WEDNESDAY 2ND JULY, 2014

BEFORE THE HON MR. JUSTICE M A PAUL

THE STATE

VS

DR MAGNUS KEN-GBORIE AND OTHERS

Case Called

All three Accused persons present

AR Mansaray Standing for M I Kanu for the State

A K Kamara holding for M P Fofanah for the 1st Accused

N D Tejan-Cole for the 2nd Accused

R B Kowa for the 3rd Accused

M I Kanu now appears for the state

JUDGMENT

The Accused persons, namely Dr Magnus Ken Gborie, Dr Edward Magbity and Lansana S M Roberts were indicted and arraigned on counts as enumerated hereunder**:**

Count 1

Statement of Offence

Conspiracy to commit a corruption offence contrary to Law:

Particulars of Offence

Dr Magnus Ken Gborie, being the Director of planning and Information of the GAVI HSS Support Project with the Ministry of Health and sanitation, Lansana , S M Roberts being the proprietor of Rolaan Enterprise of No.57 Macdonald Street, Freetown, on a date unknown, between the 1st day of April 2009 and the 30th September 2009, at Freetown in the Western area of the Republic of Sierra Leone, conspired together and with other persons unknown to Misappropriate Donor Funds in the sum of the Le46,237,500 (Forty Six Million, Two Hundred and Thirty-Seven Thousand, Five Hundred Leones).

Count 2

Statement of Offence

Misappropriation of Donor Funds, contrary to Section 37(1) of the Anti-Corruption Act No.12 of 2003.

Particulars of Offence

Lansana S M Roberts being the Proprietor of Rolaan Enterprises of No.57 Macdonald Street, Freetown on a date unknown between the 1st day of April 2009 and the 30th September 2009, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le51,375,000 (Fifty-One Million, Three Hundred and Seventy-Five Thousand Leones).

Count 3

Statement of Offence

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

Particulars of Offence

Dr Magnus Ken Gborie being the Director of Planning and Information of the GAVI HSS Support Project with the Ministry of Health and Sanitation, Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of GAVI HSS Support Project with the Ministry of Health and Sanitation and Lansana S M Roberts being the Proprietor of Rolaan Enterprises of No.57 Macdonald Street, Freetown on a date unknown between the 1st day of April 2011 and the 30th April 2011, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le242,400,000 (Two Hundred and Forty-Two Million, Four Hundred and Thousand Leones)

Count 4

Statement of Offence

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

Particular of Offence

Dr Magnus Ken Gborie, being the Director of Planning and Information of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of May 2012 and the 30th May 2012, at Freetown in

the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le62,500,000 (Sixty-Two Million, Five Hundred Thousand Leones).

Count 5

Statement of Offence

Misappropriation of Donor Funds, contrary to Section37(1) of the Anti-Corruption Act. No.12 of 2008

Particulars of Offence

Dr Edward Magbity, being the Principal monitoring and Evaluation officer of GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of May 2012 and the 30th May 2012, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le47,500,000 (Forty-Seven Million, Five hundred thousand Leones).

Count 6

Statement of Offence

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

Particulars of Offence

Dr Edwards Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of January 2008 and the 31st day of January 2008, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated

Donor Funds in the Sum of Le26, 320,00 (Twenty-Six Million, Three Hundred and Twenty Thousand Leones).

Count 7

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of January 2008 and the 31st day of January 2008, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le60,000,000 (Sixty Million Leones).

Count 8

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of January 2008 and the 31st day of January 2008, at

Freetown in the Western area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le65,000,000 (Sixty-Five Million Leones).

Count 9

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of February 2008 and the 28th day of February 2008, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le45,000,000 (Forty-Five Million Leones).

Count 10

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date

unknown between the 1st day of February 2008 and the 28th day of February 2008, at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Donor Funds in the sum of Le53,000,000 (Fifty-Three Million Leones).

Count 11

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of February 2008 and the 28th day of February 2008, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le20,000,000 (Twenty Million Leones).

Count 12

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of February 2008 and the 28th day of February 2008,

at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le70,000,000 (Seventy Million Leones).

Count 13

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of April 2008 and the 30th day of April 2008, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor funds in the sum of Le30,000,000 (Thirty Million Leones).

Count 14

Statement of Offence

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

Particulars of Offence

Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of July 2008 and the 31st day of July 2008, at

Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le30,000,000 (Thirty million Leones).

Count 15

Statement of Offence

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

Particulars of Offence

Dr Magnus Ken Gborie, being the Director of planning and Information of the GAVI HSS Support Project with the Ministry of Health and Sanitation and Dr Edward Magbity being the Principal Monitoring and Evaluation Officer of GAVI HSS support project with the Ministry of Health and Sanitation, on a date unknown between the 1st day of January 2012 and the 31st January 2012, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le50,000,000 (Fifty Million Leones).

Count 16

Statement of Offence

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

Particulars of Offence

Dr Magnus Ken Gborie, being the Director of planning and Information of the GAVI HSS Support Project with the Ministry of Health and Sanitation and Dr

Edward Magbity being the Principal Monitoring and Evaluation Officer of GAVI HSS support project with the Ministry of Health and Sanitation, on a date unknown between the 1st day of May 2012 and the 30th May 2012, at Freetown in the Western Area of the Republic of Sierra Leone Misappropriated Donor Funds in the sum of Le49,070,000 (Forty-Nine Million Seventy Thousand Leones).

Count 17

Statement of Offence

Willfully failing to comply with the Law relating, to the Procurement of Service, contrary to Section 48(2) of the Anti-Corruption Act No12 of 2008.

Particulars of Offence

Dr Magnus Ken Gborie being the Director of Planning and information of the GAVI HSS Support Project with the Ministry of Health and Sanitation and Dr Edward Magbity being the Principal Monitoring and Evaluation officer of GAVI HSS Support Project with the Ministry of Health and Sanitation, on a date unknown, between the 1st April 2012 and the 31st December 2012 at Freetown in the Western Area of the Republic of Sierra Leone Willfully failed to comply with the Law relating to procurement of respect of securing the services of Seventy Eight Enterprises and General Merchandise for the leasing of vehicles.

Count 18

Statement of Offence

Accepting an advantage, contrary to Section 28(2) (a)of the Anti-Corruption Act No.12 of 2008

Particulars of Offence

Dr Magnus Ken Gborie, being the Director of Planning and Information of the GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of May 2012 and 30th May 2012, at Freetown in the Western Area of the Republic of Sierra Leone accepted an advantage to wit: the sum of Le62,500,000 (Sixty-Two Million, Five Hundred Thousand Leones) from Seventy Eight Enterprises as a reward for vehicle hire services contract awarded to the said Seventy-Eight Enterprises for the Performance Based Financial Monitoring conducted by the Ministry of Health and Sanitation.

Count 19

Statement of Offence

Accepting an advantage, contrary to Section 28(1) (a) of the Anti-Corruption Act, No.12 of 2008 .

Particulars of Offence

Dr Edward Magbity, being the Principal Monitoring and Evaluation Officer of GAVI HSS Support Project with the Ministry of Health and Sanitation on a date unknown between the 1st day of May 2012 and the 30th May 201 at Freetown in the Western Area of the Republic of Sierra Leone accepted an advantage to wit: the sum of Le47,500,000 (Forty-Seven Million Five Hundred Thousand Leones) from Seventy Eight Enterprises as reward for the vehicle hire services contract awarded to the said seventy-Eight Enterprise for the Performance Based Financial Monitoring conducted by the Ministry of Health and Sanitation.

All three accused person entered a plea of not guilty on all counts.

In the interest of clarity, the 1st accused, Dr Magnus Ken Gborie was arraigned on seven counts scilicet; counts 1,3,4,15,16,17, and 18 respectively.

The 2nd Accused, Dr Edward Magbity was arraigned on fifteen counts scilicet counts 3,5,6,7,8,9,10,11,12,13,14,15,16,17 and 19 respectively, and
the 3rd accused, Lansana S M Roberts was arraigned on three counts scilicet: Counts 1,2, and 3 respectively.

It must be noted that counts 18 and 19 were added to the indictment following the prosecutions successful application of an amendment in a considered ruling dated that 1st day of November 2013, necessitating a re-arraignment of the 1st and 2nd accused persons on the additional counts.

It is also noteworthy that the application for an amendment was made and granted before the close of the Prosecution's case, at a time when all options were open to the defence to put their case before the court, as noted by this court in the said ruling. I have become functus officio as touching the said ruling. The attempt by the learned 1st accused's counsel, M.P. Fofanah Esq. in his final address to re-argue the issue which have already been considered and disposed of in the ruling must be roundly deprecated. The submission which bear on the said issues are therefore, better ignored and not to be countenanced. The same must be said of a similar attempt by the learned counsel for the 2nd accused, N D Tejan-Cole Esq. It is trite law that the ruling of a court remains valid and binding until it is set aside by an appellate court.

Eight witnesses were called by the prosecution in proof of their case against the accused persons.

At the close of the case for the Prosecution the 1st and 2nd accused persons elected, in their defence, to rely on the statements which they made to the Anti-Corruption Commission. They neither testified nor called any witnesses. For the 3rd accused, C F Margai Esq. made a no case submission on his behalf. In the same vein Mr. Margai raised certain jurisdictional issues arguing, inter alia, that the Anti-Corruption Commissioner, Joseph Fitzgerald Kamara, is not a Law Officer and lacks the legal capacity to sign the indictment which is the foundation of the record in the instant trial. He also argued that the Anti-Corruption Act, No 12 of 2008 makes no provision for the offence of conspiracy notwithstanding the provision in Section 128 of the said Act.

Curiously, learned Counsel for the 1st and 2nd Accused persons associated themselves with the submissions of Mr. Margai and adopted same.

In the somewhat lengthy and well considered ruling of this court dated the 10th day of January 2014, the jurisdictional issues were dismissed and the no-case submission overruled. In overruling the no-case submission, this court stated that the evidence led by the prosecution in proof of the charges against the 3rd accused is such as to warrant some answer from the 3rd accused in his defence.

Notwithstanding, the 3rd accused elected to rely on his interview statement which he made to the Anti-Corruption Commission, in his defence as did his co-accused persons. The 3rd accused made his election after Counsel on his behalf, R B Kowa Esq; had unsuccessfully made an application to the court for a case to be stated before the Court of Appeal on the same question/issues which were the subject of the ruling of this court delivered on 10th January 2014. In refusing the application, this court clearly stated that the application was a ploy to delay or frustrate the

expeditious disposal of this matter. In any event, an application for a case stated ought to be made to the court seised of a matter before the said court determines the questions intended to be stated, and not after the court had determined the very questions stating a case after the court seised of a matter has determined the questions to be stated is tantamount to an appeal in disguise, which the Law frowns upon and does not allow.

Notwithstanding the denial by this court of the application for a case stated on the same issues that have been adequately determined by this court, Mr. C F Margai proceeded to file an application before the Supreme Court seeking a review by the apex court of the very questions determined by this court on 10th January 2014, in clear abuse of process of this court. It is interesting and it has come to light that the question as to competency of the Anti-Corruption Commission to sign an indictment which was determined by this court in the said ruling and in which this court held that he had the power to sign an indictment, was the question in an appeal in the case of **Francis Fofanah Komeh and Anor V The State Cr.App. 1/2011 of 27th November 2012 (unreported)**
Counsel for the Appellant in that case was R B Kowa Esq. of the Law Firm of C F Margai and Associates.

The Court of Appeal held in that case, Hon P.O Hamilton JSC presiding, that the Anti-Corruption Commissioner has the power under the Anti-Corruption Act 2008, to sign indictments preferred by the Commission C F Margai and Associates did not launch an appeal to the Supreme Court against the said judgment since it was delivered on 27th November 2012.

The next question which was determined by this court in the ruling of 10th January 2014 and for which a case stated and review is sought by C F Margai and Associates is the question whether Section 128 of the Anti-Corruption Act 2008 creates the offence of conspiracy and, if not whether the accused persons in the instant case could be indicted and tried for the offence of conspiracy. This court is in its ruling of 10th January 2014, held that the Section creates the offence and that even if for the sake of argument it could be said that the Section does not create the offence, the Anti-Corruption Commission could properly charge the accused person with the offence of conspiracy under the common Law, Common Law being part of the Laws of Sierra Leone as is clear from Section 74 of the Court's Act 1965. See also Sections 176 and 177 of the Constitution of Sierra Leone 1991.

It has also come to light that it had been held in an earlier case, Hon E E Roberts J A in **The State V Alphajor Bah and other of 23/10/1`2 (unreported)** that Section 128 of the Anti-Corruption Act 2008 created the offence of conspiracy – the same conclusion reached by this court in its ruling of 10th January 2014. This court is not aware of any decision by any appellate Court in this country which has put a contrary construction on the provision of Section 128 of the Anti-Corruption Act 2008.

It is therefore, troubling that the Law firm of C F Margai and Associates represented by Charles F Margai and R B Kowa would engage in sharp practice aimed at deterring the course of Justice. Their conduct is an irritation to this court and their motive is clearly unwholesome. Their motive is clearly to frustrate the conclusion of this matter by this court. The application for case stated judicial review on the same issues is a ruse and a subterfuge. It is unbecoming of Counsel of the status of C F Margai and R B Kowa. By the way, My Lord, Hamilton JSC is

presiding in the Supreme Court panel on the so-called review application by C F Margai. E E Roberts JA is also a member of the said panel.

To further show that this was a carefully hatched plan by C F Margai and Associates to frustrate these proceedings, C F Margai Esq. has since resorted to all forms of intimidation and blackmail with a view to making it impossible for me to conclude this matter. In a decidedly petulant manner, he has resorted to the gadfly activity of writing mischievous and tendentious letters and filing frivolous processes with the object of removing me, if possible from continuing with this matter, even after having successfully tried same.

On the 10th day of January 21014, R B Kowa Esq. asked that the court grant him a period of one month from 10th February 2014 within which to file and serve a final address on behalf of the 3rd accused. This matter was then adjourned to 24th March 2014, for adoption of addresses. On 24th March 2014 neither C F Margai nor R B Kowa appeared on behalf of the 3rd accused person.

They did not extend to the court even the courtesy of a letter to account for their absence. On that occasion, N D Tejan-Cole Esq. applied to the court for an extension of time in which to file and serve his address on behalf of the 2nd accused. This Court allowed N D Tejan-Cole a further 14 days to do so. The court also allowed a further 14 days to the 3rd accused to enable C F Margi and Associates to file an address on his behalf, although they did not ask for same, being absent from court on that day. The 3rd accused was, however, present in court on the day.

The matter was further adjourned to 7th April 2014 for adoption of addresses. On 7th April 2014, neither Mr. Margai nor R B Kowa Esq appeared in court. They both kept away. Although the 3rd accused was present in court, they characteristically did not extend to the court, any courtesy, even by a letter to explain their absence. When the court enquired from the 3rd accused as to their reason for being absent, the 3rd accused could not provide any. Asked by the court if he did not pay C F Margai for his service, he told the court that he paid fees to him.

The court discovered on file, a statement dated 25th March 2014, entitled **"Closing address/Arguments on behalf of the 3rd accused, Lansana S M Roberts**" It was filed by C F Margai and Associates. It purported to be address and yet contained no address for the consideration of the court. It is a five paragraph statement essentially asking this court to stay proceedings in this matter under the guise that the 3rd accused has submitted an application to the Supreme Court for the apex court to quash my ruling of 10th January 2014, by which Mr. Margai's no-case submission was overruled and the jurisdictional questions raised by him were dismissed, as noted supra.

For all practical purposes, such a statement was not an address, I had dismissed it as a rubbishy piece of paper and I still do. I had questioned whether Mr. C F Margai had by his conduct, justified the fee paid to him by the 3rd accused to defend his in this matter and I do still.

This is because Mr. Charles F Margai has engaged in sharp practices unbecoming of a practitioner of his standing at the bar. He appears unable to appreciate the fact that his first and paramount duty, as Counsel, is to the court, and above all, to seek

the promotion of the supreme welfare of justice. His duty is not to treat this court with disdain and contempt while priding himself as a Senior Practitioner. Seniority comes with responsibility, without which age at the bar is reduced to a mere number. It is not his duty to engage in sharp practice aimed at defeating the ends of justice. Neither is it part of his duty as counsel to engage in mischievous shadow-boxing or tilt at windmills. It is not part of Counsel's duties to cast unwarranted aspersions or make devious innuendo about a judge as he set to do in one of his numerous letters which he copied His Excellency, the President of the Republic, His Excellency the Vice President of the Republic and the rest of the world.

Suggesting enormities and seeking to scandalize the court is not one of the duties of the lawyer. Filing motions of recusation and alleging bias where none exists, is not one of his duties

In an unreported ruling in the case of **Hassan Mansaray V The State, Misc App. 445/13 of 25th November 2013** I had cause to remind another Counsel in that case, of the felicitous words of Lord Denning MR. in the case of **Rondel V Worsely (1967)1 Q.B 443** requesting the duties of an advocate. I commend the said ruling to C F Margai Esq. Mr. Margai has at different time in my court, alluded to his aspiration to the highest office in this land. It is a great aspiration. The instance matter is related to corruption offences. Addressing the scourge of corruption must be of importance to Mr. Margai if he believes in anything that must commend this aspiration to the people of this great country. It is not to attempt to Stigler or hinder the Anti-Corruption effort by skullduggery. It is not ennobling. A man who has not the sense to discriminate between what is good and what is bad is well nigh as dangerous as the man who does discriminate and yet

chooses the bad. Nothing is more distressing to a Country man and a good patriot than the hard scoffing spirit which treats allegations of corruption in a citizen as a cause for shenanigans. It is worse than the crackling of thorns under a pot, for it denotes not merely the vacant mind, but a heart in which high emotion have been choked before they could grow to fruition.

Well, Mr. Margai must be warned that this court will not hesitate to punish him for contempt if given the cause to do.

