

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE
VS.
MOMOH KEMOH KONTEH

The accused is charged with 5 counts in an indictment of 7 Counts. The counts relating to the accused which have been renumbered because of the absence of the co-accused with whom the accused is charged read as follows:

Count 1

Statement of offence

Soliciting an Advantage, contrary to section 35 (1) of the Anti-Corruption Act 2008

Particulars of offence


MOMOH KEMOH KONTE being a businessman, and the chief Executive officer (CEO) of Transtech international Ltd of No. ... Percival Street, Freetown, and **ALEX MANSARAY** (CEO) of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011** and **31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, Solicited the sum of Fifty Thousand United States Dollars (**\$50,000 USD**) from Annas ... and Bilal... journalists attached to the Al Jazeera international Television Network, to wit: being the sum purportedly to be given to the vice president chief Alhaji Sam Sumana for his assistance in the lifting of the Ministry of Agriculture Food and Forest (MAFF) ban on timber export in favor of TAYBAR SERVICES.

Count 2

Statement of offence

Peddling influence, contrary to section 31 (3) of the Anti Corruption Act No. 12 of 2008.

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24/5/13

Particulars of offence

MOMOH KEMOH KONTE being a businessman, and the Chief Executive Officer (CEO) of Transtech international Ltd of No. ...Percival Street, Freetown, and **ALEX MANSARAY**, CEO of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011** and **31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, solicited the sum of one Hundred Thousand United States Dollars (**\$100,000**) from Annas and Bilal, ... journalists attached to the Al Jazeera international Television Network, to wit; **MOMOH KEMOH KONTE** and **ALEX MANSARAY** to use their influence to obtain assistance in the lifting of the Ministry of Agriculture Food and Forest (MAFF) ban on timber export in favor of TAYBAR SERVICES.

Count 3

Statement of offence

Soliciting an Advantage, contrary to section 35 (1) of the Anti-Corruption Act 2008

Particulars of offence

MOMOH KEMOH KONTE being a businessman, and the chief Executive officer (CEO) of Transtech international Ltd of No. ... Percival Street, Freetown, on a date unknown between the **1st October 2011** and **31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, solicited the sum of one Thousand united States Dollars (**\$1000**) from Annas ... and Bilal... journalists attached to the Al Jazeera international Television Network, to wit: being the sum purportedly to be given as an advantage to one Sheku Mansaray, Director of Forestry, Ministry of Agriculture Food and Forestry (MAFF) to expedite the issue of license for the export of timber in favor of TAYBAR SERVICES.

Count 4

Statement of offence

Conspiracy to Agree to Give an Advantage to a Public Officer, contrary to Section 128 of the Anti- Corruption Act 2008

Particulars of offence

_MOMOH KEMOH KONTE being a businessman, and the chief Executive officer (CEO) of Transtech international Ltd of No. ... Percival Street, Freetown, and **ALEX MANSARAY**, CEO of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011** and **31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, conspired together and with other persons unknown to agree to give an advantage to officials of the Ministry of Agriculture Food and Forest (MAFF) in the sum One Thousand United States Dollars (\$1000), to wit: being the sum purportedly to be given an advantage to officials at the Ministry of Agriculture Food and Forestry (MAFF) to expedite the issue of license for the export of timber in favor of TAYBAR SERVICES.

Count 5

Statement of offence

Conspiracy to commit a corruption offence, contrary to Section 128 of the Anti- corruption act 2008

Particulars of offence

_MOMOH KEMOH KONTE being a businessman, and the chief Executive officer (CEO) of Transtech international Ltd of No. ... Percival Street, Freetown, and **ALEX MANSARAY**, CEO of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011** and **31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, conspired together and with other persons unknown to solicit an inducement for performing an act in relation to the affairs of the office of the Vice President, to wit; held themselves out to be agents of the Vice president chief Alhaji Sam Sumana and while acting

as such, agreed to request moneys from Annas and Bilal, who sought audience with Vice President, the said Chief Alhaji Sam Sumana.

Before the charges were put to the accused, the prosecution applied for the name of the 2nd accused to remain in the file whilst the case of the accused is proceeded with. The application was granted and the charges were then put to the accused to which he pleaded not guilty. On the 20th of June 2012, the prosecuting counsel made an application pursuant to section 144(2) of the Criminal Procedure Act, Act No. 32 of 1965, as repelled and replaced by section 3 of the Criminal Procedure Amendment Act, Act No. 11 of 1981 for the accused to be tried by judge alone rather than by judge and jury. The application was accordingly granted.

