written asking for space. She said she could recognize Mr. Nicol Wilson and Mr. Peacock; that Mr. Nicol Wilson normally went to the office during the period the Accused was Ombudsman; that as far as she could recollect Mr. Peacock only came to the office twice; that she could not recollect the Accused sending people to Mr. Peacock during his period as Ombudsman although he did so when he was a lawyer. When pressed further by the Accused PW6 retorted that the Accused had sent matters that were not within their jurisdiction to Mr. Peacock. On being questioned about the relationship between the Accused and Mr. Nicol Wilson she said "being the Director of LAWCLA and you being the Ombudsman I believe that was the relationship you had with Mr. Nicol

Wilson. I don't recall your relationship with Mr. Peacock."

On this point, in her closing Address, Ms Glenna Thompson for the Prosecution submitted that even if Messrs Nicol-Wilson and Peacock were employed by the Office of the Ombudsman, but due to shortage of space had to work elsewhere, both Mr. Gibril and Ms Dumbuya would have known about it. In eight years they must have come across it, discussed it or at the very least heard about it. Counsel further submitted that it is not a criminal offence to have such an arrangement and if it did exist there would have been no reason for any of the witnesses to conceal it or deny its existence. She submitted that this arrangement simply did not exist and has been put forward as an explanation by the Accused to explain away his criminality.

PW7 Melron Nicol Wilson is one of the persons the Prosecution says was falsely inserted as an employee by the Accused and by so doing misappropriated funds belonging to the Government of Sierra Leone. PW7 categorically denied any suggestion that he ever worked for the Office of the Ombudsman. He had never seen any of Exhibits G1-62 nor signed any of them. He denied that the signature which appeared against his name was his. He said he did not receive any payments from the Office of the Ombudsman and that he did not have a relationship with Mr. Gibril or any other person working in that office. Indeed, even in cross examination by the Accused, he stated that he was never specifically asked to investigate any matter by him. The Accused has strenuously sought to explain the inclusion of Mr. Nicol Wilson as a staff member

by saying that he used to send him cases which fell outside the mandate of the Office of the Ombudsman. PW7's response was that in such a case the modus operandi was normally by a referral letter written by the Ombudsman to LAWCLA, the organization of which he is Director, and not to him specifically. He said that the letter would state that a particular complaint had been made and the said complaint did not fall within the mandate of the Ombudsman and for the Centre to assist. PW7 further testified that such complaints related to landlord/tenant issues and maintenance and custody matters. He explained further that because the Accused as Ombudsman was Chairman of LAWCLA, the Centre treated such matters with high priority and on a pro bono basis and so the question of payment never arose.

The Accused has tendered in evidence the Annual Report of LAWCLA 2003 (Exhibit N) in which the Office of the Ombudsman is listed amongst the "funders of LAWCLA." This Mr. Nicol Wilson explained was a printing error and should read "those LAWCLA cooperated with".

The accused asked for the statement of this witness to be tendered and it was tendered as Exhibit K. I have perused the said statement and I find that there is no inconsistency between the statement and the evidence given in court, nor was that put to the witness. Mr. Nicol Wilson both in his statement and his evidence before the Court described the relationship he had with the Accused as a "professional relationship for many years" and not that of an employee/employer relationship.

Under cross examination by the Accused PW7 denied the suggestion that monthly payments were made to him through Mr. Gibril for the services rendered. He said "monthly payments were not made to me by any official working in the Office of the Ombudsman for services rendered to that Office." He also denied the suggestion by the Accused that whenever monies were paid to him he would decline to accept them but rather make them as donations to charities. He said he did not recall having such discussions with the official who has been referred to as Mr. Gibril and working as Accountant in the Office of the Ombudsman. He concluded by stating that the Accused has been very supportive of LAWCLA but that there has never been any financial transaction between the two institutions.

Next to take the stand was PW8 Mr. Christopher Peacock. He gave evidence and, like Mr. Nicol Wilson, he denied ever being an employee of the Office of the Ombudsman. By way of background, the Prosecution tendered various newspaper articles and exchange of letters between the Accused and Mr. Peacock. These are Exhibits P to X. The accused has sought to maintain that payment was made because he sent cases to Mr. Peacock. Mr. Peacock denied ever receiving cases from the Accused and went on to say that he was consulted and his services paid for by the clients. He gave a narrative of his reaction and what transpired after he became aware via a newspaper article that his name had been used as an employee of the Office of the Ombudsman. This culminated in the letter of disclaimer written by the accused. This letter was admitted in evidence as Exhibit P. The Accused in

his defence explained that Mr. Peacock was annoyed because he had broken a promise he made at the time of employing him that he will not reveal that he, Peacock, worked for the Office of the Ombudsman. The Prosecution submitted that even allowing for the possibility that this statement might be true, how practical was it if the accused sent "many cases" to Mr. Peacock in secret. Surely, those people who were referred to him would have known that Peacock was working for him. Secondly, it is not a crime to work, so why would Mr. Peacock ask for the agreement to be kept confidential. The Prosecution further submitted that the Accused would have included that in Exhibit P because without it, it gave the impression that there was some dishonest wrong doing on the part of the Accused. Counsel further submitted that the Accused would not have left himself open to a criminal charge to honour a confidentiality agreement he made with Mr. Peacock. Like PW7, PW8 also denied ever seeing Exhibits G1-62 or ever signing any of the vouchers. He did not recognize the signature appended against his name. PW8 was very emphatic in his denial and he had this to say:

"I have never in my life received any form of emoluments from that office in the form of salary, wages, honorarium, consultancy fees, retainer ship fees or allowances or end of service benefits. I have never signed any form of documents as a recipient of any form of moneys relating to that office. I have never participated in any form of activities organized by the Office of the Ombudsman."

In his submissions to the Court the Accused has asked the Court to believe that Mr. Christopher Peacock was an employee of the Office of the Ombudsman. He said that this arose by an agreement between him and Peacock. He submitted further that as the Office of the Ombudsman generally operates on the principle of confidentiality and in order for Peacock's clients generally not to know, and also for tax avoidance reasons, it was agreed for it not to be in writing or formal. He said that this might be improper but it was not illegal or criminal.

It is pertinent to note that the Accused himself conducted the cross examination of PW5 Alieu Badara Gibril, PW6 Marie Elaine Dumbuya, PW7 Melron Nicol Wilson and PW8 Christopher James Peacock. In my considered view nothing in the cross examination by the Accused could dent these witnesses' evidence. They all came across as credible and reliable witnesses and the Court accepts their evidence. In any event, it seems to me, and my view is buttressed by the questions put to these witnesses by the Accused, that the cross examination was reduced to getting the witnesses to confirm the good relationship they had enjoyed with the Accused and the fact that he had always been good to them and had helped them to further their careers.

The last witness for the Prosecution was PW9 Victoria Aminata Mansaray, a NASSIT Official who gave evidence on the 15th January 2009. She confirmed that the Office of the Ombudsman did not register its employees for NASSIT payment.

She produced and tendered Exhibit DD which she said was a letter written formally to the Office of the Ombudsman after several oral requests to them to register their employees and to register their institution. Under cross examination the Accused put it to the witness that they never received Exhibit DD. She answered that they did and to this letter was attached the registration form for the employees.

At the close of the Prosecution's case, the Accused (who by then was unrepresented) on the 29th day of January 2009 made a no case submission premised on the following grounds:

- The Court has no jurisdiction to try the case. The proper forum for this matter should be a Tribunal appointed by the President to investigate allegations of misconducts, to wit, acts of alleged corruption and misappropriation by him as the former Ombudsman.
- As a matter of public policy, the Ombudsman, like a Judge, when performing his functions should not be sued or prosecuted in the Courts of Law.
- No consent or fiat has been proved in Court as part of the proceedings.

In the Prosecution's response, Counsel Glenna Thompson pointed out that the issues which form the basis of the submissions of the Defence are a repeat of the issues contained in the submissions made by Counsel for the Accused at the beginning of this trial in their preliminary jurisdictional objection, the subject of which is the basis of an appeal before the Court of Appeal and an application for a stay of proceedings before the Supreme Court. Counsel further

submitted that in no case submissions the guidelines laid down in the case of R v. Galbraith (73 Cr. App. R. 124, CA) should be used and since those guidelines have not been the subject of this no case submission, it should be taken that the Defence does not challenge the facts of this case as being capable to be put before the Judge to determine guilt or innocence.

Suffice it to say that after careful consideration of all the submissions made by the Accused as "Defence Reply to close of Prosecution's case" I delivered a Ruling on the 9th day of February 2009 in which I held that the Accused has a case to answer.

On the 11th day of February, 2009 the Accused was put to his election in accordance with the provisions of Section 194 of the Criminal Procedure Act, 1965. He was also informed of his right to call witnesses on his behalf, irrespective of whichever option he chose in presenting his case. The Accused elected to give evidence on oath and to call witnesses. On that day the Accused was represented by Counsel Leon Jenkins Johnston.

The Accused testified that he is a Barrister and Solicitor with 37 years post call experience having been called to the Bar at Gray's Inn on the 2nd day of July 1972. He gave a brief overview of the various positions he has held; namely, that he is a member of the Sierra Leone Bar Association of which he was President twice; a member of Commonwealth Lawyers Association; the first Sierra Leonean to be a member of the International Bar Association of which he was an executive member; also a

member of the West African Bar Association; a Notary Public; a Commissioner of oaths; the Chairman of the Committee of Lawyers that drafted the Legal Practitioner's Act; that he was also teaching at the Sierra Leone Law School and he also taught Media Law Ethics and Law of International Property at Fourah Bay College for four and a half years without salary but that he was asked to stay away until after this case ends. He stated that being a Notary Public entails notarizing documents and affidavits especially those used outside the country; that in the case of being a Commissioner of Oaths when he appends his signature and notarizes these documents it means everything has been properly and regularly done and that it is a mark of honour for anybody to perform that role in terms of trust and confidence.

The Accused further testified that he was appointed as Ombudsman in April 2000. Prior to that he said he had been informed by the then Government of Sierra Leone that they would like to promote him to the Bench or make him the first Ombudsman of Sierra Leone. He said he opted to be the first Ombudsman because he felt it was a challenging job. He identified Exhibit C as his appointment letter and he stated that even though it was dated 21st December 2000 he actually started work on 1st April 2000. He referred to the 2nd paragraph of Exhibit C where there is reference to office accommodation and he said there was no office allocated to him and so he had to resort to using his own private office at No. 84 Dundas Street, Freetown. He said this was unlike the Human Rights Commission, the ACC and the IMC which were all provided with offices. He said he complained

about this on severally occasions verbally and in writing but they did nothing virtually. He produced and tendered a letter dated 10/5/2001 written by one Mr. Wellington who was acting as Permanent Secretary at the time he was complaining about accommodation and office space. The said letter was admitted as Exhibit EE. The Accused also tendered as Exhibit FF a letter dated 1/10/02 which he had written to the then Minister of Housing. He said it was a notorious fact that his office was the only one that was not given the seriousness that it deserved.

Various other issues which the Accused brought up in his defence can be summarized as follows:

- That the Office of the Ombudsman was not provided with space by the Government of Sierra Leone;
- That the Office was not provided with staff by the government of Sierra Leone;
- That the office was inadequately funded by the government of Sierra Leone;
- That neither PW5 nor PW6 ever complained or put any disclaimer on any financial matter;
- That he used to help both PW5 and PW6;
- That the office was never questioned by Parliament or by the Accountant General's Office;
- That there was no Permanent Secretary;
- That there was no Vote Controller;
- That PW6 left his employment in 2008;

- That he was not sworn in as Ombudsman after the first term came to an end in 2004 and that since there was a violation of the Ombudsman's Act and the Parliamentary Procedure and Approval, all acts and things done by him after that period was unconstitutional, void and of no effect.

It is my view, however, that none of these issues raised address the fundamental question of whether the accused is guilty of the offences charged. Moreover, the Court has taken judicial notice that, notwithstanding the fact that he had not been sworn in, the Accused at all material times acted as Ombudsman (including signing cheques and letters from the Office). Under cross examination the accused accepted that he was Ombudsman for the entire period. He continued to perform the functions of Ombudsman, to refer to himself as such and to answer to the title. He cannot now, out of convenience, claim not to have been Ombudsman at the material time. I find that he was at all times the Ombudsman of the Republic of Sierra Leone and I so Hold.

The Accused also tendered a number of documents namely:

- Exhibit K: The recorded interview given by Melron Nicol Wilson
- Exhibit L: Letter from Francis Gabbidon to Melron Nicol -Wilson
- Exhibit M: Eighteen Month Report – Lawyers Centre for Legal Assistance
- Exhibit N: Annual Report 2003-The Lawyers Centre for Legal Assistance.

Exhibit O: Donation to Centre from Peter Harrison

Exhibit Y: Peep Magazine dated Wednesday November 21, 2007

Exhibit Z: Handwritten Profile of C.J. Peacock.

Exhibit AA: Writ of Summons attached to letter from C.J. Peacock to Mr. Gabbidon

Exhibit BB1- BB2: Letters from C. F. Peacock dated 24th January, 2002 to the Attorney General.

Exhibit CC1-CC2: Letters from C.F. Peacock dated 27th August 2001 Re: Sale of Blue Mercedes Benz 230 to Mr. Lansana Rogers

Exhibit EE: Letter from the Ministry of Presidential Affairs to Francis Gabbidon dated 10/5/01

Exhibit FF: Letter from the Ombudsman to the Minister of Housing and Environment dated 1/10/02

Exhibit GG: Letter from the Ag. Permanent Secretary to the Secretary to the President dated 11/2/02

Exhibit HH: Letter to Mr. Francis Gabbidon From Ms Marie Dumbuya dated 20/5/08

Exhibit JJ: Letter from the Secretary to Ombudsman to the Financial Secretary dated 4/6/01

Exhibit KK1-KK2: Ombudsman Annual Reports Dated 1/1/02 and 1/1/03

Exhibit LL: Letter from Mathias Tumwesigye Director Education & Prevention of Corruption, Inspectorate of Government, Kampala, Uganda

I have perused all of them and wish to state that, for all intent and purposes, the majority of these documents were intended to show the constraints under which the Office of the Ombudsman worked. The Accused has put a lot of emphasis on Exhibit LL which is a letter dated 26th June, 2002 from a Consultant sent by the Commonwealth Secretariat to assess the office of the Ombudsman. In his closing arguments, the Accused stated that the Report of Mathias Tumwesigye clearly stated that there were two Lawyers in the staff of the Office of the Ombudsman in Sierra Leone. He further submitted that the two Lawyers referred to are Christopher Peacock and Melron Nicol Wilson and that they had to work elsewhere. In any event, none of this was put to either Mr. Nicol Wilson or Mr. Peacock. Counsel for the Prosecution has urged the Court to conclude that the contents therein of Exhibit LL could only have come from the Accused himself and is further evidence of the elaborate and expansive web he weaved in order to deprive the State and now deceive the Court.

The Accused has denied all 168 counts against him and he said he did not misappropriate public funds because he had no reason to do so. He said he paid both Mr. Nicol Wilson and Mr. Peacock for work they did for the Office of the Ombudsman. He testified that the Office of the Ombudsman started off with about 5-6 staff and then increased to about 12. He said he spoke to Mr. Nicol Wilson and Mr. Peacock about the possibility of working together with them. He also said that he enjoyed a good and excellent

relationship with both Mr. Nicol Wilson and Mr. Peacock and that they did work and co-operate together. The Accused explained that he was the Chairman of LAWCLA and if there were complaints not within the mandate of the Office of the Ombudsman they sent them to LAWCLA. He said there was no money involved in some matters but they paid Mr. Nicol Wilson for other matters but Mr. Nicol Wilson never took any cent from them and that he had told them he was doing it pro bono and that he always said the money was to be given to charities. The Accused further testified that he knows that Mr. Nicol Wilson never took the money but it was Mr. Gibril, the Accountant, who handled the issue of the payment to charities such as the Amputees and the Blind. He said the staff was paid by cash and that there were no payments by cheques except for his own salary. He stated that when all the staff had been paid Mr. Gibril would prepare a return form for the next salary payment and he would enter everybody's name and then either Mr. Gibril or himself would take it for the staff to append their signatures to show they had been paid previous salaries. He said if this is not done then the next salaries would not be paid.

It is note worthy that the accused has attempted to lay the blame at the door step of Mr. Gibril. The accused in his evidence stated that all the vouchers were prepared by Mr. Gibril and that Mr. Gibril set the salary and the reviews of each salary. I find this untrue and I so hold. For a start, the accused by his own admission stated in cross examination that Mr. Gibril worked under his direction and that he, the

accused, was the head of the office. This negates any notion put forward by the accused that offences complained of were the fault of Mr. Gibril. Indeed it makes nonsense of the claim by the accused that Mr. Gibril was responsible for setting the salary levels of Messrs Nicol Wilson and Peacock.

In the case of Mr. Peacock, the Accused said he knew Mr. Peacock for the first time in 1998 when he was his student at the Law School where he lectured him on the Law of Evidence. He stated that when he became Ombudsman he told Mr. Peacock there was provision for a Lawyer/Legal /Adviser in the Office of the Ombudsman and he asked him whether he would be interested. He said Mr. Peacock said "yes" but then told him there were difficulties because he would not like it to be made public and that the relationship should be confidential because he would not like his clients or tax people to be made aware of this. The Accused said Mr. Peacock did accept the work and that he received salaries monthly which started off with Le200,000 - Le250,000 and then increased to about Le350,000. He was shown Exhibits G1-62 and he identified them as payment vouchers. He said he had nothing to do with those vouchers; that he did not sign besides Mr. Peacock's name and that he was not the Vote Controller. Under cross examination the Accused was shown Exhibit G39 which bears the figure Le524,771 against Mr. Peacock's name and he was asked whether he stood by the amount of Le350,000 he had talked about earlier. He replied that he did not stand by that amount but he maintained that "Christopher Peacock and Melron Nicol-Wilson were '*bona fide*' employees of the Office of the Ombudsman and they were regularly paid their salaries of Le500,000.00 and Le333,333.00 respectively". The

accused accepts that the names of Mr. Nicol Wilson and Peacock were inserted as employees. He insists that they were employees and that he recruited them. It is inconceivable that either or both of these two gentlemen could have been employees of the Office of the Ombudsman from 2001 to 2007, yet no one, except the accused himself, knew that they were employees. The prosecution has submitted that this assertion by the accused is completely untrue. I am inclined to believe so and my examination of the following pieces of evidence confirms this:

- a. The evidence of PW5, 6, 7 and 8
- b. The inconsistencies contained in the interview (Exhibit A1-50)
- c. Status Report (Exhibit B1-12)

The accused called a Mr. Abdul Babatunde Gillen to give evidence on his behalf. Mr. Gillen's evidence is that he is a Civil Society activist and was part of the Budget Oversight Committee. The role of the Committee was to monitor various government projects and the government budget at the time of allocation, when Ministries, Departments and Agencies would have to justify their budgets in order to receive their allocation. The Ombudsman would attend such meetings annually and would have to justify the activities that he had stated. He would be accompanied by Mr. Gibril, the Accountant. The importance of Mr. Gillen's evidence is that he stated that there was no investigation of what was told to them. He said they depended on the documents given to them and if they were dissatisfied they would ask for more documents.

They did not seek to look beyond that which was presented to them.

Under cross examination he stated that they did spot checks during the year, but only to check that activities were being carried out as planned. In the case of the Ombudsman they visited his office to obtain more copies of his annual report and decided to check his book. He saw his staff list which contained a lot of names but could only recall Mr. Gibril and Ms Dumbuya, and he only saw a total of 4 staff in the office. They did no investigation as to how the money allocated was being spent. To my mind, this evidence shows that the accused has been presenting his inflated staff list for government allocation year after year and had been using this as a cover to perpetuate the façade that he ran an office which included Mr. Nicol Wilson and Mr. Peacock. This inflated list was a means to being allocated more money than the office needed in order that he could misappropriate and spend at his whim.

For an Accused to be convicted of an offence under section 12(1) of the Anti-Corruption Act 2000 as amended, the prosecution must prove beyond reasonable doubt that the funds were public funds, public revenue or property; that the Accused must have acted wilfully, whether by himself with or through another person and that by his actions he has deprived the Government of such funds, revenue or financial interest.

I shall now turn to examine all the elements of the offence which the Prosecution must prove.

Were the funds public funds? There is no doubt that they were. In the first place the Office of the Ombudsman is a public office as can be seen from section 2 (2) of the Ombudsman Act 1997 which states as follows: "The Office of the Ombudsman shall be a public office but shall not form part of the public service". Further that same Act in section 20 stipulates how the office is to be funded, which is by government funds. The administrative expenses of the Office of the Ombudsman including salaries, allowances, gratuities and pensions, if any, of the Ombudsman and his staff, shall be a charge on the Consolidation Fund." Also section 1 of the Anti Corruption Act 2000 as amended (the interpretation section) defines public funds as "any monies paid from the funds appropriated by Parliament from the Consolidated Fund or any fund under subsection (2) of section 111 of the Constitution." The evidence given by PW4 – Haroun Alrashid Sheriff – from the Accountant General's Department also makes it clear that the Office of the Ombudsman is and has always been fully funded by the Government of Sierra Leone. This has been proved by the State.

Therefore, it logically follows that money misappropriated is always a loss to the Government of Sierra Leone. The definition of "misappropriation" is to be read in accordance with the case of R v. Gomez (1993) 1 All ER 1. This case involved the delivery by the owner of electrical goods to a third party, paid for by stolen cheques, to the knowledge of and machinations of Gomez. It was held that "appropriation" in the circumstances of that case involves the assumption of the rights of the

owner by the Accused. It follows therefore that the wilful commission of any act which results in the owner losing funds belonging to it, amounts to misappropriation. The consent of the owner is irrelevant as was pointed out by the House of Lords in *Lawrence v. Metropolitan Police Commissioner* (1971) 2 All ER 1253.

Was the act complained of wilful? Generally, it has been held that the act which causes deprivation of funds must be wilful. In the leading case of *R.v.Sheppard (James Martin)* [1981] A.C. 394 HL, the majority held that a man "wilfully" fails to provide adequate medical attention for a child if he either (a) deliberately does so, knowing that there is some risk that the child's health may suffer unless he receives such attention; or (b) does so because he does not care whether the child may be in need of medical treatment or not. The majority equated "wilfully" with common law recklessness. Lord Keith who was in the majority had this to say:

"wilfully is a word which ordinarily carries a pejorative sense. It is used here to describe the mental element which, in addition to the fact of neglect must be proved....The primary meaning of 'wilful' is 'deliberate'."

In the 2002 Edition of Blackstone's Criminal Practice, the Learned Editors have at paragraph A2.8 described 'wilful' as "a composite word to cover both intention and a type of recklessness". It follows therefore that there must be proof that the act was deliberate. The State has submitted that there is ample proof that the acts complained of were not a mistake but systematic

acts deliberately planned and executed to deprive the Government of Sierra Leone. I agree entirely with this submission and it appears to me that the evidence of PW3 James Kamara and the Exhibits he tendered fully illustrate the deliberate acts being alleged by the Prosecution.

- a. Firstly there is the Vote Service Ledger (Exhibit E): PW5, Alieu Badara Gibril was able to shed some light on this book. It contains the amounts given by the Accountant General's Department with the signature of the accused appearing on various pages. The accused himself in his cross examination admitted the signatures to be his.
- b. Secondly, is Exhibit F which is the appointment letter purportedly given to Mr. Nicol Wilson. Mr. Nicol Wilson denied ever being given this letter. Also PW6 Ms Dumbuya had testified that she was never given a letter of appointment by the Office of the Ombudsman even though the Accused had given her letters of appointments, including hers, to type. The accused himself confirmed that both Mr. Nicol Wilson and Mr. Peacock were never given letters of appointment. This he stated in his interview (Exhibit A1-58) and in cross examination. The Court can only conclude

therefore, that Exhibit F was drafted and kept by the accused to give a semblance of legitimacy should he ever be investigated.

Was the act done by himself or through others? From the totality of the evidence adduced I am satisfied that the Prosecution has proved beyond reasonable doubt that the act was done by the accused and through others, i.e. Alleu Gibril and Marie Dumbuya, who were used as instruments to further the grand plan. In Exhibit A1-58 (the interview of the accused at question 42) the accused said "We utilized the services of Mr. Christopher Peacock who was employed by me on behalf of the Office of the Ombudsman whereby he gave legal advice or second opinion if and when necessary." In answer to question 47, the accused stated that "Mr. Melron Nicol Wilson also helped with investigations especially in complaints and because I worked with him as Chairman of the Board of Directors of LAWCLA we help each other if and when necessary....." Under cross examination of PW5, it was put to him that he, PW5, took salary every month to Messrs Peacock and Nicol Wilson and that Nicol Wilson donated it to charities. This PW5 denied in its entirety. At the end of each payment voucher is an official endorsement of the Office of the Ombudsman which was shown to the accused in his interview at question 83. Here again the

General's office of the Ministry of Finance verifying that these documents were all in order, to receive or be paid their respective salaries by the Accountant-General. The Accused further submitted that they both had an obligation to report any wrong doing, if there was one, but that they failed or refused to do so and abetted him in the said wrong doing and that they should have been charged jointly with him as conspirators. Is this an admission of guilt? I must say that I find it difficult to decipher what defence the accused has put forward. To my mind, the fact that neither PW5 nor PW6 ever complained does not mean the accused is not guilty as charged nor does that absolve the accused of his responsibilities as Ombudsman of Sierra Leone. In fact they were less likely to complain as he was their Boss and he was given the due respect as Head of Office.

Though dishonesty is not specifically stated to be an element of the offence under Section 12(1), I am of the considered opinion that it would be inconceivable to convict the Accused of this offence in the absence of proof of dishonesty. The authority here is the decision of the English Court of Appeal (Criminal Division) in the case of R.v. Ghosh (1982) 2 ALL ER 689. It was held that the test was first whether according to the ordinary standard of reasonable and honest people what was done was dishonest. "If it was not dishonest by those standards then that is the end of the matter and the prosecution fails. If it was dishonest by those standards, then the tribunal must consider whether the defendant himself must have realized that what he was

doing was by those standards dishonest. In most cases where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It is dishonest to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did."

Judging from the facts of this case the accused acted in a dishonest manner. He knew that what he was doing was wrong and indeed in his cross examination of Messrs Peacock and Nicol Wilson he was more concerned for them to accept that they were all friends and he had at one point done them favours and that now their evidence was a sign of ingratitude. He never once sought to challenge that the signatures on the paid up vouchers were those of the two witnesses as opposed to the forgery which the prosecution say it is.

On the issue of whether or not the Accused was a public officer the Prosecution submitted that it is not necessary under section 12 of the Anti Corruption Act 2000 as amended for the accused to have been a public officer at the time of the commission of the offence. Be that as it may, the prosecution contends that the accused was a public officer at the time of the commission of the offence, a fact that he himself has admitted to in the submissions made at the start of the trial on the basis that as a public officer he enjoyed immunity from prosecution by virtue of Cap.172 of the Laws of Sierra Leone 1960. If we were to look at the Interpretation Act 1971 section 4, public office has the meanings given to it by the

Constitution. Section 171 of the Constitution says that public office includes an office the emoluments attaching to which are paid directly from the Consolidated Fund or directly out of the moneys provided by Parliament. This is supported by section 20 of the Ombudsman Act aforesaid. Also evidence led in this trial by Haroun Sheriff (PW4) and the cross examination of Alieu Badara Gibril (PW5) prove that the entire budget of the office comes from the Consolidated Fund. Further a public officer is a holder of a public office, same as that contained in the Anti Corruption Act 2000. The Ombudsman is therefore a public officer as he holds a public office.

The State has submitted that the accused has told a number of untruths in this case and these should not be reduced to merely an adverse reflection of his credibility, but that these should be seen as evidence of his guilt. Although the Court ought to be reminded that people may lie to bolster up a just cause, out of shame, or out of a wish to conceal disgraceful behaviour, as per the directions in the case of R v. Lucas (1981) QB 720, 73 Cr. App. R. 159 CA these lies were deliberate and were not told for an innocent reason, but rather to evade justice. The accused continually lied in the face of overwhelming evidence to the contrary that Messrs Peacock and Nicol Wilson were members of his staff. He had forged documents to bolster that falsehood and sought to bully witnesses into accepting his falsehoods by reminding them of all the good turns he had once done for them and the friendship they had once enjoyed. Also his explanations for their inclusion in his staff

list were very fluid and shifted from employment, engagement and in his words "quasi-employee". No questions were put in cross examination to any prosecution witness to suggest that the signatures were those of Messrs Nicol Wilson and Peacock. Further there has been no evidence put before this Court to support the assertion by the accused that they were employees who were paid the monies stated in the paid-up vouchers. Judging from the totality of the evidence adduced before this Court I am of the considered view that the signatures are forgeries for which the accused is responsible and that they were devised to give an appearance of legality and proper record keeping for an illegal act. Indeed in exhibit A1-58, in answer to question 83, wherein the paid up vouchers were put to him, the accused stated that the names of all those listed on the said payment vouchers were employees employed by the office of the Ombudsman at the time. He further stated that "the monies against the names were the salaries and/allowances they were entitled to receive during the period listed in the payment voucher. All amount listed against their names were paid to them".