The fact of this instant case can be briefly stated thus:

The Global Alliance for Vaccines and Immunization (otherwise called GAVI or GAVI ALLIANCE) based in Geneva Switzerland and maintains Secretariats in Geneva and Washington DC USA , is an international Organisation with a mission to save children's lives and protect people's health by increasing access to immunization in poor countries. GAVI provides funds to Health System Strengthening support for countries in order to address system bottlenecks to achieve better immunization outcomes, including increased vaccination coverage and more equitable access to immunization. The GAVI Alliance has been supporting Sierra Leone since 2001 through direct funding of Vaccines and Cash-based support for Immunization Services and Health Systems Strengthening. GAVI Health Systems Strengthening grant draft Audit Report Phase 1 for the period 2008 – 2011 for Sierra Leone dated 7th December 2012 reveals that as at the date of the report, a total amount of US$23.152,974 has been disbursed to the Government of Sierra Leone for Vaccines whilst US$4,121,850 has been disbursed for Health Systems Strengthening, Immunization Support Services and Vaccine Introduction cash grants.

It was said that Sierra Leone is among the countries with the worst indices for maternal and child health in the world and estimated that women face a 5 in 6 life-time risk of dying from pregnancy and childbirth related complications.

In an application by the Ministry of Health and Sanitation in March 2007 for the grant of GAVI Alliance Health System Strengthening funding, it was stated that in order to ameliorate the plight of maternal mortality the following bottlenecks must be addressed:

a. A large proportion of the population do not have adequate access to priority health care.
b. Very few health facilities provide Basic Emergency obstetric care.
c. Majority of the Peripheral Health Unit (PHU) staff are not trained in the integrated Management of Childhood Illness (IMC).
d. Inadequate means of transportation for prompt referrals for severe and complicated cases.
e. Irregular supervision of Peripheral Health Unit (PHU) staff, one of the causes of poor quality care.

The HSS funding was meant to address that these identified bottleneck in order to improve health care delivery services to rural population in Sierra Leone with the goal of reducing mortality rates among children under 5 years and pregnant women and contribute towards the achievement of the millennium development goals 4, 5 and 6 and the attainment of target s aimed at poverty reduction.

The Directorate of Planning and Information in the Ministry of Health and Sanitation was charged with the responsibility to coordinate the implantation of the

GAVI Health System Strengthening activities. It is responsible for collation of reports of implementers and to send periodic report to partners and GAVI

The 1st accused, Dr Magnus Ken Gborie, was at all material times the Director of the Directorate of Planning and Information and a category "A" Signatory to the Directorate of Planning and Information (DPI) account at the Union Trust Bank (UTB) See Exhibit F1. As Director, he approves proposals for events and activities for the Health System Strengthening and other Donor supported projects.

The 2nd accused, Dr Edward Magbity was at all material times, the Principal Monitoring and Evaluation Officer at the Directorate of Planning and Information and a category "B" signatory to the DPI account at the Union Trust Bank(UTB) see also Exhibit F1. He coordinated all DPI Programme activities.

The 3rd accused, Lansana S M Roberts is the Proprietor of Rolaan Enterprises of No.57 Macdonald Street, Freetown

The GAVI Transparency and Accountability Policy Team (TAP) conducted the audit noted supra which draft report made adverse findings regarding the implementation of the Health System Strengthening grant as follows:

a. Absence of clear accountability in the financial management of the programme and in particular, the total non-involvement, until now, of the Directorate for Financial Resources of the Ministry of Health and Sanitation
b. Poor programme Management oversight
c. Lack of Basic book keeping and weak record management
d. Lack of supporting financial programmatic documentation in relation to programme expenditure

e. Deficient procurement
f. Weak internal financial controls
g. Unsubstantiated and weak external audit work with technical deficiencies, including a total absence of a documented audit file.

The Audit Report also revealed the following irregularities:

a. Undocumented expenditures to the tune of US$442,078 mainly relating to central and district level supervision and workshops supported only by incomplete and inconclusive documentation
b. Unjustified disbursements, I,e cash withdrawals without any supporting documentation, totalling US$556,487;
c. Overcharged procurement estimated at US$100,872, and
d. Diversion of programme assets estimated at US$43,386.

According to the report, the provisional total amount of irregularities was US$1,142,823, pending the analysis of a genuine additional supporting documentation that may be provided before the finalization of the draft audit report. It must be noted that Management funds of GAVI HSS grant and disbursement of same as planned upon request to implementers was meant to be the responsibility of the Director of Financial Resources of the Ministry of Health and Sanitation.

It was against the backdrop of the Report that investigation were triggered leading to the charges which formed the foundation of the instant trial

As made clear in the evidence of Musa Jamiru Balal Jaweara, who testified as PW1, the Investigation triggered by the GAVI Audit Report was not limited only

to the GAVI Audit Report. It extended to other donor projects such as the World Bank, Global Fund and other donor institutions.

Before I proceed to delve into the substantive mater before me, I propose to dispose of a short point to which has been devoted by learned Counsel for the 1st and 2nd accused persons a decent amount of time in their written addresses. It is contended that the particulars of the offences provided in the indictment are vague, inadequate and insufficient and therefore, misleading in the sense that the thrust of the investigation leading to the instant trial were funds donated by GAVI Alliance and that the court's inquiry cannot be extended to matters concerning funds provided by other donors such as the World Bank and Global Fund. In the 1st accused's Counsel's submission this is in light of the fact that the particulars of offences in counts 3 and 4 of the indictment related to funds donated by Global fund while the particulars of offence in Count 18 relate to funds donated by the World Bank.

On the part of Learned Counsel for the 2nd accused, it is submitted that the allegations in Counts 6 to 14 of the indictment relate to funds donated by Global fund and World Health Organisation (WHO).

Authorities have been cited to persuade the court to hold that the particulars of the respective counts are misleading, hidden or coached in secrecy and not compliant with Section 51(1) of the Criminal Procedure Act, No.32 of 1965 and the rules as set out in the 1st schedule to the criminal Procedure Act requiring inter alia, that a charge contain such particulars as may be necessary for giving reasonable information as to the nature of the charge, in order that no injustice is caused to the accused person in being put in a position where he would not know to which

particular allegation he must apply his defence. Whatever merit there may be in these submission, although I am at pains to see any, for reason which shall be made clear shortly, I am afraid that they came late in the day. As I observed in the case of the State V Solomon Hindolo Katta and others of 3/4/14 (unreported) It does not seem right or desirable as has now become fashionable for criminal defence lawyers to wait until closing addresses to object to perceived formal defects in a charge to which an accused has pleaded not guilty and upon which his trial proceeded. The correct procedure is that every objection to any charge for any formal defect on the face.

Thereof, shall be taken immediately after the charge has been read over to the accused and not later, because the accused would be saying in effect that there is no valid information to which he could plead. Pleading to it is thus a submission to trial on a defective charge, if the defect does not deprive the court of jurisdiction . See **Oba Kpolor V The State (1991) INWKR (PT.165, 113; Ikomi V State (1996) 3 NWLR (PT.28) 340al 370.** The Court before which any such objection is taken might, if it be thought necessary at that stage, cause the indictment to be amended in such particular by some officer of the court and thereupon the trial shall proceed as if no such defect has appeared. "An objection as now proposed by learned Counsel of the 1st and 2nd accused persons at the stage of closing addresses can rarely be upheld as affecting the validity of the indictment.

This is in agreement with the letter and spirit of the enactment in Section 133(2) of the Criminal Procedure Act 1965 which provides thus:

"After a plea of not guilty, it shall not be open to an accused except with the leave of the court to object that he is not properly upon his trial by reason of some defect,

omission or irregularity relating to the depositions or committal or any other matter arising out of the preliminary investigation"

And as provided in Section 133(1), inter alia, thus:
"Every person by pleading generally the plea of "not guilty" shall, without further form, be deemed to have put himself upon his trial ….."

I add that the purpose of furnishing particulars of an offence in a court is to ensure that an accused person understands and appreciates the nature of the allegation against him to enable him know what he is called upon to answer and sufficiently prepared for his defence.

Rule 3 (4) (b) of the first schedule to the Rules made under Section 50 of the Criminal Procedure Act 1965 provides that it shall be sufficient if only the words of the section of the enactment creating the offence one set out in the particulars of the offence.

In my view, an examination of the impugned counts would clearly reveal the words misappropriation of donor funds". That the 1st and 2nd accused persons are described in terms that they are variously Directors of Planning and Information and Principal Monitoring and Evaluation Officer of GAVI HSS Support Project with the Ministry of Health and Sanitation, would to my mind, not have left the accused persons in confusion as to the counts put to them.

The issue is whether the submissions attacking the description of the 1st and 2nd accused persons in all the particulars of the offences with which they are charged as regards their designation as Director of Planning and |Information and Principal

Monitoring and Evaluation Officer respectively of GAVI HSS Support Project with the Ministry of Health and Sanitation renders the indictment bad or merely defective.

The point has been made earlier on that all objections which go merely to formal defects of an indictment shall be made before plea and trial. It means that no objectives or submissions shall in law be sustained for any matter not affecting the real merits of the offence charged in the indictment. The position of the law remains that no indictment shall be quashed for misdescription of the occupation or place of residence of an accused. An accused shall not be acquitted on account of any misdescription on the face of an indictment if there is evidence that the offence charged was committed by the accused.

Section 51(1) of the Criminal Procedure Act 1965 provides as follows:

"Every information or indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge".

Drafting an indictment is an art and it is the responsibility of drafters to ensure that the indictment against an accused person is framed in the proper form before arraignment. Agreed. See **R V Newland 87 G.App.R.118**

So that where a trial proceeds on an unamended but defective indictment, there is an irregularity in the course of the trial which may result in the court of Appeal

finding that the conviction is unsafe. See **R V Ayres (1984) AC 447** . In that case, Lord Bridge said at pages 460-461:

"If the statement and particulars of the offence in an indictment disclose no criminal offence whatever or charge some offence which has been abolished, in which case the indictment could be fairly described as a nullity, it is obvious that conviction under that indictment cannot stand. **But if the statement and particulars of offence can be seen fairly to relate to and to be intended to charge a known and subsisting criminal offence but plead it in terms which are inaccurate, incomplete or otherwise imperfect,** then the question whether a conviction on that indictment can properly be affirmed under the proviso must depend on whether, conviction on that indictment can properly be affirmed under the proviso must depend on whether, in all the circumstances, it can be said with confidence that the particular error in the pleading cannot in anyway have prejudiced or embarrassed the defendant". (Underlining Mines)

The test on appeal as illustrated in ***R V Ayres (supra)*** is whether the defect in the indictment has caused prejudice or embarrassment to the defence. On the facts of **Ayres' case**, the full indictment faced by Ayres did not charge him accurately with the only offence for which he could properly be convicted, because it charged a common law conspiracy when he was, infact, guilty of statutory conspiracy. Nevertheless, the House of Lords held that there had been no prejudice because (at page 462)

> "The particulars of offence in this indictment left no one in doubt that the substance of the crime alleged was a conspiracy to obtain money by deception. The Judge in summing up gave all the appropriate direction in

relation to that offence … the evidence amply proved that offence against the present appellant. The Jury in returning a verdict of guilty must have been sure of his guilt of that offence. The Judge passed a modest sentence comfortably below the maximum for that offence. The misdescription of the offence in the statement of offence as a common law conspiracy to defraud had in the circumstances not the slightest practical significant …. There cannot possibly have been an actual miscarriage of justice."

In the case of **R V Graham (1977) 1 Cr. App.R.302** the English Court of Appeal referred to the **Ayres case** and made it clear that a conviction would not be quashed because of a drafting or clerical error, or a discrepancy, omission or departure from good practice. A conviction would be unsafe only where the particulars did not support a conviction for the offence charge. It was held in **R V Thompson (1918) 9 Cr.App.R 252,** cited with approval in **R V McVitie (1960) 44 Cr.App.R 201**, that one of the objects of section 4 of the Indictments Act (1915) was to prevent the quashing of a conviction upon a mere technicality which has caused no embarrassment or prejudice. Section 4 of the Indictment Act 1915 is in pari material with our Section 51 of the Criminal Procedure Act 1965.

The reasoning of the court in **R V McVitie and** R V Nelson (1977) CR.App.R.119 was essentially that the indictment in each case, although defective, was not a nullity as it described an offence known to Law albeit in inaccurate terms, and the accused, had not been misled or prejudiced in the conduct of his defence by the error.

In the instant case, it was the GAVI Audit Report that triggered the investigation leading to the trial of the 1`st and 2nd accused persons. There is no denial of the

fact that these accused persons occupy the positions described in the particulars of offence in the Directorate of Planning and Information. There is no denial of the fact that the accused persons were involved in the implementation, not only of programmes funded by GAVI Alliance but also of other programmes implemented by the Directorate and funded by other donors such as the World Bank and Global Fund while they occupied the said position as described. Their interview may have centered principally on programmes funded by GAVI Alliance. There is also more than a tangential mention of other donors such as the World Bank and Global Fund . It was infact stated in evidence by pW1 that his investigation was not limited to GAVI Audit Report, but extended to other Donor Projects such as World Bank and Global Fund etc as noted earlier.

There is no denial that the donor programmes however described, were implemented with Donor funds kept in the DPI account maintained and operated at the Union Trust Bank (SL) Limited to which the 1st and 2nd accused were Category "A" and Category "B: signatories.

All the counts in the indictment are offences known to Law. The investigators who interviewed the accused person and obtained their voluntary cautioned statements confronted them with the bank instruments relating to the offences charged. Most of the instruments bear their signatures as admitted by them. There was no complaint throughout the trial that the accused persons were not served with the indictment which put them on trial.

There is therefore, no question that they knew the charges on which they were arraigned to which they entered "not guilty" plea. If the various bank instruments related to donor funds other than GAVI Alliance, it was a fact within their

knowledge as they were directly involved in the implementation of the donor programmes. This is specifically so when counts such as counts 18 and 19 make reference to a specific donor activity.

The 1st and 2nd accused persons were never misled or prejudiced in the conduct of their defence. They knew at all time what donor funded programme or activity the charge relate to and who the donors were.

I am fortified in my view by the submission of the 1st accused's Counsel that count 3 of the indictment related to an activity exclusively funded and supported by Global fund, and that counts 4 and 18 relate to an activity funded by the World Bank. Learned Counsel could only have come by such information through his client, the 1st accused person and not necessarily through consumptions from exhibits tendered by the Prosecution.

I am further fortified in my view by the submission of the 2nd accused's counsel that counts 6 to 14 relate to activities funded by Global Fund and World Health Organisation. Such information would only have come from his client the 2nd accused who knew the difference having been involved in matter to which they relate. So, whether the allegations of Misappropriation and so on relate to GAVI Alliance funded activity or not, if there is evidence before this court, in support of the offences changed and such evidence go to prove misappropriation of funds donated by other donors as noted above, the submission on behalf of the 1st and 2nd accused persons will not avail them.

In my view defects if any in the indictment such as an omission to mention in the particulars of offence the specific donor and activities to which the counts relate

are defects of a technical nature. Such omission did not render the indictment bad or make it a nullity, but only defective to my mind and for the reason articulate above. The 1st and 2nd accused persons were not embarrassed or prejudiced by the said omissions because they knew the offence with which they were charged. There is sufficient compliance with Section 57(1) of the Criminal Procedure Act 1965, by the Prosecution.

Having disposed of that issue, I proceed by stating that the general principle is that the prosecution has the burden of proving the guilt of the accused in a criminal trial. **See <u>Woolmington V DPP (1935)AC 462</u>**. There are Common Law exceptions for example, insanity under the M'Nagbten Rules. There are also statutory exception which provides that where a defence is based on "any exception, proviso, excuse or qualification, the accused will have the burden of proof in proving that the exception applies. See **<u>R V Edwards (1975) Q.B.27</u>** Where the accused bears this legal burden of proof, the test is the balance of probabilities.

In cases where the defence does not bear the legal burden of proof, the defence may still bear an evidential burden. This means that the defence must ensure that there is sufficient evidence before the doubt to require the prosecution not disprove the defence beyond reasonable doubt. In saying this, it is not the correct position of the Law, as submitted by the Learned 2nd accused's counsel that the shifting of the evidential burden of proof applies only when the prosecution has discharged the burden and standard of proof before an accused may be called upon to prove his defence.

As much as the burden of proof stays with the Prosecution throughout the trial, the prosecution requires to establish a prima facie case in order for the evidential burden to shift before any inference can be drawn by the court. This is moreso in a case where the disclosures of certain facts lie peculiarly within the knowledge of an accused person.

There is no question that Sections 94 and 97 of the Anti-Corruption Act 2008 are couched in is prove beyond reasonable doubt but nothing that of that will suffice"

As this court noted in the **Solomon Hindolo Katta case (supra)** proof beyond reasonable doubt is not proof beyond all iota or shred of doubt. The golden thread rule is **Woolmington V DPP (supra)** was postulated within the realm of reason and must not be stretched beyond reasonable limits, lest it cleave. See also **Nasitu V State (1992) NWLR(PT.589)p7 at 98**. We are in the instant case concerned with corruption offences allegations, which by their nature and complexion presents their peculiarities.

Corruption is a grave social evil which is difficult to detect, for those who take part in it will be at pains to cover their tracks. See Lord Diplock in **Public Prosecutor V Yuvaraj (1970)AC 913 at 922.** Corruption offences are very often incapable of proof by direct evidence because the perpetrators are skilled and devious schemers. Proving the requisite mensreh is also not always an easy task since direct evidence is often unavailable.

