

IN THE HIGH COURT OF SIERRA LEONE HOLDEN AT FREE TOWN

THE STATE

VS

HERBERT AKIREMI GEORGE-WILLIAMS

BOWENSON FREDRICK PHILIPS

SYLVESTER MOMOH KONEHNI

ARTHUR KWESI-JOHN

DESMOND THOMAS

FRANKLYN GARBER

ALIMAMY TURAY

AIAH BRIMAH

MOHAMAD ALLIE SHAABAN

BEFORE: JUSTICE J.B.A KATUTSI

**JUDGMENT:**

The above accused persons are indicted as hereunder indicated

COUNT 1:

**STATEMENT OF OFFENCE**

Conspiracy to commit a corruption offence contrary to section 128(1) of the Anti-corruption Act 2008

**Particulars of offence**

HERBERT AKIEREMI GEORGE-WILLIAMS & BOWENSON FREDRICK PHILIPS being the mayor and the Chief Administrator of Freetown City Council respectively, on a date unknown between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> March, 2011 at Freetown in the Western Area of the Republic of Sierra Leone conspired together and with persons unknown to misappropriate the sum of Le 744,450,000.00 (seven hundred forty four million four hundred fifty thousand Leones) to wit, caused willful loss by hosting a live two days Morgan Heritage Concert which said sum was meant for the development of the Municipality of Freetown.

COUNT 2:

STATEMENT OF OFFENCE

Failure to pay tax (Pay as you earn, "PAYE") contrary to section 48(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of offence

HERBERT AKIEREMI GEORGE-WILLIAMS & BOWENSON FREDRICK PHILIPS being the Mayor and Chief Administrator of the Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> of July 2009 and 31<sup>st</sup> August 2009 at Freetown in the Western area of the Republic of Sierra Leone unlawfully, failed to pay PAYE tax to the National Revenue Authority (NRA) in the sum of Le 62,269,595.00 (sixty two million two hundred sixty nine thousand five hundred ninety five Leones) to wit, being the sum deducted from the staff as PAYE tax that was not paid over to the National Revenue Authority.

COUNT 3:

STATEMENT OF OFFENCE

Failure to pay tax (pay as you earn "PAYE") contrary to section 48(1) (d) of the Anti-corruption Act No.2 of 2008

Particulars of offence

HERBERT AKIEREMI GEORGE-WILLIAMS & BOWENSON FREDRICK PHILIPS being the Mayor and Chief Administrator of the Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> of October 2009 and 31<sup>st</sup> December 2009 at Freetown in the Western area of the Republic of Sierra Leone unlawfully, failed to pay PAYE tax to the National Revenue Authority (NRA) in the sum of Le 88,565,638.00 (eighty eight million five hundred sixty five thousand six hundred thirty eight Leones) to wit, being the sum deducted from the staff as PAYE tax that was not paid over to the National Revenue Authority.

COUNT 4:

STATEMENT OF OFFENCE

Failure to pay National Social Security and Insurance Trust (NASSIT) contribution, contrary to section 48(1) (d) of the Anti-corruption Act No. 2 of 2008.

Particulars of Offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips, Sylvester Momoh Konnehi and Arthur Kwesi-John being the Mayor, the Chief Administrator, the acting City Treasurer and the Deputy Chief Administrator respectively, on a date unknown, between the 1<sup>st</sup> of July 2010 and

30<sup>th</sup> September 2010 at Freetown in the Western Area of the Republic of Sierra Leone unlawfully failed to pay NASSIT contribution for and on behalf of the staff of Freetown City Council in the sum of Le 106,627,188.22 (one hundred six million six hundred twenty seven thousand one hundred eighty eight and twenty two cents) to wit, being the sum deducted from the staff as NASSIT contribution that was not paid over to NASSIT.

COUNT 5:

STATEMENT OF OFFENCE

Failure to pay tax (pay as you earn "PAYE") contrary to section 48 (1) (d) of the Anti-corruption Act No. 2 of 2008

Particulars of Offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips, Sylvester Momoh Konnehi and Arthur Kwesi-John being the Mayor, the Chief Administrator, the acting City Treasurer and the Deputy Chief Administrator respectively, on a date unknown, between the 1<sup>st</sup> January 2010 and 30<sup>th</sup> April 2010 in the Western Area of the Republic of Sierra Leone unlawfully failed to pay PAYE tax to the National Revenue Authority (NRA) for and on behalf of staff of the Freetown City Council in the sum of Le 80,058,509.00 (eighty million fifty eight thousand five hundred nine Leones) to wit, being the sum deducted as PAYE tax that was not paid over to the National Revenue Authority.

COUNT 6:

STATEMENT OF OFFENCE

Failure to pay tax (Pay as you earn "PAYE") contrary to section 48 (1) (d) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips, Sylvester Momoh Konnehi and Arthur Kwesi-John being the Mayor, the Chief Administrator, the acting City Treasurer and the Deputy Chief Administrator respectively, on a date unknown, between the 1<sup>st</sup> of June 2010 and 31<sup>st</sup> August 2010 at Freetown in the Western Area of the Republic of Sierra Leone unlawfully failed to pay PAYE tax to the National Revenue Authority for and on behalf of staff of the Freetown City Council in the sum of Le 110,070,553.00 (one hundred ten million seventy thousand five hundred fifty three Leones) to wit, being the sum deducted as PAYE tax that was not paid to the National Revenue Authority.

COUNT 7:

STATEMENT OF OFFENCE

Failure to pay tax (Pay as you earn "PAYE") contrary to section 48 (1) (d) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips, Sylvester Momoh Konnehi and Arthur Kwesi-John being the Mayor, the Chief Administrator, the acting City Treasurer and the Deputy Chief Administrator respectively, on a date unknown, between the 1<sup>st</sup> of October 2010 and 31<sup>st</sup> December 2010 at Freetown in the Western Area of the Republic of Sierra Leone unlawfully failed to pay PAYE tax to the National Revenue Authority for and on behalf of staff of the Freetown City Council in the sum of Le 89,448,347.00 (eighty nine million four hundred forty eight thousand three hundred forty seven Leones) to wit, being the sum deducted as PAYE tax that was not paid to the National Revenue Authority.

COUNT 8:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips and Desmond Thomas being the Mayor, the Chief Administrator and the Head of Cashiers office of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> of January 2009 and 31<sup>st</sup> December 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum of Le 55,589,100.00 (fifty five million five hundred eighty nine thousand one hundred Leones) to wit, willfully deprived the Freetown City Council of monies collected as market dues.

COUNT 9:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips and Desmond Thomas being the Mayor, the Chief Administrator and the Head of Cashiers office of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> October 2009 and 31<sup>st</sup> December 2009 at

Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum of Le 24,317,300.00 (twenty four million three hundred seventeen thousand three hundred Leones) to wit, willfully deprived the Freetown City Council of monies collected as Municipal licenses.

COUNT 10:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Alimamy Turay being the Municipal Trade Officer of the Freetown City Council on a date unknown between 1<sup>st</sup> December, 2009 and 30<sup>th</sup> June 2010 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated public revenue in the sum of Le 22,470,000.00 (twenty two million four hundred seventy thousand Leones) to wit, willfully deprived the Freetown City Council of monies collected as market dues between the 9<sup>th</sup> of December 2009 and 4<sup>th</sup> May 2010.

COUNT 11:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams being the mayor of the Freetown City Council, on a date unknown between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> March, 2011 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum of Le 10,000,000.00 (ten million Leones) withdrawn from the Freetown City Council account at Skye Bank Freetown on Cheque No. 01028014 purporting to be payment in respect of Morgan Heritage Concert.

COUNT 12:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Aiah Brimah being the Development Planning Officer of the Freetown City Council, on a date unknown between 1<sup>st</sup> May 2009 and 31<sup>st</sup> May 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum of Le 9,800,000.00 (nine million eight hundred thousand Leones) made payable on payment voucher No. 4131 and Cheque No. 1007508 to wit, purporting to be payment for allowances to councilors' needs assessment.

COUNT 13:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Franklyn Garber being the civil engineer of the Freetown City Council on a date unknown between the 1<sup>st</sup> of May 2009 and 31<sup>st</sup> May 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum of Le 9,225,000.00 (nine million two hundred twenty five thousand Leones) made payable on payment voucher No. 4025 and Cheque No. 1007494 to wit, purporting to be payment for rehabilitation work and steel doors at Hargan Street.

COUNT 14:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Aiah Brimah being the Development Planning Officer of the Freetown City Council on a date unknown between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> March 2011 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum of Le 2,815,000.00 (two million eight hundred fifteen thousand Leones), purporting to have been paid to participants at the three day strategic planning retreat at Hill Valley Hotel as daily subsistence allowance.

COUNT 15:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips and Desmond Thomas being the Mayor, the Chief Administrator and the Head of Cashiers office of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> October 2009 and 31<sup>st</sup> December 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum of Le 2,063,400.00 (two million sixty three thousand four hundred Leones) to wit, willfully deprived the Freetown City Council of monies collected as Wharf Landing fees.