The entire account given by the accused is untrue. It is beyond belief that the accused would be so altruistic that he would put himself through the humiliation and expense of a serious criminal trial because he wanted to honour some agreement with a lawyer much junior to him and to whom he owes nothing. For a start the agreement was not illegal, so why was so much secrecy needed to

the point of subjecting oneself to the ordeal of a criminal trial with all its attendant risks.

Similarly, the idea of donating one's wages to charities such as Amputees and the Blind should not have posed any problems if indeed that was what transpired. Instead what the Accused wants this Court to believe is that Mr. Nicol Wilson donated his wages to worthy Causes, but has now decided to deny this. Mr. Nicol Wilson of course in evidence stated that he never received salaries nor did he donate them to any charities and further does not know Mr. Gibril who it was said delivered his salary monthly. Mr. Gibril himself denied ever taking money to deliver neither to Mr. Nicol Wilson nor of delivering money to any charity. It is worth noting that the accused had said that he would send Mr. Gibril to Mr. Nicol-Wilson each month whilst he stated in the witness box that Mr. Gibril took it there himself. This line of defence simply does not make sense. The accused himself could not produce any record to show that the monies were paid to charities and/or to whom. He could not even get the list of the charities straight. His account was vague, lacking in detail and devoid of all credibility. The accused would like the court to accept that all the witnesses of fact have all decided to come to court to lie. It is as if there is a grand conspiracy by all the witnesses to come to court and commit perjury. It is the submission of the State that none of these people had any reason to lie. They all admitted having had a good relationship with him and in some cases to have benefited from his generosity. This was something which the accused himself

managed to get out of every single witness of fact. It is therefore simply not true that they would come to court to lie. They had no reason to.

What I find overwhelming in this case is the fact that the Office of the Ombudsman had given the Accused a chance to serve the society but he squandered it by allowing himself to be swayed by greed. If protector becomes perpetrator, then who will save the system?

The Prosecution has adduced no evidence in support of the allegations contained in counts 165-168. I have therefore discountenanced these four counts and dealt only with counts 1-164. From the totality of all the evidence adduced before this Court, I am satisfied that the case against Francis A. Gabbidon has been proved beyond reasonable doubt. In the result, I hold that the Prosecution has proved its case against Francis A. Gabbidon beyond all reasonable doubt in respect of the 164 counts as charged in the Indictment. I therefore find the Accused guilty on each count from count 1 to count 164 and I convict him accordingly.

Justice Sey
9/6/09

Case Report:
Alimu Bah

THE STATE v. ALIMU BAH

THE HIGH COURT OF SIERRA LEONE
HON. JUSTICE M.M.Y. SEY
17 June 2010

Misappropriation of Donor Funds or Property– Theft as distinguished from Misappropriation by mens rea –Test for Dishonest Appropriation–Definition of Dishonesty–Definition of Appropriation–Donor instructions concerning the disposal of donor funds/property and nexus to question of ownership of donor funds/property– Dishonest appropriation as usurpation of owner’s rights by use of property in ways other than as designated by donor– The extent and nature of fiduciary’s obligations where donor instructions are present or absent– Trusteeship of donor funds/property and fiduciary duty to dispose of donor funds in manner stipulated by donor– Whether trustee is permitted any degree of personal discretion in the implementation of donor’s instructions– Whether liability deriving from method of disposal of donor funds/property turns on the existence of donor instructions as to method of disposal– Whether in the absence of donor instructions, trustee’s duty is to ensure the replaceability of the value of said funds/property– Whether a general account for all donations negates Misappropriation– Whether the setting off or square balancing of an obligation (debt) can occur in circumstances other than where parties are mutually indebted to each other- Evaluating witness credibility– Identifying inconsistencies between witnesses testimonies as lies– Principles behind method of payment of fines– Liability where Accused acts in concert with a non- Accused–Application for trial by Judge alone– Judicial lawmaking by reference to legal provisions not charged, for interpretation of analogous or identical concepts where “charging” statute does not interpret said concepts–The Anti-Corruption Act 2000 (as amended), ss. 12 &13 – The Theft Act 1968 s. 5(3);5(4) & 15–The Criminal Procedure Act 1965 s. 144(2) & 233 – The Criminal Procedure Act 1981 s. 3.

Held

The Prosecution proved its case beyond reasonable doubt that the Accused *did indeed between 3rd January to 24 January 2007* appropriate \$5200 out of \$6000 donated by CAF⁴⁹⁰ to the SLFA⁴⁹¹ and the Accused was convicted as charged. The Court took into account his mitigating factors⁴⁹² and decided not to imprison but instead to fine him Le20m to be paid immediately, *and not by instalment*. The Court chose not to exercise its discretionary power under Section 233 of the Criminal Procedure Act (CPA), No. 32 of 1965 to order payment by instalment.⁴⁹³ In default of immediate payment, the Accused was subject to imprisonment until he paid the fine.⁴⁹⁴

⁴⁹⁰ Confederation of African Football.

⁴⁹¹ Sierra Leone Football Association.

⁴⁹² The Accused pled in mitigation that he had worked assiduously for the SLFA his whole adult life; that he was responsible for his extended family; that he sought to reform himself; that he throughout the trial co-operated with the Court; that he had joined the SLFA after University and not sought another job despite its fledgling state; that he had realized his mistake and that a custodial sentence would punish his family.

⁴⁹³ The Defence applied for the Accused to be allowed to pay by instalment under section 233 of the CPA; refer to **Application of Law** below at p. 361.

⁴⁹⁴ The handwritten Sentencing Judgment p. 4, (handwritten number p. 60), states that that in default of the fine, the Accused was to be imprisoned until he paid said fine; whereas it says at p. 3, (handwritten number p. 59), that in the default of the fine, the Accused was to be imprisoned for a year.

Ratio Decidendi

The Court concurred with the Prosecution that the CAF funds were not for the indiscriminate use of the Accused and DW1⁴⁹⁵ since the SLFA had a fiduciary duty to account for the use of the CAF funds and to ensure their use in accordance with the stipulations of CAF in its letter addressed to the SLFA dated 13th December 2006.⁴⁹⁶

The Court reasoned that in determining the Accused's culpability, it was of no consequence whether his actions were in concert with DW1. What mattered was that the oral and documentary evidence indicated that the Accused *did appreciate* that he was acting in a dishonest manner. The Court found that the ordinary reasonable man would in these circumstances regard use of the funds for anything other than the designated purpose to amount to dishonest conduct and this Accused must have realized that his actions were by the standards of the ordinary reasonable man dishonest; *since the Accused himself admitted to understanding that the money was to be used in the manner stated by CAF and to be accounted for*. The Court apparently inferred that PW3⁴⁹⁷ was owed his due as the Education Officer since it stated that although the Accused and DW1 said they did not regard PW3 as the Education Officer, they nonetheless gave him allowances to attend conferences at Cairo and Tunisia *in that capacity*.⁴⁹⁸

With regard to the issue of who was actually responsible for the purchase of equipment using the CAF donations, the Accused claimed PW2 was responsible and had the relevant receipts, but PW2 testified that no office equipment was ever purchased using CAF funds. The Court accepted the testimony of PW2 in lieu of the Accused's, since PW2 was the Administrative Officer and PW2's evidence was more credible as opposed to DW1, whose evidence was that he, DW1 was hardly ever in the Country. Further, the Court could see no reason why PW2 should give adverse testimony against a person he claimed was his friend, i.e. the Accused.⁴⁹⁹

From the totality of the evidence adduced, the Court found the Accused's explanations about the use of the CAF funds to be full of inconsistencies, notably in areas also testified to by DW1. The Court identified these inconsistencies as lies told by the Accused. Even though it recognized that people may lie to bolster up a just cause, out of shame or to conceal disgraceful behaviour,⁵⁰⁰ the Court concluded that the lies told by this Accused were not motivated by an innocent reason, but were rather deliberate attempts to evade Justice. These lies therefore *evidenced the Accused's guilt*.

Summary of Facts

The Accused was charged with one count of Misappropriation of Donor Funds, under section 13 of the ACA (as amended). He was *alleged between the 13th December 2006 and 31st December 2007*⁵⁰¹ at Freetown, in his capacity as General Secretary of the SLFA, to have dishonestly appropriated \$5,200 from \$6000 given to the SLFA by CAF. The Prosecution argued that the

⁴⁹⁵ Nahim Kadi, President of SLFA.

⁴⁹⁶ Exhibit C.

⁴⁹⁷ The disputed role of Education Director was claimed by Mr. Alphan S. Koker, who testified as PW3.

⁴⁹⁸ Trial Judgment, pp. 5-6.

⁴⁹⁹ Refer to **Critique** below at pp.364-365.

⁵⁰⁰ *R v Lucas* (1981) QB 720, 73 Cr. App. R. 159 CA, see **Application of Law** below at p.360 and **Critique** at p.365.

⁵⁰¹ Trial Judgment, p.1 states temporal scope of the charges as being; 13th December 2006 and 31st December 2007, but at p. 11, the Court in reaching its conclusion, narrows down the period of commission by the Accused of the acts as during the period between 3rd January 2007 and 24th January 2007.

Accused and the SLFA were legally obliged to use the funds donated by CAF for the purposes CAF articulated; \$3000 for the purchase of office equipment (LCD's, laptops, beamers, overhead projectors, CD's, DVD's), and \$3000 to cover 50% of the Education Director's⁵⁰² salary from 1st July 2006 to 30 June 2007.⁵⁰³ The Prosecution called 4 witnesses and admitted 8 exhibits.⁵⁰⁴

The Accused testifying for the Defence, said that as the SLFA's General Secretary, he would personally supervise the secretariat, receive and send correspondences, and sit as an ex-officio member of executive meetings where he also served as secretary. He said that as a signatory to the SLFA's Forex⁵⁰⁵ account at the SLCB,⁵⁰⁶ he could authorize the withdrawal of funds. PW2⁵⁰⁷ confirmed that in order to withdraw funds, 2 of the 3 signatories to the SLFA's SLCB Account had to sign a written request. DW1 confirmed that the SLFA held a single Forex account for all donations; FIFA, CAF, other philanthropic organizations. The Accused confirmed receipt of the letter and cheque for \$6000⁵⁰⁸ from CAF dated 13th December 2006, but stressed that he was not responsible for the procurement of equipment for the SLFA. The Accused said that it was unrealistic to apportion \$3000 for the items stated in Exhibit C, which is why he and DW1 jointly authorized withdrawal of \$4000 on 3 January 2007, out of which they used \$3,500 to purchase equipment. DW1 confirmed that he and the Accused jointly authorized the withdrawal of \$4000 from the SLFA's account, but DW1 in contrast to the Accused, said that it was \$3,988 that was used to purchase equipment and that he, DW1 was in the UK when this equipment was purchased, but on his return a month and a half later, inspected them. The Accused on the other hand maintained that the equipment was purchased much later.⁵⁰⁹ The Accused said only a laptop and an overhead projector were purchased by the Finance Officer, whereas DW1 included in addition to the aforementioned, a camcorder and a camera. PW2 said he was instructed by the Accused to make withdrawals (indicating Exhibits A1, A2, and A3), which he gave to the Accused, but which were not used to purchase office equipment. The Accused denied that he personally received \$4000 from PW2, saying no recorded proof of such payment exists. PW4⁵¹⁰ in response to whether there had been an audit of the SLFA said one was not required, as the affair concerned only the withdrawal and use of funds by the Accused and DW1. PW4 said that although the Accused stated in his interview that the money was used to purchase equipment, the Accused could not furnish proof thereof.

⁵⁰² The disputed role of Education Director was claimed by Mr. Alphan S. Koker, who testified as PW3.

⁵⁰³ These instructions were set out in a letter admitted as Exhibit C.

⁵⁰⁴ Withdrawal letter dated 26 January 2007, admitted as Exhibit A1; Withdrawal letter dated 15 January 2007, admitted as Exhibit A2; Withdrawal letter dated 3 January 2007, admitted as Exhibit A3; Bank Statement dated 4th March 2009, admitted as Exhibit B; Letter from CAF dated 13th December 2006, admitted as Exhibit C; Letter captioned "Education Officer" from SLFA, admitted as Exhibit D; Caution statement of the Accused, admitted as Exhibit E; Letter dated 27th May 2008 from Alphan Koker and addressed to the SLFA Secretary General, admitted as Exhibit F.

⁵⁰⁵ Otherwise known as a Foreign Currency or Foreign Exchange Account.

⁵⁰⁶ Sierra Leone Commercial Bank.

⁵⁰⁷ Abubakarr Kabba, Administrative Officer of SLFA.

⁵⁰⁸ Trial Judgment, p.4; cross-examination. Letter and cheque from CAF dated 13th December 2006 which constitute Exhibit C.

⁵⁰⁹ Trial Judgment at p.5, where the Court notes this inconsistency: the Accused's own account of the precise date or even period of purchase is not evident.

⁵¹⁰ Bashiru Konneh, ACC Investigating Officer who recorded Exhibit E. Trial Judgment p. 3; cross-examination.

PW3 spoke of receiving \$500 and \$300 for his Cairo and Tunisia trips respectively, but never receiving his pay as an Education Officer, which prompted him on his return from Cairo to confront the Accused, who simply indicated they would have a later discussion. The Accused testified that although PW3 attended 2 conferences in Cairo and Tunisia, he was never actually employed as an Education Officer. DW1 conceded that PW3 went to Cairo and Tunisia as an Education Officer, but contradictorily maintained that PW3 could not be paid as he did not do any work for SLFA⁵¹¹. The Court states that the Accused contradicted himself by stating that \$500 was taken from the \$4000 withdrawn, but later said that the \$500 was taken from the SLFA President himself to pre-finance PW3's trip.⁵¹²

DW1 testified that the Accused emailed him to say he wanted to travel to Sudan for 14 days visit and wanted \$2000 for his per diem, so that on 24 January 2007, \$2000 was withdrawn and used by the Accused as per diem for his trip to Sudan.⁵¹³ DW1 said that on a trip to Cairo, he agreed with CAF that this \$2000 would be set off against any further funds CAF intended to donate for an Education Officer.⁵¹⁴ This was because CAF had stated in Exhibit C that it would send SLFA, the remaining \$3000 for the outstanding 50% of the Education Director's salary at the beginning of 2007, on presentation of SLFA's accounting records concerning the use of the initial donation. However, in clear contrast to DW1's evidence, the letter signed by the Accused and DW1 authorizing the withdrawal of the \$2000, stated it was for the "Celebration of the 50th Anniversary of CAF", and not specifically for a Sudan trip.⁵¹⁵

The Prosecution demonstrated the accounts activity to implicate the Accused in the processing of the donation. It showed how the statement of the SLFA's Forex account⁵¹⁶ showed that it initially had a balance of \$1,991.39 and how on 3rd January 2007, \$6000 was paid into the account, only for

⁵¹¹ Trial Judgment at p.4; cross-examination. It is possible what DW1 meant by this is that PW3 did not do any other work for the SLFA, i.e. apart from the conferences.

⁵¹² Trial Judgment, at p.5 where the Court notes this inconsistency

⁵¹³ Trial Judgment, pp. 5 and 7.

⁵¹⁴ It is unclear what this means, since an amount can only be "set off" against another, where the concerned parties are indebted to each other and can have their respective debts owed to each other cancel themselves out. One possible explanation is that if CAF's intended future donation for the Education Officer is treated as a debt owed to SLFA, DW1 and other members of the SLFA executive could declare that they wish to forego receiving it. Another possible meaning would be, that the \$2000 used as per diem for the Accused's Cairo trip, was treated by DW1 and the Accused as a warranted expense to be covered by CAF, so that it would be deducted from the projected donation of \$3000; in effect meaning that, the \$2000 was a debt owed to SLFA by CAF and which would be "set off", against any further incoming revenue from CAF. This does not resolve the issue of the debt owed to the Education Officer himself, and there can only be true "setting off" of this debt owed to the Education Officer himself, where SLFA itself paid directly in full monies owed to the Education Officer.

⁵¹⁵ Exhibit A1. There is some discrepancy within the judgment concerning the date of withdrawal of the \$2000, possibly a typographical error; at Trial Judgment p. 2, Exhibit A1, the Withdrawal letter is dated 26th January; at Trial Judgment p. 5, DW1's testimony puts the date of withdrawal of the \$2000 as 24th January 2007; at Trial Judgment p. 6, the Court confirms that Exhibit A1 did indeed concern the withdrawal of \$2000 and that the purpose behind its withdrawal was set out in Exhibit A1 as being for the "Celebration of the 50th Anniversary of CAF." At Trial Judgment, pp. 7 and 11 the dates of the 2 concerned withdrawals are set out as the 3rd and 24th January 2007, thereby rendering it probable that the single reference to 26th January 2007 at Trial Judgment, p 2 is a printing error. However note also: "The CAF has announced that it will use all four of its four founder countries to mark the milestone, hosting matches in Egypt and Ethiopia and discussions in South Africa and Sudan"; <http://www.fifa.com/aboutfifa/organisation/news/newsid=111384/index.html>

⁵¹⁶ Exhibit B.

the withdrawal of \$4000 to be authorized by the Accused and DW1 on that same day. The Prosecution submitted that on 16 January 2007, \$800 was withdrawn for administrative expenses, that on 24 January 2007, a further \$2000 was withdrawn and that there were also bank charges for 3 January 2007 to 24 January 2007,⁵¹⁷ leaving the balance at \$1050.39.⁵¹⁸ The Prosecution presented all these transactions, that is, the original balance, the donation and subsequent withdrawals to show that a sum amounting to the entire donation had been withdrawn the 24th January 2007 for use in ways other than its intended purpose; and thereby to show that there was dishonest appropriation. This presentation of deductions aimed to show how the current bank balance came to be arrived at, taking into account the deduction of bank charges.

Notes

Theft consists of five elements; i.) a dishonest ii.) appropriation iii.) of property iv.) belonging to another v.) with the intention of permanently depriving the owner of it; *Lawrence v Metropolitan Police Commissioner* (1972) AC 626. Property is defined in section 4 of the Thefts Act 1968,⁵¹⁹ as including money and all other property real or personal, including things in action and other tangible property. Under section 2 (1) of the TA, an Accused is not be regarded as dishonestly appropriating property where he appropriates the property in the belief that he has a right in law to deprive the other of it, on behalf of himself or a third person.

Section 5 (1) of the TA says that property shall be regarded as “belonging” to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest). This effectively distinguishes legal title strictly speaking from mere equitable interest. Hence, trust property “belongs” to the trustee who has legal title to it and also to “any person having a right to enforce the trust” that is any beneficiary of the Trust; *Blackstone’s*, p. 274. Section 5 (2) the TA states that if the property is subject to a trust, any person having a right to enforce the trust, shall be regarded as one to whom it belongs, *although the determination of property ownership within a trust can be drawn more widely than this*. Section 5 (2) also states that any intention to defeat the trust shall be regarded as an intention to deprive the relevant person of their propriety right. A trustee who appropriates trust property should be taken as acting with the intention of defeating the trust, although the requirement concerning “permanently” would still need to be established; *Blackstone’s* pp. 274 & 296.

When section 5 (3) refers to “property belonging to the other”, that “other” may be a corporation; *A-G’s Ref (No. 2 of 1982)* (1984) QB 624. The obligation in section 5 (3) for the receiver of the property to retain and deal with it, or its proceeds, in a particular way must be a legal one, not just a moral or social obligation; *Hall* (1973) QB 126. The obligation must arise independently of section 5 (3), since it is not the later that creates such obligations and whether such an obligation

⁵¹⁷ Although the Judgment does not state this, as per a computation of the transactions made known by the Prosecution, such bank charges would appear to amount to \$ 141.0¢.

⁵¹⁸ Calculations indicate that, unless other withdrawals were made that are not indicated, such bank charges should in view of all the transactions mentioned above, amount to \$141.00, in order for the final bank balance of \$1.050.39 to be arrived at. It is unclear why, although the Prosecution demonstrates the withdrawal attributable to the Accused of two separate sums of \$4000 and \$2000, it only alleges in the charges against the Accused that he misappropriated a sum of \$5200 out the total donation of \$6000; on this point refer to **Critique** at p.366.

⁵¹⁹ Henceforth referred to as the TA.

arises is a question of fact; *Floyd v DPP* (2000) Crim LR 411. **Property subject to a constructive trust under section 5 (3) does not ‘belong’ for the purposes of the TA 1968 to the person for whose benefit the trust was imposed; A-G’s Ref (No. 1 of 1985) (1986) QB 491. Where a person receives money for onward transmission, the theft can be committed as against the donors but not against the beneficiaries; Dyke (2002) 1 Cr App R 404.** “It is not necessary in order to demonstrate that property is received on account of another that that other has a legal or equitable interest in the property” since such an obligation could be founded in contractual obligations inter partes which would confer a benefit on a third party; *Blackstone’s*, pp.278-279. The Accused must appreciate the necessary facts which, as a matter of law, amount to an obligation; *Dubar* (1994) 1 WLR 1484. Whether an obligation is sufficient to satisfy section 5 (3) depends on the facts of the case since a legal obligation arises only in certain circumstances and such circumstances cannot be known until the facts have been established; *Mainwaring* (1981) 74 Cr App R 99. An equitable proprietary interest may be retained where the criteria for the application of section 5 (4) are satisfied, that is, money is paid over on the basis of a mistake, *Blackstone’s*, p. 275. Section 5 (4) of the TA 1968 provides that “an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property/proceeds.” The issue of the “permanence” of this intention would still need to be established, *Blackstone’s* p. 296.

Consent to or authorization by the owner of the taking is irrelevant, with regard to whether there has been an appropriation; *Lawrence*; *R v. Gomez* (1993) A.C. 442. Seeking to identify the exercise of a right/s **adverse** to the owner, in order to establish appropriation is no longer good law; *Blackstone’s*, p. 281. It is possible for a person having a proprietary interest to steal a property, since several persons may share proprietary interests; *Bonner* (1970) 1 WLR 838.

A bank account (i.e. the debt owed by the bank to the account holder) belongs to the customer; *Kohn* (1979) 69 Cr App R 395. When a thing in action is created by the writing of a cheque, the only person to whom it can belong is the payee, so that **he cannot steal a cheque** written in his favor; *Davies* (1988) 88 Cr App R 347. Where the Accused uses a cheque to himself, to acquire another chose in action, i.e. the value of the cheque/part of the money in the account, the act of appropriation is the reduction of the property; *Blackstone’s*, page 276. The act of appropriation can be the writing of a cheque as an assumption of one of the rights of the owner of the chose in action, i.e. the value of the cheque; *Gomez OR*, the presentation of the cheque to a Bank, with the act of Theft complete on the debiting of the account; *Kohn* (1979) 69 Cr App. **Note** the view that the act of signing the cheque is an assumption of the owner’s right as against the cheque, while presenting the cheque for payment is an assumption of the right to the property/chose in action, i.e. the debt from the Bank; *Ngan* (1998) 1 Cr App R 331.

Section 6 (1) states; “A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it, **if his intention is to treat the thing as his own to dispose of regardless of the other’s rights**; and a borrowing or lending of it may amount to so treating it if, **but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.**” Section 6 means that there are circumstances where a defendant is deemed to have the intention permanently to deprive, **even though he may intend the owner to eventually get back the object which has been taken**; *Lloyd* (1985) QB 829. “Borrowing” has been

used to mean, the non-consensual assumption of possession coupled with an intention to ultimately restore the property; this meaning has been placed on a par with permanent deprivation; *Coffey* (1987) Crim LR 498. It is possible for someone who claims to be a “borrower” to have no intention of returning the objects taken; *Velumyl* (1989) Crim LR 299. Intending the period of detention to be so long as to amount to an outright taking can amount to an intention to deprive permanently; this means that almost all if not all of the virtue in the property must have gone, by the end the relevant period; *Coffey* (1987) Crim LR 498. This is confirmed by the statement that where the object is returned after all ‘its useful qualities have been exhausted’, there may be an intention to permanently deprive; *Downes* (1983) 77 Cr App 260. A person may be guilty of dishonesty even though he is willing to pay back, although this is ultimately a question of fact; *Boggeln v Williams* (1978) 1 WLR 873.

Cases referred to in Judgment

R v Lucas (1981) QB 720, 73 Cr. App. R. 159.
Woolmington v. DPP (1935) AC 462 HL (E).
Lewis v Lethbridge (1987) Crim LR 59.
Hall (1973) QB 126.
R v. Klineberg (1998) The Times, 19 November 1998.
R v Wain (1995) 2 Cr App Rep 660.
Davidge v Bunnnett (1984) Crim LR 297.
DPP v. Huskinson (1988) Crim LR 620.
R v Gilks (1972) 56 Cr. App. R. 734.
R v Morris, Anderton v Burnside [1984] AC 320.
R v. Ghosh [1982] QB 1053.

Application of Law

The Court noted the difference between the construction of the offence of misappropriating public funds or revenue under Section 12 of the ACA 2000 (as amended) and Section 13 of the same act. It clarified that Section 13, which was charged in this instance, had as its subject, donor funds. Section 13 required that there be an appropriation, which is undertaken dishonestly and that these two elements be proven beyond reasonable doubt. The Court went on to state section 13: “Any person who, being a member or an Officer or otherwise in the management of any organization which is a public body, dishonestly appropriates 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, is guilty of an offence.”

The Court assessed the Prosecution’s submission that a charge based upon section 13 required that the donation be withdrawn in full within the indictment period and that the use of the donation for purposes other than what it was intended for, constituted dishonest appropriation.

The Court also assessed the Defence’s arguments that there could be no appropriation of \$5200 from the CAF donation by the Accused since the Prosecution had failed to show that the Accused had assumed the ownership rights of the SLFA over these funds and failed to demonstrate the manner in which the Accused had assumed such rights. In support of this argument, it highlighted the fact there was clear evidence that the SLFA had a single forex account for the remittances of donations in general and that it was from this account that the SLFA would withdraw funds for its

projects. It also stressed that there had been no professional audit which could furnish proof that the Accused had assumed such ownership rights or which even determined his “culpability”.⁵²⁰ The Defence argued that persons having the legitimate authority were entitled to “retain” the funds in question.⁵²¹ The Accused had always exercised legitimate authority since he had always acted on the directions of the SLFA Executive, which is why the withdrawal letters had the required signatures – they were endorsed by the SLFA President.⁵²² The Defence argued therefore, that the Accused had not proved its case beyond reasonable doubt, the relevant standard of the Prosecution’s burden of proof as set out in *Woolmington v. DPP* (1932) AC 462 (HL).

In support of its arguments, the Defence cited the principle approved in the case of *Lewis v Lethbridge* (1987) Crim LR 59; “*A Defendant need not have been under an obligation to deal with the particular monies or property handed over . . . it is sufficient that he is under an obligation to keep in existence a fund equivalent to that which he has received.*”⁵²³ The Defence also cited *Hall* (1973) QB 126 and *R v. Klineberg* (1998) The Times, 19 November 1998⁵²⁴ as supporting authorities. The Court overtly diverged from the Defence’s viewpoint on *Lewis*, choosing instead to rely on *R v Wain* (1995) 2 Cr App Rep 660, a case which reaffirmed *Davidge v Bunnnett* (1984) Crim LR 297 and departed from the Court’s approach in *Lewis*. In *Wain*, the Court of Appeal held that the Defendant had appropriated property belonging to another, by paying money he had raised for an organization which distributed money among charities, into a special bank account and then, with the consent of the distributing organization,⁵²⁵ paying that money into his own bank account. The jury found that the Defendant was the trustee of the money collected, which meant that he had received it subject to an obligation to deal with it in a particular way and retain its proceeds. This would mean handing the monies over to the company and setting up bank accounts for its proceeds.⁵²⁶

⁵²⁰ Presumably for the loss/appropriation of that sum; also on this point refer to **Critique** below at p.365.

⁵²¹ Trial Judgment p. 8, where the word used is “retain”, although in these circumstances, it would seem Defence counsel meant “use” or “withdraw”.

⁵²² DW1.