Generally, the Prosecution must prove its case beyond reasonable doubt. In **R.V. Walters (1969) 2A.C. 26,** The Privy Council stated that it was

> "the quality and kind of doubt which, when you are dealing with matters of importance in your own affairs, you allow to influence you one way or the other"

And in **Miller V Minister of Pension (1947) 2 All ER 372,** Deening L.J. Stated as follows:

> "It need not reach certainty, but must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of doubt. The Law would 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 'of course it's possible but not in the least probable', the case very often, the perpetrators operate covertly because they do not want the offence exposed. Therefore, an offender's mental state would have to be inferred from objective factual circumstances. Circumstantial evidence, combined with other evidence pieces of the puzzle, will have to be relied upon to infer the Commission of the crime. The court must take into account the cumulative effect of all the facts before the court pointing to the guilt of an accused and no other reasonable inference.

I agree with the prosecution as with Lord Coleridges's disquisition on circumstantial evidence in his summing-up in the case of **R.V. Dickman (1910)5 Crim App.R.32** when he said as follows:

> "It is perfectly true ….. that this is a case of circumstantial evidence alone. Now circumstantial evidence varies infinitely in its strength

and proportion to the character and variety, the cogency, the independence, one of ht another, of the circumstances. I think one might describe it as a network of facts cast around the accused man. The network may be a mere gossamer thread, as light and unsubstantial as the very air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves gaps and rents through which the accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture that no efforts on the part of the accused can break through. It may come to nothing. On the other hand, it may be absolutely convincing. If we find a variety of circumstances, all pointing in the same direction, convincing. If we find a variety of circumstances, all pointing in the same direction, convincing in proportion to the number and variety of these circumstances and their independence of one another, although each separate piece of evidence, standing by itself, may admit of an innocent interpretation, yet the cumulative effect of such evidence may be overwhelming proof of guilt. Ask yourselves then, what is the cumulative effect than upon your minds of so many so varied, so independent pieces of evidence all pointing, it is said, in one direction, all tending, it is said, to inculpate the prisoner and the prisoner alone in the Commission of this crime?"

The uses of **Adebiyi Mayekodunmi V The Queen, 14 WACA 64, Bangura V Reginam ALR Sl 209 and Mcgreevy V. DPP (1973), 1 All ER 503** cited by learned Counsel for the 2nd accused say nothing different about the law on inferences on circumstantial evidence form the principles articulated above and

encapsulated in the summing up of Lord Coleridge quoted in extensor supra Sec also **R.V. Tapper (1952) A.C. 480**

As noted earlier on in my judgment, the accused person neither gave nor called evidence in the instant trial despite the clear public interest in some account being given by them in their defence. That is not to say that the accused persons are compellable witnesses at own trial. They made interview statements to the Anti-Corruption investigators, upon which they rely, for their defence. They are unsworn extra-judicial statements containing what appear to be exculpatory or denials. It must be said that any exculpatory or denial statements by an accused to an investigator to be acted upon by the court must form part of the sworn evidence of the defence, and pass the acid test of cross-examination. The effect of a reliance by the accused on an unsworn extra judicial statement is to rest his defence on the case of the Prosecution. What an accused is then saying is that even if all the prosecution witnesses are believed, yet still the offence charged has not been proved. Indeed, it is permissible to rest on the case of the prosecution. But the accused will be taking a big risk where issues of fact will have to be decided in favour of an accused person before his defence will succeed. To rest his case on the prosecution then will be highly prejudicial. It is something of a lottery and always and gamble to so do. See **Nwede V. The State (1985)3 NWLR 444 at 455**

If the defence rests and refuses to put an accused to the witness box to depose to his own version of the events, then the court is denied the opportunity of listening to the accused tell his story, of watching his demeanor of assessing his credibility, and of making the necessary choice between history and that of the prosecution. In the final result, the court will have to decide the case on the evidence before it undeterred by the incompleteness of tale from drawing all the inferences that

properly flow from the evidence of the prosecution. The defence has shut itself out and will have itself to blame. The court will not be expected to speculate on what the accused might have said if he testified. See the Privy Council decision **in The Queen V Sharmpal Singh (1962) 2 WLR 238 at 243-245. In such a situation, the accused sands or fells with the case of the prosecution. See Akinyemi V State (2001)2 ACL.32**

I now proceed to consider the case against and for the accused persons beginning with the counts on Misappropriation of Donor Funds contrary to Section 37(1) of the Anti-Corruption Act No.12 of 2008, that is counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16

Misappropriation:

It is provided in Section 37(1) of the Anti-Corruption Act 2008 as follows:

> 37(1). "A person who, being a member or an officer or otherwise in the Management of any organization whether a public body or other wide, dishonestly appropriated 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"

Misappropriation is the intentional, illegal use of the property or funds of another person for ones own use or other unauthorized purpose. Such unauthorized purpose can be to the use of another unlawfully. An appropriation itself is the act of taking control of something or property meant for another.

As I reasoned in the case of the State V Anita Kamada in an unreported Ruling delivered on 10th July 2013, for purposes of appropriation or misappropriation

under Section 37(1) of the Anti-Corruption Act 2008, there must be an owner, and the owner of the property appropriated must be the organization whether a public body or otherwise. An owner has many rights which have, in law, been described as a bundle or package of rights. One of such rights must be the right to authorize the use of the property. An appropriation or misappropriation would therefore, involve not only an act expressly or impliedly unauthorized by the owner but may also involve the doing of one or more acts which individually or collectively amount to such adverse interference with or assumption of those rights. See Per Lord Roskill in **R.V. Morris (1983)3 All ER 288 at 293** See also **R.V. Mcphersson (1973) Crim L.R. 191; and Anderton V Wich (1980) 72 CR.App.R.23**. The concept of appropriation or misappropriation therefore, involves interference with or usurpations of the rights of the owner.

The consent of an owner is irrelevant for the purpose of misappropriation See **Larence V. Metropolitan Police Commisisoner (1971) 2 All ER 1253; R.V. Gumez (1993)1 All ER 1.** The actus reus of misappropriation or appropriation is the interference with or usurpation of the owners right that is the appropriation itself.

In order to secure a conviction under Section 37(1) of the Anti-Corruption Act 2008, the prosecution has a duty to prove the following for elements namely:

1. That an accused is a member or officer in the management of any organization, whether a public body or not
2. That property or otherwise was misappropriate or appropriated
3. That the misappropriated or appropriated property was donated to such a body in the name or for the benefit of the people of Sierra Leone or a Section thereof.

4. That such misappropriation or appropriation was undertaken dishonestly.

Dishonesty

It is dishonesty that proves the guilty mind (Menshea) in the offence of Misappropriation under Sec 53(1)

For the most part, dishonesty s to be equated with conscious impropriety carelessness is not dishonesty. Individuals are not free to set their own standards of honesty in particular standards. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.

An analysis of judicial authorities bordering on dishonesty determine that the test for dishonesty is essentially a question of fact whereby the state of mind of an accused had to be judged in the light of his subjective e knowledge but by reference to an objective standard of honesty . See for instant **R.V. Feely(1973) Q.B. 550; R.V. Gilks (1972) 3 All ER 280; R.V. Ghosh (1982) A.B. 1053 R.V. Roberts (1987) 84 G.AppR.117**

The test of dishonesty requires the court to laymen and ordinary decent people can easily recognize as dishonesty when they see it, even if they each believed that they had not acted dishonestly.

THE EVIDENCE

I am not unmindful that though accused persons are tried jointly, the case against each of them has to be treated separately. I am not entitled to treat evidence which is only applicable to or which inculpates only one accused person, against the other accused person. It is a rule of law that each accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his guilt, independent of the evidence against his co-accused.

I also caution myself that all doubts must be resolved in favour of an accused person.

I shall now proceed to examine and evaluate the evidence before me.

A public body within the meaning of Section 1 of the Anti-Corruption Act 2008 refers to anybody which has public or statutory duties to perform and which perform those duties and carry out their transactions for the benefit of the public and not for private profit. See **DPP V. Holly (1977)1 All ER 316.** The Ministry of Health and sanitation is a public body as defined by section 1 aforesaid. It is beyond controversy therefore, that the Directorate of planning and Information under that Ministry is a public body. As director of DPI and Principal Monitoring and Evaluation Officer respectively of DPI the 1st and 2nd accused persons are clearly members of a Public body. There is no want of evidence establishing this fact. In his interview Statement (Exhibit FF3 refers), the 1st accused clearly told

the Anti-Corruption investigators in answer to question No. 5, that he works for the Ministry of Health and Sanitation as the Director of Planning and formerly Planning and Information. And in Exhibit GG3, the 2nd accused said in answer to question 7 posed to him by the investigator in his interview statement that he is the Principal Monitoring and

Evaluation officer in the Ministry of Health and Sanitation. I reject the submission by Counsel to the 2nd accused that the prosecution required to produce the letter of appointment of the 2nd accused and the letter of his acceptance of his offer of appointment.

The 3rd accused person is not a member of a public body. He is the sole proprietor of Rolaan Enterprises, a private concern. Exhibit JJ4 is part of his interview Statement where he made it clear in answer to question 7 posed to him by the Anti-Corruption Commission investigators. Exhibits J67 and 68 are his Certificates of Registration dated 12th May 2005. An offence under Section 37(1) of the Anti-Corruption Act 2008 can be committed by a non-member of a public body. The Section contemplates such an offence when it provides that a 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. (Emphasis mine). The 3rd accused comes within the meaning of the underlined words of the Section.

I come now to the counts.

Count 2

Count 2 was amended - By order of this Court dated 25th April 2013 substituting the sum of Le5,147,500.00 in the particulars of offence, with the sum of Le51,375,000.00, with the result that the 3rd accused was re-arraigned on that Count. It is the prosecution's case that the 3rd accused received the sum of Le51,375,000 for vehicle hire services to the Ministry of Health and Sanitation for which there is no account or documentation showing that the service was provided other than a receipt of the sum. The Prosecution tendered this receipt dated 20th April 2009. The proforma invoices were received in evidence as Exhibit NN8 and NN9 respectively and the receipt as Exhibit NN7. Both the Proforma Invoices and the Receipt describe no further details regarding the purpose of the payment of the sum of Le51,375,000 to the 3rd accused other than simply 'vehicle rentals for 15 days' and "vehicle rental services" respectively. The vehicle rental service do not make reference to any activity for which payment was made whether in the Proforma Invoices or in the Receipt issued by the 3rd accused acknowledging receipt of the payment. The closest activity which took place during the relevant period and for which documentations were provided by the Ministry of Health and Sanitation following Notice to produce served on the Ministry by the Anti-Corruption Commission was an activity on an Assessment of Impact of newly Harmonized Forms, on Data Quality and Timeliness of Reporting. The activity was said to have been carried out by the Directorate of Planning and Information from 5th to 19th April 2009. The documentations provided by the Ministry of Health and Sanitation relating to that activity were in response to the notice to produce, dated 15th January 2013, addressed to the Senior Permanent Secretary, Ministry of Health and Sanitation received in evidence as Exhibit 'A1&2'. It is instructive that the said 'Notice' required the Ministry to produce documents

relevant to GAVI Alliance Cash Support to Sierra Leone through the Ministry of Health and Sanitation for the period 2008 to 2012.

As touching payment of the sum of Le51,375,000 to the 3rd Accused person, no document which directly references the payment was made available save Exhibits NN7, NN8 and NN9 as noted supra. Exhibit NN1 is a letter of request for funds from the 1st accused as Director, DPI to the Senior Permanent Secretary in the Ministry. He asked for an amount of Le127,870,000.00 to conduct an Assessment of Impact of newly harmonized forms, on Data Quality and Timeliness of Reporting. It was a GAVI HSS Programme. The letter is dated 24th March 2009. The request was approved and by Exhibits NN4, 5 and 6, the requested amount of Le127,870,000 which was the equivalent of $41,821.75 was transferred into the DPI account held at Union Trust Bank.

It is reasonable to draw the conclusion that no other activity which would have required the hiring or renting of vehicles during the relevant period between April and May 2009, took place for which the 3rd accused was paid the sum of Le51,375,000 other than the activity for which the sum of Le127,870,000 was transferred into DPI account. It is also reasonable to suppose that the activity for which the 3rd accused was paid was in regard to the said activity considering the fact that his proforma invoice is dated 20th April 2009 and the receipt which he issued for receipt of the sum is dated 7th May 2009.

It is reasonable to suppose that the Ministry did not produce other documentation because no other document relating to the activity for which the sum was paid to the 3rd accused exists. What is envious, however, is that the budget for the said activity as shown in Exhibit NN3 says nothing about vehicle rentals but rather motor bikes. It is also curions that the tax clearance certificate issued to the 3rd

accused which was supposed to be part of the supporting documents for the payment to him of the sum of Le51,375,000 and for which he issued a receipt dated 7th May 2009, was obtained from the National Revenue Authority on the 4th September 2009, as Exhibit NN10 shows. The testimony of Felix Lansana Tejan Kabba who testified as PW2 is instructive in this connection. He said:

> "During the course of the investigation of this matter, I had cause to look at Exhibit NN1-40. I noticed that my findings about this document are similar to the findings noted in the GAVI Matrix of Audit as in Exhibit MM1-6. In particular, I noticed that the budget estimate in NN1-40 did not make provision for vehicle rental, but rather for motor bikes. And also, the attached fuel receipts show that more than half of the fuel was bought from one location. This is important because the other attachments show the activity was carried out in 13 Districts in Sierra Leone. In essence, these are all the Districts in Sierra Leone. The activities as per the documents were supposed to be carried out simultaneously in all the 13 Districts of the Country. More than half of the fuel was bought from No.1 Camp Lane, Tankoro, Kono District. The documents concerning the vehicle rental service – there is a receipt issued by Rolaan Enterprises dated 7th May 2009 for the sum of Le51,375,000, and a proforma invoice dated 20th April 2009. And there is a tax clearance certificate attached to it dated 4th September 2009. The significance of these, my Lord, according to other retirements documents like the DSA vouchers, the activity period is (sic) between the 5th and 19th April 2009. We have a receipt for vehicle rental dated 7th May 2009. And the Tax Clearance Certificate of Rolaan Enterprises has a date that Post-dates even the activity. The Tax Clearance bears a date in September 2009 while the activity to which it is said to relate took place between 5th and 19th April 2009. Both the receipts for the vehicle rental

service and its proforma invoice also post-dates the activity. My findings basically supported the findings in the audit matrix. On Exhibit MM3, from the column dated 24th March 2009, the DPI is the submitting entity and activity described as assessment of impact of new HMIS form in the sum of Le127,870,000.00. The result of GAVI analysis are 'invoice for fuel submitted recently fabricated as per handwriting forensics, invoices dates from 4th April for 10 cars purportedly rented on 20th April. In addition, car rent was not budgeted. Tax Clearance Certificate provided by supplier with its invoice is dated 4th September 2009 for a car rental of 20th April 2009. Lastly, fuel and car rent invoices rejected for a total of Le74,450,000.'"

It is also instructive that Exhibit MM1 is an e-mail from one Bernadin Asserie, the Director of Transparency and Accountability with GAVI Alliance Secretariat, Switzerland, addressed to the Senior Permanent Secretary Mr. J.T. Kanu, at the Ministry of Health and Sanitation. The said Email had attached to it, a copy of the work paper summarizing the misused amount which forms part of the particulars of the offence in Count 2 of the indictment. Exhibit MM1 speaks for itself. As my analysis of the evidence above shows, Exhibit MM3 makes it abundantly clear and confirms that the payment of the sum of Le51,375,000 to the 3rd accused for rent of 10 vehicles was in connection with the GAVI HSS activity for which the sum of Le127,870,000 was paid into the account of DPI following the letter of request by the 1st accused dated 24th March 200

The evidence of PW3 was uncontradicted.

The evidence of Musa Jamiru Bala Jawara who testified as PW1 was also not contradicted when he testified: "that there was a procedure at the Ministry for approval of payments, meaning they would request for approval for the activity for

which payment is to be made and would go through a chain of command. After approval has been given, the Finance Officer would raise the cheque based on the instructions in the approval, and the cheque would be submitted to the 1st accused and the 2nd accused or to Dr. Michael Amara for endorsement. After which the cheque can be presented for encashment."

It would be argued that the above procedure is entirely an internal arrangement in the DPI and the Ministry of Health and Sanitation, which may be behind-the-curtain to the 3rd accused. The same goes for its breach by the 1st and 2nd accused persons. The same also goes for a breach of the procurement requirements and procedures in the Ministry.

That said, the point must be made that this is a trial for a corruption offence relating to misuse of Donor Funds. Nothing is therefore, to be taken for granted. Once it is alleged that the officers concerned have been guilty of some malfeasance for which justification cannot be found through the production of the relevant unimpeachable documentation, recourse must be had to the 3rd accused person for answers in order to connect the dots and resolve what appears to be a puzzle. This is more so giving the notoriety of the prevailing practice by public officers to keep documents as a ruse to perpetrate fraud committed in cahoots with people in the private sector through whom they haemorrhage the public institutions where they are employed. The Court is unable to appreciate the whole story unless it hears the version of an accused person. There is before this Court, evidence of payment to the 3rd accused, the sum of Le51,375,000 by the Department of Planning and Information of out of GAVI HSS donor fund. The receipt (Exhibit NN7) issued by the 3rd accused suggest on the face of it that he performed the service for which he was paid the amount. That, by itself, suggests that the sum of Le51,375,000.00 is

his lawful entitlement for job lawfully done. The evidence before the Court appears to suggest the contrary. The Court must resort to him to provide an explanation as to how the sum of Le51,375,000 which he received out of Donor Funds and for which he issued a receipt dated 7th May 2009 was his lawful entitlement. This is where Section 94 of the Anti-Corruption Act 2008 comes into play. It is part of the meaning of that Section. The 3rd accused bears the burden, albeit on a balance of probabilities, to explain or prove to the Court that he had the lawful authority to receive the sum of Le51,375,000 out of Donor Funds, for services which he lawfully provided.