COUNT 16:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips and Arthur Kwesi-John being the Mayor, the Chief Administrator and the Deputy Chief Administrator of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> October 2009 and 30<sup>th</sup> November 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum of Le 4,000,000.00 (four million Leones) made payable on payment voucher No. 3820 and Cheque No. 1262222 to wit, purporting to be payment made to National Power Authority for prepayment and light bill.

COUNT 18:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, being the Mayor of Freetown City Council, on a date unknown, between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> March 2011 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum US \$9,000.00 (nine thousand United States Dollars) to wit, purporting to be payment made for excess baggage to Morgan Heritage Concert.

COUNT 19:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, being the Mayor of Freetown City Council, on a date unknown, between the 1<sup>st</sup> July 2010 and 31st March 2011 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum US \$10,000.00 (ten thousand United States Dollars) drawn from Freetown City Council account No. 800-018001591-01 at Sierra Leone Commercial Bank, purporting to be payment in respect of the Morgan Heritage Concert.

COUNT 20:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips and Sylvester Momoh being the Mayor, the Chief Administrator and the Acting City Treasurer of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> April 2010 and 1<sup>st</sup> June 2010 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Revenue in the sum Le 79,980,000.00 (seventy nine million nine hundred eighty thousand Leones) to wit, purporting to make payment for the relocation of evictees from the construction site of a market and shop center at Fisher street.

COUNT 21:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Mohammad Shaaban being a business man operating as Waka Fast Construction and General Services, of No. 16 Pademba Freetown on a date unknown between the 22<sup>nd</sup> April and 30<sup>th</sup> May at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public



Revenue in the sum of Le 800,000,000.00 (eight hundred million Leones) to wit being payment for construction of market and shop center at Fisher street.

COUNT 22:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, and Bowenson Fredrick Philips being the Mayor and the Chief Administrator of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> June 2009 and 31st July 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum Le 13,442,500.00 (thirteen million four hundred forty two thousand five hundred Leones) made payable on payment voucher No. 3309 and Cheque No. 10227080 to wit, purporting to be payment made to one Zenobean Enterprises for the supply of swivel chairs.

COUNT 23:

STATEMENT OF OFFENCE

Misappropriation of Public Revenue contrary to section 36 (1) of the Anti-corruption Act No. 2 of 2008

Particulars of offence

Herbert Akieremi George-Williams, and Bowenson Fredrick Philips being the Mayor and the Chief Administrator of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> May 2009 and 31st May 2009 at Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Funds in the sum Le 7,640,000.00 (seven million six hundred forty thousand Leones) made payable on payment voucher No. 4032 and Cheque No. 1007550 to wit, purporting to be payment made to one Ibrahim Kamara as incentive for the Revenue Enforcement team.

COUNT 24:

STATEMENT OF OFFENCE

Willfully failing to comply with the law relating to the procurement of services, contrary to section 48 (2) (b) of Anti-corruption Act No. 12 of 2008

Particulars of offence

Herbert Akieremi George-Williams, Bowenson Fredrick Philips, Arthur Kwesi-John and Sylvester Momoh being the Mayor, the Chief Administrator, the Deputy Chief Administrator and the Acting City Treasurer of Freetown City Council respectively, on a date unknown, between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> May 2011 at Freetown in the Western Area of the Republic of Sierra Leone willfully failed to comply with the law relating to procurement in respect of the purchase of services of Morgan Heritage Family for the sum of US \$130,000.00 (one hundred thirty thousand United States Dollars) for a two day live musical concert staged at the National Stadium.

COUNT 25:

STATEMENT OF OFFENCE

Willfully failing to comply with the law relating to the procurement of services, contrary to section 48 (2) (b) of Anti-corruption Act No. 12 of 2008

Particulars of offence

Herbert Akieremi George-Williams, being the Mayor of Freetown City Council, on a date unknown, between the 1<sup>st</sup> July 2010 and 31<sup>st</sup> May 2011 at Freetown in the Western Area of the Republic of Sierra Leone willfully failed to comply with the law relating to procurement in respect of the purchase of services of Rugged Musical Set for the sum of US \$35,000.00 (thirty five thousand United States Dollars) for two days to be used at the Morgan Heritage concert at the National Stadium.

First the law: Section 74 of the Courts Act No. 31 of 1965 provides as hereunder,

74. *"subject to the provisions of the Constitution and any other enactment, the Common law, the doctrine of equity and the state of general application in force in England on the 1<sup>st</sup> day of January 1880, shall be in force in Sierra Leone."*

It is a cardinal principle of English criminal law that the burden of proving guilt of an accused person lies squarely on the prosecution and does not, with a few exceptions with which I am not concerned here, shift to the accused. That burden is only discharged on proof beyond reasonable doubt. Speaking of the degree of proof required in criminal cases, LORD DENNIN one of the most celebrated judges in the commonwealth said:

*"...that degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful probabilities to deflect the course of justice. If the evidence is so strong against a man as to leave only remote possibility in his favor*

*which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt but nothing short of that will suffice.*" MILLER V. MINISTER OF PENSIONS (1947) 2 ALL.E.R 332.

When an allegation of crime is made against a man/woman, it is the duty of Court as LORD KENYON admonished: "if the scales of evidence hang anything even to throw into them some grain of mercy." In short, to give the accused person the benefit of doubt, but always bearing in mind KENDAL BUSH C.J's admonition when he was dealing with the question of reasonable doubt:

*"...not, be it noted, of every doubt but only a doubt which reason may be given to warrant an acquittal the doubt must not be light or capricious such as timidity or passion prompts, and weakness or corruption readily adopts. It must be such doubt as, upon a calm view of the whole evidence, a rational understanding will suggest to a honest heart; the conscientious hesitation of minds that are not influenced by party, preoccupied by prejudice or subdued by fear."*

With the above principles of law in mind, I now proceed to examine the evidence before the court. Prosecution has grouped the offences charged in the following main groups.

Group 1 comprises count 1 which is a conspiracy and against A1 and A2 respectively

Group 2 comprises of offences involving unlawful failure to pay tax "PAYE" and NASSIT contributions in counts 2-7 inclusive and against A1, A2, A3 and A4 respectively.

Group 3 comprises of misappropriation of Public Revenue against A1, A2 and A5 on counts 8,9 and 15 and against A7 alone on count 10.

Group 4:

- a) involving misappropriation of Public Funds against A1 alone on counts 11, 18 and 19
- b) against 1<sup>st</sup> and 2<sup>nd</sup> accused in counts 22 and 24
- c) against 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> accused in count 20
- d) against 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> accused in count 10
- e) against 6<sup>th</sup> accused in count 13
- f) against 8<sup>th</sup> accused in count 12 and
- g) against 9<sup>th</sup> accused alone in count 21

I will now begin to examine the evidence in the above order where it is practically possible to do so.

On count 1 the essence of conspiracy is agreement. An agreement between two or more persons to carry their criminal scheme into effect. MULCAHY V. R. (1868) L.R. 3 H. L. In this case, it is conceded by the prosecution that the offence of conspiracy was brought under a section that creates no offence. Despite that, prosecution argue that that defect can be amended under the provisions of section 148 1 of the Criminal Procedure Act. I agree that section 148 (1) C.P.A

permits court to order an amendment of charge at any stage of the proceedings. But in my humble opinion this is where the indictment is valid and an indictment containing a section which does not create an offence is not a valid indictment. To order an amendment would be to permit prosecution to introduce an offence which was never part of the committal proceedings. But not only that; it has been held that a charge of conspiracy should not be included if it will lead to unfairness to the defence; *VERRIER v. DPP* (1967) 2 AC 195. In the case of *STATE v. FODDAY BANGURA MOHAMMAD*, the late ADEMOSU J.A of sweet memory said:

*“It is undesirable to add a count of conspiracy to an indictment charging specific substantive offence in a case where it is clear that the evidence to be submitted for consideration is nothing more than evidence of actual commission of the offence.”*

Applying the above principles of law I dismiss count 1 and acquit the accused.

This brings me to count 2, 3, 4, 5, 6 and 7 of the indictment charging the 1<sup>st</sup> and 2<sup>nd</sup> accused on counts 2 and 3, and 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> accused – in counts 4, 5, 6 and 7 respectively with failure to pay tax PAYE to NRA and NASSIT contributions.

To succeed prosecution must prove that each of the accused was a person

- a) Under a duty, nay, obligation or responsibility to pay taxes, levies, fees or charges and in respect of NASSIT, contributions.
- b) That each person failed to carry out such duty, obligation or responsibility
- c) And that failure to do any of the above
- d) Was done fraudulently or otherwise unlawfully

Commenting on the adverb *“fraudulently”*, the learned Authors of ARCHBOLD 2003 edition state:

*“To defraud or act ‘fraudulently’ is dishonestly to prejudice or take a risk of prejudicing another’s right, knowing that you have no right to do so.”*

And the adverb *“unlawfully”* the said Authors state:

*“This means without lawful justification or excuse”*

It must be appreciated that both the NRA and NASSIT statutes place the responsibility in case of NRA to the employer to withhold certain payment from the employees and remit the sums so withheld to NRA and in case of NASSIT the employer to pay contributions to NASSIT. Neither of the accused is the employer, the employing entity being the City Council of Freetown. The City Council however being a legal person must act through its human agents. Prosecution has to prove therefore that each of the accused was the agent of Freetown City Council when it came to withholding and remitting the sums withheld to NRA or pay contributions to NASSIT. It cannot be that in order to discharge the above statutory obligation the four accused officials had to sit

and deliberate on the issue or each had to act independently in which case it would create chaos. There must have been an official whose responsibility it was to act. For the reasons that will presently follow, I will rest this issue here.