⁵²³ It is not evident from the Trial Judgment, but, the quotations appear to be intended by the Defence to mean that, where donations of the sort are made, that liability can only stem from circumstances where the Defendant fails to keep in existence a fund equivalent to that which he received, and that liability does not attach to the Defendants not dealing as stipulated with the particular monies. It should be noted that only excerpts of the principle are cited, which might affect its meaning. If this is the meaning intended by the Defence, the Defence would be suggesting that this Defendant could not be liable since he could simply have reimbursed the account with a sum equivalent to that of the used monies. This interpretation although strikingly unusual, appears to be the only possible reading of the excerpts in a light that would be beneficial to the Defence. It is arguable that the quotation as it appears here would seem to work better in the interests of the Prosecution, since it simply attempts to pinpoint the starting point for liability, hence the use of the words “need not”, signifying that liability can be imposed even before getting to the stage where it would be necessary to assess whether or not there were obligations regarding the manner of disposal of the funds. In that sense therefore the excerpts simply establish the point at which the potential for liability begins to come alive. For a more thorough discussion of the implications attaching to *Lewis v Lethbridge* (1987) Crim LR 59, refer to **Critique** below at pp.360-364.

⁵²⁴ Trial Judgment, p.8, states that these cases were cited by Defence Counsel from Blackstone’s Criminal Practice, 1999 at page 243.

⁵²⁵ As opposed to the consent of the donors that is.

⁵²⁶ As per the principles articulated, this would mean that Wain (the Defendant) should therefore not have held on to the original sum raised, but rather have paid it to the organization for which he raised it, and if there were any additional proceeds from the original amount, have set up a special account for such proceeds in the name of or for the benefit of the organization. This interpretation would be in line with general principles of fiduciary responsibility, i.e.

The Court then deeming it necessary to address the definitions of appropriation and dishonesty refers to *DPP v. Huskinson* (1988) Crim LR 620. What is cited from that decision are the legal provisions founding the charges i.e. Section 5(3) of the Theft Act 1968, the terms of which do describe the circumstances of this case, but do not form part of the charges here and do not as a matter of fact concern “dishonest appropriation.” Section 5 (3) appears to have been cited as a starting point for establishing a concept of ownership of or title to property, where there may be a trustee position/relationship and where the property is not the subject of a commercial transaction but is nonetheless the subject of some interpersonal exchange. It is perhaps to better illustrate these types of situations, that Section 5(3) is quoted: “Where a person receives property from or on account of another and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to another.”⁵²⁷

The Court then refers to *R v Gilks* (1972) 56 Cr. App. R. 734 which again refers to Section 5 of the Theft Act of 1968, although with regard to *Gilks* the Court’s focus is on subsection 4 instead of subsection 3. The Court does not reproduce section 5(4), although it is here reproduced; “Where a person gets property by another’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation, the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.” The Court does however state that *Gilks* is authority in support of the principle that the obligation referred to in Section 5 (4) of the Act is a legal and not a moral or social obligation. By referring to section 5 (4), the Court reinforces the notion that the Accused was under an obligation to restore property, which may have “mistakenly” come into his possession, thereby euphemizing and conceptualizing the misuse of said property (i.e. “the use of said property for purposes other than those for which it was intended”), as akin to its mistaken transfer or receipt.⁵²⁸ Section 5 (4) therefore defines intention to deprive, as intention to not make restoration.

With regards to the definition of appropriation, the Court referred to the dicta of Lord Roskill in *R v Morris, Anderton v Burnside* [1984] AC 320, where both Accused were convicted for switching price labels of items in a supermarket with the intention of paying on the basis of the lower price labels they had affixed. Lord Roskill stated that switching price labels amounted to appropriation because it was an assumption by the Defendant of the owner’s right to determine what price the

if the fiduciary makes a profit, by virtue of his role as fiduciary for the principal, then the fiduciary must report the profit to the principal and only with the consent of the principal, may the fiduciary keep the benefit. Where the fiduciary does not so consent, the profit is held by the fiduciary on constructive trust for the principal, i.e. deemed by the court to be a trust.

⁵²⁷ Refer to **Critique** below at pp. 363-364 for a discussion of Trustee and Fiduciary liability and the Trustee relationship as applied to the facts in this instance.

⁵²⁸ Although this does underscore the obligation to restore property belonging to another, it does appear far-fetched to liken withdrawal authorized by the Accused and the Accused’s misuse of another’s property, to a situation where the Accused would have received property belonging to another, due to someone else’s mistake. This is problematic only in so far as, it delimits the Accused’s obligation and hence ensuing liability rather narrowly, that is, if we are to stay true to the comparison, the Accused’s liability arising from misuse ends up being defined limitedly, as arising simply from a failure to restore. On this point, refer to **Critique** below at pp. 362-363.

*goods were to be sold at.*⁵²⁹ In other words, appropriation was “any assumption of **any** right of an owner which amounted to adverse interference with, or usurpation of, those rights.” The Court states obiter, that if such an act of appropriation were accompanied by the relevant mens rea, the combination would amount to the legal prescriptions for theft. The Court does not expressly state what the requisite mens rea for Theft would be, but *what it is saying is that* as per the Theft Act, the intention to permanently deprive an owner of her property in combination with an act of dishonest appropriation on the aforementioned terms, would amount to an act of theft.⁵³⁰

With regards to the definition of dishonesty, the Court looked to the test set out in *R v. Ghosh* [1982] QB 1053, where the defendant argued that he had not acted dishonestly by claiming fees in respect of a surgical procedure he had not carried out, since the same sum was legitimately payable to him for consultation fees. At trial, the Judge directed the Jury to apply their own standards, resulting in a conviction under section 15 of the Theft Act 1968,⁵³¹ following which an appeal was lodged by the Accused to be ultimately dismissed by the Court of Appeal. The Court relies on the Court of Appeal’s decision in *Ghosh*, referring to Lord Lane CJ’s test for dishonesty as that of the ordinary standards of reasonable and honest people and the Defendant’s realization that his conduct was dishonest by those standards,⁵³² noting that attempts to morally justify his conduct could not serve as a Defence. Clearly, the test for dishonesty has both subjective and objective limbs. The Court in *Alimu Bah*, sought therefore to apply this standard in light of section 144(2) of the Sierra Leone Criminal Procedure Act, No. 32 of 1965 as repealed and replaced by section 3 of the Criminal Procedure (Amendment) Act, No. 11 of 1981, by virtue of which the trial was adjudicated by a Judge and not by Judge and Jury.

Section 144(2) of the Criminal Procedure Act, No. 32 of 1965 states that; “*Notwithstanding anything contained in section 143, in any case where a person is charged at any sessions of the Supreme Court with a criminal offence not punishable by death, the Attorney-General, if he is of the opinion that the general interest of justice would be served thereby, may make an application to the Court for an order, which shall be made as of course, that any such person or persons shall be tried by such Court with the aid of assessors, or by a Judge alone, instead of by a Judge and jury.*”⁵³³

Section 3 of the Criminal Procedure (Amendment) Act, No. 11 of 1981 entitled Repeal and Replacement of Section 144 (2) of Act No. 32 of 1965 states that: “*Subsection 2 of Section 144 of the principal Act is hereby repealed and replaced by the following new subsection: — (2) Notwithstanding anything contained in Section 143, in any case where a person is charged at any sessions of the High Court with a criminal offence not punishable by death the Attorney-General and Minister of Justice, or Director of Public Prosecutions, if he is of the opinion that the general interest of justice would be served thereby, may make an application to the Court for an order,*

⁵²⁹ The Accused, Morris replaced the correct labels of 2 items with lower priced labels and paid based on the latter, prompting his arrest. Burnside did the same with a joint of meat, but was arrested before he got to the checkout.

⁵³⁰ See UK Theft Act 1968, section 1 (1) entitled; “Basic definition of theft” and section 6 entitled; “With the intention of permanently depriving the other of it”.

⁵³¹ UK Theft Act 1968, section 15 entitled; “Obtaining pecuniary advantage by deception.”

⁵³² *R v. Ghosh* [1982] QB 1053, p 1063: The test is also phrased as determining whether the act was one that “ordinary decent people” would consider to be dishonest.

⁵³³ Note that the Trial Judgment itself does not incorporate this quotation.

which shall be made as of course, that any such person or persons shall be tried by the Court with the aid of assessors, or by a Judge alone, instead of by a Judge and Jury.”

Section 3 of Act No. 11 allows for the relevant application to be made not just by the AG, but also by the Director of Public Prosecutions, in other words the concerned Prosecutor.

Section 233 (1) of the CPA 1965 empowers the Court to make an order for payment of money by a convicted person, a.) for a fine, penalty or the expenses of his prosecution; or b.) by way of compensation or otherwise under sections 54 or 60. *The Court may either order immediate payment, or allow time for payment, or **direct payment to be made by instalments.** If such money be directed to be paid by instalments and default is made in the payment of any one instalment, all instalments then remaining unpaid shall become immediately due.* The Court chose not to exercise this power in spite of a Defence application made under this section.

Critique

Lewis v Lethbridge concerned the construction of section 5(3) of the Theft Act 1968. In *Lewis*, the Defendant held on to or failed to account for, donations he had raised for a Charity, in spite of repeated attempts by that Charity to secure the money. The facts are comparable to *Alimu Bah*, which also involve a donation held in trust by the Defendant for an organization and an allegation of appropriation against the Defendant. *Lewis* was convicted of theft by the Magistrates' Court, but appealed successfully to the Divisional Court, on the basis that the Prosecution had not proven the fact of appropriation, that is, that he had usurped the rights of the owner over this property/sum, or adversely interfered with those rights.

The *Lewis* appeal in effect treated section 5 (3) as creating a trusteeship whereby property may pass through the hands or be subject to the control of someone to whom it does not belong, circumstances which were present in *Lewis*. Section 5 (3) created a trusteeship since it defined when property in the control of the Defendant, could be said to belong to someone else, that is; where property belonging to another, had been received under an obligation, for it to be dealt with in a particular way. *Lewis* like *Bah* had received cash on account of another, but unlike *Bah*'s situation, "Lanz Charity" had no rules requiring *Lewis* to hand over the actual notes/coins received, or alternatively, to maintain a fund consisting of that money in cash or any other form representing that money. Therefore, in *Lewis* unlike *Bah* there was no obligation to deal with the monies in a particular way, so that provided he handed over an equivalent amount to the charity in due course.⁵³⁴ *Lewis* could do whatever he liked with the money. This approach was later disapproved of in *R v. Wain* (1995) 2 Cr App Rep 660. The principle deducible from these cases is simply a reiteration of what is stated in section 5 (3); that where a person receives property from, or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other. However, in *Lewis*, it could be seen that even though *it was held that* there were no attached obligations regarding treatment/disposal, so that the terms of section 5 (3) did not apply, the property was still treated as not belonging to the Defendant in whose possession it was, that is, it was still regarded as property belonging to another since, it was given to him only in the expectation that it would be passed on, hence the obligation to provide an equivalent amount to the charity in due course. Therefore, it becomes evident that even outside of the terms in section 5(3), the property may nonetheless be regarded as belonging to another, i.e. as being held in Trust,⁵³⁵ although where the terms of section 5 (3) do not apply, there is more laxity with regards to what the Defendant may legitimately do with, or how he may treat said property.

Since there is no real difference between the expectations of the donors in *Lewis* and in *Wain*, i.e. that the donations were made in the expectation that they would be passed on by either Accused, *Wain* can only be described as diverging from *Lewis*. However, *Lewis* and *Wain* would only be described as consistently correlating case law where, in *Wain*, the donors' expectations were expressed with more specificity concerning the precise course of action of the Accused, for

⁵³⁴ Geary R, (1998), Essential Criminal Law, Cavendish Publishing Limited, p. 96.

⁵³⁵ It is not clear from the *Bah* judgment that, in *Lewis* a "Trust" per se, was held to exist by the Court, although for practical purposes, it could be said that the obligation to "hand over the equivalent amount in due course", meant that a Trust was in existence.

example in a written document, or where an instrument pertaining to the distributing organization clearly expressed the Accused's course of action pertaining to monies received on behalf of the distributing organization.⁵³⁶

At any rate, when the principle concerning "obligations to treat property received from another", is applied here to *Bah*, it is clear that the CAF donations to the SLFA were accompanied by instructions from CAF as to how they were to be used. Further, the funds were under the control of the three signatories to the SLFA account held at the SLCB account - the funds were in their hands so to speak - in effect creating a trust where the signatories to the account served the role of trustee. Attached to the trustee role of the signatories were performance obligations, with regard to SLFA. The SLFA was therefore, the beneficiary of this trust. This is the sort of trustee relationship that is crafted from the facts in *Bah*, when the *Lewis* principles, derived from an application of section 5(3) of the Theft Act 1968 are transposed. It is submitted that in the interests of clarity, an express application of the principles of *Lewis* to *Bah*, should have been undertaken by the Court, since it was the Defence itself in *Bah* that sought to rely on *Lewis*, the derivative principles of which when applied to the facts in *Bah*, did not at all support, but rather directly countered its case and instead supported the Prosecution's arguments.

The Defence quoted what appears to be an excerpt from *Lewis and Lethbridge* stating; "a Defendant need not have been under an obligation to deal with the particular monies or property handed over" and that "it is sufficient that he is under an obligation to keep in existence a fund equivalent to that which he has received."⁵³⁷ There has already been a brief foray into the possible interpretations of these quotations, that is to say, on one hand the meaning as construed by the Defence and on the other, the meaning which, in light of the stance of the Appeal Judgment in *Lewis* on "obligations attaching to the use of property", would appear to more plausibly be, the meaning actually intended by the Court of Appeal.⁵³⁸ This latter meaning, reiterated here, is that there can be liability even where no obligations attach, so that such liability would be incurred simply by 1.) a failure to keep in existence funds equivalent to the received funds or 2.) a failure to provide the equivalent value of the received funds/ property. This threshold for incurring liability indicates that even in the absence of stipulated obligations, the possession or control of funds which are received with the expectation that they will be transferred or disposed of in a manner beneficial to a third party, is necessarily accompanied by a minimum degree of obligations needing no articulation.⁵³⁹

In *Bah*, the signatories to the SLFA account fell within the commonly accepted definition of Trustee since they were persons occupying a position of trust in that they held or managed the property of another, (i.e. CAF, although title to the funds is also transferred), for the benefit of a third party called the beneficiary, i.e. the SLFA, who had been designated by the (initial) owner of the property. As the actions of the trustee should only ever be in the interests of the beneficiary/beneficiaries, the relationship is characterized by standards regulating the actions of

⁵³⁶ These details are not perceptible from the *Bah* judgment.

⁵³⁷ Ibid.

⁵³⁸ Refer to FN 523, under the **Application of Law** section above.

⁵³⁹ In other words, even where there are no "obligations attaching to the use of property", the Accused / recipient of funds donated not for his own personal benefit, is still "under an obligation to keep in existence a fund equivalent to that which he has received."

the trustee. The expressed terms of the trust instrument can constitute such regulatory standards. In addition to implementing or observing these terms, the trustee must account for his actions and keep beneficiaries informed. In Bah, the CAF letter containing its instructions, is the instrument that creates and sets out the terms of the trust. In Equity, a trustee may be liable for damages where she does not make trust-related decisions with the beneficiary's interests in mind.⁵⁴⁰

Since a trustee-beneficiary relationship is characterized by confidence or trust, the trustee is said to have a fiduciary duty,⁵⁴¹ stemming from the Latin term for trust which is *fiducia*. However, fiduciary relationships are more widely drawn than trustee-beneficiary relationships, since they exist more generally where one party occupies a position of vulnerability, and relies on the other in confidence, good faith, and trust.⁵⁴² A fiduciary duty exists in equity and requires a higher standard of care than the comparable tortious duty of care at common law. A fiduciary is required to act at all times for the sole benefit and best interest of the one who trusts, and must not put his personal interests before this duty or profit from his position as a fiduciary, unless the principal consents.⁵⁴³ It is said the fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where his fiduciary duty conflicts with another fiduciary duty,⁵⁴⁴ and a duty not to profit from his fiduciary position without knowledge and consent of the other party.

With regards to the Court's statement that it could see no reason why PW2 should give adverse testimony against a person he claimed was his friend, i.e. the Accused, it is submitted that, statements forming part of the Court's ratio, when weighing on the evaluation of the evidence, and

⁵⁴⁰ Historically, Equity referred to a set of principles supplementing strict rules of law which would otherwise operate harshly. As such Equity mitigated the rigor of common law, allowing more discretion based, natural law guided decision making. Equity has now evolved into a system of precedents comparable to common-law, and having its own substantive and procedural rules, so that is not an arbitrary exercise of conscience based on ethical principles. In the event of conflict, equity prevails over Common Law. The Sierra Leonean formal legal system is derived from the Common Law and Equity of England and therefore incorporates the same doctrines and principles. In English Common Law tradition, it is from Equity rather than Common Law that a trustee's duty of care stems. Therefore this duty of care is defined by equitable obligations to use the object of the trust in a manner beneficial to beneficiaries, without competing self-interests of the fiduciaries: *Phipps v Boardman* [1967] 2 AC 46. In contrast, a Common Law duty would involve balancing the trustee's interests with the beneficiaries' interests. Where a trustee's failure to act with due care causes a loss to the beneficiary, Trustee liability should be approached from a concentric perspective; with primary resort to the trust instrument for articulation of the trustee's obligations; then, ascertainment of the trustees obligations under statute (it is submitted that the trust instrument trumps generalized statutes, whereas statutes specific to a kind of trust would trump a trust instrument), and, lastly, general principles of equity. Trustee failure to meet her duty, means she must restore the beneficiary to the pre-loss position, often with interest: *Brogden*. The obligation is not to be limited by Common Law principles governing remoteness of damage: *Dawson (Deceased)* [1966] 2 NSWLR 211. However, the beneficiary may be disentitled from claiming an equitable remedy by way of their 'inequitable conduct'; *Chan v Zacharia*. Since it is Equity which creates Trust obligations, it is Equity which would prevail over Common Law where there is an inconsistency between the two. In many jurisdictions, Legal and Equitable remedies have been merged, with equitable remedies continuing to operate on the conscience of the defendant, i.e. their frame of mind. Damages can also be awarded in Equity, in addition to injunctions, specific performance, account of profits, rescission, declaratory relief, rectification, equitable estoppel, constructive trusts, subrogation, equitable liens and equitable compensation.

⁵⁴¹ *Keech v. Sandford* [1726] EWHC Ch J76; *Sims v. Craig Bell and Bond* [1991] 3 NZLR 535 (CA).

⁵⁴² Fiduciary relationships exist as between legal guardians and wards, Lawyer and Client, and between Doctor and Patient.

⁵⁴³ *Bristol & West Building Society v Mothew* (1998) Ch 1.

⁵⁴⁴ *Stewart v Layton* (1992) 111 ALR 687.

where they are not grounded in established or widely accepted principles of evidence evaluation, should be supported with legal authorities; whether statutory or precedential.

As concerns the Defence's argument that there had been no professional audit which could furnish proof that the Accused had assumed such ownership rights or which even determined his "culpability"⁵⁴⁵, it is submitted that all the Defence's arguments must be considered and responded to, especially one that so obviously confuses legal with non-legal/factual issues. A finding from an audit could only ever have determined the Accused's actions in relation to the monies, i.e. responsibility or non-responsibility for the acts being investigated, which could potentially be compelling evidence but not binding upon the Court in its determination of the distinct issue of legal responsibility with its peculiar prerequisites.

Of the 4 prosecution witnesses called, the testimonies of 3 are identified and cited by the Court in the reasoning employed to arrive at its findings. The number of Defence witnesses is not cited and the testimony and identity of only one Defence Witness is revealed by the judgment. The Court determines that **the Accused's testimony is inconsistent with the testimonies not only of Prosecution witnesses but also with the testimony of DW1. Further, the Accused's testimony is also internally inconsistent. The Court therefore deems that the Accused's testimony is replete with lies.** It appears that **the principal reason for discrediting the Accused's testimony is** less that it was inconsistent with even DW1's testimony, (*the inconsistency between his testimony and that of Prosecution witnesses comes as no surprise*), **but rather that it was in and of itself internally inconsistent.** This would appear to be the primary consideration. **A secondary consideration would be that the Accused's testimony is discredited where overridden by correlating evidence;** PW2, PW3 and PW4 all testify to some extent on issues of financial irregularities, which prima facie fall within the designated competence of the Accused — the fact that the Accused could not furnish any receipts from the claimed purchase of office equipment with the 1st withdrawal, which in the normal course of events he should be able to do as General Secretary, and the fact that he admitted to not paying the salary of PW3, **seals the testimonies of PW2, PW3 and PW4 on the issue of whose doorstep the responsibility for the issue of financial irregularities lay.** Although DW1 and the Accused's testimony are more aligned, they are less than perfectly consistent, and **the inconsistencies between the Accused's and the testimony of his own very witness, DW1, would form the third such implicit principle.** It is submitted that it is these implicit principles which in reality guide the Court's weighing of evidence, and not the weightless comments on which the Court seems to expressly base its findings but which appear to be merely obiter dicta. Comments such as; *the Court accepted the testimony of PW2 instead of the Accused's since PW2 was the Administrative Officer; that PW2's evidence was more credible as opposed to DW1;*⁵⁴⁶ *and that PW2 would not ordinarily testify against his claimed friend.*

It is curious that DW1 was never indicted. There are several indicia that he could have been, so that it becomes necessary for the judgment to at least mention why he was not. For example, the Court itself admits that DW1 may have well conjointly been involved, since it states that the fact that actions of the Accused may have been in concert with DW1 did not impact on the Accused's culpability. Also, PW2 testifies that the Accused's withdrawal of funds were a legitimate exercise

⁵⁴⁵ Presumably for the loss/appropriation of that sum.

⁵⁴⁶ No explanation is proffered by the judgment as to particularly why.

of authority since he complied with the required procedure to do so, i.e. for at least two of the three signatories to the SLFA's SLCB account, to sign any request for withdrawal from it. Further, since the Accused and DW1, the SLFA President, both signed the requests, it meant that the Accused always acted on the directions of the SLFA Executive, since the SLFA President would have represented the will of the Executive. *Since DW1 endorsed the withdrawals, it could also be argued he should have exercised some diligence with regard to ensuring they were used wisely for the purposes stipulated by CAF.*

The Accused was charged with misappropriating \$5200 out of a total donation of \$6000, but total calculations show that on 3rd January 2007, he withdrew \$4000, that on 16 January 2007, \$800 was withdrawn for administrative expenses, that on 24 January 2007, a further \$2000 was withdrawn and that there were also bank charges for 3 January 2007 to 24 January 2007.⁵⁴⁷ In total \$6800, which is more than the CAF donation, appears to have been withdrawn by the Accused. The \$800 withdrawn as administrative expenses are not, we are told, what was used to finance the trips of the Education Officer to attend conferences at Cairo and Tunisia. Instead the Education Officer's conference allowances appear, on the testimony of the Accused to have been deducted from the withdrawal of \$4000,⁵⁴⁸ *that is*, at least \$500 according to the Accused, although the Accused also said that *that* \$500 was from the SLFA President himself. Two points should be made here; first, that the Prosecution and Court appears to have given the Accused the benefit of the doubt by simply treating the \$800 provided for the trips as deducted from the \$4000 and as a legitimate expense, since the charge against the Accused factors this in, even though such trips were not among the CAF stipulations. Secondly, the Court also treats the \$800 withdrawn for administrative expenses, as a legitimate expense, deriving from funds present in the account prior to the CAF donation. The third issue is that, since the Accused said \$3500 was spent on equipment and since the trip costed in total \$800, even \$500 taken from the \$4000, would see the need for \$300 to be sourced from elsewhere, but neither the Court nor the parties offer any clarity about this issue. The fourth issue is that it does appear that bank charges, which would in view of all the transactions mentioned above amount to \$141.00, are rather steep, except if other transactions were missed by the Prosecution.

DW1 agreed with CAF on a trip to Cairo, that the \$2000 used by the Accused for his Sudan trip would be "set off" against any further funds CAF intended to donate for an Education Officer. Since debts can only ever be "set off" against each other,⁵⁴⁹ it would appear to mean that DW1 conceived of the expenditure of \$2000 used by the Accused for his Sudan trip, as a debt owed to CAF, since it was withdrawn from the donation by CAF, for which the latter had stipulated different purposes. This would mean that since CAF has already furnished \$3000 which it stated was to be used for the payment of part (half)⁵⁵⁰ of the salary of the Education Secretary, *and* since it was expected that CAF would further furnish the outstanding half of the salary due the Education Secretary, that this outstanding sum, was conceived of by DW1 as a debt owed to SLFA by CAF. Therefore, the *SLFA's debt to CAF* could be "set off" against, *CAF's debt to the SLFA*. The effect of this square balancing would be, presumably for the SLFA to forego receipt of the

⁵⁴⁷ See **Summary of Facts** section at p.355 above.

⁵⁴⁸ See **Summary of Facts** section at p.354 above.

⁵⁴⁹ See FN 514 above.

⁵⁵⁰ CAF had stated in Exhibit C that it would send SLFA, the remaining \$3000 for the outstanding 50% of the Education Director's salary at the beginning of 2007.

funds intended for covering the rest of the Education Secretary's salary from CAF; however the \$3000 expected to be received by SLFA would however when crossed against the Sudan debt, cause CAF to have to donate only \$1000 to SLFA, with the SLFA itself taking responsibility for remaining sum due the Education Officer. Considering the fact that, the first half owed to the Education Secretary was never paid to him, his due from SLFA would amount to a sum total of \$5000. However, the SLFA could only be said to have truly "set off" of this debt, where the SLFA itself did meet its responsibility, now willingly assumed, by paying directly to the Education Officer, monies owed him. Although logically mutual debts may cancel themselves out, that does not resolve the issue of SLFA still being indebted to the Education Secretary. The fact that CAF ended up donating \$4000 where they had intended to donate \$6000 for the Education Secretary's salary, because the SLFA having misused \$2000, in a gesture of acknowledgement declared its intention to forfeit that \$2000, did not absolve the SLFA of its responsibilities towards the Education Secretary albeit outside of the scope of the judgment.⁵⁵¹

It seems unlikely that what was meant was that, the \$2000 used as per diem for the Accused's Cairo trip, was conceived of by DW1 and the Accused as a warranted expense that ought to be covered by CAF, so that it should be deducted from the projected donation of \$3000; in effect meaning that, the \$2000 was a debt owed to SLFA by CAF and which would be "set off", against any further incoming revenue from CAF.

⁵⁵¹ Note the similarities to reasonable expectation in the doctrine of promissory estoppel.

[Trial Judgment:
Alimu Bah]

The State vs Alimu Bah

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

ALIMU BAH

JUDGMENT

The accused has been charged with one count of Misappropriation of Donor Funds contrary to Section 13 of the Anti-Corruption Act 2000 (as amended). The particulars of offence state that as follows:

"Alimu Bah, on a date unknown between the 13th December, 2006 and 31st December, 2007 at Freetown in the Western Area of Sierra Leone, being the General Secretary of the Sierra Leone Football Association dishonestly appropriated the sum of US\$5,200 (five thousand two hundred United States dollars) being funds donated to the Sierra Leone Football Association by the Confederation of African Football."

Briefly put, the prosecution's case is that the accused dishonestly appropriated the sum of US\$5,200 which was part of the sum of US\$6,000 that had been donated to the Sierra Leone Football Association (SLFA) by the Confederation of African Football (CAF). The instructions given by CAF were as per Exhibit C to the effect that the amount should be used as follows:

- "3000 US dollars to buy office equipment such as LCDs, laptops, Beamers, overhead projectors CDs and DVDs etc.....
- 3000 US dollars to cover 50% of the salary of your Education Director Mr. Alphan S. Koker for the period from 1st July 2006 to 30 June 2007."

The prosecution has argued that there was a legal obligation on the accused and the SLFA to utilize the funds from CAF for their intended purposes.

To prove their case the prosecution called four witnesses and they also tendered the following Exhibits:

- A1 - withdrawal letter dated 26 January 2007
- A2 - withdrawal letter dated 15 January 2007
- A3 - withdrawal letter dated 3 January 2007
- B - bank statement dated 4th March 2009
- C - letter from CAF dated December 2006
- D - letter captioned Education Officer from SLFA
- E - caution statement of the accused
- F - letter dated 27th May 2008 from Alphan Koker and addressed to the Secretary General, SLFA.