The 3rd accused neither gave nor called evidence throughout his trial. He chose to rely on his interview statement which was received in evidence as Exhibit JJ1-25. The 3rd accused was confronted by the Anti-Corruption investigators with the receipt of the sum of Le51,375,000 during his interview. See Exhibit JJ8. He was shown Exhibits NN7, NN8, NN9 NN10 and NN11. He admitted that those where his business documents which he issued to the Ministry of Health and Sanitation. He admitted that he received the sum for providing ten vehicles. He said he sourced the vehicles from individuals. He said he could not recall who the individuals were. He had told the investigators on JJ4 that vehicle rentals was part of his business. The 3rd accused had also said in his interview statement that he maintained records of his business transactions certain times for two years at most. For whatever that answer was worth, that may be for keeping records of transactions. What about knowing the names of the individuals from whom he sourced vehicles since he said he had no pool of vehicles from which he carried on his business of vehicle rentals? In my view, it was too convenient for the 3rd accused to say that he could not recall the names of the individuals upon whom he relied for his vehicle rental business. He did not give the investigators even a

single name. This is beyond memory lapse, in my view. It is clear evidence of evasiveness. The 3rd accused could only be evasive because he did not rent vehicles for which he received the sum of Le51,375,000 out of funds donated by GAVI HSS for the benefit of the people of this Country. As submitted by the learned Prosecution Counsel, there are no traces of fuel purchase or registration numbers of the rented vehicles. It is known that documentation for vehicle hire must go with receipt for fuel purchase and registration numbers stated in the receipts. Searches conducted at the business office and home of the 3rd accused person did not reveal anything in connection with the ten vehicle rentals. Even if one were to give it to him that he shredded all documents going back to 2009, how does the 3rd accused explained his uncooperative conduct in refusing to sign portions of his interview statements even when he was told by PW2 that he was at liberty to make any clarifications in his statement, without any evidence that his statement was not made voluntarily? How does the 3rd accused assist the Court in explaining the puzzle that he received money for vehicle rental for an activity for which use of motor bikes were budgeted as made clear on Exhibit MM3. How does he explain the puzzle that the tax clearance certificate which he provided for a vehicle rental service of 20th April 2009 and for which he was paid on 7th May 2009 was obtained on 4th September 2009 when the tax clearance certificate ought to have been part of the documents submitted with the invoice before the supposed rental service was carried out? How does the 3rd Accused explain the puzzle that the activity for which he received payment on 7th May 2009 took place from 5th April to 19th April 2009, dates prior to his proforma invoice for the activity dated 20th April 2009.

It is indeed a puzzle that his proforma invoice bears a date after the very activity for which he received payment. How does the 3rd accused contradict the forensic

analysis by GAVI Alliance Secretariat in Switzerland that the fuel receipts were fabricated? How does he contradict the evidence of PW2 that the fuel receipts show that more than half of the fuel for an activity supposedly carried out simultaneously in 13 Districts of the Country, was purchased from No.1 Camp Lane, Tankoro, Kono District? This is a case in which the 3rd accused required to provide some credible answers if he had any in order to be able to create reasonable doubts, but there is no explanation. His silence is emphasized by his consequent conduct. If the 3rd accused gave evidence under Oath in his defence, the Prosecution would certainly have cross-examined him on these issues. The Court might also have had some questions for him. I agree that he is not a compellable witness in law to state his case. He is very much within his rights to not even say a word to the investigators and the Court. He could still have made a statement from the wall of the Court and not be cross-examined. Such a Statement could perhaps, have thrown a flood of light on some, if not all of the puzzles noted supra.

When a person given the right to answer the questions raised by this Court chose not to do so, the Court must not be deterred by the incompleteness of tale from drawing the inferences that properly flow from the evidence before it. The Court will not be expected to speculate on what the 3rd accused might have said if he testified. See The Queen v. Sharmpal Singh (Supra). The sum of Le51,375,000 paid to and received by the 3rd accused out of the funds donated by GAVI for the benefit of the people of this Country was received by him unlawfully. He did not perform the service for which he received the sum. It is a clear appropriation or misappropriation of funds donated for the benefit of the people of Sierra Leone. It was dishonest for the 3rd accused to receive money for which he provided no service knowingly. He knew as a businessman that proforma invoices are

submitted before approvals are given for an activity in the normal course of things. He also knew that he required to submit a tax clearance certificate prior to being engaged to provide the service for which he appropriated the sum. An honest person who is engaged in the business of vehicle rentals, who owns no vehicle but depends on individuals to source his vehicles cannot choose to forget the names of all of such individuals when he is required to name them. He would not be evasive in his answers, neither would he, in the circumstances of this case be uncooperative with investigators who were very civil with him. He did so because, in my view, he had something to hide.

As judge of law and fact, I must say that honest people do not knowingly take other people's property or seek to reap where they did not sow and try to deceive.
I have no doubt in my mind that the conduct of the 3rd accused betrays him as dishonest as far as Count 2 of the indictment is concerned. No iota of doubt is left in my mind that he is guilty of the offence charged in Count 2 of the indictment. I, therefore find him guilty as charged.

Count 3

Count 3 charges all three accused persons jointly with the offence of dishonestly appropriating donor funds to wit, the sum of Le242,400,000. The DPI account held and operated at the Union Trust Bank Limited provided a veritable cornucopia where funds from various donors meant for the implementation of diverse health programmes were kept. It was in evidence that the DPI account was fed with donor funds transferred from the Expanded Programme on Immunization (EPI) account held and operated by the Ministry of Health and Sanitation at the Sierra Leone Commercial Bank for the implementation of GAVI Alliance and other

donor projects. The donors include World Bank, Global Fund, WHO and other donor institutions. As stated by PW1, the investigation was not limited to the GAVI Audit Report. It extended to other donor projects such as the World Bank, Global Fund and other donor institutions. It was made clear by PW1 in answers to questions posed under cross-examination by M.P. Fofanah Esq. that after the approval of GAVI Project, the Ministry of Health and Sanitation, rather than open a separate account, decided to use an already existing account, the EPI account at the Sierra Leone Commercial Bank. He made clear that there is nothing like GAVI Account. He made clear that the EPI account is a central account for donor funds operated by the MOHS at Sierra Leone Commercial Bank and that the DPI account was used to implement the GAVI HSS Project and other donor projects. He made clear that the EPI account is the only account into which GAVI and other donor funds are lodged and that it is from that account that funds are transferred by MOHS into the DPI account at Union Trust Bank for the operations and implementation of DPI activities. PW2 said likewise in answer to questions posed to him under cross-examination by Mr. Fofanah.

So whether or not an activity is sponsored by a particular donor, the structure at DPI remains, that is, the 1st accused and the 2nd accused remained Director and Principal Monitoring and Evaluation Officer respectively. The modus operandi remained the same. That is, expenditures were meant to be documented and disbursement were meant to be justified. In other words, full accountability was required in the application of all donor funds for all donor activities. For this purpose, the DPI was required to follow through the process of obtaining approvals from the Ministry for donor activities and for making payments to implementers. As stated by PW1 in his testimony in chief:

> "There was a procedure at the Ministry for the approval of payment, meaning they would request for approval for the activity for which payment is to be made and would go through a chain of command. After approval has been given, the Finance Officer would raise the cheque based on the instructions in the approval, and the cheque would be submitted to the 1st accused and the 2nd accused or to Dr. Michael Mathew Amara for endorsement, after which the cheque can be presented for encashment."

That evidence was not shaken under cross-examination. It is the Prosecution's case that the sum of Le242,400,000 paid by cheque by the 1st and 2nd accused persons to the 3rd accused purportedly for vehicle hiring services was unjustified and without supporting documents. The cheque which was received in evidence as Exhibit H1 &2 was signed by the 1st and 2nd accused persons. The activity for which the said payment was effected was purportedly the provision of vehicle hire services for the Service Availability and Readiness Assessment (SARA) done in April 2011, activity funded by Global Fund.

According to PW1 investigation revealed that the 3rd accused owned no fleet of vehicles for which the payment was made. The Prosecution tendered a receipt for vehicle hiring services from Rolaan Enterprises of which the 3rd accused is sole proprietor. The Receipt acknowledges receipt by the 3rd accused, of the sum of Le242,400,000. The Receipt is dated 14th April 2011 and received in evidence as Exhibit J63. The only other documents received from the Ministry of Health and Sanitation following the ACC notice to produce documents were a Proforma Invoice, a Certificate of Renewal of License of Rolaan Enterprises, Certificate of Registration of Rolaan Enterprises, Tax Clearance Certificate and NRA Certificate of TIN Registration dated 14th January 2010. The documents were received in

evidence as Exhibits J64 to J71 respectively. Also produced, were payment vouchers for enumerators and other documents irrelevant to the payment of the sum of Le242,400,000 to the 3rd accused for vehicle hiring.

When the 1st accused was shown a copy of Exhibit H1 & 2 and confronted with questions regarding payment of the sum to the 3rd accused by the ACC investigators, the following exchanges took place:

Q. Please take a look at a copy of Union Trust Bank cheque No. 00213249 dated 15th April 2011 for the sum of Le242,400,000.00 in the name of Rolaan Enterprises with signatures on the front and a stamp and signature at the back. What can you say about this cheque IRN/BH/002?

A. I recognize the said cheque leaf from the Directorate of Planning and Information Account cheque book. I also signed as one of the signatories.

Q. The said cheque was written by what individual?

A. I cannot remember who wrote it but it was brought to me for my signature by Dr. Michael Amara.

Q. Who is the proprietor of Rolaan Enterprises?

A. He is one Rolaan

Q. What type of business is Rolaan doing?

A. This can be best answered by Dr. Amara.

Q. For which purpose this cheque was issued to Rolaan.

A. I cannot recall the activity now

Exhibits FF 36 and 37 refer.

As noted earlier on in my judgment, the structure at DPI remained the same as far as the functions and responsibilities of staff of the Directorate was concerned and

did not change from one donor activity to another. In Exhibit FF 12 and 13, these were the following exchanges between the ACC investigators and the 1st accused:

Q. Who was the Finance Officer in Change of the GAVI Project Fund for 2008, 2009, 2010 and 2011?

A. The Finance Officer I knew for GAVI Project Fund was Mr. Paul Kamara. Later, I was informed that he had been transferred to the head office and I was told that he was replaced by someone whose name is Osman but I cannot remember his surname.

Q. What are the functions of the Finance Officer?

A. I cannot tell.

In Exhibit FF 15, to the question: 'How are funds disbursed for these activities?' the 1st accused answered: 'when these requests get to the Chief Medical Officer and the Permanent Secretary, the disbursement is the function of the Finance Officer.

Other exchanges transpired as follows:

Q. What can you say about the following people: Em Kabba Amara, Murrain Walters, Michael Mathew Amara, Patrick McCarthy, Philip B. Macauley, Prince Moses Koh and Mr. Amara?

A. I Know Murrain Walters is my Secretary, Dr. Michael Amara is the Principal Health Economist, Patrick McCarthy, Philip B. Macauley, Prince Moses Koh are Monitoring and Evaluation Officers and Sahr Amara was Finance Officer for the Unit.

Q. Who was in charge of fuel supply at National and District Level at DPI?

A. I do not know

See Exhibits FF 16 and 17.

On the part of the 2nd accused, when he was shown the cheque for the sum of Le242,400,000 by the ACC investigators and asked to say something about the cheque, he simply said that it was a UTB account cheque from DPI signed by himself and Dr. Gborie (1st accused) to Rolaan Enterprises (3rd accused) for reasons he could not recall. See Exhibit GG 45.

Regarding the 3rd Accused person he told the ACC investigators that he recalled receiving a cheque payment from DPI for Le242,400,000 sometime in 2011 for vehicle services. He said he needed to consult his office for documents relating to the transaction and would produce same to the Commission. He said the money was lodged into his account with Access Bank and that the money stayed in that account for only a few days because he had to pay people from whom he sourced the vehicles. Exhibits JJ17 to JJ22 reveals the following questions and answers:

Q. Who were the people you sourced the vehicles from?

A. Med and Henry

Q. What are the contact particulars for Med and Henry?

A. For Med, I do not know his contact address but he stays at Hill Station, and for Henry, he stays at Goderich.

Q. How do you normally contact them?

A. Through phone.

Q. What are their phone numbers?

A. I have misplaced them.

Q. When was the last time you contacted Med and Henry?

A. I contacted Med in 2012, for Henry, I cannot remember.

Q. Where could they be found now?

A. I will have to find their contact numbers through a friend.

Q. Which friend are you referring to?

A. The friend is called Mr. Kanu of Waterloo but I do not know his address at Waterloo and do not remember his phone number.

Q. How much did you pay Med and Henry for the vehicles you sourced from them?

A. I cannot recall, but Michael Amara and Edward Magbity of DPI (MOHS) brought some vehicles so I gave some money to them for that.

Q. How much did you give to Michael Amara and Edward Magbity?

A. I cannot remember now but I gave the money to Michael Amara. I also used my vehicle for that rental services, so I made some money as well.

Q. Who was there when you gave the money to Michael Amara?

A. He was alone in his office when I gave the money to him and it was cash payment.

Q. The payment you referred to in answer to question 59 which money you said you gave to Michael Amara, was that payment not a bribe or a kick back to Michael Amara and others for the business they gave to your business enterprise?

A. No. since some of the vehicles were provided by them, Michael Amara asked me to give the money for the other vehicles that does not belong to me so that he can pay the owners.

Q. How many vehicles did Michael Amara and others provided?

A. I cannot recall but they gave the majority of the vehicles.

It would be noted that the 3rd accused had stated in Exhibit JJ7 that he kept records of his business transactions for at most two years and in Exhibit JJ 14 that he still had records of his business transactions dating back to 2011. The testimonies of PW3 and PW4 told this Court how the office and home of the 3rd accused were searched pursuant to search warrants and no documents relevant to the payment of the sum of Le242,400,000 was found.

The Court was also told how the 3rd accused became uncooperative and refused to sign portions of his cautioned voluntary interview statement.

A close examination of the receipt issued by the 3rd accused, acknowledging payment to him of the sum of Le242,400,000 (Exhibit J63) by the 1st and 2nd accused reveals that the 3rd accused received the payment on 14th April 2011 for which he issued the said receipt. It is stated on the face of the receipt that the payment was for hiring of 16 vehicles for fifteen days and the fuelling of the vehicles. The receipt states the cheque number as 0021329. Curiously, the cheque itself is dated the 15th April 2011 and it bears the number 00213249. This is the first puzzle. By what stretch of the imagination can a receipt acknowledging payment of a sum bear a date earlier than the date when the payment itself was made. The second puzzle is like the first one. It was in evidence that the 3rd accused did not own a fleet of vehicles for hire and needed to source vehicles from people. In all, 16 vehicles were said to have been hired from the 3rd accused for the Services Availability and Readiness Assessment Activity which took place in April, 2011. The Proforma Invoice submitted by the 3rd accused DPI is dated 14th April 2011. It made no mention of vehicle Registration Numbers. No, not of even one vehicle. The date on the Proforma Invoice correspond with the date on the receipt acknowledging payment for the sum of Le242,400,000. What is the possibility that the 3rd accused had and delivered 16 vehicles to DPI on the same day on which he submitted his proforma invoice and issued a receipt acknowledging that he was paid the sum of Le242,400,000 by the Directorate.

How is the 3rd accused to explain that there was no single document in his possession showing any relationship with the hiring of 16 vehicles to DPI in April 2011, even when it was a period which fell within the supposed two years beyond which he would not keep documents relating to his business transactions. He was

interviewed on 27th February 2013. How intelligible is it for the 3rd accused to say that he did not know the contact of Med and Henry, who he claimed were the sources of the vehicles he hired to DPI. How could he blank out every possibility of contact by the ACC investigators with the said Med and Henry, if his story was credible? How could he not say how much he paid to Med and Henry for the sourcing of vehicles from them? How can the 3rd accused explain the information in Exhibit J 64 (the proforma invoice) regarding hiring of 16 vehicles vis-à-vis his claim in his voluntary interview statement that he received the sum of Le242,400,000.00 partly for the benefit of Michael Amara and the 2nd accused, Edward Magbity and to say that they provided most of the vehicles for which he submitted a proforma invoice. These and more are puzzles and questions which credible evidence by the 3rd accused in his Anti-Corruption trial could perhaps, have been resolved and answered and some reasonable doubt created in the mind of the Court. The 3rd accused neither gave nor called evidence. The 3rd accused was clearly evasive in his answers to the questions put to him in his voluntary interview statement. It is because he had something to hide. His evasiveness is in itself evidence of dishonesty. He was uncooperative with the investigators. It is a fact which in the circumstances, is evidence of dishonesty. The 3rd accused did not provide any vehicles for hire to the DPI for which he received payment in the sum of Le242,400,000.00. He did not tell the Court how much of the sum he kept for himself. He did not say how much of the sum he gave to Michael Amara and Edward Magbity, the 2nd accused. An appropriation or misappropriation is one notwithstanding that the sum appropriated is for the benefit of another. It is a usurpation and an interference with the right of the owner of the donated fund, the people of this Country.