There is evidence to show that money was withheld from the emoluments of the Freetown City Council employees for the purpose of remitting it to NRA and paying NASSIT contribution. There is evidence that by the time these charges were preferred no payment had been made to either of the two statutory bodies. There is no evidence however that any sum meant for the above purpose left the coffers of the Freetown City Council and ended up in the pockets of individuals.

In their final address to court, prosecution wrote:

*"It is the defence case that council lacked funds hence reason why they could not pay the taxes dues of the council staff. The prosecution submits that the FCC benefited from loans and overdraft facilities from especially the First International Bank and Rokel Commercial Bank....The evidence demonstrates and in particular exhibit 'SSS1-2' of 05<sup>th</sup> January 2011 where Rokel Commercial Bank granted a short term loan to council of Le 5,000,000,000.00 (five billion) on terms and conditions stipulated in exhibit 'SSSS'. Even with receipt of the said five billion, accused persons failed to pay NASSIT and NRA tax obligations."*

Be that as it may. In my humble opinion another view could be that it was because the FCC was in financial doldrums that it resorted to loans and overdrafts.

FESTUS DOW THOMPSON is a supervisor for Income Tax department of NRA. He appeared before this court to be a witness who was a friend of truth, decorum and virtue and I accept his evidence unhesitatingly. Under cross-examination he said;

*"The Act 2000 spells out mechanisms for collecting money due to NRA. The Anti-corruption Commission is not one of those mechanisms. When we met the council, the officials told us that council had cash flows – we were not curious to know why there was no payment. We go against institutions and not individuals.... I met A4 at the city council some time in 2011. After the meeting there was an agreement made."*

In his examination in chief, the same witness said:

*"...we did visit the City Council to enquire about the default. After the meeting we contacted one Mr. Sylvester Konneh (A3) and Mr. Jaroh. These officials agreed to the liability and promised to pay. After the meeting we contacted the enforcement and debt management unit who entered into a payment plan with the City Council. I have a document to that effect which was drawn with the cooperation of the City Council."*

As can be seen from this piece of evidence, this was not the behavior of an institution that was 'fraudulently' or otherwise 'unlawfully' refusing to pay. It evinces a conduct of an institution that was willing to pay but had problems with paying.

ABDUL KARIM FOFANAH was internal auditor who carried out the audit that culminated into these charges. Under cross-examination, he said;

*"The reason why the City Council did not meet its obligations to NASSIT and NRA is because of the financial constraints they found themselves in."*

FATMATA MAMADI KANNEH is Senior Administrative officer in charge of Budgeting, Finance and Foreign Committee of the Freetown City Council. Under cross-examination, she said;

*"I am aware that the City Council is in arrears of NASSIT dues. This is not a deliberate decision not to pay these dues. The city council is indebted to NRA in respect of PAYE tax. This too is not willful. It is simply because the City Council – our revenue collected one way or the other is not...on our counts for the rate payers are not paying our city rates and even government is not paying our rates. In short, the Council is in bad financial state."*

While it is a fact that the City Council did not remit money withheld to NRA and pay contributions to NASSIT, prosecution have abysmally failed to prove that failure to do so was done "fraudulently" or otherwise "unlawfully". It should also be remembered that both NRA and NASSIT statutes have elaborate mechanisms in place to recover their money from defaulting employers. They do not need the intervention of a seemingly overzealous Anti-corruption Commission unless of course there is proof that an individual has pocketed the money. Evidence abounds to show that it was not only the Freetown City Council that was in default in remitting the money. In his evidence, ALFUS COLE of NASSIT said: *"Yes we can make arrangements with debtors as to how their contribution can be paid... I have a list of institutions that are indebted to NASSIT (exhibit EE5) – ministry of finance is one of the debtors to the tune of Le 3 billion plus."* While a wrong plus a wrong cannot make a right, one wonders why it was only the Freetown City Council being selected for prosecution. This smacks of selective prosecution.

Before I leave this group of charges, I wish to register my doubts about the propriety of charging failure to pay NASSIT contribution under section 148 (1) (d) of the Anti-corruption Act of 2008.

The MACMILLAN ENGLISH DICTIONARY – new edition defines contribution as:

*"A regular payment that you make when you are working that helps you pay for your pension or for benefits for people who are unemployed or ill."*

Speaking for myself that is what NASSIT is for. Can such contributions amount to taxes, levies, charges etc?!

The accused will be found not guilty under counts 2 to 7 inclusive and acquitted.

This now brings me to counts 8, 9 and 15 charging 1<sup>st</sup>, 2<sup>nd</sup>, and 5<sup>th</sup> accused with misappropriation of market dues, Municipal licenses and Wharf Landing fees.

The Anti-Corruption Act No. 12 of 2008 defines misappropriation as hereunder following:

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

It is clear that the offence created by section 36 (1) of the Anti-corruption Act No. 12 of 2008 requires mens rea, i.e. a state of mind on the part of an accused directed to that particular act that constitutes the actus reus and warrants the description of “willful”. To succeed therefore, prosecution must prove both intent and actual commission of the intended act. In addition, prosecution must prove that each of the accused persons was responsible for the collection and maintenance of the market dues, municipal license fees and wharf landing fees.

ABDUL KARIM FOFANAF (PW11) is a witness this court found to be a friend of truth, decorum and virtue. He was the internal auditor and this prosecution can be said to be grounded chiefly on his findings. Under cross-examination, he said:

*“This is exhibit “LLL” page three thereof under ‘findings’ – cash collected by revenue collectors was paid to the cashier of the council directly. That was the procedure established at the City Council. The revenue collectors were to pay only to cashiers and no other person. When I detected the discrepancies, I submitted my report and waited for a reply. I spoke to the revenue collectors and cashiers as I was preparing my report. I arrived at a conclusion as to where the discrepancies took place. The blame lay on the cashiers and revenue collectors.....if the money was misappropriated, this was by the cashiers and revenue collectors....exhibit “LLL” table under landing wharf fees pg.4; entries for October, November and December 2009. The total difference in respect of revenue collected and cash deposit is Le 2,630,400.00. As mayor has nothing to do with the collection of license fees, wharf landing fees and market fees.”*

While it is true that under the Local Government Act 2004 section 11 (3) (e) the chairperson (mayor in case of the City Council of Freetown) is to ensure that financial affairs of the local council are properly managed and controlled, it would be demanding too much that he becomes responsible for the discrepancies that may appear in the recording of the same. We must not demand standards that we ourselves cannot attain. Charges under counts 8, 9 and 15 against 1<sup>st</sup> accused will be dismissed and he is accordingly acquitted.

BOWENSON FREDRICK PHILIPS (A2) was Chief Administrator of the City Council of Freetown. Under section 31 (4) of the Local Governments Act 2004 he is responsible for the

financial and other resource management and the day-to-day administration of the Local Council. Under section 31 (5) of the same Act, the Chief Administrator in the performance of his duties is to “ensure that there is accountability and transparency in the management and delivery of the local council services” and under 33 (2); “the other staff of a local council shall be responsible to local council Chief Administrator.”

DESMOND THOMAS (A5) was the head cashier of the Freetown City Council. It is in his office that according to the evidence of PW11 discrepancies were found. In respect of the market dues, PW11 under cross-examination said, *“The cashiers issue receipts only for money paid to them by revenue collectors. During my exercise of auditing, I looked at the cash receipts. I did not check the amount on these receipts against the daily analysis form recorded therein... I don't have receipts issued by the Head Cashier for the market dues and Municipal license fees. I saw them during the audit. The receipts issued by the cashier had the same figures – the same with the daily collection analysis form verified by the internal audit department. Cash deposit ledger versus revenue collected by the revenue collectors – the cash and deposit analysis is what is used to record the cash received – what the cashier receives from the collectors is what he issues receipts for.”*

From the totality of the evidence of this witness, the following may be deduced:

- a) He saw and examined receipts issued by the Head Cashier against daily collection analysis form verified by the internal audit department.
- b) The receipts issued by the Head Cashier reconciled i.e. agreed with the records of daily collection analysis form verified by the audit department.