PW2 Abubakarr Kabba explained the withdrawal procedure SLFA has with its bankers Sierra Leone Commercial Bank. He confirmed that a letter requesting the withdrawal of funds signed by any two of the three signatories to the account was sufficient authority for the withdrawal of funds from their account. He stated that he was instructed by the accused to make various withdrawals as indicated in Exhibits A1, A2 and A3 and that he handed over the sums of money to the accused. PW2 testified further that as far as he is aware nothing in the form of office equipment was purchased from these sums of money.

PW3 Alphan Koker told the court that he was never paid the US\$3,000 that was due to him as Education Officer. He said all he received was US\$500 for the trip to Cairo and US\$300 for the trip to Tunisia. He said that upon his return from Cairo he had confronted the accused about his payment but the accused had simply indicated that they would talk. He also stated that the equipment that should have been purchased using the US\$3,000 sent on the 13th December, 2006 was never purchased by SLFA. He was supposed to use the said equipment in his work and consequently he could not.

PW4 Bashiru Konneh was the investigating officer who recorded Exhibit E. Under cross examination he was questioned at some length on whether audit of the SLFA had been undertaken and his response was that as far as he was concerned the matter was not one that required an audit because it was simply an issue of the withdrawal and use of funds by two persons, one of whom was the accused. He also stated that during the interview, the accused had maintained that the money had been used to purchase equipment but that the accused was unable to furnish proof of such purchase.

The accused gave evidence in his defence and also called one witness. He confirmed his position as General Secretary of SLFA and he stated his duties and responsibilities. He said he acts as supervisor of the secretariat; and he receives and sends correspondences on behalf of SLFA; that he sits as ex-officio member during executive meetings and serves as a secretary during the said meetings; that he counter-signs mandates for the withdrawal of funds from the SLFA foreign account because he is signatory to the said account; that he was not in charge of procurement with SLFA and that he was not responsible for the procurement of the equipment.

Under cross examination, the accused confirmed receipt of the letter of the 13th December, 2006 from CAF together with the draft cheque for US\$6,000. The accused said the SLFA made an initial withdrawal of \$4000, on the joint authority of the President and himself, because it was unrealistic for them to have used US\$3,000 to secure laptops, LCDs, beamers, overhead projectors CDs and DVDs, etc as itemised by CAF in Exhibit C.

He maintained that PW3 was never employed as an Education Officer although he attended two conferences in Cairo and Tunisia respectively. He denied receiving US\$4,000 from PW2 and he stated that there is no proof of record to show that PW2 handed these sums to him. He went on to state that out of the US\$4,000 that they had withdrawn, US\$500 was meant for PW3's trip and US\$3,500 was used to purchase a laptop and an overhead projector for the SLFA at a later date and that this was done by the Finance Officer and that they had already started using the equipment.

DW1 Nahim Kadi stated that he was the President of the SLFA. He said the items mentioned in Exhibit C exceeded US\$3,000 and that they bought a projector, one laptop, one camcorder and one camera. He said the US\$4,000 withdrawn from the SLFA account on his joint authority with the accused was used to purchase equipment for US\$3,988. He further said that he had travelled to the UK for treatment and was not around when the equipment was purchased but that he inspected the said equipment on his return from the UK one and a half months later.

Under cross examination, DW1 agreed that PW3 went to Cairo and Tunisia as an Education Officer but maintained that PW3 could not be paid as he did not do any work for SLFA.

DW1 also explained that on the 24th January, 2007, US\$2,000 out of the US\$6,000 sent by CAF was withdrawn by the accused and used by him as per diem for his trip to Sudan. He further stated that on a trip to Cairo he had agreed with CAF that the balance of US\$2,000 from the original US\$6,000 was to be set-off against any further funds that CAF intended to forward to the SLFA for an Education Officer. DW1 also told the court that the SLFA operated a single forex account which has been used as the account accommodating subventions from FIFA, assistance from CAF and other philanthropic organisations.

Having carefully considered the evidence adduced by the defence, I must state that I find significant inconsistency and contradictions in the testimony of the accused and his witness DW1. For instance, DW1 said they spent US\$3,988 on the equipment yet the accused told the court that out of the US\$4,000 withdrawn it was US\$3,500 that was used to purchase the equipment. Also, DW1 stated that the US\$4,000 was used to purchase office equipment immediately after he left for the UK but the accused maintained that the equipment was purchased much later. Again, they differ with regard to the items purchased. The accused said only a laptop and an overhead projector were purchased whereas DW1 stated that in addition to these two items, a camcorder and a camera were also purchased. As regards the amount given to PW3 as allowances, the accused on the one hand said that PW3 was paid US\$500 out of the US\$4,000 withdrawn on the 3rd January, 2007 for his trip to Cairo but later the accused contradicted himself by stating that the US\$500 was taken from the President of SLFA to pre-finance PW3's trip.

It is also noteworthy that even though the accused and DW1 have stated that they did not regard PW3 as the

Education Officer they nonetheless gave him allowances to attend conferences at Cairo and Tunisia in that capacity.

Turning to the Anti-Corruption Act, 2000 (as amended), the manner in which the offence of misappropriating public funds or revenue under Section 12 of the said Act is committed is totally different from what has to be alleged and proved under Section 13 with respect to donor funds. There are two essential ingredients that have to be sufficiently proved beyond reasonable doubt. These are that there has been an appropriation and secondly, that such appropriation has been undertaken dishonestly.

In this present case, the accused is charged under Section 13 of the Anti-Corruption Act 2000 (as amended). It provides as follows:

"Any person who, being a member or an officer or otherwise in the management of any organization which is a public body, dishonestly appropriates 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 is guilty of an offence."

It is in evidence that the accused was the General Secretary of the Sierra Leone Football Association and that he had authority to withdraw funds from the account held with the Sierra Leone Commercial Bank. PW2 testified that he was instructed by the accused to make various withdrawals as indicated in Exhibits A1, A2 and A3 and that he handed over the sums of money to the accused. Exhibit A1, which is the letter of authorization addressed to the SLCB and signed by the accused and DW1, states the purpose for which the US\$2,000 is required as being the "celebration of the 50th Anniversary of CAF." However, it is

clear from the evidence of DW1 that this was not the case because DW1 explained to the court that the accused had sent him an e-mail to say he wanted to travel to Sudan for 14 days visit and that the accused had withdrawn US\$2,000 out of the US\$6,000 CAF had donated to SLFA for his per diem.

A close perusal of Exhibit B, which is the statement of account for the foreign currency account of the SLFA, shows that before the receipt of the sum of US\$6,000 on the 3rd January 2007 the account had a credit balance of US\$1,991.39; that it was on the same day that the accused and the President of SLFA, Nahim Kadi, authorised the withdrawal of US\$4,000 from the amount of US\$6,000 received from CAF; that by the 24th January 2007 when a further amount of US\$2,000 was withdrawn, the remaining balance was US\$1,050.39; that if the US\$800 withdrawn on the 16th January 2007 for administrative expenses is added to the bank charges for the period 3rd January 2007 and 24th January 2007, one gets the original balance of US\$1,991.39 as of 3rd January, 2007. In his written Address, Prosecuting counsel has submitted, inter alia, that what this means is that the whole amount of US\$6,000 donated by CAF had been withdrawn in full by the 24th January, 2007 and that unless US\$3,000 had by that date been used to procure office equipment and the other US\$3,000 paid out to PW3 Alphan Koker, then there was indeed a dishonest appropriation of the donated funds.

The defence, however, has argued that the SLFA operated a single forex account which has been used as the account accommodating subventions from FIFA, assistance from CAF and other philanthropic organisations. Defence counsel submitted that there is clear evidence that a common fund has been in existence and it is from that very source that

funds are remitted and withdrawn to carry out projects undertaken by the SLFA.

Counsel has relied on the principle approved in the case of Lewis v. Lethbridge (1987) Crim LR 59 that "a defendant need not have been under an obligation to deal with the particular monies or property handed over" and that "it is sufficient that he is under an obligation to keep in existence a fund equivalent to that which he has received."

It is counsel's further submission that the case of Hall (1973) QB 126 and the more recent case of Klineberg (1998) The Times, 19 November 1998, cited from Blackstone's Criminal Practice, 1999 at page 243 show that the funds could be retained by persons under legitimate authority to do so. He further argued that the accused had always acted on the instructions and directions of the SLFA executive; that the mandates for withdrawal showing the signatures have always been confirmed by DW1 the President of the SLFA and that there is no proof that the accused had assumed the rights of SLFA to appropriate the sum of US\$5,200 where no audit has been done by professionals and the accused has not been found culpable. Finally, counsel submitted that the prosecution has failed to show a) the rights of SLFA that had been assumed by the accused and b) the manner by which the accused had assumed the rights if any. He argued that the prosecution has not proved its case beyond a reasonable doubt to convict the accused as per Woolmington v. DPP (1932) AC 462 (HL).

Let me pause here to examine some cases dealing with appropriation and dishonesty.

DPP v. Huskinson (1988) Crim LR 620:

The decision turns on the construction of S.5 (3) of the Theft Act 1968. That provision provides as follows:

"Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other."

In the case of *R v Gilks* (1972) 56 Cr App R 734 it was held that the obligation which is referred to in S.5 (4) of the Act is a legal obligation and not a moral or social obligation.

In *R v Morris*, *Anderton v Burnside* [1984] AC 320, Morris took two items from supermarket shelves and replaced the correct labels with ones showing lower prices. He took the items to the checkout, paid the lower price and was then arrested.

Burnside took the label off a joint of meat and placed it on a more expensive joint. His act was discovered and he was arrested before he got to the checkout.

Both defendants were convicted. Lord Roskill explained that the switching of price labels amounted to appropriation because it was an assumption by the defendant of the owner's right to determine what price the goods were to be sold at. If accompanied by mens rea it would be theft. Lord Roskill envisaged appropriation as "any assumption of any right of an owner which amounted to adverse interference with, or usurpation of, those rights."

I have also considered the decision in *R v Ghosh* [1982] QB 1053. The defendant was a consultant at a hospital. He falsely claimed fees in respect of an operation that he had not carried out. He claimed that he thought he was not dishonest by his standards because the same amount of money was legitimately payable to him for consultation fees. The judge directed the jury that they must simply apply their own standards. He was convicted of an offence

contrary to S.15 Theft Act 1968 (which uses the same concept "dishonesty") and he appealed against his conviction. The appeal was dismissed by the Court of Appeal. Lord Lane CJ stated:

"In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails.

If it was dishonest by those standards, then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example, Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though they may consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest."

I must state that I am particularly mindful of the principle enshrined in Ghosh especially since the trial of this accused before this Court is by Judge alone, instead of by Judge and Jury, pursuant to Section 144(2) of the Criminal Procedure Act, No. 32 of 1965 as repealed and replaced by Section 3 of the Criminal Procedure Amendment Act, No. 11 of 1981.

It is defence counsel's submission that a defendant need not have been under an obligation to deal with the particular monies or property handed over and that "it is sufficient that

he is under an obligation to keep in existence a fund equivalent to that which he has received."

I do not agree with this submission and I place reliance on the decision in *R v Wain* (1995) 2 Cr App Rep 660. In that case, the defendant, by organising events, raised money for a company which distributed money among charities. He paid what he had raised into a special bank account and thereafter, with the consent of the company, into his own bank account. He then dishonestly dissipated the credit in his account. The Court of Appeal held that he thereby appropriated property belonging to another because the jury were entitled to find that he was a trustee of the money collected and had therefore received it subject to an obligation to retain its proceeds (the successive bank accounts) and deal with them in a particular way (i.e. to hand them over to the company).

We are told in the judgment that the justices clearly preferred *Davidge v Bunnett* (1984) Crim LR 297 to *Lewis v Lethbridge* (supra) which is the case relied upon by defence counsel.

In my considered judgment, the prosecution's evidence in this present case plainly establishes that, between 3rd January 2007 and 24th January 2007, there was indeed the appropriation by the accused of the sum of US\$5,200 out of the sum of US\$6,000 donated by CAF to the SLFA.

In his defence, the accused shifted the responsibility for the purchase of the equipment to PW2 whom he said had the receipts relating to the purchase. However, it is pertinent to note that, as the Administrative Officer of SLFA, PW2 would have been aware if any office equipment had been purchased using funds from CAF. PW2 testified before this court that the office equipment was never purchased. I believe his testimony and see no reason why he should give adverse testimony against the accused who he stated was his friend. In any event, PW2 appeared to be a more credible witness than DW1 who, according to his testimony, was hardly ever in the country.

From the totality of the evidence adduced, I find that the explanations given by the accused in relation to the withdrawal and use of the money are peppered with inconsistency. In my considered view, the accused has told a number of untruths in this case and these can be seen as evidence of his guilt. Although the court is mindful of the fact that people may lie to bolster up a just cause, out of shame, or out of a wish to conceal disgraceful behaviour, as per the directions in the case of R v. Lucas (1981) QB 720, 73 Cr. App. R. 159 CA, the lies told by this accused were deliberate and were not told for an innocent reason, but rather to evade justice.

Having considered the oral and documentary evidence in this case, I find that the accused did appreciate that he was acting in a dishonest and reprehensible manner.


I also find that the donor fund of US\$6,000 from CAF was at the material time owned controlled and administered by SLFA which had a fiduciary duty to ensure that the said amount was used for the purposes for which it was donated. Exhibit C, which is dated 13th December 2006, clearly spelt out how the amount was to be used and it went further to request a proper accounting of the use of the funds. The penultimate paragraph therein states as follows:

"The remaining 3,000 US dollars to cover the remaining 50% of the salary of your technical director for the above mentioned period will be sent to you at the beginning of 2007 upon presentation of all pro-formas and documents related to the purchase of the office equipment as well as the payments made to your director of education, for approval by CAF finance division."

In fact, during cross examination, the accused admitted that he fully appreciated that the money was to be used specifically for the contents of Exhibit C and that CAF demanded accountability for the use of those specific funds.

I am in agreement with the prosecutor's submission that these were not funds that the accused and DW1, Nahim Kadi the President of SLFA, could use at will and for any other purposes. Nonetheless, whether the accused acted in concert with DW1 is immaterial for the purposes of his culpability. It could only have been someone acting dishonestly who would, in such circumstances, use the funds for other purposes. The ordinary reasonable man would regard such use as dishonest and, to my mind, I find that the accused himself must have realised that what he was doing was by those standards dishonest. I so hold.

For all the foregoing reasons, I am satisfied that the prosecution has proved its case against the accused beyond reasonable doubt. In the result, I hereby find him guilty and convict him as charged.


.....
Hon. Justice M.M.Y. Sey

17 June, 2010

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Thursday, 17th
June, 2010

Before the Hon Mr
Justice M. Sly

Case called
Accused present
C.T. Mantsebo for the state
A. I. Sesay for the accused

Order: Judgment Delivered

Accused found guilty and
convicted as charged.

Statement: Accused states: my Lord
I want to plead for mercy. I
have been in court over 5-6
months now and I want you
temper justice with mercy.
I have been with SLFA for the
whole of my adult life and
have worked assiduously
in the game. Whatever might
have happened during those
transactions was a great
mistake which generally
due to the stress in running
a ball in a country like ours.
I stand before you here
my Lord I am a young man
and I have a young family
and I am in charge of an
extended family that runs
between here and Guinea
and other parts of Africa.

string back at all life has
 right him. My Lord the Court
 fore this Court & the
 fused may look at this
 a reformative one. My
 ord putting a custodial
 intence over him would
 a punishment on the
 stire family system & even
 e football fraternity. He
 as a post graduate Degree
 n Football Management
 hich he could use to the
 enegit of the game and
 r to all who love the game
 f football. My Lord for
 these reasons I plead
 with you to temper justice
 with mercy.

Sentence

Alimu Bah, The Court has
 taken all your mitigating
 factors into account and
 in passing sentence I
 shall not impose a custodial
 term of imprisonment on you.
 You are hereby sentenced
 to a fine of Le 20,000,000.
 (Twenty million Leones) to be
 paid immediately. In default
 of Payment of the said
 imprisonment

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Appendix 1: The Sierra Leone Anti-Corruption Act 2000

THE ANTI-CORRUPTION ACT, 2000

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Signed this 26th day of January, 2000

ALHAJI AHMAD TEJAN KABBAH
President

No. 1



2000

title.

The Anti-Corruption Act, 2000

of commencement.

Being an Act to provide for the prevention of corrupt practices and for related matters.
[3rd February, 2000]

Enacted by the President and Members of Parliament in this present Parliament assembled.

PART I — PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires:—

"advantage" includes—

- a. any gift, loan, fee, reward or commission, consisting of money or of any valuable security or other property or interest in property;
- b. any office, employment or contract;
- c. any payment, discharge or liquidation of any loan; and
- d. any other benefit or favour (except entertainment);

"Commission" means the Anti-Corruption Commission established by section 2;

"Commissioner" means the Anti-Corruption Commissioner;

"Court" means the High Court;

"document" includes tape-recording, any form of computer input or output and any other material, whether produced mechanically, electronically, manually or otherwise;

"official income" means salaries, wages, allowances, pensions, gratuities and other moneys paid to a public officer by virtue of his appointment as public officer;

"member" means the Anti-Corruption Commissioner or Deputy Commissioner;

"public body" includes—

- a. the Government;
- b. Parliament;
- c. the Freetown City Council and any other local authority;
- d. a company in which the Government is a major shareholder;
- e. a corporation established by an Act of Parliament or out of moneys provided by Parliament;
- f. any commission, committee or other body of persons, whether paid or unpaid, appointed by or on behalf of the Government or local authority or by a public corporation or company in which the Government is a major shareholder;
- g. any educational or similar institution financed wholly or partly from public funds; and
- h. any organisation, whether local or foreign, established to render any voluntary social service to the public or any section thereof or for other charitable purposes, which receives funds or other donation for the benefit of the people of Sierra Leone or a section thereof;

"public corporation" means a corporation established by an Act of Parliament or out of moneys provided by Parliament and includes a company which is wholly owned by the Government or in which the Government is a major shareholder;

"public officer" means a holder of a public office;

"public office" means an office in the service of the Government of Sierra Leone, and includes service in, the offices of President, Vice-President, Minister, Deputy Minister, Attorney-General and Minister of Justice, member of Parliament, Magistrate, Judge of the Superior Court of Judicature, and offices in the Armed Forces, the Police Force, a public corporation or on the board thereof; a local authority, any commission or committee established by or under the Constitution or by or under any law or by the Government.

PART II — ESTABLISHMENT OF COMMISSION

Establishment of
Commission.

2. (1) There is hereby established a body to be known as the Anti-Corruption Commission, hereinafter referred to as "the Commission".

(2) The Commission shall consist of the following members:—

- a. a Commissioner who shall be the head; and
- b. a Deputy Commissioner,

both of whom shall be appointed by the President with the approval of Parliament.

(3) The President shall appoint the Commissioner and Deputy Commissioner from among persons of conspicuous probity and with proven knowledge and ability in accounting or other profession or in the investigation of offences involving dishonesty.

(4) An appointment under subsection (3) shall be for a term of five years which may be renewed as and when necessary.

(5) A member of the Commission may resign his office by written notice to the President and may be removed from office but only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for stated misconduct.

(6) The statement of misconduct referred to in subsection (5) shall be addressed to a tribunal appointed by the President, adapting for that purpose, the provisions of paragraphs (a) and (b) of subsection (5) of section 137 of the Constitution; and subsections (6) and (7) of that section shall apply, with the necessary modifications, to the removal of any member of the Commission.

(7) In the absence of the Commissioner, the Deputy Commissioner shall have power to perform all the functions of the Commissioner.

Remuneration of
members of
Commission.

3. (1) A member of the Commission shall be entitled to such salary, allowances, gratuity and pension as may be determined by Parliament and such entitlements shall not be varied to his disadvantage.

(2) A member shall also be entitled to such privileges and other terms and conditions of office as may be stated in his letter of appointment.

Functions of
Commissioner.

4. (1) The Commissioner, as head of the Commission is responsible for—

- a. the effective performance of the duties and the proper exercise of the powers of the Commission set out in this Act;
- b. the implementation of the national anti-corruption strategy;
- c. the management of the Commission and for the conduct of the staff of the Commission,

and may in relation thereto, make standing orders, not inconsistent with this Act.

(2) Subject to section 54, the Commissioner shall account to the people of Sierra Leone for the conduct of the national campaign against corruption.

PART III — FUNCTIONS OF COMMISSION

Functions of
Commission.

5. (1) The object for which the Commission is established is to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or

otherwise and to take such steps as may be necessary for the eradication or suppression of corrupt practices.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission—

- a. to examine the practices and procedures of Government Ministries, departments and other public bodies, in order to secure a revision of those practices and procedures which, in the opinion of the Commissioner, may lead to corrupt practices, and to advise the heads of such Ministries, departments and other public bodies thereon;
- b. to instruct, advise and assist any person or authority on ways in which corrupt practices may be reduced or eliminated;
- c. to educate the public against the evils of corruption; and
- d. to enlist and foster public support in combating corruption.

(3) The Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with any investigation if the Commission is satisfied that—

- a. the complaint is frivolous or vexatious; or
- b. the investigation would be unnecessary or futile.

(4) Where the Commission declines to conduct an investigation or proceed further with any investigation into any complaint, the Commission shall inform the complainant, in writing if practicable, of its decision but shall not be bound to assign any reason for its decision.

Protection of
complainants and
penalty for false report.

6. (1) The Commission shall provide every protection for the sources of its information but any person who wilfully—

- a. makes or causes to be made to the Commission a false complaint or report that an offence has been committed under this Act; or
- b. misleads the Commission by giving false information or making any false statement or accusation;

commits an offence and shall be liable on conviction, to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) Where an alleged or suspected case of corruption by a public officer is referred to the Commission by any member of the public or by another public officer such reference shall be accompanied by sufficient particulars of the basis of the allegation or suspicion, including, where possible, documents, papers and other things connected with the matter alleged or suspected.

PART IV — CORRUPT PRACTICES

Corrupt acquisition of
wealth.

7. (1) A public officer is guilty of the offence of corrupt acquisition of wealth if it is found, after investigation by the Commission, that he is in control or possession of any resources or property or in receipt of the benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly or in circumstances which amount to an offence under this Act.

(2) Where during a trial of an offence under subsection (1), the Court is satisfied that there is reason to believe that any person is holding pecuniary resources or property in trust or otherwise on behalf of the accused person or acquired such resources or property as a gift from the accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

Soliciting or accepting
advantage.

8. (1) Any public officer who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- a. performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;

- b. expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or
- c. assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body;

is guilty of an offence.

(2) Any public officer, who solicits or without the general or special permission of the President, accepts any advantage, is guilty of an offence and shall, upon summary conviction be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) The general permission of the President is deemed to have been granted for the acceptance of gifts of a customary nature by Paramount Chiefs.

(4) For the purposes of subsection (3), a gift is not of a customary nature unless given in circumstances recognised as appropriate by custom.

Using influence for contracts.

9. (1) Any person who, whether in Sierra Leone or elsewhere, offers an advantage to a public officer as an inducement or reward for or on account of such public officer giving assistance or using influence, or having given assistance or used influence in—

- a. the promotion, execution, or procuring of any contract or subcontract with a public body for the provision of any service, the doing of anything or the supplying of any article, material or substance; or
- b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract referred to in paragraph (a)

is guilty of an offence.

(2) any public officer who, whether in Sierra Leone or elsewhere, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence or having given assistance or used influence in—

- a. the promotion, execution or procuring for; or
- b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1), is guilty of an offence.

Corrupting public officer.

10. Any person who, while having dealings of any kind with any public body, gives any advantage to a public officer or any other person to influence any public officer in guilty of an offence.

Soliciting or accepting advantage for public officers, etc.

11. (1) Any person who solicits or accepts any advantage for or on behalf of any public officer is guilty of an offence.

(2) Any person who offers any advantage to any public officer which that public officer is not authorised to receive by law, is guilty of an offence, and shall, on summary conviction, be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Misappropriation of public funds or property.

12. (1) Any person who misappropriates public revenue, public funds or property is guilty of an offence.

(2) A person misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a public corporation or a local authority is deprived of any revenue, funds or other financial interest or property belonging or due to the Government, the public corporation or local authority.

Misappropriation of

13. Any person who, being a member or an officer or otherwise in the management of any organization which is a

donor funds or property. public body, dishonestly appropriates 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 is guilty of an offence.

Impeding foreign investment.

14. Any public officer who knowingly—

- a. performs or abstains from performing any act in his capacity as a public officer;
- b. expedites, delays, hinders or prevents the performance of any act, whether by himself or by any other public officer, in his or that other public officer's capacity as a public officer; or
- c. assists, favours, hinders or delays any person in the transaction of any business with a public body,

in order that a non-citizen investor or potential investor is coerced, compelled or induced to abandon his investment or, as the case may be, is prevented from proceeding with his initial investment, to the advantage of any other person is guilty of the offence of corruption in respect of foreign investment and shall be liable, on conviction, to a fine not exceeding thirty million leones or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

Corrupt transactions with agents.

15. (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- a. performing or abstaining from performing or having performed or abstained from performing any act in relation to his principal's affairs or business; or
- b. showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,

is guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's—

- a. performing or abstaining from performing or having performed or abstained from performing any act in relation to this principal's affairs or business; or
- b. showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,

is guilty of an offence.

(3) Any person who knowingly gives to any agent, or an agent who knowingly uses, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, is guilty of an offence.

(4) a person convicted of an offence under this section shall be liable on conviction to a fine not exceeding thirty million leones or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(5) In this section—

"agent" includes a public officer and any person employed by or acting for another;
"principal" includes an employer.

PART V — POWERS OF INVESTIGATION

Powers of Commission and servants to request information.

16. (1) For the purposes of any investigation under this Act, the Commission shall have such powers, rights and privileges as are vested in the High Court of Justice or a judge thereof in a trial in respect of—

- a. enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- b. compelling the production of documents; and
- c. the issue of a commission or request to examine witnesses abroad;

and the Rules of Court shall, with the necessary modification, apply to the exercise of the powers, rights and privileges of the Commission conferred by this section.

(2) A person under investigation or any witness summoned to appear in any hearing before the Commission, may, with the leave of the Commissioner, be assisted by counsel of his own choice at such hearing.

(3) Pursuant to subsection (1), the Commissioner may authorise in writing an investigating officer to exercise the following powers upon production by him of such authorisation—

- a. to inspect and investigate any share account, subscription account, investment account, expense account or other account of any description and any company books relating to any person named in the authorisation;
- b. to require from any person the production of any accounts, books, documents or other article of or relating to, any person named in such authorisation which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or any relevant entry therein.

(4) An investigating officer authorised under subsection (3) shall be empowered by such authorisation to require from any person information as to whether or not there is any account, book, document or other article at any company or any other place which is to be produced, inspected or investigated.

(5) Any requirement made under subsection (3) shall be in writing.

(6) any person who is required under this section to disclose any information or to produce any accounts, books, documents or articles shall, notwithstanding the provision of any law to the contrary, comply with such requirement.

(7) Any person who—

- a. fails or neglects, without reasonable excuse, the proof of which shall be upon him, to comply with any requirement under this section; or
- b. obstructs any investigating officer in the execution of the authorisation given under this section,

is guilty of an offence and shall be liable on conviction to a fine not exceeding two million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Information relating to
property.

17. (1) The Commission may, by writing under the hand of the Commissioner, request any person who—

- a. is under investigation; or
- b. is related to any person who is under investigation; or
- c. is suspected to have or to have had any business or other dealings with any person who is under investigation, under this Act—

to furnish to the investigating officer a statutory declaration or statement in writing enumerating—

- i. any property, moveable or immovable, as may be specified by the Commission being property belonging to or possessed by or which at any time belonged to or was possessed by such person, his agents or trustees;
- ii. all expenditure incurred by such person in respect of himself, his spouse or spouses, parents, or children with regard to living expenses and other private expenditure during any period specified by the Commission;
- iii. all liabilities incurred by such person, his agents or trustees during the period specified by the

Commission and specifying in respect of each such liability whether it was incurred jointly (and if so, with whom) or severally.

(2) The Commission may also request such person or persons as may be specified by it to furnish the investigating officer with a statutory declaration or a statement in writing—

- a. of all income earned during a specified period; and
- b. the tax paid on such income.

(3) Any person specified in paragraph (a) or (b) or (c) of subsection (1) may be requested to furnish to the investigating officer a statutory declaration or statement in writing—

- a. of all moneys or other movable property or properties kept in his home; and
- b. of all moneys or other moveable property or properties sent out of Sierra Leone by him or on his behalf during the period specified by the Commission.

(4) any person requested under subsection (1) to furnish information in respect of his movable or immovable property shall specify in respect of each such property whether it is or was possessed jointly (and, if so, with whom) or severally; and specify the dates upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and where it was acquired by purchase, specifying the consideration paid therefore.