As regards the 2nd accused, it was too convenient for him to say that he could not recall the reasons why he signed the cheque for the amount of Le242,400,000.00

As a public officer involved in the management of donor funds, how does he explain the fact that the 3rd accused told investigators that he received money for hire of vehicles in connection with the SARA activity funded by Global Fund. How does he explain the fact that proper records of such hire by the 3rd accused was not kept by his Department, DPI. How does he explain the puzzle that the receipt acknowledging payment of the sum to the 3rd accused bears a date earlier than the date on the cheque for the amount which he signed. How does the 2nd accused resolve the puzzle that the proforma invoice submitted by the 3rd accused for the hiring of 16 vehicles bear the same date as the receipt for the amount paid. How does the 2nd accused explain what procurement procedure and process he adopted in paying the sum of Le242,400,000.00 to the 3rd accused in the absence of any evidence that the approved procurement procedure was followed. It has been submitted by N.D. Tejan-Cole Esq. on behalf of the 2nd accused, that the signing of the cheque by the 2nd accused person cannot amount to an offence, especially so when he is an authorized signatory. I disagree with that submission. Being a signatory means that he take responsibility. It means that he is accountable. It was his place to ensure that the approved procedures for procurement were followed and that there were supporting documents to warrant the payment. It was his place to ensure that the payment was justified. That his name features prominently in the interview statement of the 3rd accused as one of the beneficiaries of the amount of Le242,400,000 for which he appended his signature makes it imperative for him to proffer some explanation. To simply tell the investigators that he could not recall is simply too convenient. I do not agree with the submission that the Permanent Secretary of the MOHS ought to have been called to shed light on the practice in the Ministry regarding procurement procedure when one is stipulated by the stakeholders. That is a red herring. The testimony of Mohamed Kallon who testified before the Court as PW7 is instructive. He told the Court that all

procurements in the MOHS must go through the Procurement Unit of which he was head during the relevant period. He said these departments include the Directorate of Planning and Information as part of the Ministry. Section 2(c) of the first Schedule to the Public Procurement Act 2004 provides that shopping procedures shall be used when the estimated value of the procurement is below Le60,000,000.00 for procurement of services. And it is provided under Section 3 (c) of the 1st Schedule that National Competitive Bidding shall be used when the estimated value of the procurement is below Le300,000,000.00 in the case of contracts for the procurement of services. There is also procedure provided under Regulation 45(1) and (2) in Part IV and Part VIII of the Public Procurement Regulations 2006, for Sole-Source procurements. The Procurement Act 2004 and the 2006 Regulations are designed to serve as a guide for Procurement Units. Although the evidence of PW7 made no specific mention of the payment of the sum of Le242,400,000.00 to the 3rd Accused's Enterprise for vehicle hiring services, it is not out of place, judging from the documents submitted by the MOHS and tendered in Court on this transaction, and the evidence before the Court, to conclude that it was only the 3rd accused who was involved in the so-called vehicle hiring service for which he was paid the sum of Le242,400,000.00. The evidence of Mohamed Musa, who testified as PW8 agrees with that of PW7 regarding the role of a Procurement Committee and Procurement Unit which carries out a procurement activity. PW8 who is himself a National Trainer on procurement and a staff of National Public Procurement Authority (NPPA) made it clear that all procurements are to be done within the procurement structures existing in every public institution once they are procurements that involve public funds, unless a donor agency specifies a procedure to be followed. PW8 told the Court that even then, the procurement procedure to be followed must not be done outside the National procurement system. He went further and told the Court that

donor procurement procedure, where specified, includes the period of advertisement, the type of procurement document to use, the thresholds that determine the type of procurement methods to use etc.

Mr. Tejan-Cole has submitted that the Prosecution was obliged to produce the necessary documents relating to the transaction in which the sum of Le242,400,000.00 was paid to the 3rd accused or call witnesses from the Ministry of Health or a local representative of the donor organization other means. To produce the necessary documents is exactly what the Prosecution has done in this case. They produced all the documents made available to them by the MOHS. They did not stop there. They also had recourse to the 3rd Accused and he could not produce any documents. The Prosecution was not to conjure up documents from the sky where none exists. It would be an absurdity to require the Prosecution to go further than they did in the name of discharging the standard of proof beyond reasonable doubt, as required of them by law. If anything else required to be done in the search for further answers in order to unravel matters shrouded in secrecy, it is entirely the place of the 2nd accused to do so.

The 2nd accused could, perhaps, tell the Court how Global Fund which donated the SARA fund out of which the sum of Le242,400,000.00 was spirited away to the 3rd accused. He could, better still, tell the Court how Global Fund as a donor, specified that he should be a beneficiary of the funds donated in the manner in which it was said by the 3rd accused that the 2nd accused received part of the sum of Le242,400,000.00 paid to his enterprise and yet it was the 3rd accused who submitted the proforma invoice. No, even in the face of his clear implication in the misappropriation by the 3rd accused, the 2nd accused chose not to proffer any explanations. Yes, he is very much within his rights to say nothing even to the investigators and to the Court. But I would think that "if a man holds me by the neck and wants to drown me, that I should struggle to free myself directly". In the

instant case, it is to my mind a course which is consistent with honour. The taciturnity of the 2nd accused to state his version in order to attempt to create a reasonable doubt in the mind of the Court, can yield only to one inference, that is, that he has nothing credible to tell the Court in his defence, nay, anything that can stand up to cross-examination by the Prosecution or questions from the Court. And to use the 3rd accused and his enterprise, Rolaan Enterprises, as a conduit through which he appropriated donor funds is itself clear evidence of dishonesty on his part.

As said of the 3rd accused, when a person given the right to answer the questions raised by this Court chose not to do so, the Court must not be deterred by the incompleteness of tale from drawing the inference that properly flow from the evidence before it. The Court will not be expected to speculate on what the 2nd accused might have said if he testified. See again the Queen v. Sharmpal Singh (Supra) proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.

See per Denning L.J in Miller v. Minister of Pensions (Supra)

I entertain no doubt in my mind that the 2nd accused is guilty of the offence charged in Count 3 of the indictment.

I come now to the 1st accused. I have set out supra the exchanges between him and the ACC investigators in his interview statement. The 1st accused is a Category 'A' signatory to the DPI account held and operated at UTB as noted earlier on. The evidence before this Court which I accept, is that it is the Directorate of Financial Resources in the Ministry of Health and Sanitation which was responsible for effecting payments to implementers of donor funded projects, but that the function was usurped by the 1st and 2nd accused persons together with one

Dr. Michael Mathew Amara. PW1 told the Court how their findings during the investigation leading up to this trial tallied with the findings by the GAVI Transparency and Accountability Team on the usurpation of this function. Exhibit D1-32 refers. This problem and concern which was highlighted in the draft GAVI HSS Audit Report for GAVI HSS Grant Phase 1 – 2008 – 2011, in relation to GAVI Grants, was also true of programmes and activities funded by other donors. This was made clear in the testimony of PW1.

Exhibit HH1 &2 is a letter from the Senior Permanent Secretary MOHS dated 26th October 2011. The subject matter of the letter is

> "Transfer of Management of GAVI Fund and other Accounts to the Directorate of Financial Resources, MOHS"

It is stated in the said letter inter alia:

> "In addition to the above, I instructed that management of health including projects/programme Funds such as RCHP2,UNFPA,Global Fund, Gavi and others that are not managed by fiduciary agents recruited by the Fund providers should be centralized in the office of the Director of Financial Resources, MOHS. You will agree with me that with best practices people do the work for which they are best suitable. As a result, it will be exemplary in the Ministry if Medical personnel focus their attention fully on programmatic issues whilst financial management is left with the Financial Director. If however, you were not aware of this instruction, you are now required to submit all relevant documents with regards to the operations of the GAVI Fund and other accounts to the Directorate of Financial Resources without delay…"

This letter which was tendered as an exhibit by Mr. M.P Fofanah, learned Counsel for the 1st accused was addressed to the Programme Manager, CH/EPI and copied

to the Director of Planning and Information among others. The contents of this letter, in my view, says nothing different from the testimony of PW1 that the 1st and 2nd accused persons together with their colleague Dr. Michael Mathew Amara, who are medical personnels, were involved in the financial management of donor funds and agrees with the concerns raised in exhibit D1 – 32 in the Draft GAVI Audit Report. The evidence before this Court is clear on that involvement. Otherwise, how close the 1st accused justify signing a cheque for the sum of Le242,400,000.00 in favour of the 3rd accused, which cheque was presented to him by Dr. Michael Amara who is not a Finance Officer. How does the 1st accused want the Court to believe him that he simply signed a cheque for an amount of that magnitude and cannot recall the activity to which the amount was connected. How does the 1st accused want the Court to believe him when he told the investigators that the name of the beneficiary of the cheque amount was Rolaan and then shrank from telling them the business of Rolaan. On what authority did the 1st accused sign the cheque as a Principal or Category 'A' signatory. For what activity and with what supporting documents as Director of the Directorate of Planning and Information responsible for the implementation of Donor funded programmes and activities. How does the 1st accused explain to the Court that he did not know the surname of the Finance Officer in the directorate of which he is head, if indeed, he dealt with him, and not bypass him as the evidence before the Court makes clear. How does the 1st accused react to his answer to a question in his interview statement that he could not tell the functions of the Finance Officer to the question in Exhibit FF 15:

How are funds disbursed for these activities, the 1st accused answered and said: 'when these requests get to the Chief Medical Officer and the Permanent Secretary, the disbursement is the function of the Finance Officer." What could the 1st

accused have told the Court about the role of the Finance Officer in the payment of the sum of Le242,400,000.00 to the 3rd accused in the face of his statement that it was Dr. Michael Amara who gave him the cheque to sign. When taken to task by the Prosecution or the Court, how does he explain his statement to the investigators that he had no knowledge of who was in charge of fuel supply at the National and District Level at DPI which he heads.

The conduct of the 1st accused conduces to the inference that he has something to hide. As noted earlier in my judgment, dishonesty is to be equated to conscious impropriety. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. The conduct of the 1st accused must be assessed in light of his position, experience, intelligence and reasons for acting as he did in the circumstance of the instant case. If a man of the standing position experience and intelligence of the 1st accused was aware, as this Court believes he was, of the things that he ought to have questioned but failed to question them, there can be no clearer evidence of dishonesty on his part. A suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist is sufficient blind eye knowledge such as to make an accused's conduct dishonest. The dividing line between conduct which would be dishonest and incompetence is a difficult one to draw. See Lord Scott in Manifest Shipping Co. Ltd V. Uni-Polaris Insurance Co. Ltd. (2003) – AC 469. In my view, the 1st accused's conduct in all the circumstances of this case is on the side of dishonesty, for if he was not going to benefit from the misappropriation of the sum of Le242,400,000.00 paid out of donor funds, he should have insisted on adherence to procedure on procurement of single-source service; he should have scrutinized the supporting documents, if it was a genuine transaction; he should have rejected receiving and putting his signature on the cheque for the amount as presented to

him by Dr. Michael Amara, who is only an alternate signatory to the DPI account and not a Finance Officer.

It must not be forgotten that the 3rd accused stated in his interview statement that he gave Dr. Michael Amara out of the amount of Le242,400,000.00 money in cash. According to the 3rd accused money was given to Dr. Michael Amara and Dr. Edward Magbity, the 2nd accused. He said money was given to Dr. Amara so that he could pay owners of vehicles rented for the activity. The investigators were not told who these unnamed owners were. The Court was not told either. I have held that there were no vehicle rental service for the SARA activity for which the sum of Le242,400,000.00 was paid to the 3rd accused. The 1st accused neither gave nor called evidence. In an Anti-Corruption trial he owed it to himself to make every effort to clear his name through offering some credible explanation for his conduct, if honour means anything to him. There is clear public interest in some account being given by him. He is within his rights in law to remain silent, however. some credible explanation might perhaps create reasonable doubt in the mind of the Court. This Court must, however, not be deterred by the incompleteness of tale from drawing the inferences that properly flow from the evidence before it. This Court will not be expected to speculate on what the 1st accused might have said if he testified. See again The Queen V. Sharmpal Singh (Supra) it is proper to infer from the conduct of the 1st accused in the circumstances of this case, that the money given by the 3rd accused to Dr. Michael Mathew Amara out of the donor fund of Le242,400,000.00 routed through the 3rd accused enterprise, was shared with the 1st accused. He was a beneficiary. I hold that the routing of the money through the Enterprise owned by the 3rd accused is strong evidence of dishonesty on the part of the 1st accused.

No doubt exists in my mind as to the guilt of the 1st accused. In the final analysis, I hereby convict the 1st, 2nd and 3rd accused persons of the offence charged in Count 3 of the indictment. The submission by M.P. Fofanah Esq. that the 1st accused could not be tried on count 3 of the indictment because it concerned an activity funded by Global Fund and not GAVI is self-serving and inept. He was duly confronted with the payment of the sum by the investigators, and cannot now complain about the charge in count 3 as prejudicial, unjust and illegal. The flaw which that submission exposes is that all donor funds ought to be accounted for and not limited only to GAVI Funds.

Counts 4 and 5

The facts constituting the particulars of offences in counts 4 and 5 of the indictment arose of the same transaction. They are therefore, better considered together.

On 17th April 2012, the 1st accused as Director of DPI requested, via a letter received in evidence as Exhibits P10 and P11, requested for funding of Performance Based Financing, Montoring of Implementers at Health Facility Level country-wide, otherwise known as PBF. The Prosecution led evidence to show that donor funds were made available for this activity. As conceded by M.P Fofanah Esq. and the 2nd accused in his interview statement (see Exhibit GG 43) it was a programme funded by the World Bank from the Reproductive & Child Health Project Phase 2 (RCHP2) (World Bank – IDA Grant TF No. 96812 – SL) through the Integrated Projects Administration Unit (IPAU) at the Ministry of Finance. See Exhibits Q and R respectively.

The amount of Le995,790,000 made available for the programme was transferred to the DPI account No. 210-07181-01 held and operated at Union Trust Bank (Exhibits P12 – P14 refer).

It was alleged that the procurement of the services of 78 Enterprises, a private concern for vehicle hiring in the conduct of the PBF Monitoring Programme was illegal. The Prosecution tendered Exhibits M1 & 2, N1& N2 and PP1- 4 being cheques signed by the 1st and 2nd accused persons in favour of 78 Enterprises as payment for vehicle hiring services by the Enterprise. The face value of Exhibit M1 dated 25th April 2012 is the sum of Le180,180,000.00 and the face value of Exhibit N1 dated 17th May 2012 is the sum of Le235,420,000.00. But instruments were lodged in the account of 78 Enterprises held and operated at Bank PHB, in Sierra Leone. It was in evidence that the proprietor of 78 Enterprises, Momoh Gbao who testified before the Court as PW5, paid monies by cheque to the 1st and 2nd accused persons, out of the amounts paid to him for the vehicle hire services. The 1st accused was paid the sum of Le62,500,000.00 while the 2nd accused was paid Le47,500,000.00. Exhibits P1-2 is the original cheque for the amount drawn in favour of the 1st Accused together with documents showing that the cheque went through special clearing. The cheque is dated 18th May 2012. Exhibit V 2 -13 is the statement of the account of the 1st accused kept and operated at the Sierra Leone Commercial Bank. An examination of the account reveals that the amount of Le62,500,000.00 reflected on Exhibit T1 was credited into the 1st accused's account on 30th May 2012 as shown on Exhibit V2. See also Exhibit W3. Exhibit P3-4 is the original cheque for the amount drawn in favour of the 2nd accused. The cheque is also dated 18th May 2012. Exhibit Y12-14 is the statement of account of 78 Enterprises held and operated at Bank PHB, Sierra Leone. Exhibit Y12 shows that the sum of Le47,500,000.00 was withdrawn in person by the 2nd accused from the 78 Enterprises Account on 28th May 2012.

Testifying on behalf of the Prosecution on 26th April 2013, PW1 told the Court that it was from the proceeds of the payments to 78 Enterprises for vehicle hiring services that Momoh Gbao, PW5 issued two cheques in favour of 1st and 2nd accused persons and that the source of the payment to 78 Enterprises from the DPI account was donor funds made available for the PBF Programme by the Ministry of Finance and Economic Development as noted supra. PW1 also told the Court that there were no supporting documents for the vehicle hiring services. Momoh Gbao who testified as PW5 told the Court that he also does not know the accused persons. He said as follows:

> "I have done business with the Ministry of Health and Sanitation specifically the DPI. I did business with them between April and May 2012 for four-wheel drive vehicle hiring to carry out a survey. I was contacted by telephone by Dr. Michael Amara of DPI that if (sic) I could provide vehicles for a survey. I said, yes … I was asked to send proforma invoice. I sent two proforma invoices. I see Exhibit P66. These are the copies of the Proforma Invoices that I sent. After the proforma invoices were sent, I organized for the vehicles and I was paid a start-up amount by cheque. The start-up amount was Le180,180,000.00 (shown Exhibit N1&2). This is the cheque I am referring to. I provided the service. After the execution of the service the balance payment was made by cheque also. It was for the sum of Le235,420,000.00 … I see Exhibit M1&2. It is the cheque issued by the DPI for the balance. I recall issuing a cheque to Dr. Magnus Ken Gborie. I see Exhibit PP2. It is 78 Enterprise Bank PHB cheque. It is endorsed for payment to Dr. Magnus Ken Gborie. It is for Le62,500,000.00. I signed the cheque. The cheque was issued based on instructions from Dr. Michael Amara as Dr. Gborie is one of the team leader for the Survey for which I provide the service. The sum of Le62,500,000.00 was paid out of the

amount paid to me. I see Exhibit Y12. I see transaction date 29th May 2012, MC No. 4949 that is the bank identification number. I see that the account of 78 Enterprise was debited with the sum of Le62,500,000.00…. I see Exhibit PP1. It is a 78 Enterprises cheque from Bank PHB. The drawer of the cheque is Dr. Edward Magbity. It was for the sum of Le47,500,000.00. I signed the cheque. I issued the cheque on the instruction of Dr. Michael Amara, that Edward Magbity was also a team leader for the Survey. (shown Exhibit Y12). I see the transaction dated 28th May 2012 on Exhibit Y12. I see record of cheque issued in favour of Dr. Edward Magbity on 28th May 2012 … I drew this cheque out of the same amount paid to me."

Under cross-examination by M.P. Fofanah Esq. PW5 told the Court that it was Dr. Michael Amara who told him the names of the team leaders although he did not participate in the Survey himself. He maintained that it was on the instruction of Dr. Michael Amara that he issued the cheque to the 1st accused even though he did not know him.

PW5 was not cross- examined by N.N. Tejan-Cole Esq.