Earlier on he had agreed that the report exhibit “LLL” was inaccurate. He said: *“there are inconsistencies in the report and this was a draft report.”* The MACMILLAN ENGLISH DICTIONARY – new edition defines the word ‘draft’ inter alia as *“something such as a plan, letter or drawing that may have changes made to it before it is finished.”*

ALBERT LAMIN (PW14) is a senior auditor with Audit Services of Sierra Leone. In his evidence he said: *“I am the author of this statement (exhibit KKK). I sent it to the Chief Administrator of the City Council of Freetown. At page 8 of this document – ‘Inadequate control’ paragraph 3.2 – Findings; our findings in regard to market dues for January to December 2009 – there was a difference between the record of the market supervisor and the record of the cashier. The figure should read Le 60,813,600.00. Exhibit KKK page 8 refers to appendix B of exhibit KKK. After my findings, I recommended that the vote controller ensures that the money is retrieved from the parties concerned – the vote controller was the Chief Administrator (A2). The response was; see page 9 of the exhibit – there could be leakages in revenue collection which could have resulted in the difference recorded. They said we could have duplicated the calculations of our findings – there was no such duplication in our calculation.”*



The so called voluntary caution statement of 2<sup>nd</sup> accused was by question and answer. Nowhere in the entire document was he ever asked about market dues, municipal license fees or wharf landing fees!

For his part, the 5<sup>th</sup> accused stated, *"I was responsible for the supervision of two staff in the person of Atim Archison and Mr. Abdul Kano who were sub-cashiers respectively. Mr. Ghozalia Gisil a licenses officer attached to Freetown City Council substation in Kissy made weekly payments for licenses .... All other payments including licenses, city rate, and municipal licenses, wharf landing fees and any other payments were received by cash office for which I was head. ...upon receipt of monies paid by the market office to the cash office, we issue receipts on the total amount paid."*

He did not talk about the discrepancies alleged between the amounts recorded by the revenue collectors and what his office recorded as having been received from the revenue collectors.

In his final address learned counsel for 2<sup>nd</sup> accused wrote:

*"what came out clearly in the evidence was that there was a separate revenue collection mechanism set up by the Freetown City Council of which 2<sup>nd</sup> accused was not part as he played only administrative roles. The same applies for counts 9 and 15 in respect of the municipal license fees and wharf landing fees respectively."*

I have given this submission very anxious and meticulous consideration and I am highly persuaded by it. The only fault that can be visited on this official is that he received a recommendation from auditors to recover the money from those concerned for its misappropriation and sat on that recommendation. Can this inability or refusal to act on the recommendation be a subject of censure under section 36 (1) of the Anti-Corruption Act 12 of 2008? I would with respect give the benefit of doubt to the 2<sup>nd</sup> accused and find him not guilty and acquit him on counts 8, 9 and 15 of the indictment.

DESMOND THOMAS (A5) was the Head of Cashier's office of the Freetown City Council. It is his office which was responsible for collecting the revenue monies from revenue collectors. The objective of the audit carried out by ABDUL KARIM FOFANAH (PW11) was inter alia to find out:

1. The actual monies collected by all revenue collectors - sub cashiers are actually received by the cashier in the cash office.
2. ....
3. The correct receipts are issued for all monies collected

By exhibit LLL which is a report he prepared and submitted to the mayor and Chief Administrator of the City Council of Freetown, his detailed finding – (see exhibit LLL page 3)

*"It was observed that the monies collected by revenue collectors are actually received by the cashier in the cash office. This can be evidenced by receipts issued to revenue collectors on payment to cashier of monies collected and correct receipts were issued for monies collected and paid into cash office."*

The report recommended that:

*"We recommend that frequent and on spot checks be done to ensure further transparency in the cash office."*

In his evidence under cross-examination he said: *"before money is paid to the cash office, it first goes to audit department for verification. After that we prepare analysis form which we stamp and is taken to the cash office. The cashiers do not go out to collect revenue, they have collectors. He only collects cash in office – the cashiers issue receipts only for money paid to them by the revenue collectors. During my exercise of auditing, I looked at the cash receipts – I did not check the amounts on these receipts against the daily analysis form recorded therein."* The same witness went on to say, *"I do not have the receipts issued by the Head Cashier for market dues and municipal licenses. I saw them during the audit – the receipts issued by the cashier had the same figure – the same with daily collection analysis form verified by the internal audit department."*

This piece of evidence is in harmony with what he gave in his detailed finding – exhibit LLL at page 3 thereof. It is therefore surprising that the same audit report at page 4 came up with discrepancies in monies collected by collectors paid into cash office and the amount registered by the cashier in the cash and deposit under the heading: "Improper Recording of Cash into the Cash and Deposit Register." This may perhaps be explained away by what the witness further said: *"There are inconsistencies in the report"* describing his report as a draft report.

Can a court of law properly directing itself to the law safely base a conviction on such evidence? Exhibit KKK – the objectives behind this document was to enable the Auditor General to express an opinion on the financial statement of the Local Council for the Financial Year 1<sup>st</sup> January – 31<sup>st</sup> December, 2009 in accordance with section 81 (3) of the Local Government Act.

Paragraph 3.0: Inadequate Control over the Collection, Recording and Reporting of Financial Transactions; the auditors found- *"a difference of Le 60,748,000.00 was observed between a sample daily market collection sheets and receipts issued for the same by the cashier of the council."*

A closer examination of appendix B, the difference given is Le 60, 821,700. No explanation for this discrepancy is given. Be that as it may, this appendix is "market dues" between the 27 -28 of 2009 to 29/12/09. This report has nothing on Municipal fees, and Landing wharf fees. In their response to the discrepancy management of Freetown City Council wrote:

*“While council cannot dismiss the occurrence of leakages in revenue collection due to some ineffective control mechanisms, it however argues with the intrinsic difference of Le 60,821,700 observed between the sample of daily market collection sheets and receipts issued for the same day by the cashier. Our recapitulation of your highlighted daily samples (annex C forwarded herewith) has left us with strong impression of possible duplication of your calculation.”*

Before the court ALBERT LAMIN (PW14) the author of exhibit KKK swore that; “they said we could have duplicated the calculations of our findings – there was no such duplication in our calculation.” However this is hard to reconcile with the evidence of fellow auditor ABDUL KARIM FOFANAH. *“I don’t have the receipts issued by the Head Cashier for market dues and municipal licenses. I saw them during audit – the receipt issued by the cashiers had the same figure - the same with the daily analysis form verified by the internal audit department.”*

In conformity with the law, the benefit of the doubt goes to the accused. This court finds 5<sup>th</sup> accused not guilty and he is accordingly acquitted.

Count 10 charges ALIMAMY TURAY (A7) with misappropriation of Le 22,470,000 allegedly being monies collected as market dues.

ALIMAMY TURAY was at the material time the Municipal Trade Officer. In his evidence ABDUL KARIM FOFANAH (PW11) said: *“it was observed that this period 9-12-09 to 04-05-2010 – market tickets issued to the municipal officer – Mr. Turay (A7) from stores to various markets were not posted into the market dues issue ledger...this gives Le 22,470,000.00. I was not able to locate the whereabouts of these books not posted.”*

Under cross-examination, he said:

*“A7 was a Municipal Trade Officer – receipts issued to him were not recorded in the market fees ledger. I did not come across any acknowledgement of these receipts – the amount of Le 22,470,000.00 represented the price of the books that were not accounted for. I have no evidence that these books were later discovered.”* In answer to the question put to him by the court, the witness said: *“I have no evidence that the books were received by the accused.”*

In my humble opinion, what can be deduced from the above evidence is;

- a) Evidence from stores showed that ticket books worth Le 22,470,000.00 were issued to A7. This evidence is not controverted; it stays unscathed.
- b) The auditing exercise did not find evidence that the ticket books had been posted into the market register issue ledger. This evidence is not controverted. It stands unscathed.
- c) These ticket books if sold could have realized for the city council Le 22,470,000.00

Now the question is: where are the books? In his final address to court, learned counsel for A7 wrote:

*“Prosecution case against A7 is also fraught with difficulties and riddled with doubts that should be resolved in his favour. He like the 6<sup>th</sup> accused was not given an opportunity by the ACC investigator to clear doubts before charging him. Instead they took the conclusion in exhibit LLL and TTT lock and barrel”* (here learned counsel is reminded that the expression is ‘lock stock and barrel’).

The accused was given every opportunity by court to clear the air about the whereabouts of these ticket books. Instead he opted for his constitutional right to say nothing. What he could have told the ACC investigator, he could say before the court. The argument advanced by learned counsel is hollow. While an accused has a constitutional right to remain silent and say nothing by way of his defence, if evidence is forthcoming pinning him on some issue, he should clear the air by giving the court what he knows about the issue. This is not to place the burden to prove his innocence; it is only that if he has anything about the issue he should leave it to court for the court to consider. Prosecution is required to prove that the accused did an act that led to the council to be deprived of revenue. It has been proved that the accused was issued with ticket books and that these ticket books evaporated into thin air! I think prosecution has discharged its obligation. I find the accused guilty on this count and convict him as charged.