Summoning witnesses.

18. (1) The Commission may, by notice in writing under the hand of the Commissioner, summon any person whom the Commission believes to be acquainted with any facts relevant to the affairs of any person who is under investigation to appear before it and to arrange orally on oath or affirmation any question relevant thereto; and to produce the original or copy of any document in his possession or under his control which may be relevant to such investigation.

(2) For the purposes of subsection (1), the Commissioner shall administer any oath or affirmation.

Heads of Department and bank managers to produce statements, etc.

19. (1) The Commission may, by notice in writing under the hand of the Commissioner, request the head of any government Ministry, department, office or establishment, or the person in charge of any statutory or public body to produce to the Commission, notwithstanding any law to the contrary, any document or copy thereof, certified by the person in charge of any such document, which is in his possession or under his control

(2) The Commission may also apply *ex parte* to the High Court for an order to be served on any officer of a bank to produce any banker's books, safe-deposit boxes, copies of any bank accounts or any documents relating to any person who is under investigation or of his spouse, parent or child or any other person who has or has had dealings (business or otherwise) with such person at the bank as shall be named in the order.

Service of notices under Act.

20. Any notice under this Act shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

Penalty for false answers.

21. Any person who fails to make a statement or wilfully makes any false statement in answer to a notice under subsection (1) of section 17 is guilty of an offense and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

Restriction on disposal of property, etc.

22. (1) The Commission may, in writing under the hand of the Commissioner, serve a notice on any person who is under investigation directing that such person shall not dispose of or otherwise deal with any property specified in such notice, including moneys in any bank account, without the written consent of the Commission.

(2) The Commission may attach such terms and conditions as it thinks fit to its consent for the disposal of, or other dealings with, any property specified in a notice under subsection (1).

(3) A notice under subsection (1) shall have effect from the time of service upon the person to whom it is addressed

and shall continue in force for a period of six months unless cancelled by the Commission.

(4) Nothing in subsection (3) shall prevent the Commission from making a further order in respect of the same property.

(5) For the purposes of this section, "property" includes any money deposit, share account, club account, subscription account, investment account, bank account or any other property, whether movable or immovable.

Penalty for breach of
restriction order.

23. (1) Any person on whom a notice has been served in accordance with subsection (1) of section 22 shall be guilty of an offence if he disposes of or otherwise deals with any such property without the written consent of the Commission.

(2) Any person convicted of an offence under this section shall be sentenced to a fine not exceeding thirty million leones or a term of imprisonment not exceeding five years or to both such fine and imprisonment.

Restraining order
against third parties.

24. (1) Where the Commission has reason to believe that a third party is holding any property, including moneys in any bank account, for or on behalf of or to the order of a person who is under investigation, it may apply *ex parte* to the High Court for a restraining order to be made against such person.

(2) A restraining order shall be served on the third party to whom it is directed and on the person being investigated and the Court may, in making a restraining order—

- a. impose such condition; or
- b. exempt such property from the operation thereof,

as it thinks fit, but subject to paragraphs (a) and (b), the third party on whom a restraining order is served shall not dispose of or otherwise deal with any property specified in the restraining order except in accordance with the direction of the Court.

(3) A restraining order made under this section shall continue in force for twelve months from the making thereof but on application by or on behalf of the Commission, the Court may cancel or extend the order for a further period of six months.

Penalty for breach of
restraining order.

25. (1) A third party on whom a restraining order has been served under section 24, is guilty of an offence, if during the continuance in force of the order, he knowingly disposes of or deals with any property specified in the restraining order otherwise than in accordance with the directions of the Court.

(2) Any person who is guilty of an offence under subsection (1) shall, on conviction thereof, be sentenced to a fine not exceeding one million leones or the value of the property disposed of whichever is greater, or to a term of imprisonment not exceeding three years.

Revocation of
restraining order.

26. The Commission or a third party on whom a restraining order has been served may at any time apply *ex parte* to the Court for the revocation of the restraining order.

Suspect to surrender
travel document.

27. (1) Where the Commission has reason to believe that any person who is under investigation under this Act is about to leave Sierra Leone, the Commission may apply to a Magistrate for an order requiring such person to surrender any travel document or documents in his possession.

(2) A Magistrate may, after hearing the application, order such person by written notice to surrender his travel documents forthwith to the Commissioner and to find two persons who are owners of property in Sierra Leone, the value of which is not less than fifty million leones each, to stand surety for him.

(3) A travel document which is surrendered to the Commissioner under this section may be held for a period of three months from the date on which the Magistrate issues the notice.

(4) Where it appears that the investigation may not be completed before the expiry of the period of three months, the Commission may apply again to the Magistrate for renewal of the order for such longer period as may be reasonably required.

(5) Where a person who possesses a travel document fails to comply with the order forthwith, he may thereupon be arrested and taken before a Magistrate and unless such person complies with the order, the Magistrate shall by warrant commit him to prison for thirty days and thereafter, until the Commission completes the investigation in respect of him.

Powers of arrest. **28.** An investigating officer authorized in that behalf by the Commissioner may, without warrant, arrest any person upon reasonable suspicion of his having committed or of being about to commit an offence under this Act.

Bail and the procedure after arrest. **29. (1)** A person arrested under section 28—

Act No. 32 of 1965. a. may be taken forthwith to a police station and dealt with in accordance with the Criminal Procedure Act, 1965; or
 b. may be taken to the offices of the Commission.

(2) A person arrested and taken to the offices of the Commission may be—

- a. detained there if the Commissioner considers it necessary for the purpose of further inquiries; or
- b. released from custody—
 - i. on depositing such reasonable sum of money as the Commissioner may require; or
 - ii. on his entering into recognizance, with such sureties, if any, as the Commissioner may require; or
 - iii. on complying with subparagraphs (1) and (ii) together as the Commissioner may require.

(3) A person who has deposited money and been released from custody under subsection (2), shall—

- a. attend at the offices of the Commission at such time or times as the Commissioner may specify, or
- b. appear before a Magistrate at such time and place as the Commissioner may specify.

(4) A recognizance entered into under this section shall be conditioned upon—

- a. the attendance of the person at the offices of the Commission at such time or times as the Commissioner may specify; or
- b. the appearance of the person before a Magistrate at such time and place as may be specified therein.

(5) Where a person released from custody under this section fails to attend at the offices of the Commission or to appear before a Magistrate as required, the deposit paid or recognizance entered into for the release, as the case may be, may be forfeited by a Magistrate upon application by the Commissioner.

(6) A person who is detained at the offices of the Commission under this section shall be brought before a Magistrate as soon as practicable but not later than within ten days after his arrest in accordance with paragraph (a) of subsection (3) of section 17 of the Constitution, unless sooner released on bail.

(7) any person detained at the offices of the Commission for the purposes of further inquiries under paragraph (a) of subsection (2) shall, while being moved to and from any other place in the custody of an investigating officer on the instructions of the Commissioner, be deemed to be in lawful custody.

(8) The President may, by statutory instrument, make such provision as he considers necessary for the treatment of persons detained at the officers of the Commission.

(9) In this section, the reference to "Commissioner" in subsections (2), (3), (4), (5) and (7) includes the Deputy

Commissioner and, where appropriate, any investigating officer designated by the Commissioner in that behalf.

Power to finger-print
and photograph arrested
person.

30. (1) An investigating officer may, if so directed by the Commissioner, take or cause to be taken under the supervision of another officer, photographs, finger-prints and the weight and height measurements of any person arrested under section 28.

(2) The identifying particulars of a person taken under subsection (1) may be retained by the Commissioner, except that if—

- a. a decision is taken not to charge the person with any offence; or
- b. the person is charged but discharged by a Court before conviction or acquitted at his trial or on appeal,

the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable, be destroyed or, if the person concerned so prefers, delivered to him.

(3) Notwithstanding subsection (2), the Commissioner may retain the identifying particulars of a person who has been previously convicted of an offence under this Act or an offence involving dishonesty.

(4) In this section, "identifying particulars" in relation to a person, means photographs, finger-prints and the weight and height measurement, of that person.

Arrest of persons
granted bail by
Commission.

31. (1) An investigating officer authorized in that behalf by the Commissioner may arrest without warrant any person who has been released on bail under section 29—

- a. if that officer has reasonable grounds for believing that any condition upon which the person was so released or otherwise admitted to bail has been or is likely to be broken; or
- b. on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.

(2) Any person arrested under subsection (1) shall be brought before a Magistrate within twenty-four hours after his arrest or as soon as practicable thereafter.

(3) If it appears to the Magistrate before whom a person is brought under subsection (2) that any condition upon which the person was released or otherwise admitted to bail has been or is likely to be broken, he may—

- a. remand that person in custody; or
- b. admit that person to bail on the same or on such other conditions as he thinks fit.

Search and seizure.

32. (1) An investigating officer authorized in that behalf by the Commissioner may search any person, if he reasonably suspects that such person is guilty of an offence under this Act.

(2) A person shall not be searched under subsection (1) except by a person of the same sex.

Search of premises.

33. (1) Where the Commissioner has reasonable cause to believe that there is in any place or premises, other than a residential property, anything which is or contains evidence of the commission of an offence under this Act, he may by warrant directed to an investigating officer empower such officer to enter such place or premises, by force, if necessary, and search it:

Provided that, in the case of a residential property, he may be information on oath to a Magistrate, obtain a warrant for the purpose of the entry and search of that property.

Unlawful disclosure of
investigation.

34. (1) Any person who knowing or being likely to know that an investigation for an offence under this Act is taking

place, without lawful authority or reasonable excuse, discloses to—

- a. the person under investigation the facts of his being investigated or any details of the investigation, including the identity of an informer in the investigation; or
- b. any other person the identity of the person under investigation or the fact that such person is being investigated or the details of the investigation, including the identity of any informer in the investigation.

is guilty of an offence.

(2) A disclosure referred to in subsection (1) shall not be an offence where, in connection with the investigation concerned—

- a. the person under investigation has been requested to furnish a statement in writing under paragraph (a) of subsection (1) of section 17;
- b. a property restriction notice has been served under subsection (1) of section 22 on the person under investigation;
- c. the person under investigation has been ordered to surrender his travel documents under subsection (2) of section 27 or committed to prison under subsection (5) of section 27; or
- d. the person under investigation has been arrested under section 28.

Impersonation of officer
of Commission.

35. Any person who impersonates an officer of the Commission is guilty of an offence and shall, on conviction, be sentenced to a fine not exceeding one million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

PART VI — PROSECUTION OF OFFENCES

Reference of reports to
Attorney-General and
Minister of Justice.

36. (1) Where the Commissioner is of the opinion that the findings of the Commission on any investigation warrant consideration by the Attorney-General and Minister of Justice as to whether any criminal proceedings may be instituted thereon, he shall send the report of the investigation to him except that every adverse finding under section 7, shall be referred to the Attorney-General and Minister of Justice.

(2) The Attorney-General and Minister of Justice may request from the Commission any information regarding any matter which he is prosecuting or which he intends to prosecute under this Act.

(3) An adverse finding under section 7, in relation to a public officer, means a finding by the Commission that he is in control or possession of any resources or property or in receipt of the benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly as the case may be, or in circumstances which amount to an offence under this Act.

(4) In any criminal proceedings based on an adverse finding, unless the accused person is able to rebut that finding to the satisfaction of the Court, the Court shall convict him accordingly.

Prosecution under
reports of Commission.

37. If after examining a report referred to him by the Commissioner under section 36, the Attorney-General and Minister of Justice decides that there are sufficient grounds to prosecute the public officer concerned, he shall do so in the High Court or Magistrates' Court.

Procedure.

Act No. 32 of 1965.

38. (1) An indictment relating to an offence based on a report of the Commission referred to in section 36, or summary of such report duly signed by the Commissioner, shall be preferred without any previous committal for trial, and it shall in all respects be deemed to have been preferred pursuant to a consent in writing by a judge granted under subsection (1) of section 136 of the Criminal Procedure Act, 1965 and shall be proceeded with accordingly.

(2) On the trial on indictment preferred under this section, an extract of the findings of the Commission, signed by the Commissioner, to the effect that a particular person is, or particular persons are implicated in any offence under this Act shall, without more, be sufficient authority for preferring that indictment in respect of any such offence as is

disclosed in or based on the report or those findings.

(3) An indictment preferred under this section shall be filed and served on the accused together with the summary of the evidence of the witnesses which the prosecution relies on for the proof of the charge contained in that indictment and the names of such witnesses shall be listed on the back of the indictment.

(4) The prosecution may, upon giving to the Registrar of the Court and to the accused a notice of his intention to do so together with a summary of the evidence to be given by that witness, call as additional witness any person not listed on the back of the indictment who may give necessary or material evidence at the trial of any indictment under this section, whether or not that person gave any evidence during an investigation by the Commission.

(5) The trial of any offence under this Act shall have priority of hearing in the Court over any other indictment except an indictment for treason, murder or other capital offence.

Bail from accused persons.

39. (1) The judge of the Court trying any person under this Act may, on application by the Attorney-General and Minister of Justice or any officer representing him, issue a warrant to arrest such person and to cause him to be brought before him as soon as practicable to be dealt with under this section.

(2) Any person brought before the Court in pursuance of subsection (1), shall, if he satisfies the Court that he is not preparing or about to leave Sierra Leone, be admitted to bail, on his procuring or producing such surety or sureties as, in the opinion of the judge, will be sufficient to ensure his appearance on such day, and at such time and place on that day, as may from time to time, on his appearing be decided by the judge.

(3) Where a person offered bail under this section refuses to enter into the recognizance required or defaults in finding any surety or sureties as may be required, the judge shall, by warrant, commit him to prison until—

- a. he finds such surety or sureties, as the case may be; or
- b. the expiry of thirty days from the date of his committal to prison; or
- c. the judge orders and directs the Director of Prisons to discharge such person from prison, whichever occurs first.

Penalties for offences under section 7.

40. (1) Any person who is guilty of an offence under subsection (1) of section 7 shall, on conviction, be sentenced to a term of imprisonment not exceeding seven years.

(2) In addition to the punishment prescribed by subsection (1), the Court shall, for an offence under subsection (1) of section 7, order that twice the amount or value of the resources or property acquired or the advantage received by the person convicted be paid by him to the Accountant-General.

(3) Where, after making the orders prescribed in subsection (2), there is still some amount outstanding, the Court shall make a further order that any person holding any moneys on behalf of such person or gratuities, awards, pensions, or similar entitlement due to such person, shall pay such moneys or entitlements to the Accountant-General.

(4) Where, after applying subsections (2) and (3) there is still some outstanding amount to be paid by the person convicted, that amount shall be regarded as a debt due to the Government and the Attorney-General and Minister of Justice may at any time bring an action in the High Court or in the Magistrates' Court, as the case may be, to recover the amount concerned.

General penalty for corrupt practice.

41. Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection (1) of section 11, section 12 or section 13 shall, on conviction, be sentenced to a fine of not less than thirty million leones or to a term of imprisonment of not less than ten years or to both such fine and imprisonment; and in addition, the Court shall order the forfeiture of the advantage corruptly acquired.

Protection of informers.	<p>42. (1) Except as provided in subsection (2)—</p> <ul style="list-style-type: none">a. no information for an offence under this Act shall be admitted in evidence in any civil or criminal proceedings; andb. no witness in any civil or criminal proceeding shall be obliged—<ul style="list-style-type: none">i. to disclose the name or address of any informer who has given information to the Commission with respect to an offence under this Act or of any person who has assisted the Commission in any way with respect to an offence; orii. to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person, if, in either case, such informer or person is not himself a witness in such proceeding. <p>(2) If, in any proceeding before a Court for an offence under this Act, the Court, after full inquiry into the case, is satisfied that a person who gave information to the Commission wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding a Court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of a person who gave information to the Commission, the Court may permit inquiry and require full disclosure concerning such person.</p>
Impossibility of achieving purpose not defence	<p>43. (1) If, in any proceedings for an offence under this Act, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given on account of his doing or abstaining from doing anything as is referred to in this Act, it shall be no defence that—</p> <ul style="list-style-type: none">a. he did not actually have the power, right or opportunity to do so or abstain;b. he accepted the advantage without intending so to do or abstain; orc. he did not in fact so do or abstain <p>(2) If in any proceedings for an offence under this Act, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or abstaining from doing, or having done or abstained from doing, any act as is referred to in this Act, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or abstain from doing, it shall be no defence that such other person had no such power, right or opportunity.</p>
Person giving or receiving bribe not regarded as accomplice	<p>44. A witness in any proceedings for an offence under this Act shall not be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of payment or, delivery of any advantage by or on behalf of the person accused to him.</p>
Presumption of corruption	<p>45. Where, in any proceedings for an offence under this Act, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.</p>
Evidence of pecuniary resources or property	<p>46. The fact that an accused cannot satisfactorily account for any pecuniary resources or property of which he is in possession disproportionate to his official income may be taken by the Court—</p> <ul style="list-style-type: none">a. as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; andb. as showing that such advantage was accepted or solicited as an inducement or reward.
Alternative conviction	<p>47. If, on the trial of any person for any offence under this Act, the prosecution is unable to prove that the accused is guilty of the offence charged, but it proves that the accused is guilty of some other offence under this Act, the accused may be convicted of that other offence and shall be dealt with accordingly.</p>
Attorney- General's consent	<p>48. (1) Except where the prosecution is instituted by himself, no prosecution shall be instituted under this Act without</p>

the written consent of the Attorney-General and Minister of Justice.

(2) The Attorney-General and Minister of Justice shall be deemed to have given his written consent to any prosecution resulting in a conviction for an alternative offence under section 47.

Part VII — ADMINISTRATIVE PROVISIONS

Committee of
Commission

49. (1) The President shall appoint, with the approval of Parliament, an Advisory Committee on Corruption consisting of seven members, one of whom should be Chairman, but such other committees as may be required to assist the Commission in the performance of its functions under this Act, shall be appointed by the Commission itself from time to time.

(2) The Advisory Committee on Corruption shall in addition to any other function, advise the Commission on appointments and discipline, including termination, of staff of the Commission.

(3) A Committee appointed under subsection (1) shall have such members and such functions as the Commission shall determined in standing orders made under section 4, so, however, that each committee shall have a majority of members who are neither members nor staff of the Commission.

(4) A member of any committee shall be paid such remuneration or allowance as the Commissioner shall, after consultation with the Minister responsible for finance, determine.

Staff of Commission

50. (1) The Commission may employ such staff, including investigating officers, as the Commission may consider necessary for the efficient performance of its functions and shall, subject to subsection (2) of section 49, have disciplinary powers in respect of such staff.

(2) Public officers may be seconded or otherwise render assistance to the Commission.

(3) The staff of the Commission shall be employed on such terms and conditions as the Commission shall, after consultation with the Minister responsible for finance, determine.

Expenses of
Commission charged on
Consolidated Fund

51. The administrative expenses of the Commission, including the salaries, allowances, gratuities and pensions of the members and staff of the Commission, shall be a charge on the Consolidated Fund.

Estimates, accounts and
audit of funds

52. (1) Parliament shall, on the basis of annual estimates of expenditure submitted to it by the Commission, provide the Commission with the funds needed for its operations.

(2) The Commission shall keep proper books of account and proper records in relation to the funds of the Commission and the books of account and the records shall be in such form as the Auditor-General shall approve.

(3) The books of account of the Commission shall be audited by the Auditor-General or an auditor appointed by him, within three months after the end of each financial year of the Commission which shall be the same as the financial year of the Government.

Independence of
Commission

53. Except as otherwise provided in this Act, the Commission shall not, in the performance of its functions, be subject to the direction or control of any person authority.

Annual reports of
Commission

54. (1) The Commission shall, not later than three months after the end of any year, submit to the President a report of its activities in that year.

(2) A report under subsection (1) shall include, among other matters—

- a. the number and brief account of investigations carried out in the year concerned;
- b. the number of reports of the Commission referred to the Attorney-General and Minister of Justice under section 36 in the year concerned; and

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The Anti-Corruption Act, 2000

c. the report of the audit conducted by the Auditor-General under subsection (3) of section 52.

(3) The President shall cause the report submitted under subsection (1) to be tabled before Parliament.

Regulation **55.** The Commission may, by statutory instrument, make regulations for the carrying out of the provisions of this Act.

Repeal of Cap. 33 **56.** The Prevention of Corruption Act is repealed.

PASSED IN PARLIAMENT this *18th* day of *January*, in the year of our Lord two thousand.

J.A. CARPENTER,
Clerk of Parliament.

**Appendix 2: The Sierra Leone Anti-Corruption
(Amendment) Act 2002 /Act No. 15 of 2002**

ACTS

Supplement to the Sierra Leone Gazette Vol. CXXXIII, No. 69
dated 21st November, 2002

SIGNED this 8th day of November, 2002.

ALHAJI AHMAD TEJAN KABBAH,
President.



No. 15



Sierra Leone

2002

The Anti-Corruption (Amendment) Act, 2002

Short title.

Being an Act to amend the Anti-Corruption Act, 2000.

[21st November, 2002] Date of com-
mencement.

ENACTED by the President and Members of Parliament in this
present Parliament assembled.

Amendment of
Act No. 1 of
2000.

The Anti-Corruption Act, 2000 is amended—

(a) in section 17—

(i) by substituting for the words “request” and “requested” respectively wherever they appear therein, the words “require” and “required”;

(ii) in subsection (3) thereof, by inserting immediately after the word “home” in paragraph (a), the words “or elsewhere in Sierra Leone”;

(b) in section 18, by the repeal and replacement of subsection (2) thereof with the following:—

“(2) For the purposes of subsection (1), the Commissioner, the Deputy Commissioner or any investigating officer of the Commission authorised in that behalf by the Commissioner shall administer the oath or affirmation.”

(c) in section 19—

(i) by substituting for the word “request” in subsection (1), the word “require”;

(ii) by inserting immediately after subsection (2) thereof the following:—

(3) Any person who fails or neglects without reasonable excuse, the proof of which shall be upon him, to comply with any requirement under subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding two million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.”

- (d) in section 20, by substituting for the words "or by registered post" appearing therein, the words "or by prepaying, registering or posting an envelope containing the notice".
- (e) by the repeal and replacement of section 21 with the following:—

"Penalty for failure to furnish information and for false answers.

21. Any person who fails to furnish any statutory declaration or statement as required in subsections (1) to (3) of section 17 or to furnish any information as required in subsection (4) of section 17, or who, in making any statement or furnishing any information under section 17, wilfully makes any false statement or any statement which he does not believe to be true, is guilty of an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment".

- (f) in section 24, by the repeal and replacement of subsection (3) with the following:—

"(3) A restraining order made under this section shall continue in force for twelve months from the making thereof but on application *ex parte* by or on behalf of the Commission, the Court may cancel, revoke or extend the order for a further period of six months".

- (g) by the repeal and replacement of section 26 with the following—

"Revocation of
restraining
order.

26. The third party on whom a restraining order has been served under section 24 may at any time apply to the Court for the revocation of the restraining order."

- (h) in section 34, by the insertion immediately after subsection (2) thereof of the following:—

"(3) Any person who is guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment".

- (i) in section 38, by substituting for the words "On the" appearing at the beginning of subsection (2) thereof, the words "For the purposes of a";

- (j) by the repeal and replacement of section 41 with the following:—

"General
penalty for
corrupt
practice.

41. Any person who is guilty of an offence under subsection (1) of section 8, section 9, section 10, subsection (1) of section 11, section 12 or section 13 shall be liable on conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment; and in addition, the Court shall order the forfeiture of the advantage corruptly acquired."

- (k) by the insertion immediately after section 41 of the following:—

"Penalty for
obstruction of
Commission.

41A. Any person who wilfully obstructs or otherwise interferes with the Commission or any of its members or staff in the discharge of their functions under this Act, is guilty of an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment".

PASSED in Parliament this 22nd day of *October*, in the year of our Lord two thousand and two.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.

Appendix 3: The Sierra Leone Anti-Corruption Act 2008

ACT
THE ANTI-CORRUPTION ACT, 2008
ARRANGEMENT OF SECTIONS

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- (a) any gift, loan, fee, reward, discount, premium or commission, consisting of money or of any valuable security or of other property or interest in property of any description, or other advantage other than lawful remuneration;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether wholly or partly;
- (d) any payment of inadequate consideration for goods or services;
- (e) any exercise or forbearance from the exercise of any right or any power or duty;
- (f) any other benefit, service or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted; and
- (g) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of paragraphs (a), (b), (c), (d), (e) and (f);

“associate”, in relation to a person, means-

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person;
- (c) a firm of which that person, or his nominee is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or

shares amounting to more than thirty percent of the total share capital; or

- (e) the trustee of a trust, where-
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty percent of the total value of the assets of the trust;

"Commission" means the Anti-Corruption Commission established under section 2;

"Commissioner" means the Anti-Corruption Commissioner appointed under section 3;

"Constitution" means the Constitution of Sierra Leone, 1991;

"Court" means the High Court;

Act No. 6 of 1991

"corruption" means an act which constitutes an offence under Part IV of this Act and includes-

- (a) any conduct whereby in return for an advantage, a person performs or abstains from performing' any act in his capacity as a public officer;
- (b) the offer, promise, soliciting or receipt of an advantage as an inducement or reward to a person to expedite, delay, hinder or prevent the performance of an act by himself or by any other public officer in his capacity as a public officer;
- (c) the abuse of a public office for personal or private gain;
- (d) the corrupt acquisition of wealth;
- (e) the possession and control of unexplained wealth;
- (f) the misappropriation of public funds or property;

- (g) the misappropriation of donor funds or property; and
- (h) any offence involving dishonesty in connection with any tax, rate, charge or levy imposed under any enactment; or

“corrupt practices” includes-

- (a) any practice or conduct by any person that adversely affects or could adversely affect, either directly or indirectly, the honest and impartial exercise of official functions by any public officer or any public body; or
- (b) any practice or conduct of a public officer that constitutes or involves the dishonest or partial exercise of any of his official functions; or
- (c) any practice or conduct of a public officer or former public officer that constitutes or involves a breach of public trust; or
- (d) any practice or conduct of a public officer or former public officer that involves a misuse of information or material that he has acquired in the course of his official functions whether for his benefit or for the benefit of any other person

“Deputy Commissioner” means the Deputy Commissioner appointed under section 3;

"document" includes a tape or video recording, disc or any form of computer input or output and any other material, whether produced mechanically, electronically, manually or otherwise;

“economic crime” means-

- (a) an offence under section 48; or
- (b) an offence involving dishonesty under any enactment providing for the maintenance or protection of the public revenue;

Act No. 6
of 2005.

“entertainment” means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as such provisions;

“financial institution” includes any person whose regular occupation or business is the carrying out of any activity listed in Part I of the First Schedule to the Anti-Money Laundering Act, 2005 and includes activities of the non-financial businesses and the professions listed in Part II of that Schedule;

“Government company” means a body corporate in which the Government -

- (i) directly or indirectly or through any other corporate body, owns or controls not less than twenty five percent of the entire share capital; or
- (ii) by reason of its financial input through loans, debentures or otherwise, or by reason of the presence of its representatives on the Board of Directors or other governing body, is in a position to influence its policy or decisions;

Act No. 1
of 2004

“local council” means a local council established under the Local Government Act, 2004;

"official income" means salaries, wages, allowances, pensions, gratuities and other moneys paid to a public officer by virtue of his appointment as a public officer;

"public body" includes—

- (a) Cabinet, any ministry, department or agency of Government;
- (b) Parliament;
- (c) the Judiciary;
- (d) the Armed Forces;

- (e) the Police Force;
- (f) the Prisons' Service;
- (g) a local council;
- (h) the Freetown City Council and any other city council;
- (i) a Government company;
- (j) a company or other body or organization established by an Act of Parliament or out of moneys provided by Parliament or otherwise set up partly or wholly out of public funds;
- (k) any commission, committee or other body of persons, whether paid or unpaid, appointed by or on behalf of the Government or local council or by a public corporation or company in which the Government owns or controls not less than twenty five percent of the entire share capital;
- (l) any commission or committee established by or under the Constitution or by or under any law or by the Government;
- (m) any educational or similar institution financed wholly or partly from public funds; and
- (n) any organisation, whether local or foreign, established to render any voluntary social service to the public or any section thereof or for other charitable purposes, which receives funds or other donation for the benefit of the people of Sierra Leone or a section thereof;

"public corporation" means a corporation established by an Act of Parliament or out of moneys wholly or partly provided by Parliament and includes a company which is wholly owned by the Government or in which the Government owns or controls not less than twenty five percent of the entire share capital;

"public funds" includes-

- (a) moneys paid from funds appropriated by Parliament from the Consolidated Fund;
- (b) any fund under subsection (2) of section 111 of the Constitution;
- (c) any moneys, loan, grant or donation for the benefit of the people of Sierra Leone or a section thereof;

"public officer" means an officer or member of a public body including a person holding or acting in an office in any of the three branches of government, whether appointed or elected, permanent or temporary, or paid or unpaid.