The 1st accused neither gave nor called evidence as noted earlier. He, however, made a voluntary cautioned statement to the ACC investigators. He admitted that he signed the cheques in the sum of Le180,180,000,000 and Le235,420,000 in favour of 78 Enterprises and said that Dr. Michael Amara was in the best position to explain for what activity the payments were made to 78 Enterprises. He said the two cheques were prepared by Dr. Michael Amara and had supporting documents at the time he signed them. The 1st accused was confronted with questions regarding the payment to him, of the sum of Le62,500,000 by 78 Enterprises. The following exchanges took place:

Q. Carefully examine a copy of Bank PHB Sierra Leone, Rawdon Street Branch, 3 Rawdon Street, Freetown, cheque No. 00056175 for the sum of Le62,500,000 in the name of Dr. Magnus Gborie with signature and stamps at the front issued by 78 Enterprises dated 18th May 2012 now marked IRN/BH/003. What do you have to say about this cheque?

A. I recognize it as a cheque written in my name Dr. Magnus Gborie. I recall this cheque as a payment for vehicle rental. Last year between April and May, the Directorate of Planning and Information Unit spearheaded the Mentoring activities in the Districts on Performance Based Financing (PBF). So a contract was awarded by the Health Financing Unit headed by Dr. Michael Amara. Dr. Michael Amara will be in best position to say to whom the contract was awarded. About the time when the PBF exercises were to start, Dr. Amara informed me that 12 of the vehicles were not in good condition for the exercise and therefore, he could not take them for the exercise. I was further informed by Dr. Amara that he has reverted to the contractor on this issue who told him that he had exhausted his pool and as a result he had asked the contractor that those 12 vehicles were not good for the exercise and needed to be replaced. The contractor requested the Unit to get the 12 vehicles from which ever source and he will make payment as he had already received full payment for the 24 vehicles. I was able to facilitate in securing 4 vehicles out of the 12 that needed to be replaced. The vehicles in question did not belong to me. It was in respect of the 4 vehicles the cheque aforementioned was written to me to ensure that the owners of the vehicles be paid. Upon receipt of the cheque I decided to make special clearing for it. I collected the money and later provided it to the coordinator of the PBF exercise for cash payment to the vehicle owners, which he did.

He showed me voucher they signed and retired the entire exercise to the Ministry of Finance.

Q. What is the name of the PBF Coordinator to whom you gave the money for onward payment to the vehicle owners?

A. Dr. Michael Amara.

Q. What are the names of the 4 vehicle numbers and their owners?

A. One of the vehicle owners is Eku Karim who works at the Ministry of Health and Sanitation. The other 3 vehicles were facilitated by Abdulai Sesay with cell phone number 076 602 742.

Q. Did those 4 vehicle owners issue the unit receipts for payment made in respect of the rental (sic) their vehicles?

A. No. They signed on a payment voucher that was prepared by Dr. Michael Amara.

Q. On this document IRN/BH/001 is are account No. 001-100 603-10-00-01 held at the SLCB, Siaka Stevens Street, Freetown. Who is the owner of this bank account?

A. It is my Bank Account.

Q. Why was the money paid into your account?

A. The cheque was prepared in my absence and so I ordered it to be launched (sic) into my account.

Q. What are the registration numbers of the 4 vehicles?

A. I don't remember them but any information about the details of the vehicles will be provided by Dr. Amara.

For his part, the 2nd accused neither gave nor called evidence. The following exchanges however, took place when he was confronted by the ACC investigators regarding the sum of Le47,500,000 which he received from 78

Enterprises, as his cautioned interview statement (see Exhibit GG 43-45) would show:

Q. What can you say about this Bank PHB cheque No. 00056176 in the name of Dr. Edward Magbity dated 18/5/12 in the sum of Le47,500,000 marked IRN/MJ/07?

A. It is a cheque that was drawn in my name by the agency from which we hired some vehicles to pay to certain people that provided vehicles for this contract. The circumstances around this cheque is as follows: In April 2012, the Ministry with support from World Bank wanted to undertake a Performance Based Financial (PBF) Mentoring exercise for all peripheral Health Unit (PHU) in the Country. There was a need for 24 extra vehicles and a firm was contracted to provide these vehicles. On the day the exercise was to commence the firm brought the 24 vehicles for inspection during which we noticed that a good number of the vehicles were not fit for the assignment. So we told the contractor to replace the unfit vehicles. He said that this was his best and that if we knew of people who had vehicles, we can send them to him and he will negotiate with them so that the assignment/activity can go on. I asked around for people who had roadworthy vehicles and one suggested, Letto Rental Services was suggested. I told Letto Car Rental Services to take their vehicles to the contractor so that they can negotiate. They negotiated and Letto Car Rental provided 3 vehicles for the activity. At the end of the exercise, the contractor sent me a cheque of Le47,500,000 to pay for the 3 vehicles. The cheque was written in my name and I deposited it in my savings account to give to Letto Car Rental. I withdrew the money from my account and gave to Letto Car Rental Service and they gave me a receipt which I can make available to the Commission not later than tomorrow.

Q. What was the cost of vehicle rental per day?

A. I was not in the negotiation when Letto Car Rental Services met with the Contractor, but the Contractor gave me a cheque of Le47,500,000.00 for the 3 vehicles.

Q. Where is this Letto Car Rental Services located?

A. It is on Priscilla Street and the owner is Mohamed Turay.

The submission of the Prosecution was that the PBF Monitoring returns tendered as Exhibit PP1 – 77 contains neither the voucher nor the signatures spoken about by the 1st accused and that by relying on his interview statement the 1st accused is repeating his deception in Court. The Prosecution submitted, with regards to the 2nd accused, that the 2nd accused did not produce the receipt for Letto Car Rental Services which he said he would make available to the ACC and did not tender same in Court.

I shall not give countenance to the submission of M.P. Fofanah Esq. on behalf of the 1st accused and N.D. Tejan-Cole Esq. for the 2nd accused as regards the question as to whether the funds out of which payment was made to 78 Enterprises by DPI was donor funds or not as it is clear beyond any per adventure that is was from funds donated by the World Bank as all documentary evidence relating to this issue together with the interview statement of the 2nd accused amply show. It changes nothing that the funds for the activity were transferred from the IDA Unit of the Ministry of Finance. I venture to say that even if the money had been granted by the World Bank to Sierra Leone so that it can be said that it is money belonging to the Government of Sierra Leone, it remains a donor fund and a charge can be brought against the 1st accused under Section 37(1) of the Anti-Corruption Act 2008. I also dismiss the argument by Mr. Fofanah that the said funds not being GAVI HSS Funds, Count 4 should be dismissed. I reject the submission as

idle. It has been submitted by Mr. Fofanah that the sum of Le62,500,000 received by the 1st accused was money belonging to Momoh Gbao (PW5) having been paid same for services rendered by him to DPI and no longer donor fund. Counsel relied on the judgment of my learned brother, Katutsi J in the unreported case of The State V. Michael Amara of 19th September 2013, in which money received under similar circumstances was regarded as "kickback" with the greatest respect, I disagree. Receiving "kickbacks" may not amount to misappropriation where it is clear that legitimate sums are paid for work done. Where, however, the evidence before the Court suggests impropriety and certain illegitimacy surrounding a payment of out of donor funds and money is paid out of such improper and illegitimate payment in a fashion as suggest 'kickback' although a camouflage, and the money is traceable to the improper and illegitimate payment, such camouflage 'kickback' can bear no other name nor clad in any other toga than 'a' misappropriation'.

The evidence before the Court is that the total sum paid to 78 Enterprises for vehicle hire services for the PBF programme was Le415,600,000.00 from award of the contract to payment, all procurement and other procedures were contravened. Section 3 (c) of the first Schedule to the Public Procurement Act 2004 is clear as stated earlier on in my judgment as are parts IV and VIII of the Public Procurement Regulations 2006 on Sole Source Procurements. I shall return to this issue when I consider and give consideration to the testimonies of PW5, PW7 and PW8. Count 17 of the indictment. The impropriety and illegitimacy of the entire transaction was accentuated by the fact that the 1st accused told the ACC investigators that it was Dr. Michael Amara who prepared the cheques paid to 78 Enterprises in the sum of Le180,180,000.00 and Le235,420,000.00 respectively. Nothing was said about the Finance Officer whose functions the 1st accused told the investigators he did not know. From the evidence of PW5 (Momoh Gbao) which I accept, he was

simply instructed by Dr. Michael Amara to issue cheques in favour of the 1st and 2nd accused persons as team leaders for the Survey. Not having met nor known the 1st accused as the evidence goes, the chances of a 'kickback' as a reason for payment of the sum of Le62,500,000 to the 1st accused is almost non-existent. The manner in which the instruction to pay to the 1st accused was given to PW5 clearly suggests that the interest of the 1st accused to the extent of the amount paid to him by PW5 was taken into account and provided for at the time the cheques for Le415,600,000 were prepared by Dr. Michael Amara. The same goes for the 2nd accused. His interest was provided for, to the extent of Le47,500,000.00. The contract amount was thus padded to include the interests of the 1st and 2nd accused persons. I am persuaded that PW5 would not have known that the 1st and 2nd accused persons were team leaders for the PBF Survey except he was told so by Dr. Michael Amara.

I find the answers of the 1st accused to questions touching on the payment of Le62,500,000.00 to him, rather evasive. He was conveniently selective in his recollection of the circumstance surrounding the PBF vehicle hiring transaction and payment received by him, in a way that suggests selective amnesia. It is easy to see the incongruity between the 1st accused's version and that of the 2nd accused as regards the hire or renting of vehicles to replace the so-called unfit vehicles for the exercise. While the 1st accused's version was that the Contractor requested that the Unit should get 12 vehicles from whatever source and he will make payment for the vehicles, the version of the 2nd accused was that the Contractor said that if they knew of people who had vehicles, they could go to him and he would negotiate with them. He then said he told Letto Car Rental Services to take their vehicles to the Contractor for negotiation and they did so. Which of the two versions is the Court to believe? The 1st accused said there were supporting

documents when he signed the cheques paying a total sum of Le415,600,000 to 78 Enterprises. Where then are the supporting documents which he referred to? It remains a matter for conjecture what the 1st accused means by 'supporting documents' other than the documents made available to the ACC by the Ministry of Finance and Economic Development tendered before this Court as Exhibit P1 – 77.

The 1st accused was in his statement quick to pass the buck easily to DR. Michael Amara. Yet he never gave evidence nor called Dr. Amara as a witness. He said the four vehicle owners who were paid the money received by him signed on a payment voucher prepared by Dr. Amara. No such voucher was part of the bundle of documents made available to the ACC and tendered before this court.

The 1st accused was given the opportunity to tell the court how it had to be that it was Dr. Michael Amara who prepared the cheques that he signed. He had the opportunity to tell the court why the Finance Officer played no role in the entire transaction leading up to the payment of over Le.400 million to 78 Enterprises for vehicle hire services. He had the opportunity to tell the court how the sum was arrived at and why he put his signature on the cheque as principal signatory or category A signatory to the DPI account. He had the opportunity to tell the court what he meant by supporting documents and if possible produce and tender them as exhibits before the court. He had the opportunity to tell the court why there was non-compliance with procurement procedures in a transaction that required National Competitive bidding as required by the Procurement Act 2004.

He had the opportunity to tell the court why a single source was resorted to in the provision of Vehicles for hire for the PBF Survey and yet required the submission of two proforma invoices in order to cloak with legitimacy. He had the opportunity

to tell the court why it had to be given him as Director of DPI and principal Signatory to the DPI account who must facilitate the hiring of vehicles for the PBF He had the opportunity to tell the Court how he had to be the go- between regarding payments for four hired vehicles according to him. The 1st accused had the opportunity to tell the court why he made cash withdrawals of the sums of Le.10,250.000.00 and Le.45,000,000,000.00 on the 5th June 2012 from his account with SLCB when his account had only a credit balance of Le.1,263,305.09 as at 30th May 2012 when the sum of Le.62,500,000 was paid into his account. The 1st accused had the opportunity to explain his claim to the court that the cheque for the sum of Le.62, 500,000 was prepared by 78 Enterprises during his absence. The 1st accused had the opportunity to answer all the above questions and more, had he given or called evidence. The prosecution and the court would perhaps have questioned him. He also could have made an unsworn statement from the well of the court and given some credible explanation to his conduct that did not seem right and as to his role in the entire transaction. The court would have been interested in seeing the vouchers that he mentioned in his interview statement.

Likewise the 2nd accused had the opportunity to explain his role in the entire transaction .He had the opportunity to proffer an explanation to the court as to the reason why Letto Car rental Services would negotiate the provision of vehicles with 78 Enterprise and rather than be paid directly for the provision of vehicle by 78 Enterprises the payment had to be routed through him. He had the opportunity to tell the court why he withdrew the cash sum of Le.47, 500,000 purportedly meant for Letto Car rental and yet proceeded to pay the sum into his savings account.

He had the opportunity to produce the receipt which he did not make available to the ACC. There is no question that 1st and 2nd accused persons are not compellable

witness in their own trial but credible explanations from them in a trial for corruption offence on account of Misappropriation of Donor funds might have credited reasonable doubt in their favour.
But lo they were not forthcoming. It is because they have something to hide and nothing to say as would stand up to cross – examination by the prosecution and questions by the court.

The conduct of the 1st and 2nd accused persons as regards their role in the receipt of the sum of Le62,500,000 and Le47,500,000 leave so much to be desired. This courts persuasion is that 78 Enterprises was simply used as a conduit to misappropriate the sums constituting the charges in counts 4 and 5 of the Indictments such Labyrinthine routing of donor funds is clean evidence of dishonestly. The sums paid by 78 Enterprise to the 1st and 2nd accused persons are clearly traceable to Donor money from the World Bank. The routing was only calculated to deceive. It was only a camouflage. The impropriety and illegitimacy surrounding the payment of the sum of Le415,600,000 to 78 Enterprises clearly expose a devious scheme by the 1st and 2nd accused persons to misappropriated donor funds and they misappropriate the sums of Le62,500,000 and Le47,500,000.00 respectively.

I am not deterred by the incompleteness of tale to draw the above inferences that properly flow from evidence before me. I am not expected to speculate on what the 1st and 2nd accused persons might have said if they had testified. The failure by the 1st accused to call Dr. Michael Amara as a witness raises a presumption against him that Dr. Amara's evidence would not have been in his favour had he been called. See the State Vs Anita Kamara (Supra)

No doubt is left on my mind that the 1st and 2nd accused persons are guilty of Misappropriation of Donor Funds as charged in counts 4 and 5 of the indictments I find them guilty as charged.

I now proceed to counts 6-14.

Counts 6 to 14

The 2nd accused is charged in counts 6, 7, 8.9,10,11,12,13 and 14 of the indictment with the offences of misappropriation of donor funds. All the offences are alleged to have been committed between the 1st Day of January 2008 and 31st Day of July 2008. It is alleged that the 2nd accused person withdrew donor funds by himself personally and for his own benefits and failed to account for the invoices.

The sums withdrawn and for which the prosecution led evidence are a follows:-

a. Le26,320,000 as alleged in count 6
b. Le60,000.000 as alleged in count 7
c. Le65,000.000 as alleged in Count 8
d. Le45,000,000 as alleged in count 9
e. Le53,000,000 as alleged in count 10
f. Le20,000,000 as alleged in count 11
g. Le70,000,000 as alleged in count 12
h. Le30,000,000 as alleged in count 13, and
i. Le30,000,000 as alleged in count 14

It is the submission of Mr. Tejan-Cole that all the above counts must fail on the grounds that the offences were alleged to have been committed before the effective date of the operation or coming into effect of the Anti- Corruption Act 2008, which in Counsel's submission was the 18th Day of September 2008.

The counter submission by Mr. Kanu is that the offence of misappropriation of Donor funds was already in existence at the time the alleged offence were

committed and that the charges are properly laid, correct and valid in law. The Supreme Court case of the **State V Adel Osman &Others SC. Misc App 1/88 of 13/4/88** (unreported) was cited in support. Also the case of **the State V. Hamza Sesay and others per Browne-Marke JA.**

There is force in the submission of Mr. Kanu.

There can be no valid attack upon the right of the state or ACC to charge an accused person under a new legislation, with an act which constituted an offence or a known offence at the time when the alleged offence was committed. This is the position of the law. It is diffrent from charging under a new law with an act which was not an offence when it was allegedly was committed. This consistent with the reasoning of the Supreme Court in the State V Adel Osman (suprs) where the apex court upheld the contention of Mr. Tejan-Cole Director of Prosecutions (now Learned 2nd Accused's Counsel in the instant case) that where an offence is not new to the Criminal law of the country and was in existence at the time of the alleged act a charge under a later law providing for the same offence is correct, valid and perfectly laid. The reasoning embodied in the decision of the Apex court is in conformity with the principle laid down in Hawkin's pleas of the Crown in numerous English decisions that where an offence was punishable before the enactment of a statute prescribing a particular method of punishing it, then such particular remedy is cumulative and does not take away the former remedy.

In Lowe V Darling (1906) 2 KB 772', FARWELL LJ observed:

" Now the distinction between a Statute creating a new offence with a particular penalty and a stipulate enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled in the former case. The new offence is punishable by the new penalty only in the latter; it is punishable also by all such penalties as were applicable before the act to the offence in which it is included"

The rule was recognized by Lord Mansfield in Rex V Right (1758) 1 Burr 543 and in a note to 2 Hawkins pleas of the Crown (1824 Ed) page 239 is thus stated:

> "The true rule seems to be this : where the offence was punishable before the statute prescribing a particular method of punishing it, then such particular remedy is cumulative and does not take away the former but where the statute only exists that the doings of an act not punishable before, shall for the future be punishable in such a particular manner" there it is necessary to pursue such particular method and not the common law method of indictment "

Where, therefore, a new offence is created under any enactment, the accused must be sent with in accordance with the provisions of that enactment. Where on the other hand, a statute makes an act already punishable under some former law punishable and there is nothing in the later enactment to exclude the operation of the former one, then the accused person can be proceeded against under either of the enactments.