I now come to count 11 involving the 1<sup>st</sup> accused alone. This count charges 1<sup>st</sup> accused with misappropriation of Le 10,000,000.00 purportedly being payment in respect of the Morgan Heritage Concert and withdrawn from the Freetown City Council account at Skye Bank on Cheque No. 01028014. In his evidence 1<sup>st</sup> accused said:

*“As for the sum Le 10,000,000.00 (ten million Leones), exhibit HHHH is a cheque for that sum. The cheque was encashed by Fatmata. This amount was handed to me was paid for various items such as hiring a crane, and generator – Le 6,000,000.00. This was handed to councilor Aruna and Suleiman Bah. Fuel was required for the generator – Le 1,760,000.00 was spent on fuel. I receipt was issued; it was taken by ACC. Buying mobile phones for visiting band team, cleaning the stadium before the show.”*

This evidence was not controverted, especially the evidence that the ACC took away a receipt for fuel. The evidence tends to be supported by SULEIMAN BAH (PW12). In his evidence, he said; *“sometime in late December 2010, one business man HAMAD DAKIK called me by phone to go and collect a generator plant from his workshop at Wilberforce to go with the machine to the National Stadium.... I left the machine at the stadium with councilor Aruna. After that Dakik called me again to tell me that councilor Aruna should give me some money.... We had arranged to be paid Le 800,000.00, I charged him Le 900,000.00. I met Aruna at the stadium. He told me to go down to the city council ... I was paid Le 800,000.00 to take to Dakik.”*

In their final address prosecution wrote:

*“The prosecutor refers to exhibit HHHH together with the testimonies of PW7 Fatmata Konneh and that of 1<sup>st</sup> accused. Exhibit HHHH was signed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> accused authorizing*

*Miss Konneh to withdraw Le 10,000,000.00 which she handed to the 1<sup>st</sup> accused. No expenditure voucher was raised. The prosecutor submits that the 1<sup>st</sup> accused failed in his feeble attempt to justify the withdraw and expense of Le 10,000,000.00 and urge the honourable court to convict the 1<sup>st</sup> accused on count 11 as charged."*

Well what does Fatmata who actually withdrew the money and handed it to 1<sup>st</sup> accused say? Under cross-examination, she said: *"The 10,000,000.00 I handed the mayor as I later learnt was used for hiring a crane, purchase of fuel and local artists."* This is a prosecution witness talking! Prosecution must stand or fail by the evidence of their own witness. Count 11 is accordingly dismissed and accused acquitted.

Count 12 charges Aiah Brimah with misappropriation of Le 9,800,000.00 made payable on payment voucher No. 4131 and cheque No. 1007508 purporting to be payment for allowances to councilors needs assessment. In their final address prosecution wrote:

*"Prosecution notes that the 8<sup>th</sup> accused called a witness named Alusine Allieu Conteh, who testified receiving the sum of Le 200,000.00 from the 8<sup>th</sup> accused. The prosecution further notes that the witness was speaking on his own behalf and nobody else. The accused called no further witness in this regard."*

Alas! Is not this surely to suggest that the accused had the burden of proving his innocence? Prosecution is here reminded of the "golden thread". Throughout the web of the English criminal law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt.

Be that as it may, in his evidence Albert Lamin an auditor with Audit Services of Sierra Leone said: *"There were no supporting documents for the amount; appendix F page 2 – 11.05.09 check No. 1007508 – payment voucher 4131 for Le 9,800,000.00 we did not get any supporting document for this audit. We recommended that all these payments without supporting documents be presented to Audit Service Sierra Leone before the response date. The response dates were thirty days of receipt of exhibit KKK. We did receive a response appreciating the importance of supporting evidence. ... After this response, we did a verification exercise a week after the receipt of management response – we were not given supporting documents for these expenditures."*

Under cross-examination he said: *"The management explained that the absence of supporting documents could have been due to inappropriate archive system of movement of documents from one destination to another.... We have never refused to receive supporting documents on account of being late."* Interestingly this witness was not cross-examined by learned counsel for the 8<sup>th</sup> accused. The accused had elected to give evidence, when it came to his turn he changed his mind and elected to say nothing but to examine a witness on his behalf. He was entitled to his choice. The witness he examined Alusine Allieu whose demeanor I studied very closely while in the witness box struck me as a man alien to the truth. He sounded unconvincing, prevaricating and

shiftily. In a word he is a witness in whom court could not place its trust. It is strange that he could be paid public money without signing for it.

Prosecution has proved this count to the required degree of proof and accused is convicted as charged.

Count 13 charges FRANKLYN GARBER alone with the misappropriation of Le 9,225,000.00 purporting to be payment for rehabilitation work and steel door at Hargan Street market. Franklyn Garber was the Civil Engineer of the Freetown City Council.

The case for prosecution is that Garber withdrew the sum of Le 9,225,000.00 from the FCC account with First International Bank. It is contended by prosecution that he did not or failed to explain how he expended the Le 9,225,000.00 since no supporting documents could be found or were tendered.

His counsel was not amused and in his final address attempted to redefine the offence of misappropriation by resorting to dictionary definitions from famous Authors such as CHAMBERS 21<sup>st</sup> Century Dictionary revised edition © 1999 and Jowitt Dictionary of English Law (Vol. 2 © 1977). With the greatest respect, this was an exercise in futility. Parliament in its immense wisdom defined the phrase "to misappropriate" in the Anti-Corruption Act 12 of 2008 – see section 36 (2). The court cannot go outside the definition as given by the legislature. To do so would be to legislate which is not the function of court. I have herein reproduced the definition of "misappropriation" as set down by the legislature and need not repeat it here.

It is a fact that the accused did withdraw Le 9,225,000.00 from the FCC account with First International Bank. Exhibit WW which is a check drawn in his name speaks out loud and clear. In his evidence ALBERT LAMIN said: "...same page 15-05-09 check No. 1007494 payment voucher 4025 Le 9,225,000.00 there were no supporting documents for this amount." Check No. 1007494 is exhibit WW I have already referred to herein above. (Morgan Street was an error which was corrected)

Frankly Garber made a caution statement; in the statement he talks about work that was to be done or done and problems in payments. Nowhere does he allude to the sum of Le 9,225,000.00 on exhibit WW. In his evidence Albert Lamin said: "*We recommended that all these payments without supporting documents be presented to Audit Service Sierra Leone before the response dates. The response dates were 30 days of receipt of exhibit KKK. We did receive a response appreciating the importance of supporting documents....after this response; we did a verification exercise a week after receipt of the management response. – We were not given supporting documents for these expenditures*"

So the fact of the matter is Franklyn Garber was given Le 9,225,000.00 of Public money. To date he has not accounted for it. The question is; where is the money? Prosecution has proved the case against the accused who is found guilty and convicted as charged.

Count 14 charges AIAH BRIMAH 8<sup>th</sup> accused with misappropriation of Le 2,815,000.00 purported to have been paid to participants at a three day strategic planning retreat at Hill Valley Hotel as daily subsistence.

The case for prosecution is that the 8<sup>th</sup> accused with drew the sum of Le 46,672,000.000 from the FCC account at Rokel Commercial Bank. The sum of Le 26,025,000.00 was meant for daily subsistence allowance (DSA) for 78 participants for a three day residential retreat. The accused according to prosecution expended Le 23,210,000.00 on DSA on 88 participants and still had unspent funds of Le 2,815,000.00 which was never retired or accounted for.

Exhibit FFF is a cheque naming the 8<sup>th</sup> accused as the payee for a sum of Le 46,672,000 dated 29-09-10 on the same exhibit there is the I.D card of the 8<sup>th</sup> accused. By all indicators this check was cleared and the 8<sup>th</sup> accused paid the proceeds thereof. Exhibit GG gives the breakdown of how Le 151,397,000.00 requested for Sectrol Planning retreat i.e. how the sum was to be used. According to the exhibit the sum of Le 26,025,000 was for "Daily Subsistence Allowance" (DSA) participants – 78 persons. The same exhibit GG 4-8 has the list of participants who signed for the receipt of the DSA. In his evidence Maada Konneh (PW3) the investigating officer who carried out the investigations in this case said: *"I found during my investigations that the 8<sup>th</sup> accused withdrew from the Freetown City Council account at Rokel commercial bank the amount of Le 46,672,000.00 for the purpose of daily subsistence allowance for participants."*

I must observe here that this piece of evidence is wrong for as observed above the breakdown in exhibit GG gave subsistence allowance as Le 26,025,000.00. The witness continued to say: *"Part of this money was unaccountable by the documents submitted to the Commission by the Freetown City Council. The unaccounted for money was about Le 2,000,000.00."* The witness does not show how he came to this figure of Le 2,000,000.00; in any case he says it was about that. Herein above I have already shown that he was wrong about the amount for subsistence allowance. If he was wrong here he could be wrong elsewhere. There is no any other independent evidence to back up the claim made by this investigating officer. He was an investigator and not an auditor. In the absence of an audited account on this issue, I cannot say that prosecution has proved this charge against the accused. Count 14 will therefore be dismissed and accused acquitted.