"public property" includes property belonging to Government, or to the people of Sierra Leone or a section thereof, or to a local authority, or to a Government Company, any commission or committee established by or under the Constitution or by or under any law, whether in Sierra Leone or elsewhere;

"public revenue" includes, taxes, duties, fines, royalties, rents, fees, levies and charges payable to a public body;

"relative" in relation to a person, includes-

- (a) a spouse, concubine, conjugal partner or paramour of that person;
- (b) a brother or sister of that person;
- (c) a brother or sister of a spouse, concubine, conjugal partner, or paramour of that person; or
- (d) any lineal ascendant or descendant of that person;

"trustee" includes-

- (a) an executor, administrator, tutor or curator;
- (b) a liquidator or judicial manager;
- (c) a person having or taking on the administration or control of property subject to a trust;

- (d) a person acting in a fiduciary capacity; and
- (e) a person having the possession, control or management of the property of a person under a legal disability;

“unexplained wealth” includes assets of a person-

- (a) acquired at or around the time the person is alleged to have committed an act of corruption or economic crime; and
- (b) whose value is disproportionate to his lawful sources of income at or around that time and for which there is no reasonable or satisfactory explanation.

(2) For the purposes of this Act-

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

PART II - ESTABLISHMENT OF COMMISSION

Establishment 2. (1) There shall continue to be a body to

of Commission.

be known as the Anti-Corruption Commission hereinafter referred to as “the Commission”.

(2) The Commission shall be a body corporate having perpetual succession and shall be capable of-

- (a) acquiring, holding and disposing of movable and immovable property;
- (b) suing and being sued in its corporate name; and
- (c) performing all such acts as bodies corporate may by law perform.

(3) The Commission shall have a seal, the use of which shall be authenticated by the signature of-

- (a) the Commissioner; or
- (b) the Deputy Commissioner and any other officer of the Commission authorized either generally or specifically by the Commission, in that behalf.

Commissioner and Deputy Commissioner.

3. (1) The Commission shall have-

- (a) a Commissioner who shall be the head of the Commission; and
- (b) a Deputy Commissioner,

both of whom, shall be appointed by the President, subject to the approval of Parliament.

(2) The Commissioner shall be a legal practitioner having not less than ten years’ practice in his profession with proven managerial experience and of conspicuous probity.

(3) The Deputy Commissioner shall have proven knowledge, ability and experience of at least ten years in accounting, banking, financial services or any other relevant profession, and shall be a person of conspicuous probity.

Tenure of Commissioner

4. (1) The Commissioner and Deputy Commissioner shall each hold office for a term of five years and

**and Deputy
Commissioner.**

shall be eligible for re-appointment for another term of five years only.

(2) The Commissioner or Deputy Commissioner may resign his office by written notice addressed to the President.

(3) A resignation is effective upon being received by the President or by a person authorized by the President to receive it.

(4) The Commissioner or Deputy Commissioner, may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for stated misconduct.

(5) If it is represented to the President that the question of removing the Commissioner or Deputy Commissioner under subsection (4) ought to be investigated then the President shall appoint a tribunal which shall consist of a chairman and two other members all of whom shall be persons qualified to hold or have held office as Justices of the Court of Appeal;

(6) The Tribunal shall enquire into the matter in accordance with such procedures as it may determine and shall, not later than three months after its appointment, report on the facts thereof and the findings thereon to the President and recommend to him whether the Commissioner or Deputy Commissioner, as the case may be ought to be removed from office.

(7) While the question of removing the Commissioner or Deputy Commissioner from office is pending before a tribunal under subsection (5), the President may suspend the Commissioner or Deputy Commissioner, as the case may be, from performing the functions of his office, and the suspension shall in any case cease to have effect if the tribunal recommends to the President that the Commissioner or Deputy Commissioner ought not to be removed from office.

(8) The Commissioner or Deputy Commissioner shall be removed from office by the President-

- (a) if the question of his removal from office has been referred to a tribunal in accordance with subsection (5) and the tribunal has recommended to the President that the Commissioner or Deputy Commissioner ought to be removed from office; and

- (b) if his removal has been approved by a two-thirds majority in Parliament.

**Functions of
Commissioner.**

5. (1) The Commissioner, as head of the Commission is responsible for-

- (a) the effective performance of the duties and the proper exercise of the powers of the Commission set out in this Act;
- (b) the management of the Commission and the conduct of the staff of the Commission; and
- (c) the coordination of the implementation of the national anti-corruption strategy,

and may in relation thereto, make standing orders, not inconsistent with this Act.

(2) Subject to section 19, the Commissioner shall account to the people of Sierra Leone for the conduct of the national campaign against corruption.

(3) In the absence of the Commissioner, the Deputy Commissioner shall have power to perform all the functions of the Commissioner and in the absence of the Commissioner and the Deputy Commissioner, a director generally or specifically authorized by the Commissioner, shall perform the functions of the Commissioner.

**Remuneration of
Commissioner
and Deputy
Commissioner.**

6. The Commissioner and Deputy Commissioner shall be entitled to such salary, allowances, gratuity, pension, privileges and other terms and conditions of office as may be determined by the President subject to the approval of Parliament, provided that such terms shall not be varied to their disadvantage.

**Functions of
Commission.**

7. (1) The objects for which the Commission is established are-

- (a) to take all steps as may be necessary for the prevention, eradication or suppression of corruption and corrupt practices;
- (b) to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise;

- (c) to investigate any matter that, in the opinion of the Commission, raises suspicion that any of the following has occurred or is about to occur-
 - (i) conduct constituting corruption or an economic or related offence;
 - (ii) conduct liable to allow, encourage or cause conduct constituting corruption or an economic or related offence; and
- (d) to prosecute all offences committed under this Act.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission-

- (a) to receive and investigate complaints regarding alleged contraventions of this Act;
- (b) to detect or investigate any act of corruption;
- (c) to investigate the conduct of any person which, in the opinion of the Commission is conducive to or connected with, corruption;
- (d) to receive, examine and retain all declarations of assets filed with it under this Act;
- (e) to make such enquiries as it considers necessary in order to verify or determine the accuracy of the declarations of assets filed under this Act;
- (f) to examine the practices of public bodies in order to facilitate the discovery of corrupt practices or acts of corruption and to secure revision of those practices and procedures which in the opinion of the Commission, may lead to or be conducive to corruption or corrupt practices;

- (g) to advise and assist any person, authority, public body or private sector institution on changes in practices or procedures compatible with the effective discharge of the duties of such persons, authorities, public bodies or private sector institutions that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (h) to issue instructions to public bodies of changes in practices or procedures which are necessary to reduce or eliminate the occurrence of corrupt practices;
- (i) to undertake studies and assist in research projects in order to identify the causes of corruption and its consequences on, *inter alia*, the social and economic structures of Sierra Leone;
- (j) to monitor, in such manner as it considers appropriate, the implementation of any contract awarded by a public body, with a view to ensuring that no irregularity or impropriety is involved therein;
- (k) to draft model codes of conduct and advise public bodies as to the adoption of such code of conduct as may be suited to such bodies;
- (l) to monitor current legislative and administrative practices in the fight against corruption and to advise Government on the adoption and ratification of international instruments relating to corruption;
- (m) to advise Government on such legislative reform as it considers necessary to foster the elimination of acts of corruption;
- (n) to determine the extent of financial loss and such other losses to public bodies, private individuals and organizations as a result of corruption;

- (o) to educate the public on the dangers of corruption and the benefits of its eradication and to enlist and foster public support in combating corruption;
- (p) to co-operate and collaborate with foreign Governments, local, regional and international institutions, agencies and organizations in the fight against corruption particularly in relation to development and humanitarian aid and co-operation programmes;
- (q) to investigate the extent of liability for the loss of or damage to any public property and-
 - (i) to institute civil proceedings against any person for the recovery of such property or for compensation; and
 - (ii) to recover such property or enforce an order for compensation even if the property is outside Sierra Leone or the assets that could be used to satisfy the order are outside Sierra Leone; and
- (r) to carry out any other function conferred on it by or under this Act or any other enactment.

Public bodies to comply with instructions of Commission.

8. (1) A public body shall, not later than three months of receipt of instructions from the Commission pursuant to paragraph (h) of subsection (2) of section 7 effect the necessary changes in practices and procedures.

(2) Where a public body considers that the changes in practices and procedures as contained in the instructions would be impracticable or otherwise disadvantageous to the effective discharge of its duties, the public body shall make representations to the Commissioner in writing, within seven days of receipt of the instructions.

(3) Upon considering the representations of the public body concerned, the Commission may confirm, vary or cancel the

instruction, as it may think appropriate and the Commission's decision shall be final.

(4) The head of a public body which fails to comply with the instructions of the Commission or variation thereof commits an offence and shall be liable on conviction to a fine not less than five million leones.

(5) In addition to the penalty prescribed in subsection (4), the head of the public body shall be subject to disciplinary measures including dismissal or removal from office by the appropriate authority notwithstanding the provisions of his letter of appointment or any enactment to the contrary.

(6) The Commission shall inform the appropriate appointing authority of the failure of a public authority to comply with instructions issued pursuant to paragraph (h) of subsection (2) of section 7.

**Independence of
the Commission.**

9. (1) The Commission shall act independently, impartially, fairly and in the public interest.

(2) Subject to this Act, the Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

**Co-operation
with other
bodies.**

10. (1) The Commission may in the performance of its functions work in co-operation with any other persons or bodies as it may think appropriate and it shall be the duty of any such person or bodies to cooperate with the Commission.

(2) Without prejudice to the generality of subsection (1), such persons or bodies include the Auditor-General, the Accountant-General, the Commissioner-General of the National Revenue Authority, the National Security Adviser, the Inspector-General of Police, the Chief Executive Officer of the National Public Procurement Authority and, financial institutions.

**Departments
of the**

11. The Commission shall have such departments as the Commissioner may from time to time determine.

Commission.

**Directors and
other staff of
the Commission.**

12. (1) Every department shall be headed by a Director who shall be appointed by the Commissioner with the approval of the Advisory Board on Corruption.

(2) The Commission may employ such other staff as the Commission may consider necessary for the efficient performance of its functions and shall have disciplinary powers in respect of its staff.

(3) Public officers may be seconded or otherwise render assistance to the Commission.

(4) The Directors and other staff of the Commission shall be employed on such terms and conditions as the Commission shall, after consultation with the Minister responsible for finance determine.

**Disclosure of
assets and
liabilities.**

13. The Commissioner, Deputy Commissioner and every officer of the Commission shall-

- (a) not later than thirty days after the date of his appointment;
- (b) not later than 31st December in every year until the expiration or termination of his appointment; and
- (c) upon the determination of his appointment,

deposit with the Commission a sworn declaration of his assets and liabilities in such form as the Commission may prescribe.

Confidentiality.

14. (1) The Commissioner, Deputy Commissioner and every officer shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.

(2) Except in accordance with this Act, or as otherwise authorised by law, neither the Commissioner, Deputy Commissioner nor any officer of the Commission shall-

- (a) divulge any information obtained in the exercise of a power, or in the performance of a duty under this Act;

- (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Commission.

(3) Notwithstanding subsections (1) and (2), the Commissioner may disclose, for the purposes of publication in the media, such information as he considers necessary in the public interest.

(4) For the purposes of an investigation under this act in respect of an offence committed in Sierra Leone, the Commissioner may, impart to an agency in Sierra Leone or elsewhere, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into any offence.

(5) Any person who, without lawful excuse, fails to comply with this section is guilty of an offence and shall, on conviction, be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

(6) The Commissioner, Deputy Commissioner and every officer shall take such oath as may be prescribed by the Commission.

Use of independent professionals and experts.

15. The Commission may, where it considers it expedient to do so, hire or retain the services of such professionals, consultants, experts, independent investigators and informers as may be necessary for the proper and effective performance of its functions.

Expenses of Commission charged on Consolidated Fund.

16. The administrative expenses of the Commission, including the salaries, allowances, gratuities and pensions of the Commissioner, Deputy Commissioner and staff of the Commission shall be a charge on the Consolidated Fund.

Funds of the Commission.

17. (1) The Commission shall establish a General Fund comprising-

- (a) monies appropriated for the purpose of the Commission; and
- (b) subject to subsection (2), grants, gifts, donations or bequests made to and accepted by the Commission; and

- (c) funds derived from or accruing to it from any other source.

(2) No gift, grant, donation or bequest shall be accepted by the Commission if it is made on condition that the Commission performs any function or discharges any duty or obligation other than a function, duty or obligation aimed at achieving its objects, or on any condition determined solely by the donor.

(3) All gifts, grants, donation or bequest received under subsection (2) shall be credited to the General Fund.

**Estimates,
accounts, and
audit of funds.**

18. (1) Parliament shall, on the basis of annual estimates of expenditure submitted to it by the Commission, provide the Commission with the funds needed for its operations.

(2) The Commission shall keep proper books of account and proper record in relation to the funds of the Commission and the books of account and records shall be in such form as the Auditor-General shall approve.

(3) The books of account of the Commission shall be audited by the Auditor-General or by an auditor appointed by him.

(4) The audit shall be completed within two months after the end of each financial year of the Commission which shall be the same as the financial year of the Government.

**Annual Reports
of Commission.**

19. (1) The Commission shall, not later than three months after the end of any year, submit to the President a report of its activities in that year.

(2) The Commission shall cause the report submitted under subsection (1) to be tabled before Parliament.

(3) A report under subsection (1) shall include -

- (a) the number and a detailed account of investigations carried out in the year;
- (b) the investigations which the Commission has decided to discontinue;
- (c) investigations which have lasted more than six months;

- (d) the number and status of matters pending in the courts;
- (e) key prevention measures instituted or implemented during the year;
- (f) key education and community relations activities undertaken during the year; and
- (g) the report of the audit conducted under subsection (3) of section 18.

Protection from liability.

20. No action, suit or other legal proceeding shall lie against the Commissioner, Deputy Commissioner or any officer of the Commission in respect of any decision taken or any act done or omitted to be done in good faith in the performance of any function under this Act.

Proceedings of Commission.

21. The Commission shall regulate its own proceedings.

PART III - ADVISORY BOARD AND OTHER COMMITTEES

Advisory Board on Corruption.

22. (1) The President shall appoint, with the approval of Parliament, an Advisory Board on Corruption consisting of seven members.

(2) The members of the Advisory Board on Corruption shall be appointed from among persons representing civil society, professional bodies, religious organizations, educational institutions, chieftaincy institutions and the media, having relevant experience and of conspicuous probity.

(3) The members of the Advisory Board on Corruption shall elect a chairman from among themselves.

(4) The Advisory Board on Corruption shall in addition to any other function-

- (a) advise the Commission on any aspect of the mandate and functions of the Commission; and
- (b) annually assess the work of the Commission and advise the Commission on it.

(5) Members of the Advisory Board on Corruption shall be appointed for a term of five years and shall be eligible for re-appointment for another term only.

(6) A member of the Advisory Board on Corruption may resign his office by written notice to the President.

**Other
committees.**

23. (1) The Commission shall from time to time appoint such other committees as may be required to assist the Commission in the performance of its functions.

(2) A Committee appointed under subsection (1) shall have such members and such functions as the Commission shall determine in standing orders made under section 5, so, however, that each committee shall have a majority of members who are neither members nor staff of the Commission.

Allowances.

24. A member of any committee appointed under this Part shall be paid such remuneration or allowance as the Commissioner shall, after consultation with the Minister responsible for finance, determine.

**Proceedings
Of Board and
Committees.**

25. The Advisory Board on Corruption and any other Committee established by the Commission shall regulate its own proceedings.

PART IV - OFFENCES

**Corrupt
Acquisition
of wealth**

26. (1) A public officer commits an offence of corrupt acquisition of wealth if it is found, that he is in control or possession of any resources or property or in receipt of the benefit of any advantage which he may reasonably be suspected of having acquired or received corruptly or in circumstances which amount to an offence under this Act.

(2) Where during a trial of an offence under subsection (1), the Court is satisfied that there is reason to believe that any person is holding pecuniary resources or property in trust or otherwise on behalf of the accused person or acquired such resources or property as a gift from the accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

(3) A person guilty of an offence under subsection (1) shall be liable on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(4) In addition to any punishment prescribed by subsection (3), the Court shall, for an offence under subsection (1), order that twice the amount or value of the resources or property acquired or the advantage received by the person convicted be paid by him into the Consolidated Fund.

(5) Where, after making the orders prescribed in subsection (4), there is still some amount outstanding, the Court shall make a further order that any person holding any moneys on behalf of such person or gratuities, awards, pensions or similar entitlements due to such person, shall pay such moneys or entitlements to the Accountant General.

(6) Where, after applying subsections (4) and (5) there is still some outstanding amount to be paid by the person convicted, that amount shall be regarded as a debt due to the Government and the Commissioner may at any time bring a civil action in the Court or Magistrates' Court, as the case may be, to recover the amount concerned.

**Possession of
unexplained
wealth.**

27. (1) Any person who, being or having been a public officer-

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, commits an offence.

(2) Where the court is satisfied in proceedings for an offence under paragraph (b) of subsection (1) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or

property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) A person guilty of an offence under subsection (1) shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(4) In addition to any penalty imposed under subsection (3), the court may order a person convicted of an offence under paragraph (b) of subsection (1) to pay into the Consolidated Fund -

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition by him of which was not explained to the satisfaction of the Court.

(5) An order under subsection (4) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.

(6) In this section, "official emoluments" includes a pension or gratuity payable under the National Social Security and Insurance Trust Act, 2001.

Act No. 5
of 2001

**Offering,
soliciting or
accepting
advantage.**

28. (1) A person who, whether in Sierra Leone or elsewhere, without lawful authority or reasonable excuse, gives, agrees to give or offers an advantage to a public officer as an inducement to or reward for or otherwise on account of such public officer-

- (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;
- (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or

- (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, commits an offence.

(2) Any public officer who solicits, accepts, or obtains or agrees to accept or attempts to obtain for himself without lawful consideration or for a consideration which he knows or has reason to believe to be inadequate, any advantage as an inducement to or reward for or otherwise on account of his-

- (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer;
- (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public officer in his capacity as a public officer; or
- (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

commits an offence..

(3) A person guilty of an offence under subsection (1) or (2) shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(4) Notwithstanding section 94, where in any proceedings under subsection (1), it is proved that the accused person gave, agreed to give or offered an advantage, it shall be presumed until the contrary is proved that the accused gave, agreed to give or offered the advantage for any of the purposes set out in subsection (1).

(4) Notwithstanding section 94, where in any proceedings under subsection (2), it is proved that the public officer

solicited, accepted or obtained an advantage, it shall be presumed until the contrary is proved that the advantage was solicited, accepted or obtained for any of the purposes set out in subsections (2).

**Using influence
for contracts.**

29. (1) Any person who, whether in Sierra Leone or elsewhere, gives or agrees to give or offers an advantage to a public officer as an inducement or reward for or on account of such public officer giving assistance or using influence whether real or fictitious, or having given assistance or used influence, whether real or fictitious in-

- (a) the promotion, execution, or procurement any contract or subcontract with a public body for the provision of any service, the doing of anything or the supplying of any article, material or substance;
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract referred to in paragraph (a); or
- (c) obtaining for that person or for any other person, an advantage under any contract or sub-contract referred to in paragraph (a),

commits an offence.

(2) Any public officer who, whether in Sierra Leone or elsewhere, solicits, accepts or obtains an advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence or having given assistance or used influence in-

- (a) the promotion, execution or procurement for;
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in; or
- (c) obtaining for that person or for any other person, an advantage under,

such contract or subcontract as is referred to in paragraph (a) of subsection (1), commits an offence.

(3) A person guilty of an offence under subsection (1) or (2) shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Influencing a public officer.

30. A person who exercises any form of violence, or pressure by means of threat, upon a public officer, with a view to the performance by that public officer of any act in the execution of his functions or duties, or the non-performance by that public officer of such act is commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Peddling influence.

31. (1) A person who gives or agrees to give or offers an advantage to another person, to cause a public officer to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body commits an offence.

(2) A person who gives or agrees to give or offers an advantage to another person to use his influence, real or fictitious to obtain work, employment, contract or other benefit from a public body commits an offence.

(3) A person who solicits, accepts or obtains an advantage from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body commits an offence.

(4) A public officer who solicits, accepts or obtains an advantage from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body commits an offence.

(5) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Bid rigging, etc.

32. (1) A person who receives or solicits or agrees to receive or to solicit an advantage as an inducement or reward for -

- (a) refraining from submitting a tender, proposal, quotation or bid;
- (b) withdrawing or changing a tender, proposal, quotation or bid; or
- (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions,

commits an offence.

(2) A person who gives or offers or agrees to give or offer an advantage as an inducement or reward for-

- (a) refraining from submitting a tender, proposal, quotation or bid;
- (b) withdrawing or changing a tender, proposal, quotation or bid; or
- (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions,

Commits an offence.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Corrupting
public officer.**

33. A person who, while having dealings of any kind with any public body, gives an advantage to a public officer or any other person to influence any public officer commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Bribery of or
by public officer
to influence
decision of
public body.**

34. (1) A person who gives, or agrees to give, or offers to a public officer an advantage for-

- (a) voting or abstaining from voting or having voted or abstained from voting, at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure,

resolution or question submitted to the public body;

- (b) performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing or having performed, or abstained from performing or having aided in procuring, expediting, delaying, hindering or preventing the performance of an act by a public body of which he is a member, director or employee;
- (c) aiding in procuring, or preventing or having aided in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any other person,

commits an offence.

(2) Any public officer who solicits, accepts or obtains an advantage for-

- (a) voting or abstaining from voting or having voted or abstained from voting at a meeting of a public body of which he is a member, director or employee in favour of or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing or aiding in procuring expediting, delaying, hindering or preventing the performance of, an act of a public body of which he is a member, director or employee;
- (c) aiding in procuring or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any person

commits an offence.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Soliciting,
accepting or
obtaining
advantage for
public officer, etc.**

35. (1) A person who, solicits, accepts or obtains any advantage for or on behalf of any public officer commits an offence.

(2) Any person who offers any advantage to any public officer which that public officer is not authorised to receive by law, commits an offence.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

Misappropriation of public funds or property.

36. (1) A person who misappropriates public revenue, public funds or property commits an offence.

(2) A person misappropriates 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.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Misappropriation of donor funds or property.

37. (1) Any person who, being a member or an officer or otherwise in the management of any organization whether a public body or otherwise, dishonestly appropriates 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.

(2) A person who dishonestly appropriates anything whether property or otherwise, which has been donated to himself or any other person in the name of or for the benefit of the people of Sierra Leone or a section thereof, commits an offence.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Impeding
investment.**

38. (1) A public officer who knowingly-
- (a) performs or abstains from performing any act in his capacity as a public officer;
 - (b) expedites, delays, hinders or prevents the performance of any act, whether by himself or by any other public officer, in his or that other public officer's capacity as a public officer; or
 - (c) assists, favours, hinders or delays any person in the transaction of any business with a public body,

in order that an investor or potential investor is coerced, compelled or induced to abandon his investment or, as the case may be, is prevented from proceeding with his initial investment, commits an offence and shall be liable, on conviction, to a fine not less than fifty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(2) For the purposes of subsection (1), "investor" or potential investor" includes a development partner or potential development partner; and "investment" includes development projects intended for the benefit of the people of Sierra Leone or a section thereof.

**Corrupt
transactions
with agents.**

39. (1) Any agent who, without lawful authority or reasonable excuse, solicits, accepts or obtains any advantage as an inducement to or reward for or otherwise on account of his-
- (a) performing or abstaining from performing or having performed or abstained from performing any act in relation to his principal's affairs or business; or
 - (b) showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,
- commits an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

- (a) performing or abstaining from performing or having performed or abstained from performing any act in relation to his principal's affairs or business; or
- (b) showing or abstaining from showing, or having shown or abstained from showing, favour or disfavour to any person in relation to his principal's affairs or business,

commits an offence.

(3) Any person who knowingly gives to any agent, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, commits an offence.

(4) A person guilty of an offence under this section shall be liable on conviction to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(5) In this section and section 40-

- (a) “agent” means a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or on behalf of another person;
- (b) “principal” means a person, whether in the public or private sector, who employs an agent or for whom or on whose behalf an agent acts.

(6) If a person has a power under the Constitution or any other enactment and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent's principal, the person shall be deemed, for the purposes of this Part, to be an agent for the Government and the exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government.

(7) For the purposes of this Part-

- (a) a Cabinet Minister shall be deemed to be an agent for both the Cabinet and the Government; and
- (b) the holder of a prescribed office or position shall be deemed to be an agent for the prescribed principal.

Deceiving a principal.

40. (1) An agent who with intent to deceive his principal, knowingly uses, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular and which to his knowledge is intended to mislead the principal commits an offence.

(2) An agent who, to the detriment of his principal, makes a statement to his principal that he knows is false or misleading in any material respect commits an offence.

(3) An agent who, to the detriment of his principal, uses, or gives to his principal, a document that he knows contains anything that is false or misleading in any material respect commits an offence.

(4) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Accepting advantage to protect offender from legal proceedings.

41. (1) Subject to subsection (2), any person who accepts or obtains, or agrees to accept or attempts to obtain, any advantage for himself or for any other person, in consideration of-

- (a) his concealing an offence, or his protecting any other person from legal proceedings for an offence; or
- (b) his not proceeding against any other person in relation to an alleged offence, or his abandoning or withdrawing a prosecution against any other person; or
- (c) his obtaining or endeavouring to obtain the withdrawal of, a prosecution against any other person,

commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(2) Subsection (1) shall not apply to any lawful compromise as to the civil interest resulting from the offence, but any such compromise shall not be a bar to any criminal proceedings which may be instituted by the Commission or the State in respect of the offence.

Abuse of office.

42. (1) Any public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence.

(2) A person guilty of an offence under subsection (1) shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Abuse of position.

43. A public officer who knowingly abuses his position in the performance or failure to perform an act, in contravention of any law, in the discharge of his functions or duties is commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Public officer
using his
office for
advantage.**

44. (1) Subject to subsection (3), a public officer who makes use of his office or position for an advantage for himself or another person commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(2) For the purposes of subsection (1), a public officer shall be presumed until the contrary is proved, to have made use of his office or position for an advantage where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.

(3) This section shall not apply to a public officer who-

- (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and

- (b) acts in that capacity in the interest of that body corporate.

Conflict of interest.

45. (1) Where a public body in which a public officer is a member, director, employee or is otherwise engaged proposes to deal with any company, partnership or other undertaking in which that public officer has a direct or indirect private or personal interest, that public officer shall forthwith disclose, in writing to that public body, the nature of such interest.

(2) Where a public officer or a relative or associate of such public officer has a personal interest in a decision to be taken by a public body, that public officer shall not vote or take part in any proceedings or process of that public body relating to such decision.

(3) A public officer who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Treating of public officer.

46. A person who, while having dealings with a public body, offers an advantage to a public officer who is a member, director or employee of that public body commits an offence and shall, on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Receiving gift for a corrupt purpose.

47. A public officer who solicits, accepts or obtains an advantage for himself or for any other person-

- (a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public officer to whom he is subordinate or of whom he is the superior; or
- (b) from a person whom he knows to be interested in or related to the person so concerned,

commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Protection of public property

48. (1) Any person who fraudulently or otherwise unlawfully-

and revenue,
etc.

- (a) acquires public property or a public service or benefit;
- (b) mortgages, charges or disposes of any public property;
- (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or
- (d) fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges,

commits an offence.

(2) A person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property commits offence if he-

- (a) fraudulently makes payment or excessive payment from public revenues for-
 - (i) sub-standard or defective goods;
 - (ii) goods not supplied or not supplied in full; or
 - (iii) services not rendered or not adequately rendered;
- (b) willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or
- (c) engages in a project without prior planning.

(3) A person who commits of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(4) For the purposes of this section, “public property” means real or personal property, including public funds, and money of a public body or under the control of, or consigned or due to, a public body.

**Dealing with
suspect
property.**

49. (1) A person who deals with property that he believes or has reason to believe was acquired in the course of or as a result of corruption or corrupt conduct commits an offence and shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(2) For the purposes of this section, a person deals with property if he-

(a) holds, receives, conceals or uses the property or causes the property to be used;

(b) enters into a transaction in relation to the property or causes such transaction to be entered into.