This is also consistent with the provision of Section 18(1) (b) of the Interpretation Act 1971, Act No 8 of 1971 as follows:

> "18 (1) (e). The repeal or revocation of an Act, unless a contrary intention appears, shall not (e) affect any investigation. Legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture punishment and any such investigation legal proceedings or remedy may be instituted continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the Act had not been repealed"

In the instant case therefore, it matters not that the Anti-Corruption Act 2000 was repealed by section 141(1) of the Anti-Corruption Act 2008. I do not need any

longer address myself to the inquiring as to whether the offences charged in the case were offences when they were allegedly committed. It is conceeded by Mr.Tejan–Cole that the Law of Misappropriation existed under the 2000 Anti Corruption Act. The case of Sahid Mohamed V Rex and RV Mackenzie (2011) WLR 2807 cited by Mr. Tejan- Cole are inapplicable to our circumstances. I hold that the charges in counts 6,7,8,9,10,11,12, 13 and 14 are correct valid and properly laid.

I must not in any event fail to mention that although the general rule of law is lex prospicit non respicit, that is law looks forward not backwards and as stated in **Maxwell on the Interpretation of Statutes** that it is a fundamental rule of English law that no statutes shall be constrained to have a retrospective operation unless such a construction appears very clearly on the terms of the Act, or arises by necessary and distinct interpretation **(See 12th Edition, 1969, 8.215**) the public good requires that evasion of statutes be prevented. See **Lord Greeen MR in Lord Howard de Walden V IRC (1942) IKB 389 at 398**.

The enquiry to which I have to address myself is therefore whether the prosecution has led cogent evidence pointing to the conclusion that the 2nd accused committed the offences which are the subject matter of counts 6 to 14 of the indictment.
In proof of counts 6 to 14 , the prosecution tendered through PW1 and PW6 Amanda McCarthy , frontline Manager of Union Trust Bank several bank instruments by way of cheques drawn in favour of the 2nd accused for the sums represented in the particulars of counts 6 to 14. The cheques were received in evidence as exhibits Z 1-4 , AA 1-4 BB1-4 CC 1-4 DD1-4 EE1-4, EE 5-8, EE D1-12 and EE 13 – 16 respectively with copies of the identity card and drivers license number of the 2nd accused inclusive indicating that it was the 2nd accused who

presented the cheques at Bank and en cashed them. All the cash withdrawals by the 2nd accused are reflected in the statement of account of the Department of Planning and information held and opened at the Union Trust Bank Ltd Freetown. Exhibits F4 and 5 duly reflect all the withdrawals. It is in the prosecution's case that the returns from the Ministry of |Health and Sanitation following the AC Commissions notice to produce documents related to the investigation did not include any documentation supporting the huge withdrawals by the 2nd accused . The prosecution also tendered exhibit F1-3 to show that the 2nd accused become a signatory to the DPI account with effect from 17th November 2008.

The 2nd accused neither gave nor called evidence throughout his trial, as noted in my judgment he relied on his interview statement in which when he was shown all the cheques and confronted by the investigations with questions relating to each specific withdrawals, his sing song and refrain was variously. It is a UTB cheque from DPI prepared in my name and the funds were collected by me at UTB. I cannot be certain for which activity this cheque was drawn "or" it is a UTB cheque from DPI made in my name and for which I received money at the Bank. But I cannot recall exactly the purpose of the funds "or words to the effect (Exhibit GG 38-42 refer).

In exhibit AH3 the second accused told the ACC investigators that as Principal Monitoring and Evaluation Officer he coordinates the setting up of information system to help monitor the performance in the MOHS, helps undertake assessment to evaluate the performance and sector as a whole and other duties assigned to him by the Director of DPI.

To the question who did you replace as Principal Monitoring and Evaluation in the Ministry? His answer was "Before 1st April 2010 the position was Vacant and I was recruited into it before April 1st 2010, I was working in the Ministry as Consultant Monitoring and Evaluation Specialist performing the same function. I started working at the Ministry as Consultant Monitoring and Evaluation Specialist in 2005. Further questions "What role or roles did you play with specific reference to the implementation of GAVI HSS Project as the MOHS?" He answered thus:

> " I led the writing of GAVI HSS project Proposal in 2007. As a result, I was more Knowledgeable about the project proposal than most other people in the Ministry. When the Proposal was approved by GAVI, we were asked to submit details of account to which GAVI should deposit the funds for the project. Management agreed that we use an existing GAVI account in the Ministry that is the GAVI EPI account. When the funds arrived, I informed management that the funds had arrived and shared with them the proposal and the activities that GAVI was supporting. I informed my Director about the activities to be implemented, who should implement and the quantum of money available for the implementation. I also shared information with the unit that should implement the activity and asked them to submit a request for the fund. I also led the writing of the annual report for 2009, 2010 and 2011"

The 2nd accused, also to the investigators said that he informed implementers verbally or by e-mail to submit requests for the implementation of project activities. He said the DPI submitted requests for supervision for both national and district levels.

The above portions of the 2nd accused's interview statement have been set out in order to show that his memory of events dating back to 2005 is crystalline and that his experiences knowledge and intelligence is beyond question. His answers to other questions put to him betray him as a man without memory impediment and intelligent.

Although Exhibit F3 shows that the signatories to the DPI account before the 2nd accused as an alternate signatory with effect from 17th November 2008 were Dr, Clifford W. Kamara who was the former Director DPI, and Dr. Duramini Conteh who later became Ag. Director of DPI, it does not add up for a man of experience, intelligence and gift of memory as the 2nd accused not to remember even a whit of purpose for which sums altogether totaling Le.399,320,000 .00 were systematically withdrawn by him for the DPI account from which donor activities were implemented. This is all the more so when most of the withdrawals took place within short intervals of time namely 17/1/08,23/1/08/ 28/1/08.4/2/08,18/2/08, 28/2/08, 3/3/08, 16/4/08, and 11/7/08.

The effect of the almost constant refrain of the 2nd accused in answer to questions posed to him regards to withdrawals is silence on his part The absence of supporting documents provided him with a convenient shield behind which to hide. It must not be forgotten that documents supporting those withdrawals were not part of the bundle of documents provided by the MOHS to the Anti Corruption following a section 56 (1) (a) (b) of the Anti-Corruption Act 2008 notice to the Ministry see Exhibit A 1-2 clearly. Exhibit A 1-2 clearly requested for records of disbursement including receipts and payments vouchers regarding GAVI Alliance Cash Supports to Sierra Leone through the Ministry of Health and Sanitation, among other documents. The inventory of documents received by ACC from MOHS bear no records of documents relating to the withdrawals. See Exhibit B 1-

8. It would not be expected that Documents would be manufactured by the Senior Permanent Secretary of the MOHS were non existed, in order to respond to the ACC Notice to the Ministry. It was in evidence that it was the Senior Permanent Secretary who submitted the bundle of documents to the ACC pursuant to Exhibit A 1-2.

It was also in evidence as made clear in Exhibit D5 that one of the findings in the Executive summary of the GAVI Transparency and Accountability team draft audit report and corroborated by the evidence of PWL was that there was a lack of supporting Financial programmatic documentation in relation to programme expenditures and that is cash withdrawals without supporting documentation , totaling $556,487.00.

An examination of nine cheques for the amounts drawn in favour of the 2nd accused and withdrawn by him would reveal that the cheques were signed by Doctors Clifford W. Kamara and Duramani Conteh. Since the 2nd accused was neither of the signatories but a beneficiary, it would have been expected that he would proffer some credible explanation as his withdrawals of the huge sum clearly call for an explanation. His silence in a situation such as this and his determination not to state his version in court of the circumstances justifying such withdrawals is in my view, deafening and compelling. It is my view that he was determined to be silent because he had and has no explanation to offer as would stand up to questioning and investigation by the investigator the prosecution and the court. I am unable to see any soundly based objective reasons for the silence and evasiveness of the 2nd accused sufficiently cogent and telling weight in the balance against the clear public interest in an account being given by him of the sums which he received. See R.V.Howell (2003) Crim. LR405 weighed against his right of silence it would have

been expected that the 2nd accused would proffer some explanation however in adequate in order possibly to avoid adverse references and create a reasonable doubt in his favour.

In R.V.Argent (1997) 2ER .APP.R.27, Lord Brighton stated that an adverse inference can be drawn where an accused does not make disclosures or speak when there is a proceeding against him for an offence or his failure to speak or mention a fact before charge or on a charge. See also R,V.Dervish & Anori (2001) EWCA Crim.2789 The court has held that circumstances to be taken into account in drawing an adverse inference in determining whether an accused person is guilty of the offence charged include, when relevant, time of day, accuser's age ,experience, mental capacity, state of health, sobriety, tiredness, knowledge, personality and legal advice. See again R.V Howell (supra).

The experience, knowledge and mental capacity or intelligence of the 2nd accused is beyond controversy. The accused has something to hide. His silence is deliberate because he was minded to shield, not only himself but also Dr. Clifford Kamara and Dr. Duramini Conteh who without doubt signed all those instruments it would seem without lawful authority. Again it looks back to Exhibit D5 and the testimony of PW1 That there was absence of clear accountability in the financial management of GAVI donor programmes and in particular, the total non-involvement until December 2012, of the Directorate of Financial Resources of the MOHS See also Exhibit HH 1&.

Otherwise how can it be explained that the instruments are in his name. How can it be explained that all the cheques, namely Exhibits Z1-42, AA1&2, DB1&2, CC1&2, DD1&2, EE1&2, EE5&6, EE9&10, and 13&14. Are ostensible written by Dr, Duramini Conteh's signature's on the cheques leave me in no doubt whatsoever

that the cheques was all written were all written by Dr, Duramini Conteh . The state of evidence before me convinces me that he wrote the cheques and signed as one of the signatories.

I do not need the aid of magnifying lenses to see that it is so. I do not need the help of an expert handwriting to form this opinion on the facts before me See R.V. Rickards (1918) 13 Cr.App Rp. 140: RV Turner (1974) 60 Cr App. R 80 ,DPP V. Jordan (1977) Ac 699 at 718

As noted earlier on Exhibit F3 shows unmistakably that Dr. Duramini Conteh was a medical statistician in the MOHS and he became Ag. Director, DPI and consequently a signatory to the DPI account.

When charges in the amounts of this magnitude are written and signed by Duramini Conteh and Dr. Clifford Kamara in favour of the 2nd accused, who as evidence shows is not an implementer of a donor activity, but performed the function of a Monitoring and Evaluation officer during the relevant period of the withdrawals, it can only be for one purpose, and that is to withdraw donor funds behind the shield of the 2nd accused persons and to share same among themselves.

Otherwise, what is the function of the Finance Officer at DPI?

In his interview statement, the 2nd accused told ACC investigators that a certain Mr. Sahr Amara was Finance Officer at DPI and that Mr. Amara disburses funds for supervision. Mention was also made in his statement of Paul Kamara and Osman Bangura who at different times were finance officers at the EPI. None of these officers appear to have played any role in the systematic withdrawals of the monies.

It is easy to see that this is a clear case of Misappropriation of donor funds. It is easy to see that the funds misappropriated by the 2nd accused in collusion with his

colleague medical Doctors were GAVI , funds given the relevant period in which the withdrawals were made . If the funds were not from GAVI it is the place of 2nd accused to have provided that information and explanation as at that is a fact which a officer of his position ought to know. It is easy to see why there could have been no supporting documents for these unjustified withdrawals.

I hold that the 2nd accused acted in the manner in which he did because he was dishonest. I say so given what he knew, his experience and intelligence his evasiveness and farcical unwillingness to reveal anything concern the sums he received further buttresses hid dishonesty. As noted earlier there is no question that the 2nd accused was within his rights in law to say not ever a word in answer to the allegation against him. There is however no question that the prosecution and the court were entitled to question him had he given evidence. He could also had proffered some credible explanation regarding the eye – popping withdrawals were he to make a statement from the well of the court which might create a reasonable doubt. He silence emphasized by his consequent conduct. This court cannot be deterred by the incompleteness of tale from drawing inferences that properly flow from the evidence before it nor can it be dissuaded from reaching a firm conclusion by speculating upon what the 2nd accused might have said if he had testified. See again The Queen V. Sharmpal Signh (supra).

I am satisfied that the circumstances of the withdrawals of the money which constitute the particulars of the offences in count 6 to 14 of the indictment point only to one conclusion admitting of no co-existing circumstances to the contrary and that is the gilt of the accused.

I therefore find the 2nd accused guilty of counts 6,7,8,9,10,11,12,13 and 14 of the indictment as charged .

I come now to count 17

Count 17

The 1st and 2ns accused persons are jointly charged under Section 48(2) (b) of the Anti Corruption Act 2008 with the offence of willfully failing to comply with the law relating to procurement in respect of securing the services of 78 Enterprises.

Section 48 (2) (b) provides as follows:

> "A persons whose functions concern the administration custody, management, receipt or used of any part of public revenue or public property commits an offence if he ……(b) willfully or negligently fails to comply with ant law or applicable procedures and guide lines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures……."

Public Property is defined in Section 48(4) as meaning:

> "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."

Section 1 of the Anti corruption Act 2008 defines public funds as including

> "any monies loan, grant or donation for the benefits of the people of Sierra Leone or a section thereof" .

In order to found a conviction under section48 (2) (b) of the Anti Corruption Act 2008 the prosecution need not prove that the person charged is a public officer. They need proof that the persons function concern administration, custody, management, receipt or use of ant part of the public revenue or public property, in our case public fund donated for the benefits of the people of Sierra Leone or a section thereof . They need also proof that the failure to comply with the law

relating to procurement procedure and guide line was willful or negligent. The word "willful or negligent "are not defined by the Anti corruption Act 2008.

When a word is not defined by statute, it is customary for the court to construe it in accord its ordinary and natural meaning. The word willful is defined as proceeding from a conscious motion of will, voluntary, knowingly deliberate. Intending the result which actually comes to pass, designed, intentional, purposeful not accidental or involuntary. Premeditated, malicious done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences, unlawful, without legal justification see Black's Law Dictionary 6th Edition Page 827.

On the other hand, to act negligently on the context of Criminal Law is to fail to use reasonable care to avoid consequences that threatened or harm the safety of the public and that are the fore seeable outcome of acting in a particular manner. The mensrea of an offence under section 48 (2) (b) of the Anti Corruption Act is the willful or negligence failure to comply with ant law or applicable procedures and guidelines relating to procurement.

The procurement regime in Sierra Leone is governed by the Public Procurement Act 2004 and the Public Procurement Regulation 2001. The Act and the Regulation contained provisions for procurement of goods services and works. We are here concerned with the procurement of services – vehicle hiring services, that is –
It is now not in doubt that the 1st and 2nd accused persons were involved in the administration, management and receipt of public funds as defined supra. The 1st accused was Director of DPI at MOHS and involved in the Coordination of GAVI HSS support project and other Donor funded programmes and w\as a category A signatory to the DPI account held at UTB. As Director of DPI, he approved

proposal for programmes and activities for GAVI HSS. And other Donor supported projects. The second accused was the principal Monitoring and Evaluation Officer at DPI and a category B signatory to the DPI account UTB. They signed cheques for the withdrawals of funds from the DPI account held at UTB including Exhibit M1&2 and N1&2 being payment to 78 Enterprises for vehicle hire services.
As noted earlier on in my judgment the cheques were for the sums of Le.180, 180,000.00 and Le. 235,420,000.00 For the PBF mentoring activities with funds provided by the World Bank. It is beyond depute that the funds were donated for the benefits for the people of Sierra Leone. Put together, the amount paid to 78 Enterprises for the PBF activity was Le415, 600,000.00.

The evidence before the court sole source procurement method was adopted by DPI for the vehicle hire service. It was in evidence that a Dr .Michael Mathew Amara, who was the Principal Health Economist at the DPI and a category B signatory to the DPI account held at UTB, simply contacted PW5 Momoh Gbao the Proprietor of 78 Enterprises by telephone to submitted proforma invoice for the vehicle hire service.

Section 1(c) of the first schedule to the Public Procurement Act 2004 provides that contract awards shall be published.
When the estimated value of the contract is above Le.300, 000,000 in the case of contracts for the procurement of services.

PartV111 of the Public procurement regulations makes provision for sole source procurement and procedure to be followed under the conditions set out in regulation 45(1). Regulation 45(2) provides that procurement under the sole source procurement method shall be subject prior approval by the Procurement Committee.

Section 46(1) of the Public Procurement Act 2004 also makes provision for the circumstances in which a sole source procurement is permitted, and provides in section 46(2) that use of sole source procurement on any of the grounds referred in section 46(1) (b) (c) (d) and (e) is subject to prior approval by the procurement committee. Section 47 also makes provision for basic procedure for sole-source procurement. Under section 46 aforesaid, public procurement by means of a sole-source procurement method is permitted only in limited circumstances such as exclusivity in terms of performance of service, additional service from previous service, extreme and unforeseeable emergency and unique qualification.

Mohamed Kallon , who testified as PW7, was the Head of the Procurement Unit of the MOHS during the period relevant prior to these proceedings. He told the court that as head of the procurement unit, he was not aware of the vehicle hire/rental services for the PBF mentoring activity in April 2012. He testified as follows:

> "My unit was not involved in the hiring of vehicles from 78 Enterprises for the performance Based Financial Mentoring (PBF) activity. The total of the contract in issue was Le415,600,000. This is a consultancy service. Usually that quantum of money should have gone through our competitive process or in the case of emergency, there should have been an approval by the procurement committee for such an activity to be carried out. This means that should have gone through the procurement process. First of all, we would send out an expression of interest for firms to show interest in the provision of that service from there, we would have to evaluate and negotiate with the most competitive firm. If it had gone through the procurement process, it would have eventually got to the procurement committee which would give approval".