Count 18 charges 1<sup>st</sup> accused with misappropriation of US \$9,000.00 allegedly being payment for excess baggage of Morgan Heritage group. In their final address prosecution wrote:

*"...prosecution refers to exhibit W2 under the rubric 'additional' item 29 and submits that by the terms of the contract, reimbursements were to be made by Morgan Heritage group after presentation of receipts for all items stated in exhibit CC1 including airline receipts for excess luggage from their point of departure which said receipts the defence failed to tender in court. Prosecution submits that exhibit CC2 is a fake document and the 1<sup>st</sup> accused misappropriated the \$9,000.00 and must be held responsible as charged."*

Prosecution examined Maada Konneh of the Anti-Corruption Commission Intelligence, Investigation and Prosecution Department. He is actually the officer who carried out investigations that culminated in the charges. This is what he had to say about the \$9,000.00:

*"I am aware that Al is charged with misappropriation of \$9,000.00 paid to Morgan Heritage for excess luggage. I was presented with a receipt allegedly signed by the representative of Morgan Heritage by the official of Freetown City Council. There was no proof of the origin of the receipt. I did not speak to Albert Cook. I obtained a statement from the official at the city council who had made payment to Albert Cook – the official of the city council – MAADA BAH. He is not the accused. Said he had personally paid Albert Cook the equivalent of \$9,000.00. My investigations revealed that the council was under financial obligations to Morgan Heritage."*

The statement by Maada Bah was tendered as exhibit PPP 1-58.

ALIMAMY TURAY (PW9) in his evidence in chief said:

*"I am a ticket consultant with BMI airlines...my responsibilities include ticketing observation and all other airline related transactions... I do recognize exhibit KK2 – is a letter written to us by the Anti-Corruption Commission. As a result of this we did reply supplying all the details in exhibit KK2"*

I have found it necessary to reproduce exhibit KK2 in full in this judgment.

BMI

CMR/PS/BMI/9395/11

Mr. Joseph Fitzgerald Kamara

Commissioner Anti-Corruption Commission

3 Gloucester Street

Freetown

Dear sir,

*We refer to your letter dated 22<sup>nd</sup> November, 2011 wherein you are requesting evidence against payment of excess baggage in respect of the under mentioned persons (Morgan Heritage Family Musical Group).*

Lukes Morgan

Peter Morgan

Una Morgan



*Roy Grains Morgan*

*As per request, attached is a copy of BMI audit coupon (MCO No. 236 4700 278 278 655) for \$480 (four hundred eighty US dollars), being excess baggage (extra luggage) issued in the name of Mr. M. Morgan to travel:-*

<i>Flt No.</i>	<i>Date</i>	<i>From</i>	<i>To</i>
<i>BD 968</i>	<i>31. Dec.10</i>	<i>Freetown</i>	<i>London (Heathrow)</i>
<i>AA657</i>	<i>01, Jan, 11</i>	<i>London (Heathrow)</i>	<i>Miami</i>
<i>AA1990</i>	<i>01, Jan, 11</i>	<i>Miami</i>	<i>Orlando</i>

*I trust that clarifies your request."*

This leaves no doubt that excess baggage was paid for.

Exhibit CC2 is a hand written chit dated December, 31<sup>st</sup> 2010 and I here below reproduce it.

*Dec. 31, 2010*

*Albert Cook, on behalf of Morgan Heritage, have collected the sum of US \$9,000.00 as final payment for:*

*Backline rental*

*Visas reimbursement*

*Excessive luggage*

*Loans to Shabba*

*\*Albert Cook*

Prosecution says exhibit CC2 is a fake document. The law is well settled. He who alleges must prove that which he alleges. It is for the accused to place before the court material as would make issue one fit for consideration. Once he has done that, the ultimate burden is on the prosecution. If in consideration of the whole of the evidence the court either believes the defence or is left in reasonable doubt whether it might be true, then the accused should be acquitted because prosecution has not negated the defence in such a manner as to leave no reasonable doubt in the mind of the court. It is not a case of giving the accused the "benefit of doubt" - the prosecution will have failed to prove the case against him so he is entitled to an acquittal. That is good law and good sense! It is of note that prosecution had listed Mohammad Madina Bah, the accountant at the FCC as a witness. He was not called. The law is well settled, if a party fails to call a witness that he/she should have otherwise called, court is entitled to presume that if called,

that witness would have given evidence adverse to that party. Prosecution has to prove that exhibit CC2 is a fake. This they have abysmally failed to do and accused is entitled to an acquittal. He is accordingly acquitted.

Count 19 charges 1<sup>st</sup> accused with misappropriation of the sum of US \$10,000.00 withdrawn from the Freetown City Council account No. 800018001591-01 at Sierra Leone Commercial bank allegedly being payment made in respect of Morgan Heritage Concert. In their final address prosecution wrote:

*"It is prosecution's submission that 1<sup>st</sup> accused explanation in respect of the \$10,000.00 stating that he paid \$4,000.00 to Rugged Musical, \$5,000.00 to Albert Cook and another \$1,000.00 as further per diem to Morgan Heritage group is incredible, unbelievable and cannot be supported by any document before court."*

In his evidence before court, 1<sup>st</sup> accused said:

*"About misappropriating US \$10,000.00 allegedly paid in respect of the Morgan Heritage Concert – this is exhibit DD 1-2. Is a request for payment. The proceeds were handed over to me by Miss Fatmata. I expended this money on behalf of Freetown City Council. I paid \$4,000.00 as part payment of Musical set, US \$5,000.00 to Albert Cook for and on behalf of..... and US \$1,000.00 as per diem... exhibit AA – it is a receipt of payment addressed to mayor – the amount is US \$11,000.00 the US \$4,000 paid to musical instrument is covered by this receipt. Other payments were made after paying \$5,000.00 and \$4,000.00."*

This particular claim is supported in material particulars by the evidence of prosecution witnesses. For instance in her evidence Fatmata (PW7) said: *"The \$10,000.00 I handed to A1 – exhibit DD. Out of this \$4,000 was paid to Rugged for providing Musical System for the concert. Exhibit BBBB, the \$5,000.00 covered here came out of the \$10,000.00 I handed to A1. It is not my knowledge that Morgan Heritage held a concert at the Country Lodge Hotel. Instead they held a mini concert at Lagonda Entertainment complex. Exhibit BBBB is a receipt from Albert Cook for the sum of \$5,000 for a concert organized at Lagonda complex. This concert was actually a request of Mr. Emille Carr who later on paid council in Leones. Carr did not come up with \$5,000 so the City Council had to pay. Albert Cook had said he needed the money before performance."*

Emile Carr appeared as PW8. This is what he said: *"I do recall the dates between 27<sup>th</sup> and 28<sup>th</sup> December 2010. Prior to this date myself and other members of the club agreed with the mayor (A1) that Morgan heritage band will do a premier performance at the summit club at Lagonda. We agreed for a fee of \$5,000.00 and on dates of performance. The band arrived at around 11 o'clock at night. This was on 27<sup>th</sup> December 2010. ...Mr. Cook demanded that we pay \$5,000 before they perform... After the performance they left. After that the bank called me the next day on 28<sup>th</sup> December 2010 to say that a cheque in my names had been presented. I advised the bank not to pay the cheque. Immediately we arranged to get \$5,000.00. Mayor (A1) - he advised us to*

go to the treasurer to pay which we did. We paid the person in the treasurer directed us. This is exhibit DDDD – the purpose of paying \$5,000.00 was for performance of Morgan Heritage band.”

Maada Konneh (PW3) was the investigating officer in this case. The following is what he said in regard to \$1,000.00: “This document – receipts of Morgan Heritage Concert. I have seen this document before - exhibit AAAA – I cannot say the sum of money shown was part of the \$10,000.00 said to have been misappropriated by A1.”

Later under cross-examination, he said: “This document is a receipt received from Mr. Emile Carr dated 28<sup>th</sup>-12-2010. (Exhibit BBBB) I did not talk to A1 about this document. This document allegedly issued by Albert Cook. I did not talk to Mr. Carr about the document. I do not know where the money covered on this document came from. I would be surprised if it came out of the \$10,000.00 allegedly misappropriated. I have seen it before.”

Here we have an investigating officer who is shown a very important document and simply ignores it. The question is; why ignore it? He had received it from Mr. Carr, it was showing that Mr. Albert Cook was paid \$5,000.00 and he simply ignored it.

Then there is exhibit AA2 which I will with respect reproduce here under:

*Receipt of payment*

*From invoice No.*

*RSL-FCC-1230.*

*Bill to:*

*His worship the Mayor of*

*Freetown City Council*

*Herbert George-Williams*

*Freetown, Sierra Leone*

*This is receipt for payment of \$11,000.00 (US dollars) cash received from his worship the Mayor Herbert George-Williams, Freetown City Council, Freetown Sierra Leone as part payment for hire of rugged equipment on invoice RSL-FCC 1230 totaling \$35,000 for program titled ‘Morgan Heritage Live’ dated the 28<sup>th</sup> and 29<sup>th</sup> of December 2010 at the Sierra Leone National Stadium, Skye Street, Freetown, Sierra Leone.*

*Balance of payment remaining is \$24,000.00*

*This receipt is produced by rugged and supplied by Nasser Hyjazy, Project Direct (Africa Contracts), 32 Bathurst Street Freetown, Sierra Leone (+232) 033 793305 or email [naz@ruggedhouse.com](mailto:naz@ruggedhouse.com).*

This receipt gives a lot of details that if the Anti-Corruption Commission wished to check its authenticity it could not have taken them much time. I am in complete agreement with learned counsel for A1 that the cumulative effect of the evidence on record does not conclusively and definitively point to the guilt of the accused. He is entitled to the benefit of doubt and accordingly acquitted.