(3) In this section, “corrupt conduct” means conduct constituting corruption.

**Bribery in
relation to
auctions.**

50. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, commits an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits, accepts or obtains any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, commits an offence.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

Gifts.

51. (1) A public officer who solicits or accepts any gift, fee or personal benefit from any person as an inducement or reward for anything done or omitted to be done by him in the performance of his duties commits an offence and shall be liable on conviction to a fine five times the value of the gift or benefit or fifty million leones whichever is greater or to imprisonment for a term not less than one year or both such fine and imprisonment.

(2) In addition to any punishment prescribed by subsection (1), the Court shall, order that twice the amount or value of the gift, fee or personal benefit solicited or received by the person convicted be paid by him to the Consolidated Fund.

(3) Subject to subsection (4), subsection (1) shall not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(4) **Where a gift or personal benefit exceeds five hundred thousand leones in value or where the total value received directly or indirectly from one source in any twelve month period exceeds five hundred thousand leones, the public officer shall-**

- (a) make a report of that fact to the relevant public body within such time and in such form as may be prescribed by the Commission; and
- (b) file with his annual declaration of assets and liabilities a statement indicating the nature of the gift or benefit, its source and the circumstances under which it was given or accepted.

(5) A public officer who fails to comply with the requirements in subsection (4) commits an offence and shall be liable on conviction to a fine three times the value of the gift or benefit or thirty million leones, whichever is greater or to imprisonment for a term not less than one year.

Transfer of proceeds of corruption, etc..

52. (1) **Any person who-**

- (a) converts, transfers, or disposes of property knowing such property to be the proceeds of corruption or related offences for the

purpose of concealing or disguising the illicit origin of such property or helping any person who is involved in the commission of the offence to evade the legal consequences of his action; or

- (b) conceals or disguises the true nature, source, location, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences; or
- (c) acquires, possesses or uses property knowing that such property is the proceeds of corruption or related offences,

commits an offence and is liable on conviction to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(2) Where the Commissioner has reason to believe that any person having illicitly received or acquired an advantage or property, he may by notice addressed to that person or to any other person to whom the advantage, property, the proceeds or money value, or any part of the proceeds or money value, is believed to have been transferred or conveyed by the person suspected of having illicitly received or acquired it or by an agent of such person, directing the person to whom the notice is addressed not to transfer, dispose of or part with the possession of the property or money value specified in the notice.

(3) The Commissioner may, subject to subsection (1) issue a notice to any other person to whom the money or property under this section may pass by operation of law.

(4) Every notice issued under subsection (2) shall remain in force and binding on the person to whom it is addressed for a period of six months from the date of the notice or, where proceedings for an offence under this Act or any other enactment in relation to the advantage or property commenced against any such person until the determination of those proceedings.

(5) A person who has been served with a notice under subsections (2) and (3) who, in contravention of the notice, transfers, disposes of, or parts with, the possession of the sum of money value or a property specified in the notice, commits an offence and shall be liable on conviction to a fine

not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(6) In any proceedings for an offence under this section, it shall be a defence for an accused person if he satisfies the court that-

- (a) the sum of money or other property was delivered to the Commissioner or Deputy Commissioner or to some other officer of the Commission as directed in the notice;
- (b) the sum of money or other property specified in the notice was produced to the court and has been retained by such court;
- (c) the notice was subsequently withdrawn by the Commissioner by notification in writing.

PART V - POWERS OF INVESTIGATION

Powers of Commission and servants to request information.

53. (1) For the purposes of any investigation under this Act, the Commission shall have such powers, rights and privileges as are vested in the High Court or a judge thereof in a trial in respect of-

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad,

and any rules of Court shall, with the necessary modification, apply to the exercise of the powers, rights and privileges of the Commission conferred by this section.

(2) A person under investigation or any witness summoned to appear before the Commission may be assisted by counsel of his own choice.

(3) Pursuant to subsection (1), the

Commissioner may authorize in writing an investigating officer to exercise, upon production by the investigating officer of the authorization, the power to inspect and investigate and to require any person to produce, any accounts, books, documents or other article of or relating to, any person named in such authorization which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or other relevant entry therein.

(4) An investigating officer authorized under subsection (3) shall be empowered by such authorization to require from any person information as to whether or not there is any account, book, document or other article at any company or any other place which is to be produced, inspected or investigated.

(5) Any requirement made under subsection (3) shall be in writing and may require a person to produce records or provide explanations and information on an ongoing basis over a period of time, not exceeding six months.

(6) The six month limitation in subsection (5) shall not preclude the Commissioner from making further requirements for further periods of time so long as the period of time in respect of which each requirement is made shall not exceed six months.

(7) A requirement under this section to produce a record stored in electronic form is a requirement-

- (a) to reduce the record to hard copy and produce it; and
- (b) if specifically required, to produce a copy of the record in electronic form.

(8) A person who is required under this section to disclose any information or to produce any accounts, books, documents or articles shall, notwithstanding the provision of any law to the contrary or any oath of secrecy, comply with such requirement.

(9) A person who-

- (a) fails or neglects, without reasonable excuse, the proof of which shall be upon him, to comply with any requirement under this section; or

- (b) obstructs any investigating officer in the execution of an authorization given under this section,

commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

Information relating to property.

54. (1) The Commission may, by writing under the hand of the Commissioner, require any person who-

- (a) is under investigation; or
- (b) is related to any person who is under investigation; or
- (c) is suspected to have or to have had any business or other dealings with any person who is under investigation, under this Act-

to furnish to the investigating officer a statutory declaration or statement in writing enumerating-

- (i) any property, moveable or immoveable, as may be specified by the Commission being property belonging to or possessed by or which at any time belonged to or was possessed by such person, his agents or trustees;
- (ii) all expenditure incurred by such person in respect of himself, his spouse or spouses, parents, or children with regard to living expenses and other private expenditure during any period specified by the Commission;
- (iii) all liabilities incurred by such person, his agents or trustees during the period specified by the Commission and specifying in respect of each such liability whether it was incurred jointly (and if so, with whom) or severally.

(2) The Commission may also require such person or persons as may be specified by it to furnish the investigating officer with a statutory declaration or a statement in writing-

- (a) of all income earned during a specified period; and
- (b) the tax paid on such income.

(3) Any person specified in subsection (1) may be required to furnish to the investigating officer a statutory declaration or statement in writing-

- (a) of all moneys or other movable property or properties kept in his home or elsewhere in Sierra Leone; and
- (b) of all moneys or other moveable property or properties sent out of Sierra Leone by him or on his behalf during the period specified by the Commission.

(4) Any person required under subsection (1) to furnish information in respect of his movable or immovable property shall specify in respect of each such property whether it is or was possessed jointly (and, if so, with whom) or severally; and specify the dates upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and where it was acquired by purchase, specifying the consideration paid for it.

(5) The declarations filed with the Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or inquiry in respect of a declarant under this Act, the Commissions of Inquiry.

Penalty for failure to furnish information and for false answers.

55. Any person who-

- (a) fails to furnish any statutory declaration or statement as required in subsections (1) to (3) of section 54; or
- (b) in making any statement or furnishing any information under section 54, willfully makes any

false statement or any statement which he does not believe to be true,

commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

**Summoning
of witnesses.**

56. (1) The Commission may, by notice in writing under the hand of the Commissioner, summon any person whom the Commission believes to be acquainted with any facts relevant to the affairs of any person who is under investigation-

- (a) to appear before it and to answer orally on oath or affirmation any question relevant thereto; and
- (b) on demand by the Commission to produce or deliver or otherwise furnish the original or copy of any document in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which may be relevant to such investigation.

(2) For the purposes of subsection (1), the Commissioner, the Deputy Commissioner or any investigating officer of the Commission authorized in that behalf by the Commissioner shall administer the oath or affirmation.

(3) Any person on whom a notice is served under subsection (1) shall, notwithstanding the provision of any law to the contrary, or any oath of secrecy, comply with such notice.

(4) Any person who without reasonable excuse neglects or fails to comply with a notice under subsection (1) commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

**Heads of public
bodies, managers
to produce
statements, etc.**

57. (1) The Commission may, by notice in writing under the hand of the Commissioner, require the head or person in charge of any public body, to produce to the Commission, notwithstanding any enactment to the contrary, any document or copy thereof, certified by the person in charge of any such document, which is in his possession or under his control.

(2) The Commission may, by notice in writing under the hand of the Commissioner, require any financial institution or officer of a financial institution to produce any banker's books, safe-deposit boxes, copies of any bank accounts or any documents relating to any person who is under investigation or of his relative or any other person who has or has had dealings (business or otherwise) with such person, at the financial institution as shall be named in the notice.

(3) A person who is required under this section to disclose any information or to produce any accounts, books, documents or articles shall, notwithstanding the provision of any law to the contrary or any oath of secrecy, comply with such requirement.

(4) A person who fails to comply with the terms of a notice under subsection (1) commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

**Service of
Notices.**

58. (1) A notice under this Act shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(2) Where it is impracticable to serve notice in accordance with subsection (1), notice may be effected through private courier, or electronically or by advertisement in at least two newspapers published in Sierra Leone or by broadcast on a radio station in the locality of his last known place of business or residence.

**Restriction on
disposal of
property, etc.
by persons
under
investigation.**

59. (1) The Commission may, in writing under the hand of the Commissioner, serve a notice on any person who is under investigation directing that such person shall not dispose of or otherwise deal with any property specified in such notice, including moneys in any bank account, without the written consent of the Commission.

(2) The Commission may attach such terms and conditions as it thinks fit to its consent for the disposal of, or other dealings with, any property specified in a notice under subsection (1).

(3) A notice under subsection (1) shall have effect from the time of service upon the person to whom it is addressed and shall continue in force for a period of six months unless cancelled by the Commission.

(4) Nothing in subsection (3) shall prevent the Commission from making any further order or orders, as the case may be, in respect of the same property.

(5) For the purposes of this section, "property" includes any money deposit, share account, club account, subscription account, investment account, bank account or any other property, whether movable or immovable.

(6) A person on whom a notice has been served in accordance with this section commits an offence if he disposes of or otherwise deals with any such property without the written consent of the Commission.

(7) A person convicted of an offence under subsection (6) shall be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Restriction on
disposal of
property, etc.
by third parties.**

60. (1) Where the Commission has reason to believe that a third party is holding any property, including moneys in a bank account, for or on behalf of or to the order of a person who is under investigation, the Commission may, by notice in writing under the hand of the Commissioner, serve a notice on such third party directing that such person shall not dispose of or otherwise deal with any property specified in such notice.

(2) A notice under subsection (1), shall be served on the third party to whom it is directed and on the person being investigated and the Commission may in issuing a notice-

- (a) impose such condition; or
- (b) exempt such property from the operation thereof,

as it thinks fit, but subject to paragraphs (a) and (b), the third party on whom a notice is served shall not dispose of or otherwise deal with any property specified in the notice except in accordance with the terms of the notice.

(3) A notice issued under this section shall have effect from the time of service upon the person to whom it is addressed and shall continue in force for a period of twelve months unless cancelled or varied by the Commission.

(4) A third party on whom a notice has been served under subsection (1) commits an offence, if he knowingly disposes or

deals with any property specified in the notice without the consent of the Commission.

(5) Any person who is guilty of an offence under subsection (4) shall, on conviction thereof, be liable to a fine not less than thirty million leones or the value of the property disposed of or otherwise dealt with whichever is greater, or to imprisonment for a term not less than three years.

**Revocation of
restriction notice.**

61. A person or a third party on whom a restriction notice under section 59 or 60 has been served may apply *inter partes* to the court to revoke the notice and the court may, after hearing the parties revoke the notice or make such order as it may deem fit.

**Restriction notice
to apply to
income from
property, etc.**

62. (1) A restriction notice under section 59 or 60 shall, if so provided in the notice apply to the income from any property specified therein as it applies to the property itself.

(2) Where any property specified in a restriction notice is immovable property, such restriction notice shall be deemed to be an instrument affecting land and shall be registrable as such in a register kept in the office of the Registrar-General.

(3) Where any property specified in a restriction notice includes any debt or obligation due by a financial institution to the person to whom the notice is given, the Commissioner may serve on such financial institution, a copy of that restriction notice which copy shall have the effect of directing the financial institution with respect to the person specified in such copy not to pay, liquidate, satisfy, settle or discharge that debt or obligation either in whole or in part without the consent of the court.

**Surrender of
travel documents.**

63. (1) Where the Commission has reason to believe that any person who is under investigation under this Act is about to leave Sierra Leone, the Commission may, in writing under the hand of the Commissioner, serve a notice on such person requiring him-

- (a) to surrender his travel documents forthwith to the Commissioner; and
- (b) to enter into recognizance with two sureties who are owners of property in Sierra Leone the value of which is not less than fifty million leones, each.

(2) A travel document which is surrendered to the Commissioner under this section may be held for a period of three months from the date on which the notice was issued.

(3) Where it appears that the investigation may not be completed before the expiry of the period of three months, the Commission may renew the notice for such longer period as may be reasonably required.

(4) Where a person who possesses a travel document fails to comply with the notice forthwith, he may thereupon be arrested and taken before the Commission and unless such person complies with the notice, the Commissioner shall by warrant commit him to prison for ten days and thereafter, until the Commission completes the investigation in respect of him.

(5) Subject to subsection (3), a person to whom a notice under subsection (1) is addressed shall not leave Sierra Leone before the expiry of the period of three months from the date of the notice unless-

- (a) an application made under section 64 for the return of the travel documents is granted; or
- (b) an application made under section 65 for permission to leave Sierra Leone is granted.

**Return of
travel
documents.**

64. A person who has surrendered his travel documents under section 63 may apply *inter partes* to the court for the return of his travel documents.

**Permission
to leave
Sierra Leone.**

65. (1) Without prejudice to section 64, a person on whom a notice under section 63 is served may at any time apply in writing to the Commissioner or *inter partes* to a judge or both for permission to leave Sierra Leone, and every application shall contain a statement of the grounds on which it is made.

(2) A judge shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a judge shall only grant an application made under subsection (1) where the Commissioner or the judge, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in

subsection (1) of section 63, a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section-

(a) the applicant may be required to-

- (i) deposit such reasonable sum of money with such person as may be specified;
- (ii) enter into such recognizance with such sureties, if any, as may be specified; or
- (iii) deposit such sum of money and enter into such recognizance as may be specified;

(b) such applicant or surety may be required to deposit such property or document of title or instrument thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to a condition that the applicant shall appear at such time and place in Sierra Leone as may be specified and at such other time and place in Sierra Leone thereafter as may be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant shall appear at such time and place in Sierra Leone as may be specified and at such other time and place in Sierra Leone thereafter as may be further specified.

(7) Where a person is permitted to leave Sierra Leone under this section subject to a condition imposed under subsection (5) or (6), then after the time specified under that subsection or (if applicable) after the last of such times, subsection (5) of section 63 shall continue to apply in respect of the person as if the person had not been permitted to leave Sierra Leone under this section.

Powers of

66. (1) An investigating officer authorized in that

arrest.

behalf by the Commissioner may, without warrant, arrest any person upon reasonable suspicion of his having committed or being about to commit an offence under this Act.

(2) Where the Commissioner is satisfied that a person who may assist the Commission in an investigation-

- (a) has interfered with a potential witness; or
- (b) intends to destroy documentary evidence which is in his possession and which he has refused to give to the Commission,

the Commission may, in writing under the hand of the Commissioner, direct an investigating officer to arrest that person.

(3) An investigating officer may solicit the assistance of a police officer, in effecting an arrest under this Act.

**Bail and other
procedures
after arrest.**

67. (1) A person arrested under section 66-

- (a) may be taken to the offices of the Commission;
- (b) may be taken forthwith to a detention facility established by the Commission; or
- (c) may be taken to a police station and dealt with in accordance with the Criminal Procedure Act, 1965.

Act No. 32
of 1965.

(2) A person arrested and taken to the offices of the Commission or detained at a detention facility pursuant to subsection (1) may be-

- (a) detained there if the Commissioner considers it necessary for the purpose of further inquiries;
- (b) released from custody-
 - (i) on surrendering his travel documents to the Commission; or

- (ii) on depositing such reasonable sum of money as the Commission may require; or
- (iii) on his entering into recognizance with such sureties, if any, as the Commissioner may require and conditioned upon the attendance of the person at the offices of the Commission at such time or times as the Commissioner may specify; or
- (iv) on condition that he resides at such address as the Commissioner may specify; or
- (v) on condition that he attends at the offices of the Commission at such time or times as the Commissioner may specify; or
- (vi) on any one or more of the conditions set out in sub-paragraphs (i) to (v).

(3) Where a person released from custody under this section fails to attend at the offices of the Commission, the deposit paid or recognizance entered into for release, as the case may be, may be forfeited by a judge upon application by the Commission.

(4) Any person who is detained at the offices of the Commission under this section shall be brought before a court as soon as practicable but not later than ten days after his arrest in accordance with paragraph (a) of subsection (3) of section 17 of the Constitution, unless sooner released on bail.

(5) Any person detained by the Commission for the purposes of further inquiries under paragraph (a) of subsection (2) shall, while being moved to or from any other place in the custody of an investigating officer on the instructions of the Commissioner, be deemed to be in lawful custody.

(6) The Commission may, by statutory instrument, make such provisions as it considers necessary for the treatment of persons detained by the Commission.

(7) In this section, the reference to “Commissioner” in subsections (2), (3) and (5) includes the Deputy Commissioner and, where appropriate, any investigating officer designated by the Commissioner in that behalf.

**Power to
finger-print
and photograph
arrested person.**

68. An investigating officer may, if so directed by the Commissioner, take or cause to be taken under the supervision of another officer, photographs, finger-prints and the weight and height measurements of any person arrested under section 66.

**Arrest of persons
granted bail by
Commission.**

69. (1) An investigating officer authorized in that behalf by the Commissioner may arrest without warrant any person who has been released on bail under section 67-

- (a) if that officer has reasonable grounds for believing that any condition upon which that person was so released or otherwise admitted to bail has been or is likely to be broken; or
- (b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.

(2) Any person arrested under subsection (1) shall be brought before a judge within twenty-four hours after his arrest or as soon as practicable thereafter.

(3) If it appears to the judge before whom a person is brought under subsection (2) that any condition upon which the person was released or otherwise admitted to bail has been or is likely to be broken, he may-

- (a) remand that person in custody; or
- (b) admit that person to bail on the same or on such other conditions as he thinks fit.

**Search and
seizure.**

70. (1) An investigating officer authorized in that behalf may search any person-

- (a) if he has reasonable grounds for suspecting that such person has committed an offence or is about to commit an offence under this Act and seize any document, material or other thing found on him; or
- (b) if he has reasonable grounds for believing that such person has with him or on him any document, material or other thing which is relevant or is likely to be relevant to the investigation and seize any such document, material or other thing found on such person.

(2) A person shall not be searched under subsection (1) except by a person of the same sex.

Search of premises.

71. (1) Where the Commissioner has reasonable cause to believe that there is in any place or premises, other than a residential property, anything which is or contains evidence of the commission of an offence under this Act, he may by warrant directed to an investigating officer empower such officer to enter such place or premises, by force, if necessary, and search it.

(2) Where the Commissioner has reasonable cause to believe that there is on any residential property anything which is or contains evidence of the commission of an offence under this Act, he may on application to a judge obtain a warrant for the purpose of the entry and search of that property.

(3) Where a search is effected under subsection (1) or (2), the investigating officer effecting the search may-

- (a) seize and take possession of any book, document, computer, computer disk or other article;
- (b) inspect, make copies of, or take extracts from, any book, record or document;
- (c) search any person who is on the premises, detain him for the purpose of the search, and seize any article found on such person;
- (d) break open, examine, and search any article, safe, container or receptacle.

**Responsibility
for seized
property.**

72. (1) The Commission shall take all reasonably necessary steps to protect anything obtained pursuant to a requirement or anything seized under a search warrant under this Part, while it is in the custody of the Commission.

(2) Where the Commission does not propose to use anything obtained or seized under this Part as evidence in any proceedings, it shall make arrangements for such thing to be returned forthwith to the person from whom it was obtained or under whose control or possession it was seized.

**Admissibility
of things
produced
or found.**

73. Anything, including the contents thereof, provided by a person pursuant to a requirement or obtained on a search of any person or premises under this Part, may be taken and retained by the Commission for such time as is reasonable for the purposes of the investigation concerned and is admissible in evidence in a prosecution of any person, including the person who produced it or from whom it was obtained, for an offence.

**Unlawful
disclosure of
investigation.**

74. (1) Any person who knowing or being likely to know that an investigation for an offence under this Act is taking place, without lawful authority or reasonable excuse, discloses to-

- (a) the person under investigation the fact of his being investigated or any details of the investigation, including the identity of an informer in the investigation; or
- (b) any other person the identity of the person under investigation or the fact that such person is being investigated or the details of the investigation, including the identity of any informer in the investigation,

is commits an offence.

(2) A disclosure referred to in subsection (1) shall not be an offence where, in connection with the investigation concerned-

- (a) the person under investigation has been requested to furnish a statement in writing under subsection (1) of section 54;

- (b) a property restriction notice has been served under subsection (1) of section 59 on the person under investigation;
- (c) the person under investigation has been committed to prison under subsection (4) of section 63; or
- (d) the person under investigation has been arrested or detained under section 66 or section 67.

(3) Any person who commits an offence under subsection (1) shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

**Identification
for investigating
officers.**

75. (1) The Commission shall issue identification documentation to every investigating officer and such identification shall be evidence that the person to whom it is issued is an investigating officer.

(2) The identification documentation issued by the Commission shall be signed by the Commissioner.

**Impersonation
of officer of
Commission.**

76. Any person who impersonates an officer of the Commission commits an offence and shall, on conviction be liable to a fine not less than three million leones or to imprisonment for a term not less than six months or to both such fine and imprisonment.

**Duty to report
acts of corruption.**

77. (1) Where a public officer suspects that an act constituting an offence under Part IV has been committed or is about to be committed within or in relation to a public body, he shall forthwith make a written report to the Commission.

(2) The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1).

**Referrals to
Commission.**

78. (1) Notwithstanding section 77, where in the exercise of his functions-

- (a) a judge or magistrate;
- (b) the Ombudsman;

- (c) the Director of Public Prosecutions;
- (d) the Auditor-General or an auditor appointed by him;
- (e) the Accountant-General;
- (f) the Commissioner General, National Revenue Authority; or
- (g) the Chief Executive of a public body; or
- (h) Parliament,

is of the opinion that an act constituting an offence under Part IV may have occurred, he or it shall refer the matter to the Commission for investigation.

(2) Where in the course of a police investigation-

- (a) it is suspected that an act constituting an offence under Part IV has been committed; and
- (b) the Inspector-General of Police is of the opinion that the matter ought to be investigated by the Commission,

the Inspector-General of Police shall refer the matter to the Commission for investigation.

**Particulars
of reports.**

79. Where an alleged or suspected case of corruption by a public officer is referred to the Commission by any member of the public or by another public officer such reference shall be accompanied by sufficient particulars of the basis of the allegation or suspicion, including, where possible, documents, papers and other things connected with the matter alleged or suspected.

**Commission
may decline
investigation.**

80. (1) The Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed with any further investigation if the Commission is satisfied that-

- (a) the complaint is frivolous or vexatious; or

- (b) the investigation would be unnecessary or futile.

(2) Where the Commission declines to conduct an investigation or proceed further with any investigation into any complaint, the Commission shall inform the complainant, in writing if practicable, of its decision but shall not be bound to assign any reason for its decision.

**Protection
of informers.**

81. (1) Where the Commission receives information in confidence to the effect that an act constituting an offence under Part IV has occurred, that information and the identity of the informer shall be held secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any court, tribunal or other authority.

(2) Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Commissioner shall cause all parts relating to the informer or the information given to be concealed from view or to be obliterated so far as may be necessary to protect the identity of the informer.

(3) A person who gives information that results in the conviction of another person, of an offence under this Act shall be paid ten percent of the proceeds of any property forfeited as a result of the conviction.

**Protection of
witnesses.**

82. (1) Subject to subsection (6), where a person-

(a) discloses to the Commissioner or Deputy Commissioner or an officer of the Commission that a public officer, body corporate or public body is or has been involved in any act constituting an offence under Part IV; and

(b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act,

he shall incur no civil or criminal liability as a result of such disclosure.

(2) Subject to subsection (6), where a public officer-

- (a) discloses to his superior officer or to the Commissioner that an act constituting an offence under Part IV may have occurred within the public body in which he is employed; and
- (b) believes on reasonable grounds that the information is true,

he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be instituted against him by reason only of such disclosure.

(3) A person who makes a disclosure under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may undertake in relation to matters disclosed by him.

(4) A person to whom a disclosure is made under subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.

(5) A person who commits an act of victimization commits an offence and shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

(6) A person who makes a false disclosure under subsection (1) or (2) knowing it to be false commits an offence and shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

(7) In this section, “victimization” includes an act-

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or
- (d) amounting to threat or reprisal.

**Additional
measures to
protect witnesses.**

83. (1) Subject to this section, any party to proceedings under this Act may apply *ex parte* to a Judge to order the non disclosure of the identity of a witness who in the opinion of the Judge may be in danger or at risk.

(2) A Judge may, on his own motion, or at the request of either party, or the witness concerned, order appropriate measures to safeguard the privacy and security of the witness, provided that such measures are consistent with the rights of the accused person.

(3) A Judge may hold *in camera* proceedings to determine whether to order measures to prevent disclosure to the public of the identity or whereabouts of a witness or persons related or associated with him by such means including-

- (a) expunging the names and identifying information from the court's public records;
- (b) non-disclosure to the public of any records identifying the witness;
- (c) assignment of a pseudonym to the witness;
- (d) holding proceedings *in camera*.

(4) When making an order under subsection (1), a Judge shall where appropriate state whether the transcripts of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in any other proceedings before the court.

(5) Where protective measures have been ordered in respect of a witness or victim in any proceedings, before the court, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the court unless and until they are revoked, rescinded, varied or augmented.

(6) A party to any subsequent proceedings seeking to revoke, rescind, vary or augment protective measures shall apply to the court seized of the subsequent proceedings.

**Power to
obtain assistance.**

84. (1) Any investigating officer conducting an investigation into an offence alleged or suspected to have been committed under this Act may apply to any public officer for assistance in the exercise of his powers or the discharge of his duties under this Act.

(2) A public officer who when requested under subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance is guilty of an offence and shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than six months or to both such fine and imprisonment.

**Protection
for assisting
Commission.**

85. (1) No action or proceeding, including disciplinary action, may be instituted or maintained against a person in respect of assistance given by the person to the Commission or an investigating officer.

(2) Subsection (1) does not apply with respect to a statement made by a person who did not believe it to be true.

(3) In a prosecution for an offence under Part IV or a proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of a person who assisted the Commission or an investigating officer.

(4) In a prosecution for an offence under Part IV or a proceeding under this Act, the court shall ensure that information that identifies or might lead to the identification of a person who assisted the Commission or an investigating officer is concealed from view or obliterated so far as may be necessary to protect the identity of that person.

**Penalty for
false report.**

86. Any person who-

- (a) willfully makes or causes to be made to the Commission a false complaint or report that an offence has been committed under this Act; or
- (b) misleads the Commission by giving false information or making a false statement or accusation

commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than six months or to both such fine and imprisonment.

**Application for
attachment order.**

87. (1) Notwithstanding any other enactment to the contrary, where a court, on an *ex parte* application by the Commission, is satisfied that the Commission has reasonable grounds to suspect that a person has committed an offence under Part IV, the court may make an attachment order under this section.

(2) An order under this section shall-

- (a) attach in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the suspect;
 - (b) require the person named in the order to declare in writing to the Commission, within forty eight hours of service of the order, the nature and source of all moneys and other property so attached; and
 - (c) prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.
- (3) Where an order is made under this section, the Commission shall-
- (a) cause notice of the order to be published in the next issue of the *Gazette* and in at least two daily newspapers published in Sierra Leone or broadcast on a radio station in the locality of the suspect's last known place of business or residence; and
 - (b) give notice of the order to any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

Forfeiture of property if suspect has absconded.

88. Notwithstanding any other enactment to the contrary, where a court, on an *ex parte* application by the Commission, is satisfied that having regard to the evidence before the court the suspect has committed an offence under Part IV, and on the balance of probabilities, that the person has absconded from Sierra Leone in order to evade prosecution under this Act, it may make an order for forfeiture of property due or owing or belonging to or held on behalf of the suspect.