Under cross examination by M.P.Fofanah Esq., PW7 told the court that members of the procurement committee at the MOHS were the Senior Permanent Secretary,

the Chief Medical Officer, the Chief Nursing Officer, the Principal Accountant and PW7 himself as Secretary of the Committee. He said he knew about the GAVI project but was not involved in all its operational and workplan. He said that the 1st accused was a Senior Officer as Director of DPI and had been involved in procurement matters, but that he, PW7 had no knowledge of about the hiring of vehicles. PW7 said that he only proceed consultancy services requests which came to the procurement unit.

Under cross-examination by N.D.Tejan-Cole Esq, PW7 stated that work is assigned to the procurement unit by programmes and project officers for processing and not necessarily the Senior Permanent Secretary. Testifying in tandem after PW7 was Mohamed Musa, a national procurement expert who testified as PW8 and he currently works for the National Public Procurement Authority as a national trainer in procurement. He said he is the Head of Procurement, Monitoring and Evaluation and Head of Procurement Capacity Building. He said the payments to 78 Enterprises as revealed in exhibits M1&2 and N1&2 were a single activity and that as a service, the procedure for procurement is as follows:

> "As a service, an expression of interest would be advertised by the procuring unit of the procuring institution upon approval by the procurement committee. This is to be followed by a request for proposals which is normally the two envelope system. Upon receipt of the proposals, evaluations of the technical proposals and financial proposals is to be conducted to determine the service provider… Every institution has its own procurement committee, the procurement unit and an evaluation committee. The sole responsibility of approving the execution of every procurement activity lies with the procurement committee. The procurement unit carries out the activity itself."

Under cross-examination by M.P.Fofanah Esq, PW8 stated that during the course of the year, if the institution happens to have access to donor funds, then the procurement aspects of that fund should be handled by the procurement committee as dictated by the project appraisal document. In answer to a question posed by the court PW8 stated that even when a donor agency specifies a procedure to be followed in procurement the procurement procedure to be followed must not be done outside the national procurement system. He stated that donor procurement procedure, where specified, includes the period of advertisement, the type of procurement document to use, the thresholds that determine the type off procurement methods to use etc.

The evidence before the court shows a total violation of the procurement level and procedure by the 1st and 2nd accused persons in the award of the contract for procurement of vehicles by way of vehicle hire from 78 enterprises for which they paid a total sum of Le415,600,000. The uncontradicted evidence before the court is that PW5, Momoh Gbao was simply contacted by telephone by Dr. Michael Matthew Amara to submit invoice for vehicle hire service and no more. The requirement by section 1(c) of the first schedule to the Public Procurement Act 2004 that an award be published was not complied with. The provision under part VIII of the Public procurement Regulations 2006 for sole-source procurements and the procedure to be followed under the condition set out in Regulation 45(1) was not followed but simply ridden roughed over. Regulations 45(2) which requires the prior approval of the procurement committee for sole-source procurements section 46(1) and 47 of the Public Procurement Act 2004 were not seen adverted to by the 1st and 2nd accused persons.

It has been submitted by M.P. Fofanah Esq that the 1st accused was not directly involved in the procurement of the services himself but by Dr. Michael Amara, the DPI Finance Officer and the 2nd accused. Let me in the first place say that there was no evidence throughout these proceedings of the involvement of the DPI Finance Officer in the procurement of the service of 78 enterprises.

The 1st accused might not, it would seen, have been involved directly in the procurement of the vehicle hire services. However, the circumstances of the case suggest otherwise exhibits P10 and P11 show that it was he who requested for funding for the activity that being so, his interest in the execution of the activity is not in doubt. His interview statement also shows that he was directly involved according to him, in the hiring of the vehicles as noted supra. As Director of DPI and principal signatory to the DPI account, he was directly involved in the procurement of the vehicle hire services as he clearly signed the two cheques, extra $M^{1\&2}$ and $N^{1\&2}$, in favour of 78 enterprises. Because he was directly involved in the vehicle hire services, he turned a blind eye to the requirements of the law and procedure on procurement of services. He was also directly involved as the evidence before the court shows that he stood to benefit from the very activity. He received an unearned sum of Le62,500,000 as noted in my judgment supra. He was directly involved and had no reason to deal with the Finance Officer but Dr. Michel Amara with whom he arranged all and who prepared the cheques which he signed. The overall conduct of the accused yields to no other suggestion or exclusion other than that he deliberately or willfully failed to comply with the law and applicable procedure and guidelines relating to the procurement of the services of 78 enterprises in the provision of vehicles for the PBF mentoring activity.\this court cannot be deterred by his failure testify from drawing the influences that properly flow from the evidence before it, neither can it be disturbed from reaching a firm conclusion by speculating upon what he might have said if he had testified.

His failure to testify , in my view, is because he simply had nothing credible to say as would justify his ignorable conduct, nothing that would have stood up to questioning by the prosecution and the court. No doubt lingers on my mind concerning his guilt. I therefore, find him guilty of count 17 of the indictment, as changed.

As regards the 2nd accused it is the submission of the N.D. Tejan-Cole that he could not be charged with an offence under section 48(2)(b) of the Anti-Corruption Act 2008 in the absence of evidence led in court of his duties. If it is a matter of duties, it is conceded by Mr. Tejan-Cole that the 2nd accused enumerated his duties in his interview statement (Exhibit. AA1-54). Learned Counsel contends that procurement was not part of the duties of the 2nd accused. Granted that procurement of services was not part of his duties as enumerated by him in his interview statement, the 2nd accused stated his involvement in the procurement of the services of 78 enterprises for the vehicle hire. Although I rejected supra, his attempt to finalize an explanation for his receipt of the sum of Le47,500,000 in the same connection, it cannot be suggested that he was a stranger to the procurement of the services of 78 enterprises in the vehicle hire for the PBF mentoring activity. As I reasoned in the case of the 1st accused, the 2nd accused by purity of reasoning was directly involved in the procurement of the vehicle hiring services. As Principal Monitoring and Evaluation Officer, he was an alternate signatory to the DPI account. He co-signed exhibits $M^{1\&2}$ and $N^{1\&2}$ with the 1st accused. By that singular act, the 2nd accused was directly involved. The question may be asked: was the 2nd accused as a signatory to the DPI account not accountable for donor funds paid out of the account by cheque signed by him? The answer is clearly in the affirmative. If that was so, it was then his place to ensure that procurement law and procedures were complied with before he appended his signature on the cheques – Exhibit. $M^{1\&2}$ and $N^{1\&2}$. In the case of the 2nd accused, even if it may be

said that there was possibly no willful failure on his part to comply or ensure compliance with the procurement law and procedure, it may not be said of him that he was not negligent if he merely appended his signature on the cheques. Without asking questions. It could also be a case of blind eye dishonesty. If the scenario of negligence was applicable to him, he is still criminally liable under section 48 of the Anti-Corruption Act 2008. I have said the above for argument sake. It is my view, however, that the 2nd accused willfully failed to comply with the law on procurement of the services of 78 enterprises for the PBF mentoring activity. It is my view that he was determined from the start to not comply with the law, together with the 1st accused and Dr. Michael Amara. His determination not to comply or ensure compliance with the procurement law and procedure was simply informed by the benefit which he set out to derive from their method of dealing. I have held supra that he received an unearned sum of Le47,500,000 from PW5, following the instruction of Dr. Michael Amara. It is legitimate to infer that his interest in this sum was taken into account in the award of the procurement service contract to 78 enterprises and I so hold. The 2nd accused cannot in these circumstances be said not to have willfully failed to comply with section 48(2)(b) of the Anti-Corruption Act 2008.

Given his position as Project Monitoring Evaluation Officer and as a signatory to the DPI account, his intelligence and experience, how does the 2nd accused want this court to believe that he is not guilty of willful failure to comply with the procurement law and procedures prescribed by law in the award of the vehicle rental service to 78 enterprises. I even find no good and compelling reason why an honest person in his position would participate in a transaction which involves a violation of the law on procurement of services knowing that the law on procurement not only prohibits collusion and other attempts to subvert the public bidding process but encompasses much more than that. He ought to know that the

law on procurement aims to effectively root out corruption in procurements. Would an honest person in the 2nd accused's position deliberately close his eyes and ears, or deliberately not ask questions before signing the cheques, that is, exhibits M1&2 and N1&2, lest he learn something he would rather not know, and then proceed regardless. That is assuming that he was not part of the collusion to subvert or circumvent the procurement law and procedure. The evidence before the court point to no other conclusion than that he was directly involved in the failure of compliance with the procurement law and procedure because of what he stood to benefit from circumvention of the requirements of the procurement law and procedure.

The failure of the 2nd accused to testify in his trial cannot deter this court from drawing the inferences that properly flow from the evidence before it, neither can the court be dissuaded from reaching a firm conclusion by speculating upon what he might have said if he had testify. As with the 1st accused, his failure to testify is, in my view, because he simply had nothing credible to say as would stand up to cross-examination by the prosecution and questioning by the court. There is no reasonable doubt on my mind concerning the guilt of the 2nd accused. I therefore find him guilty of count 17 of the indictment as charged.

In the final analysis, the accused persons have been found guilty as follows:

The 1st accused, Dr. Magnus Ken Gborie is found guilty on three counts to wit: count 3, 4 and 17;

The 2nd accused, Dr. Edward Magbity is found guilty on twelve counts to wit:

Counts 3, 5, 6,7,8,9,10,11,12,13, 14 and 17; and

The 3rd accused is found guilty on two counts to wit: counts 2 and 3.

Count 1, 15, and 16 were conceded by the prosecution. The accused persons are hereby discharged of those counts.

Having found the 1st and 2nd accused persons guilty of counts 4 and 5, I hereby dismiss counts 18 and 19 accordingly.

Judgment delivered in open court this 2nd day of July 2014.

Plea in Mitigation

For the 1st accused:

I will first of all start by commending you for the effort you have put in putting this judgment together. The 1st accused, will say from the onset is a professional that works in a country that has a ……. of professionals in that field of study. He had so many options open to him in duty, but not limited to the fact that he should have gone private. He however, decided to dedicate all his lifetime and effort to provide invaluable services to the people and government of Sierra Leone there in this country, it was part of the evidence that he had to be queried for insisting that the procurement of ambulances for the use of the Ministry of Health be contracted to UNICEF and the rationale for that then was that Government paid less for quality service. There he stands as head of a family and a breadwinner that is looked up to by many people from this nuclear family, his chiefdom and his town of origin. I write …….to say that his ……. had been one compatible with acceptable standards. Having said so, I most respectfully request that you temper justice with mercy, especially so when this is his first time in court, not even as a witness.

After the backdrop I plead that he is given fine and not custodian sentence.

For the 2nd Accused

Tejan-Cole: I make this plea on behalf of the 2nd accused. You stated your summing up at 11:45 and concluded the judgment at 3:45pm. It shows and I must ……. The accused is a produced of overseas training especially

in Medical Project which whiles WHO, UNICEF and other organistion. It is a big sacrifice on his part that he denied to come to Sierra Leone. He is a married man, children, three of whom are still undertaking three different tuition. Have a very large family who depend greatly on him and this incident which has happened to him affects them very seriously, because he has been receiving half salary since his suspension.

No one will ….. that he has not learnt from your summing-up and there are caution aspects of my views which I would like to adopt. I take full responsibility that I did not asked the 2nd accused to give… I know now that I am wrong. I will ask you Lordship not to exercise your power of custodial sentence. I pray that as far as count 6 to 14 for the court to be considerable that the 2nd accused should not be punished severely because ofhte my mistake.

In any future criminal trial I shall very carefully consider putting the accused in the witness box notwithstanding his right to rely on his statement.

You have made a mark in this country and you will always be remembered.

I want you to be remembered for the immense contribution which you have made to the progress and …. of this country.

For the 3rd Accused

R B Kowa: I have a difficult job to do here but I must proceed.

The 3rd accused is a Sierra Leonean who has set up business to create job for ordinary Sierra Leoneans. He employs people who earn their living through him. He is also a family man and takes care of the immediate and some of the extended

family members. He has children whose future depends on him. He may have made mistakes, possibly with records, however, he is a first-0time offender. I will implore the court to take those into consideration and plead that a custodian sentence not be imposed. I am of the …. consideration……

This may serve as a deterrence, not only to him but ot many others. He is a young man with a lot of stake. He has had a lot of stress be it psychological and otherwise, until today. He has been up for over 7 hours since we commence proceedings this morning.

For the Prosecution

Mr. Kanu: The state thanks your Lordship for the well-reasoned judgment and industry. We wholeheartedly accept same. The state will ask for a sentence that serves a deterrent purpose … the seriousness of corruption offer us in the country. I refer to the sentence of this court in the State V Solomon Katta and 6 Others in so far as he stand and 2nd accused as public officers and have ……..The public trust. I refer the case of the State V Francis Gabidon where the interest of an accused was putted with those of the public. The ……. held that in all cases public interest outweighs that of the accused. There will be a serious failing of the system if there are ….. time offenders in corruption offences. This is based on the submission tht the accused persons are 1st time offender.

The 1st and 2nd accused ……. their ……. for public health. Their suspension shows that they are not indispensable in the medical performance in the country.

Draws attention to S B of the ACC Act 2008. Also to the principle restitution.

SENTENCE

Court:

All has been pleaded on behalf of the accused …… now convicts. It must be said that this court has will articulated judicial philosophy which considers one manner of law for the high and low, rich or poor members of the ….family. It's values would be called to question therefore, if a different sentencing consideration is brought to bear on the instant case because of the position of the convicts, for the rule of law which is the substation of the philosophy of this court postulates equality before the law. Any sentencing consideration cannot ignore the clear purpose…… of this matter and the fact that the 1st and 2nd accused are public officers who have clearly betrayed the trust repose in them by all and ….

The people who bear the brunt of the consequences of the infamous conduct f the convicts are the people of this country for whose benefit the donation by GAVI, Global Fund, World Bank, WHO and other were made in order to address the health concerns of the vast majority of the population who live on the breadline. To this demography belong people who lack the wherewithal to obtain medical attention from private clinics and hospitals in this country and are in no way able to afford the luxury of seeking medical attention abroad.

The grim or macabre report that Sierra Leone is among the countries with the worst indices for maternal and child health in the World in troubling, to say the least. As exhibit C4 showed, it is estimated that women face a 1 in 6 live-time risk of dying form pregnancy and child birth related complications. It is also reported that 1 of every 5 children dies before reaching their fifth birthday, with up to 40%

of these deaths securing in the first month of life. It is also highlighted in Exhibit C4 that a large proportion of the population do not have adequate access to priority health care and that very few health facilities provide basic emergency obstetric care. It is reported that majority of the peripheral health Unit (PHU) staff are not trained in the integrated management of childhood illnesses (IMCI); that there is inadequate means to transportation for prompt referrals for severe and complicated cases and that irregular supervision of peripheral health Unit staff is one of the causes of poor quality care.

The intervention by the donor communities in the health sector, is no doubt a much needed one. The object is clearly to generally address the health of the teeming population of this country. It is therefore, not just mind-boggling but also mind-bending imagine that persons such as these convicts who were in the positions to ensure that the benefits of the donations reach the population are the dame persons who treat the donations as an "Aladdin's cave" . They are the same persons who divert the donated monies for their own use and benefit to the detriment of the people. It is easy to imagine how mamy members of our population who have fallen victim to the acts of misappropriation of these convicts, two of whom have, by their professional calling, been trained to save lives.

It is easy to imagine the immorality, callousness and indifference to live lost by the activities or these convicts by their acts of misappropriation of monies donated for he improvement of the health of the people who constitute the majority of the population of this country. It goes without saying that the activities of these convicts provide no incentive to the donor community for further and continued intervention in the health sector to the detriment of the people who have been

short-changed by these activities. Deterrent punishment is called for in the circumstances.

My sentence is therefore as follows:

1st Accused

On count 3: A fine of Le800,000 and 6 years imprisonment

On Count 4: A fine of Le62,500,000 and 6 years imprisonment

On Count 17: A fine of Le100,000,000.00 and 6 years imprisonment

All fines shall be cumulative that is Le243,300,00. All imprisonment terms shall run concurrently. If the cumulative fine of Le243,300,000 is not paid, Dr Magnus Ken Gborie he shall remain in prison custody until such a time as the fine is paid.

2nd Accused

On Count 3: A fine of Le80,800,000 and 6 years imprisonment

On count 5: a Fine of Le47,500,000 and 6 years imprisonment

On count 6: A fine of Le30,000,ooo and 6 years imprisonment

On Count 7: A fine of Le60,000,000.00 and 6 years imprisonment

On count 8: A fine of Le65,000,000 and 6 years imprisonment

On cont 9: A fine of Le45,000,000 and 6 years imprisonment

On count 10: A fine of Le53,000,000.00 and 6 years imprisonment

On count 11: A fine of Le30,000,000.00 and 6 years imprisonment

On Count 12: A fine of Le70,000,000.00 and 6 years imprisonment

On Count 13: A fine of Le30,000,000.00 and 6 years imprisonment

On count 14: A fine of Le30,000,000.00 and 6 years imprisonment

On Count 17: A fine of Le00,000,00.00 and 6 years imprisonment

All fines shall be cumulative, that is over Le637,620,000.00. All imprisonment terms shall run concurrently. If the cumulative fine of over Le637,620,000.00 is not paid by Dr Edward Magbity, he shall remain in prison custody until such a time as the fine is paid.

3rd Accused

On Count 2: A fine of Le51,375,000.00 and 6 years imprisonment
On count 3: A fine of Le80,800,000.00 and 6 years imprisonment

Both fines shall be cumulative, that is Le132,175,000.00. the imprisonment terms shall run concurrently. If the cumulative fine of Le132,175,000.00 is not paid by Lansana S M Roberts, he shall remain in prison custody until such a time as the fine paid.

Dated this 2nd day of July 2014.

M.A. Paul J.
2/7/14