Count 20 charges 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> accused with misappropriation of Le 79,980,000.00 allegedly for relocation of evictees from the construction site of market and shop centre at Fisher Street. There is evidence to show that the ministry of Trade and Industry provided the FCC with a total sum of Le 879,980,000.00 for the construction of a market and shop center at Fisher Street. Out of this money, Le 800,000,000.00 of which Le 40,000,000.00 was paid as income tax was advanced to Waka Fasta Construction Company which had won the bid to construct the market and shop center referred to above. Le 79,980,000.00 was meant for paying the squatters who were on the site of the intended market and shop center. Evidence abounds that the said evictees stayed put and the above sum was never expended. There is no scintilla of evidence to show that this sum ever left the coffers of the Freetown City Council. In their final address prosecution wrote;

*“The prosecution refers to the 1<sup>st</sup> accused answer in cross-examination – where he says that before he left office, which is to say in November 2011, the balance at the Rokel Commercial Bank were in negative. No explanation has been proffered by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> accused whose sole responsibility is to approve withdraws and payments and who are signatories to all Freetown City council accounts as to what happened to the Le 79,980,000.00 meant for relocation of evictees of the Fisher street market.”*

Alas! This was perilously nigh suggesting that the accused had the burden of proving their innocence and not prosecution to prove their guilt beyond reasonable doubt. Maada Konneh (PW3) prosecution’s key witness said in respect of A1, *“A1 is also charged with misappropriation of Public Funds in the sum of Le 79,980,000.00 purporting to be payment of relocation of evictees from the construction site of the market at Fisher Street. The tenants are still occupying the market so are the traders. I am also aware that construction has not yet commenced – my investigations revealed that the ministry of Lands has to provide land on which the evictees to relocate. I am not aware that the city council is still waiting for funds from the government to proceed with the project. Neither A1 nor the city council claim to have paid the market people. This is exhibit DDD – the first credit is 879,980,000.00. This money came from the ministry of Trade and Industry in respect of Fisher Street market. This exhibit is a statement of accounts of 02-01184507-01. It covers the period of 1<sup>st</sup> April 2010 to 30<sup>th</sup> November 2010. There is no evidence of withdrawal of Le 79,980,000.00. There is no evidence that A1 misappropriated the sum in exhibit DDD.”* In his evidence, 1<sup>st</sup> accused swore: *“the above sum of Le 79,980,000.00 was never removed by the city council from the account.”* In this he has the support of Maada Konneh (PW3) the prosecutor’s star witness! Prosecution must stand or fail

with the evidence of their star witness. Count 20 will be dismissed and accused are acquitted accordingly.

Count 21 charges the 9<sup>th</sup> accused alone with misappropriation of Le 800,000,000.00 allegedly being payment for construction of market and shop center at Fisher Street. The 9<sup>th</sup> accused is a construction contractor engaged in construction business. He was operating a company known and styled as: "WAKA FASTA CONSTRUCTION COMPANY". This company won a bid to construct a market and shop center at Fisher Street, Freetown. The contract was worth 3.4 billion. Out of this the company was paid Le 800,000,000.00 as advance payment which attracted a withholding tax of 5% equal to 40,000,000.00. The company did not construct the market and shop center. Evidence abounds to show that this failure was not due to the default of the company. The site at which the market was to be constructed was occupied by squatters and tenants who had to be evicted and relocated elsewhere by the government. By the time these charges were preferred on the 9<sup>th</sup> accused, the squatters and tenants had not been evicted. They had stayed put. And now the Anti-corruption commission in their immense wisdom has pressed charges against him. They say and would like court to convict him of all offences misappropriation of even money that was deducted as tax! Well, wonders never cease to happen! Unfortunately a whole cabinet minister has been dragged in this ungodly affair and ordered the 9<sup>th</sup> accused to return the money including the sum that was withheld as tax. What injustice! I do not know which law the Hon. Minister based his order. All I can say is that the order is made in violation of the spirit of laissez faire. It has no force of law and is very unfortunate. There is a whole branch of law devoted to this type of scenario. How about the law of building contracts? The Anti-corruption Commission would be well advised to steer clear from this type of interference. Their efforts to bring the guilty to punishment praise worthy as they are, are not to be aided by the sacrifice of those great principles of fairness and justice. The business community of this great Republic deserves a procedure that protects their life and liberty from the inroads of powerful injustice. In my humble opinion and judgment, the 9<sup>th</sup> accused is not being prosecuted. He is being persecuted for engaging in lawful business. This to say the least is very unfortunate. Charges against him are hereby dismissed with all the contempt it deserves. He is accordingly acquitted.

Count 22 charges 1<sup>st</sup> accused and 2<sup>nd</sup> accused with misappropriation of Le 13,442,500.00 purporting to be payment made to one Zenobean Enterprises for the supply of swivel chairs.

The case for the prosecution is that the items in exhibit XX were not purchased nor delivered. Exhibit XX is a Local Purchase Order for the supply of Swivel chairs addressed to Zenobean Enterprises 119 Sequeen Drive off Wilkinson Road Freetown. The specific items for the purchase order: "*Description: Supply of swivel chairs: Contract sum – Le 14,150,000.00. Completion period: Two weeks from the date of this purchase order.*"

In their final address prosecution wrote:

*“The prosecution refers to the evidence of PW6, Sahr John Allieu, the store keeper that on his assumption of duty he found nothing related to the delivery of the 9 Swivel chairs and the metal cabinet. He received no records with regards to goods supplied to the FCC and no records relating to the receipt of the items indicated in exhibit XX 1-3.”*

I have deemed it necessary to reproduce the relevant evidence of PW6 SAHR JOHN ALLIEU. He said: *“on assumption of office, I did not receive any records with regards to goods supplied to the city council. Exhibit XX at page 3 – I have no record relating to the receipt of items recorded here.”*

Under cross-examination, he said: *“I succeeded Mr. Paul Turay as store keeper. He did a handing over to me. We have a stock out ledger – Paul left this stock out ledger to me. I received a stock out ledger for receipt books. I did not receive a stock out ledger for goods received at the store before I commenced work. This is where the items in exhibit XX should have been acknowledged. This document was absent. Because of the unavailability of this document, I am not in position to say that these items on exhibit XX3 could have found their way into the store. I do not know whether it is possible for the city council to purchase goods that do not go to the store. After visiting the Anti-corruption Commission, I did try to ascertain whether the items on the exhibit XX were in the store. I found them to be in the store.”*

The witness was then shown photographs of items – swivel chairs and metal cabinet and his response was; *“yes these pictures are of the items listed in exhibit XX3 which I found in the store.”* What is important here is that prosecution witness said that when he went to his store after visiting the Anti-Corruption Commission, he found the items he had been grilled about and which prosecution still insist were never delivered were in the store! Did prosecution have trust in the witness they were examining? The Anti-Corruption Commission is clothed with immense powers; why did they if they did not trust the store keeper SAHR JOHN ALLIEU use section 56 (1) (a) of the Anti-Corruption Act 12 of 2008 to summon any official from Zenobean Enterprises to ask her/him whether the Enterprise had supplied the items in exhibit XX1-3?

The charges under count 22 are completely of no substance. This count stands dismissed and accused acquitted.

Count 23 charges 1<sup>st</sup>, and 2<sup>nd</sup> accused with misappropriation of Le 7,640,000.00 made payable on payment voucher No. 4032 and cheque No. 1007550 purporting to be payment made to one Ibrahim Kamara as *“incentive for Revenue Enforcement team”*.

In their final address to Court, prosecution wrote: *“The functions of the 1<sup>st</sup> accused as stated in the Local Government Act 2004, section 11 (3) (d) thereof is to properly manage and control the financial activities of council including collection of revenue. The prosecution submits this was basically a scheme for misappropriation of public funds by the said accused persons...”*

It would appear to me that prosecution had ran out of steam for what they say are the duties of the 'mayor' in subsection (3) (d) are actually to be found in subsection 3 (e) and not (d).

To resolve this issue we have to turn to prosecution witness who was the investigating officer in this case – Maada Konneh (PW3). Under cross-examination this is what he said: "*exhibit QQQ 1-5 - my investigations I was told the money was an incentive as the document indicates. I did not ask whether the money was used as incentives... I do not have evidence that A1 did misappropriate the sum of Le 7,640,000.00... I did obtain a statement from Ibrahim Kamara an employee of the council .... Ibrahim Kamara said that it was part of the strategies of the council to give incentives to revenue collectors. He gave me the composition of the team of revenue collection officers. The team comprised of police officers.*"

Another prosecution witness Fatmata (PW7) under cross-examination said: "*...yes in May 2009 incentives were paid to revenue enforcement team. The team comprised of employees of the city council among others....it was actually paid to the beneficiaries*".