PART VI - PROSECUTION OF OFFENCES

Procedure.

89. (1) Where the Commissioner is of the opinion that the findings of the Commission on any investigation warrant a prosecution under this Act, he shall do so in the Court.

Act No. 32
of 1965.

(2) An indictment relating to an offence under this Act shall be preferred without any previous committal for trial, and it shall in all respects be deemed to have been preferred pursuant to a consent in writing by a judge granted under subsection (1) of section 136 of the Criminal Procedure Act, 1965 and shall be proceeded with accordingly.

(3) On a trial on indictment preferred under this section, an extract of the findings of the Commission, signed by the Commissioner, to the effect that a particular person is, or particular persons are implicated in any offence under this Act shall, without more, be sufficient authority for preferring that indictment in respect of such offence as is disclosed in or based on the report of those findings.

(4) An indictment preferred under this section shall be filed and served on the accused together with the summary of the evidence of the witnesses which the Commission relies on for the proof of the charge contained in that indictment and the names of such witnesses shall be listed on the back of the indictment.

(5) The Commission may, upon giving to the Registrar of the Court and to the accused a notice of its intention to do so together with a summary of the evidence to be given by that witness, call as additional witness any person not listed on the back of the indictment who may give necessary or material evidence at the trial of any indictment under this section, whether or not that person gave any evidence during an investigation by the Commission.

(6) The trial of any offence under this Act shall have priority of hearing in the Court over any other indictment except an indictment for treason, murder or other capital offence.

Bail for accused persons.

90. (1) The judge trying any person under this Act may, on application by the Commissioner or any officer representing him, issue a warrant to arrest such person and to cause him to be brought before him as soon as practicable to be dealt with under this section.

(2) Any person brought before the Court in pursuance of subsection (1), shall, if he satisfies the Court that he is not preparing or about to leave Sierra Leone, be admitted to bail, on his procuring or producing such surety or sureties as, in the opinion of the judge, will be sufficient to ensure his appearance on such day, and at such time and place on that day, as may from time to time, on his appearing be decided by the judge.

(3) The Court may dispense with sureties if, in its opinion, its so dispensing will not tend to defeat the ends of justice and may order one or more of the following-

- (a) that the defendant surrenders his traveling documents to the court pending the trial;
- (b) that the defendant reports at a local police station at such times as the court may determine;
- (c) that the defendant gives a definite place of abode or residence where he shall live and sleep;
- (d) that the defendant may be subjected to curfew if the court deems it fit.

**Admissibility
of accused's
declarations
and statements.**

91. In any proceedings against a person for an offence under this Act-

- (a) if such person tenders himself as a witness then any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served on him under section 54 shall be regarded as a formal statement made by him relative to the subject-matter of the proceedings;
- (b) the fact of the person's failure in any respect to comply with the terms of a notice served on him under section 54 may be adduced in evidence and made the subject of comment by the court and the prosecution.

**Evidence of
pecuniary
resources or**

92. (1) In any proceedings against a person for an offence under Part IV, other than section 27, the fact that the accused was, at or about the date of or at any time since the date of

property.

the alleged offence, or is in possession, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court-

(a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage;

and

(b) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of subsection (1) a person accused of an offence under Part IV, other than section 27, shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

**Certificate
as to official
emoluments, etc.**

93. (1) In any proceedings against a person for an offence under this Act, a certificate purporting-

(a) to certify-

(i) the rate of, and the total amount of, official emoluments and the allowances, other than such emoluments, paid to any public officer in relation to the discharge by him of his duties as a public officer;

(ii) that any person was or was not serving at any specified time or during any specified period as a public officer or ceased to be a public officer at or before any specified time; or

(iii) that a public officer held or did not hold at any specified time any public office; and

(b) to be signed by the Establishment Secretary or head of administration of a public body,

shall be admitted in such proceedings by any court on its production without further proof.

(2) On the production of a certificate under subsection (1) the court before which it is produced shall, until the contrary is proved, presume-

(a) that the facts stated therein are true; and

(b) that the certificate was signed by the Establishment Secretary or head of administration of a public body.

Act No.5 of 2001

(3) In this section, "official emoluments" includes a pension or gratuity payable under the National Social Security and Insurance Trust Act, 2001.

Burden of proof.

94. In any proceedings against a person for an offence under this Act, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

Impossibility of achieving purpose not defence.

95. (1) If, in any proceedings for an offence under this Act, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given on account of his doing or abstaining from doing anything as is referred to in this Act, it shall be no defence that-

(a) he did not actually have the power, right or opportunity to do so or abstain;

(b) he accepted the advantage without intending so to do or abstain; or

(c) he did not in fact so do or abstain.

(2) If in any proceedings for an offence under this Act, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or abstaining from doing, or having done or

abstained from doing, any act as is referred to in this Act, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or abstain from doing, it shall be no defence that such other person had no such power, right or opportunity.

Person giving or receiving bribe not regarded as accomplice.

96. A witness in any proceedings for an offence under this Act shall not be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of payment or, delivery of any advantage by or on behalf of the person accused to him.

Presumption of corruption.

97. Where, in any proceedings for an offence under this Act, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

Forfeiture of property of persons convicted.

98. (1) Upon application by the Commission to the court, any property of or in the possession or under the control of any person who is convicted of an offence under Part IV and any property of that person, subject of a restriction notice shall, unless proved to the contrary, be deemed to be derived from corruption and forfeited by order of the court.

(2) In making a forfeiture order the court may give directions-

- (a) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof;
- (b) as to the disposal of the property.

(3) Upon application to the court by a person against whom a forfeiture order has been made under this section, the court may order that a sum deemed by the court to be the value of the property so ordered to be forfeited be paid by that person to the court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

Property tracking and monitoring order.

99. (1) For the purpose of determining whether any property belongs to, or is in the possession or under the control of any person, the court may, upon application by the Commission

and if satisfied that there are reasonable grounds for so doing, order-

- (a) that any document relevant to-
 - (i) identifying, locating or quantifying property of that person;
 - (ii) identifying or locating any document necessary for the transfer of property to that person,be delivered forthwith to the Commission;
- (b) a financial institution forthwith to produce to the Commission all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the court directs;
- (c) upon being satisfied by the Commission that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with paragraph (a) or (b), that the Commission may enter any premises and remove any document material or other thing therein for the purposes of executing such order.

(2) Where a person produces or delivers a document pursuant to an order under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against the person in any proceedings except a proceeding for an offence of failing to comply with an order of a court.

**Offences in
relation to
property
tracking, etc.**

100. It is an offence-

- (a) for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with paragraph (a) or (b) of subsection (1) of section 99;

- (b) for a person who is the subject of an order made under paragraph (a) or (b) of subsection (1) of section 99 to disclose the existence or operation of the order to any person except to an officer or agent of the Commission or any law enforcement authority named in the order, for the purposes of ensuring that its order is complied with or a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the order.

Limitation on forfeiture of property.

101. Section 98 shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

Appeals.

102. Nothing in this Part shall prevent the operation of any appeal normally available against orders made by the court.

PART VII - MUTUAL ASSISTANCE

Co-operation with foreign State.

103. Subject to section 108, where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commissioner shall, after consultation with the Minister responsible for Foreign Affairs and the Attorney-General and Minister of Justice-

- (a) execute the request; or
- (b) inform the foreign State making the request of any reason-
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

Power of Commissioner to obtain search warrant.

104. (1) The Commissioner upon application to a court and upon production to the court of a request, may obtain a warrant-

- (a) to enter any premises belonging to, or in the possession or control of, any person named in the application and to search the premises;
- (b) to search the person of any person named in the warrant,

and remove any document or material for the purpose of executing the request as directed in the warrant.

(2) The court shall not issue a warrant unless it is satisfied that-

- (a) the documents emanating from the foreign State and accompanying the request in support of the application are duly authenticated;
- (b) there are reasonable grounds to believe that a corruption offence has been committed in the requesting State; and
- (c) that the warrant is necessary for the purpose of the investigation or prosecution, as the case may be.

**Property
tracking etc.,
for foreign
State.**

105. The Commissioner, upon application to the court and upon production to the court of a request, may obtain an order-

- (a) that any document relevant to-
 - (i) identifying, locating or quantifying any property;
 - (ii) identifying or locating any document necessary for the transfer of any property,

belonging to, in the possession or under the control of any person named in the request be delivered to the Commission.

- (b) that a financial institution forthwith produce to the Commission all information obtained by the institution about any business transaction conducted by or for a person named in the request with the institution during such period before or after the date of the order as the court directs;

**Freezing and
forfeiture of**

106. (1) Subject to section 108, the Commissioner upon application to the High Court and upon production to the

**property in
international
co-operation.**

High Court of a request for a freezing or forfeiture of property of or in the possession or under the control of a person named in the request, may obtain an order-

- (a) freezing the property of or in the possession or under the control of the person named in the request for such period as is indicated in the order;
- (b) giving directions as to the disposal of that property for the purpose of-
 - (i) determining any dispute as to ownership of or interest in the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts, incurred in good faith, due to creditors prior to the request;
 - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family; and
 - (v) the payment of costs and other expenses to defend any criminal proceedings referred to in the request; and
- (c) forfeiting the property of or in the possession or under the control of any person named in the request.

(2) An application under subsection (1) shall be accompanied by the request from the foreign State and-

- (a) an authenticated copy of an order of the court in the requesting foreign State ordering the freezing of property of a person who has been charged with a relevant offence in the requesting State; or

- (b) an affidavit of a competent officer in or of the requesting State stating that a person has been charged with a relevant offence in that State.

(3) For the purposes of this section, a relevant offence is an offence constituted by an act or omission which, had it occurred in or within Sierra Leone would have constituted a corruption offence.

(4) This section shall apply only to property coming into the possession or under the control of a person after the commencement of this Act.

Request to be accompanied by an evidence order.

107. (1) Subject to section 108, the Commissioner may, upon application to the Court and upon production to the Court of a request accompanied by an order issued by a Court of the requesting State directed to any person within the jurisdiction of the Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with subsection (1), the person served shall, for the purposes of the order either-

- (a) deliver himself to the jurisdiction of the Court; or
- (b) deliver himself to the jurisdiction of the Court of the requesting State,

in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with subsection (1) elects to deliver himself to the jurisdiction of the Court of the requesting State and fails to comply with any direction in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the Court as provided in paragraph (a) of subsection (2).

(4) The Court shall conduct such proceedings as are necessary to take the evidence of the person delivering himself to the jurisdiction of the Court pursuant to paragraph (a) of subsection (2) and the evidence shall subsequently be transmitted by the Court to the foreign State.

Limitations on compliance with request.

108. The Commissioner may refuse to comply with a request if-

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- (a) the action sought by the request is contrary to, or is likely to be contrary of 1991. to, the Constitution;
- (b) the execution of the request is likely to prejudice the national interest;
- (c) under the law of the requesting State the grounds for refusing to comply with a request from another State is substantially different from paragraph (a) or (b).

Request to Foreign States.

109. (1) The Commissioner may, after consultation with the Minister responsible for Foreign Affairs and the Attorney-General and Minister of Justice, make a request to a foreign State-

- (a) which he considers may be able to provide evidence or information relating to a corruption offence; or
- (b) for the freezing and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a corruption offence.

(2) Where the foreign State, to which a request for assistance is made under subsection (1), requires the request to be signed by an appropriate competent authority, the Commissioner shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

Issuing evidence order against person resident in foreign State.

110. The Commissioner may, in respect of any proceedings for a corruption offence, apply to a Judge in chambers for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign State for the purpose of giving evidence in relation to those proceedings.

**Evidence
pursuant to
requests.**

111. Evidence taken pursuant to a request in any proceedings in a Court of a foreign State shall be received as *prima facie* evidence in any proceedings to which such evidence relates.

**Authentication
of documents.**

112. For the purposes of this part, a document is authenticated if-

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the requesting State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal -
 - (i) of a Minister, Department of State or Department or officer in or of the Government of the requesting State; or
 - (ii) in the case of a territory, protectorate or colony, of the person administering the Government of the requesting territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony.

**Form of
requests.**

113. A request shall be in writing, including facsimile transmittal writing, dated and signed by or on behalf of the person making the request.

**Contents of
requests.**

114. The request shall-

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected corruption offence or that a person has been convicted of any such offence;
- (b) state the grounds on which any person is being investigated or prosecuted for any corruption offence, or give details of the conviction of the person for a corruption offence;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material which may be of assistance to the investigation or prosecution;

- (e) request assistance to obtain from a financial institution or other person all and any information, documents or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

Request for forfeiture.

115. A request for forfeiture shall have attached to it a copy of the final forfeiture order of the Court and a statement signed by a judge of that Court to the effect that no further appeal against such order can be made.

Request not to be invalidated.

116. A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with any provisions of this Part, where the Commissioner is satisfied that there is sufficient compliance to enable him properly to execute the request.

Asset sharing.

117. Where the Minister responsible for finance considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under this Part, or the value thereof, be given or remitted to the requesting State.

Offence of interference with mutual assistance orders.

118. It is an offence-

- (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which he knows or has reasonable grounds for believing that it is likely to be relevant to the execution of any order made in accordance with this Part;
- (b) for any person who knows or has reasonable grounds for believing that an investigation into a corruption offence has been, is being or is about to be made, or that an order has been made or may be

made requiring the delivery or production of any document under this Part to divulge that fact or other information to another person whereby the investigation is likely to be prejudiced.

PART VIII - INTEGRITY IN PUBLIC LIFE

Public officers to declare assets and liabilities.

119. (1) Every public officer shall within three months of becoming a public officer deposit with the Commission a sworn declaration of his income, assets and liabilities and thereafter not later than 31st March in each succeeding year that he is a public officer, he shall deposit further declarations of his income, assets and liabilities and also while leaving office.

(2) Every person who at the commencement of this Act is a public officer shall within three months of commencement of this Act deposit with the Commission a sworn declaration of his income, assets and liabilities and thereafter not later than 31st March in each succeeding year that he is a public officer, he shall deposit further declarations of his income, assets and liabilities.

(3) In the case of every person who ceases to be a public officer, at any time after the commencement of this Act, on the first anniversary of the date on which he ceases to be a public officer he shall file in respect of his assets, income and liabilities, covering the period from the date of his last declaration to the date on which he is required by this paragraph to furnish a declaration.

(4) Notwithstanding the provisions of subsection (1), the Commission may in any particular case, for good cause, extend the time for the furnishing of a declaration for a period not exceeding six months.

(5) A declaration required under this Part shall include such particulars as are known to the declarant of the assets, income and liabilities of himself, of his spouse and of his children:

Provided that-

- (a) if the spouse was not ordinarily living with the declarant for a continuous period of two years during the period in relation to which the declaration is made; or

- (b) if a child of the declarant was not ordinarily living with the declarant at any time during the period in relation to which the declaration is made,

the particulars required to be furnished by this subsection shall be limited to assets held by the spouse or child (as the case may be) in trust for, or as agent of the declarant, so, however, that nothing in this subsection shall be construed as precluding the Commission from requiring from a declarant any additional particulars the Commission may think fit.

(6) Where a public officer who is required to furnish a declaration fails to do so in accordance with this section or without reasonable cause, fails to furnish details in accordance with the prescribed form, the Commission shall publish such fact in the *Gazette* and in at least two daily newspapers published in Sierra Leone or broadcast such fact on a radio station in the locality of such public officer's last known place of residence .

(7) The Commission may at any time after publication in the *Gazette* pursuant to subsection (6), make an *ex parte* application to the Court for an order directing such person to comply with the Act and the Court may, in addition to making such order, impose such conditions as it thinks fit.

(8) Where a public officer holds money or other property in trust for another person, he may so state in his declaration, but shall not be required to disclose the terms of the trust.

(9) For the purposes of a declaration under this Part, the income, assets and liabilities of a person in public life include the income, assets and liabilities acquired, held or incurred by any other person as his agent or on his behalf.

(10) Subject to this Act, Parliament may by resolution apply this section to any other persons employed by the Government not mentioned herein.

(11) Before passing the resolution referred to in subsection (10), Parliament shall give a reasonable opportunity to public appointees and public officers affected thereby to express their views, and shall duly take such views into consideration.

(12) Any person to whom this section applies shall, from the date of such application, be deemed to be a public officer and this Act

regarding the furnishing of declarations to the Commission and other matters relating to public officers shall apply to him in like manner.

(13) Subject to this Act, the Commissioner, Deputy Commissioner, Directors and other persons having an official duty under this Act, or being employed in the administration of this Act, shall deal with all documents and information, and all other matters relating to a declaration under this Part, as secret and confidential, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or inquiry in respect of a declarant under this Act, the Commissions of Inquiry.

(14) The Commissioner, Deputy Commissioner, Directors and other persons referred to in subsection (13) shall make and subscribe such oath of secrecy as the Commission may prescribe.

(15) The declaration shall be in such form as the Commission may prescribe.

**Examination
and publication
of declaration.**

120. (1) The Commission shall examine every declaration furnished to it and may request from the declarant any information or explanation relevant to a declaration made by him, which in its opinion, would assist it in its examination.

(2) Where upon an examination under subsection (1), the Commission is satisfied that a declaration has been fully made, it shall publish or cause to be published a certificate in the *Gazette* in the form prescribed by the Commission.

(3) Where the Commission publishes or causes to be published a certificate under subsection (2), any person may make a written complaint to the Commission in relation to that certificate.

**Power to
investigate
particulars
in declaration.**

121. (1) Where-

- (a) upon an examination under section 121, the Commission is not satisfied that a declaration has been fully made, it may decide that further investigation is necessary; or
- (b) after a certificate has been published in the *Gazette* under section 121 any person makes a written complaint to the Commission in relation to that certificate, the Commission,

after consideration of the complaint, may decide that the complaint should be investigated.

(2) In conducting an investigation pursuant to subsection (1), the Commission may-

- (a) in writing request the public officer concerned or the complainant to furnish such further information or documents as it may require, within such time as it may specify;
- (b) in writing require the public officer concerned to attend on the Commission at such time as may be specified by the Commission;
- (c) make such independent inquiries and investigation relating to the declaration or complaint as it thinks necessary;
- (d) summon witnesses and require the production of documents;
- (e) in respect of a complaint under paragraph (b) of subsection (1), in addition to summoning the complainant, it may hear the complainant who may be represented by a legal practitioner and any witnesses in support of the complaint; and
- (f) do all such things as it considers necessary or expedient for the purpose of carrying out its functions.

(3) Where a public officer is required to attend on the Commission pursuant to subsection (2), he may have the right to be accompanied and represented by a legal practitioner for the purposes of such inquiry and may require the Commission to summon such witnesses as he thinks necessary.

(4) For the purpose of investigation of a complaint under this section, the Commission may, on good cause being shown to its satisfaction, allow the complainant to have access to the declaration of the public officer concerned filed under this Act.

(5) Where the Commission after conducting an inquiry in accordance with paragraph (b) of subsection (1) is satisfied that the complaint is groundless or has not been substantiated, it shall publish a statement in the Gazette to that effect, and in addition, where there is evidence of the commission of an offence under this Act either by the complainant or by the public officer concerned the Commission shall take such action as it may consider necessary.

**Offences in
relation to
declarations.**

122. Any person who-

- (a) fails without reasonable cause, to furnish to the Commission a declaration which he is required to furnish in accordance with the provisions of this Act;
- (b) knowingly makes any false statement in such declaration;
- (c) fails without reasonable cause to give such information or explanation as the Commission may require;
- (d) after a certificate in respect of a declaration has been published in the Gazette pursuant to subsection (2) of section 121, publishes any statement whatever (orally or in writing) challenging the accuracy of that certificate or the honesty or credibility of the declarant, otherwise than by way of a complaint to the Commission;
- (e) contrary to section 120, discloses or makes known to any person any information contained in any such declaration otherwise than in accordance with this Act or any other enactment;
- (f) makes any frivolous, vexatious or groundless complaint to the Commission in relation to a declaration or a certificate in respect of such declaration; or
- (g) fails without reasonable cause to attend an investigation being conducted by the Commission pursuant to section 122, or knowingly gives any false information in such investigation,

commits an offence and shall be liable on conviction to a fine not less than twenty million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

PART IX - MISCELLANEOUS

Effect of death of person involved.

123. A notice authorised or required to be given to a person under this Act is, for a person who is dead, taken to have been given if it is given to the person's legal personal representative.

Effect of death of joint owner of restrained property.

124. (1) If a person has an interest in property as joint owner of the property, the person's death after a restriction notice issued in relation to the interest does not, while the notice is in force, operate to vest the interest in the surviving joint owner or owners and the restriction notice continues to apply to the interest as if the person had not died.

(2) A forfeiture order made in relation to the interest applies as if the order took effect immediately before the person died.

(3) If a restriction notice ceases to apply to an interest in property without a forfeiture order being made in relation to the interest, subsection (1) is taken not to have applied to the interest.

Arrangements to avoid operation of Act.

125. (1) If the court is satisfied on an application by the Commission that a scheme was carried out by a person for the purpose of directly or indirectly defeating the operation of this Act in any way, the court may for the purpose of defeating that purpose-

- (a) make an order declaring all or part of the scheme void; or
- (b) make an order varying the operation of all or part of the scheme.

(2) The court may also make such orders as the court considers just in the circumstances for consequential or a related matter or for giving effect to any order of the court under this section, including any order about the following-

- (a) any disposition of property;
- (b) the payment of money;

- (c) the sale or other realisation of property and the disposition of the proceeds;
- (d) the creation of a charge on property in favour of any person and the enforcement of the charge created.

(3) In this section-

- (a) "defeating" includes avoiding, preventing and impeding;
- (b) "scheme" includes-
 - (i) any agreement, arrangement, promise, understanding or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
 - (ii) any action, course of action, course of conduct, plan or proposal.

**Corruption offence
extraditable.
Act No.11 of 1974**

126. Any request for extradition of an offender shall be subject to the Extradition Act, 1974 which shall be applied as if any corruption offence or economic crime is an offence for which extradition may be granted.

**Obstruction
of justice.**

127. (1) No person shall-

- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten, a person acting under this Act;
- (b) deceive or knowingly mislead the Commission or a person acting under this Act;
- (c) destroy, alter, conceal or remove documents, records or evidence that the person believes, or has grounds to believe, may be relevant to an investigation or proceeding under this Act; or

- (d) make false accusations to the Commission or a person acting under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than three years or to both such fine and imprisonment.

Conspiracy.

128. (1) Any attempt or conspiracy to commit a corruption offence or aiding, abetting, counseling, commanding or procuring the commission of a corruption offence shall be punishable as if the offence had been completed and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

(2) The powers of investigation conferred by Part V shall apply with respect to a conspiracy to commit an offence under this Act in like manner as they apply to the investigation of any such offence.

**Offence by
body of persons.**

129. Where an offence under this Act is committed by a body of persons-

- (a) if the body of persons is a body corporate, every director or officer of that body shall be deemed to have committed that offence;
- (b) if the body of persons is a firm, every partner of that firm shall be deemed to have committed that offence.

General penalty.

130. (1) A person who fails to comply with any requirement under this Act for which no offence is specifically created commits an offence and shall be liable on conviction to a fine not less than five million leones.

(2) Any person who commits an offence for which no penalty is provided shall be liable on conviction to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

**Court may
impose ban.**

131. A court may in addition to any other penalty, permanently or for a maximum period of five years, ban any person convicted of an offence under Part IV from pursuing the profession, trade, vocation or occupation which provided the opportunity for the commission of the offence.

**Custom not
a defence.**

132. Unless otherwise provided in this Act, in any prosecution of an offence under Part IV, it shall be no defence that the receiving, soliciting, giving, offering or obtaining of any advantage is customary in any business, undertaking, office, profession or calling.

Civil proceedings.

133. Where the Commission is satisfied that a person has been a party to corruption and has benefited from it, the Commission shall institute civil proceedings for damages in respect of the corruption.

**Suspension of
public officer
charged with
corruption.**

134. (1) A public officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge.

(2) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.

(3) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.

(4) This section does not apply with respect to an office in respect of which the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.

**Suspension of
public officer
convicted of
corruption.**

135. (1) A public officer who is convicted of an offence shall be suspended without pay with effect from the date of the conviction pending the outcome of any appeals.

(2) The public officer ceases to be suspended if the conviction is overturned on appeal.

(3) The public officer shall be dismissed if-

(a) the time period for appealing against the conviction expires without the conviction being appealed; or

(b) the conviction is upheld on appeal.

(4) This section does not apply to an office in respect of which the Constitution limits or provides for the grounds upon which a

holder of the office may be removed or the circumstances in which the office must be vacated.

Commissioner to report on charges and convictions for corruption.

136. (1) The Commissioner shall report to the appropriate appointing authority the fact that a public officer has been charged for or convicted of corruption or economic crime.

(2) Where a public officer is convicted of corruption or economic crime, the Commissioner may, in the report made pursuant to subsection (1), make such recommendations as to possible disciplinary action to be taken against such public officer as he may deem appropriate.

Conduct outside Sierra Leone constituting offenders.

137. Conduct by a citizen of Sierra Leone that takes place outside Sierra Leone constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Sierra Leone.

Costs on acquittal.

138. Where a person is acquitted after trial before the Court for an offence under Part IV, the court may award costs to that person, such costs to be taxed and paid out of the Consolidated Fund.

Supplementary funds.

139. The Commission shall retain ten per cent of all debts recovered in civil proceedings in the course of its work and shall supplement its budget with it and the remaining ninety per cent shall be paid into the Consolidated Fund.

Regulations.

140. The Commission, may by statutory instrument, make regulations for the carrying out of the provisions of this Act.

Repeal and savings.

Act No. 1 of 2000.

141. (1) The Anti-Corruption Act, 2000 is repealed.

(2) Notwithstanding subsection (1), any rules, regulations, orders, notices, prescriptions and other instruments or directives issued under the repealed Act and in existence immediately before the commencement of this Act, shall continue in operation until their expiration or until their express repeal or revocation.

(3) Any person holding or deriving office by appointment under the repealed Act shall be deemed to have been appointed or to derive office under this Act.

(4) All investigations, prosecutions and other legal proceedings, instituted or

commenced under the repealed Act and which have not been concluded before the commencement of this Act, shall be continued and concluded in all respects as if that Act had not been repealed.

Passed in Parliament this day of in the year of our Lord two thousand and eight

VICTOR A KAMARA
Clerk of Parliament

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill

VICTOR A KAMARA
Clerk of Parliament

MEMORANDUM OF OBJECTS AND REASONS

The Anti-Corruption Act 2000 (Act No. 1 of 2000) was enacted to prevent corrupt practices. The Act, since its enactment has been the subject of many criticisms. One of such criticisms is that the Act did not go far enough in its provisions especially when viewed against the United National Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption and Related Offences, both of which Sierra Leone has ratified.

Another criticism was that the Anti-Corruption Commission did not have power to prosecute offences under that Act and relied on a three member Committee established by the Law Officers (Prosecution of Anti-Corruption Cases) Instructions, 2005 to make decisions as to whom to prosecute under that Act, the constitutionality of which remains doubtful.

The object of this Bill is therefore to plug the holes in the Anti-Corruption Act 2000 whilst adopting the provisions in the two conventions.

Part 1 of the Bill provides for the establishment of the Anti-Corruption Commission as a body corporate with the power to acquire, hold and dispose of moveable and immoveable

properties, etc. the Bill also seeks to limit the tenure of office of the Commissioner and Deputy Commissioner to a maximum of two terms of five years each. Unlimited renewals of appointment as provided for in the Anti-Corruption Act, 2000 tended to breed inefficiency and laissez faire attitude to work. It could also engender corruption as the renewals may well develop “goodwill” for the time when a favour is needed.

Parts IV deals with offences. Clause 26 provides for the corrupt acquisition of wealth by public officers whilst Clause 27 provides for possession of unexplained wealth.

Parts V and VI deal with powers of investigation and prosecution of offences respectively. Clause 89 in particular empowers the Anti-Corruption Commission to prosecute offences where the Commission, after its investigations thinks that prosecution is warranted.

Part VII provides for mutual assistance whereby the Commission is to co-operate with foreign states in the investigation or prosecution of corrupt practices upon being requested by a foreign state.

However, where the request (a) is contrary to or likely to be contrary to the Constitution of Sierra Leone (b) the execution of the request is likely to prejudice the national interest or (c)

under the law of the requesting states, the grounds for refusing to comply with the request is substantially difference from the ones stated in (a) and (b), then the Commission may refuse such request.

ABDUL SERRY KAMAL
Attorney-General and Minister of Justice

Freetown
Sierra Leone
May, 2008

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