Another prosecution witness ABDUL KARIM FOFANAH (PW11) who as this court observed earlier in this judgment was a witness who proved to be a friend of truth, decorum and virtue said:

*"This is exhibit QQQ; I have seen the document before. I am looking on page 1, I know No. 19, and it is my name. There is my signature next to my name. yes I signed acknowledging receipt of Le 100,000.00. Incentives were given to revenue collectors in 2009. I was a beneficiary... we had put in extra hours in this special work. It was a decision of the council to remunerate those who did special work..."*

With this clear and loud evidence coming from prosecution witnesses as it does, does prosecution prove any wrong doing against the accused? There is absolutely no evidence to support the claim by prosecution that '*this was basically a scheme for misappropriation of public funds by the accused persons.*'

Supposition and surmise is one thing, evidence another. The accused are found not guilty and acquitted.

Count 24 charge 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> accused with the offence of willfully failing to comply with the law relating to procurement of services contrary to section 48 (2) (b) of the Anti-Corruption Act No. 12 of 2008, while count 25 charges 1<sup>st</sup> accused alone with the same offence.

Section 48 (2) (b) of the Anti-Corruption Act No. 12 of 2008 provides as hereunder following:

*"A person whose functions concern the administration, custody, management, receipt or use of any part of public revenue or public property commits an offence if he willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the*

*procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expense."*

To be held liable under the above offence it must be shown that the accused was a person whose functions concern any of the following:

- a) The administration
- b) The custody
- c) Management
- d) Receipt or use of any part of public revenue or public property

The adverbs "willfully" and "negligently" have received a lot of judicial discussion that it is idle to add to the acres of paper and streams of ink that have been devoted to the discussion. Suffice it to say that "willfully" requires mens rea, i.e., a state of mind on part of the accused directed to a particular act that constitutes the actus reus and warrants the description willful.

The 1<sup>st</sup> accused was mayor and under section 11 (3) (e) he was enjoined to (e) ensure that the financial affairs of the local council are properly managed and controlled (under this Act, the mayor of Freetown is equated to the chair person of a local council).

The 2<sup>nd</sup> accused was the Chief Administrator of the Freetown City Council and under section 31 (4) (a) of the Local Government Act, he was responsible for the financial and other resource management and the day to day administration of the Local council.

The 4<sup>th</sup> accused was the Deputy Chief Administrator while the 3<sup>rd</sup> accused was the Acting Treasurer of the Freetown City Council.

At the time material to these charges FUDIE JANGAH KONNEH was the head of procurement unit of the Freetown City Council responsible for the day to day administration of procurement activities. Under him was a procurement committee comprised of five members. Three of these members, i.e,

- a) Chairman of the unit
- b) Head of accounting section
- c) The procurement officer; were permanent members of the committee. There were two revolving members who included
- d) A senior officer,
- e) An official from the end user

The procedure of procurement of services depends on various thresholds, for example, for services below the threshold of Le 60,000,000.00, a shopping or request quotation is needed; above the threshold of Le 60,000,000.00 to Le 300,000,000.00 the international competitive method is used and above that threshold an international competitive method is used for both national and international bidding. The witness stressed. Where there is an emergency and



services are required urgently then there is a request for a waiver of any of the above methods. The request is placed with the NPPA through a written request justifying the need for the activity to be undertaken within the stipulated time. He swore that the procurement unit he headed was not consulted on either Morgan Heritage Concert or Rugged musical instruments contracts.

There is copious evidence to show that both the 1<sup>st</sup> and 2<sup>nd</sup> accused were actively engaged in procuring the services of Morgan Heritage. Exhibit R is a letter written by the 2<sup>nd</sup> accused addressed to the 1<sup>st</sup> accused on the subject: UPDATE ON THE MORGAN HERITAGE SHOW DECEMBER 28th and 29<sup>th</sup> 2010. This update among other things informs the 1<sup>st</sup> accused; "*the financial position of council does not allow it to come up with the \$91,000.00 deposit needed to be wired against Friday 16<sup>th</sup> July. The only option is to revert to our deposit at the Crown Agent UK. Therefore wish to recommend as follows:*

#### RECOMMENDATION

*That in light of the urgency of the situation, council withdraws the sum of \$91,000.00 from our Crown Agent bank account in the UK. In order to pay the deposit to commit the Morgan Heritage Group and refund the same upon receipt of funds from sponsors." Exhibit O is REQUEST FOR TRANSFER OF FUNDS – USD 91,000 addressed to Kate Taffureth, Senior Manager, Banking Service Crown Agents Bank...." And advises; "we instruct that you transfer USD – 91,000.00.....to the below in favour of Freetown City Council."*

This request exhibit O is signed by the Chief Administrator, City Treasurer (A3) and His Worship the Mayor of Freetown. Thus making the three privy to the Morgan Heritage Concert venture. It is argued by learned counsel for 1<sup>st</sup> accused that he was not a member of the procurement committee. Indeed he was not and in my opinion that worsens his position. He was the political head of the Freetown City Council. Without doubt, he was aware of the existence of a procurement committee of the city council. Despite that awareness he went ahead to sideline this committee and procured the services of Morgan Heritage Group and entered into a contract with Rugged to secure musical instruments. Indeed in all this foresight and prudence was more conspicuous by its absence.

For the 2<sup>nd</sup> accused it is argued by learned counsel that there is no evidence adduced by the prosecution to show what procurement procedure was not complied with nor the mental element proven that the 2<sup>nd</sup> accused willfully or negligently failed to comply with the procurement procedure. If there is anything that the evidence on record establishes beyond reasonable doubt, it is that Morgan Heritage Group came here at the invitation of the Freetown City Council through the active collaboration of both A1 and A2 and neither the procurement committee of the Freetown City Council nor the NPPA was involved in this venture. In short, the procurement process was jettisoned to the winds.

For the third accused, it is argued by his counsel that he was not part of a committee and that he was not clothed with authority to approve payment and did not sign for the transfer of

\$91,000.00. It would appear to me with respect that learned counsel did not check his facts. Exhibit O which is a request for transfer of \$91,000.00 bears the signature of Sylvester Momoh Konneh in very clear and unmistakable form!

It was argued on behalf of the accused that the Morgan Heritage Concert was an investment venture undertaken by the Freetown City Council. It was said that the Freetown City Council looked forward to the purchases of buses for the city schools – a noble cause indeed. Alas! This was counting chickens before they hatch! The venture ended up swallowing a whopping Le 744,450,000.00 as a loss to tax payers' money. Be that as it may, this question was put to MUHAMAD JOHN MUSA a member of the NPPA who appeared as a friend of the court and he rubbished it in terms lacking any form of ambiguity. In answer to a question put to him by learned counsel for 1<sup>st</sup> accused, this witness said: "*Procurement rules on entertainment – I do not agree that they have nothing to do with procurement. In 2010 I was with NPPA – I had a meeting regarding Morgan Heritage concert. The view was that Morgan Heritage concert was a service – I never told them that Morgan Heritage concert was not a clear procurement matter.*" Despite that clear and loud advice, the mayor and his Chief Administrator went ahead and contracted Morgan Heritage Group without bothering to go through the procurement process. If this is not impunity then I don't know what impunity is. As far as Rugged contract is concerned, evidence abounds that the 1<sup>st</sup> accused single handedly secured their musical instruments at a cost of \$35,000.00 in complete disregard of the procurement procedure. I find that prosecution have proved their case against 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> accused namely; Herbert Akieremi George-Williams, Bowenson Fredrick Phillips and Sylvester Momoh Konneh and convict them as charged on count 24. I find the 1<sup>st</sup> accused guilty under count 25 and convict him as charged. I find no sufficient evidence against the 4<sup>th</sup> accused Arthur Kwesi-John in count 24 and acquit him.

Lastly prosecution in their wisdom chose to withdraw counts 16 and 17 because the "*information presented cannot support or substantiate a charge under counts 16 and 17 of the indictment as filed!*" However looking at the whole circumstances and at the stage at which the offer to withdraw was made, I think allowing such withdrawal would not be in the interest of justice. Instead an order dismissing and acquitting the accused will be made.

The sum total of my judgment is:

HERBERT AKIREMI GEORGE-WILLIAMS (A1) is convicted on counts 24 and 25

BOWENSON FREDRICK PHILIPS (A2) is convicted on count 24

SYLVESTER MOMOH KONEHNI (A3) is convicted on count 24

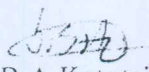
DESMOND THOMAS (A5) is convicted on count 8

ALIMAMY TURAY (A7) is convicted on count 10

AIAH BRIMAH (A8) is convicted on count 12

FRANKLYN GARBER is convicted on count 13

A4 and A9 are acquitted of charges of which they were charged and set free forthwith unless held on other lawful orders. They are released from their bail conditions forthwith.

  
J.B.A Katutsi

Judge

10-05-2012.

Verdict need to signed.