In sitting as a tribunal of fact and law, it is imperative that I constantly remind myself of the burden of proof placed on the prosecution in all criminal cases; that being the duty of the prosecution to prove every element of the offence charged beyond reasonable doubt. A judge sitting both as a tribunal of fact and law should only find an accused guilty of the offence charged when the prosecution has proved every element of that offence. If at the end of the trial there is any doubt in the mind of the judge as to the guilt of the accused, the judge is bound to acquit and discharge the accused. See the dictum of Viscount Sankey LC in the case of *Woolmington vs. DPP 1935 AC 462* which was adopted and applied in the case of *Kargbo v. R (1968-69) ALR SL* and a host local authorities.

In any offence which is not of strict liability, the prosecution carries this burden throughout the trial. The accused is not required to prove his guilt. Emphasizing the point that an accused does not have to prove his innocence Viscount Sankey LC again had this to say in *Woolmington v. DPP supra*:

“Juries are always told that, if conviction there is to be, the prosecution must prove the case beyond reasonable doubt. This statement cannot mean that in order to be acquitted the prisoner must “satisfy” the jury. This is the law as laid down in the Court of Criminal Appeal in Rex v. Davies 29 Times L. R. 350; 8 Cr. App. R. 211, the headnote of which correctly states that where intent is an ingredient of a crime there is no onus on the defendant to prove that the act alleged was accidental.”

It is in line with these principles that I have to determine this matter before me.

In order to prove their case, the prosecution called 5 witnesses, one of which (PW4) was only tendered. The rest of the witnesses listed on the back of the indictment were dispensed with.

The first Prosecution witness (PW1) was Mr. Felix Lansana Tejan Kabba, the Chief Investigations Officer of the Anti-Corruption Commission. He investigated this matter. He came to know the accused during the course of investigation of this matter. He said sometime in November, 2011, the Al Jazeera Television Network aired a documentary titled "Africa Investigate" that showed among other things the accused and Alex Mansaray. He said an investigation was conducted into the said documentary. That the Commission requested from the Al Jazeera Television Network documents/materials that would assist the Commission in the investigation to which Al Jazeera Television Network obliged. He said he received from the Al Jazeera Television Network, documents which included a DVD and copies of transcripts of conversations between the Al Jazeera Television Network journalists and the accused and some other persons. The copies of the transcripts were tendered and marked exhibit A1-33 (pages 1-33, containing Files 1-14), exhibit B1-32 (pages 34-66 containing File15- 26) and exhibit C1-39 (pages 67-106 containing File27-31) respectively. The witness told the court that amongst the documents he received from the Al Jazeera Television Network were The Memorandum & Articles of Association of TAYBAR SERVICES to which were also attached another document titled "Africa Investigate Timber Updated 18/11/11. This document was tendered by the witness and marked exhibit D 1-30 after an objection by defence counsel had been overruled. The DVD titled "Al – Jazeera Africa Investigate Sierra Leone Timber" was also tendered and marked exhibit "E". Again, after the defence's objection had been overruled. On the 27th of March, 2012 the witness obtained a cautioned statement from the accused which was tendered and marked exhibit "F1-24".

Under cross examination, the witness said the accused did not admit that he solicited funds from anyone. He said when he was obtaining the cautioned statement from the accused, he did not ask him whether he solicited the sum of US\$2000 from anybody. In question 37 of the caution interview, the witness said he did ask the accused whether he asked any of the two gentlemen (referring to PW5 and Bilal) or anybody to give money to the Vice President of the Republic of Sierra Leone to which the accused answered in the negative. In question 38 also,

the witness said he asked the accused whether he asked any of the two gentlemen to give money to the Director of Forestry in the Ministry of Agriculture Food and Forestry and Food (MAFF) to which the accused also answered in the negative. The witness told the court that at the time he obtained the cautioned statement from the accused he already had in his possession the materials/documents from the Al - Jazeera Television Network but that he had not at that time obtained any statement from PW2 Sorious Samura. The witness agreed with defence counsel that he did not during the course of investigation or when obtaining the cautioned statement from the accused ask him whether he solicited the respective sums of US\$50,000.00, US\$1000.00 and US\$100,000.00 from Bilal and PW5. The witness said he did not know whether at the time he was giving evidence, the Commission had obtained statements from PW5 and Bilal. The statement made by PW2 Sorious Samura to the commission was tendered through the witness and marked exhibit "H1-2. Portion of exhibit H1-2 was read by the witness.

On the issue of the Exhibit D1-30, the witness said there was no mention of timber in its objects clause. He said his search at the Registrar-General's office revealed that no company bearing the name of exhibit D was registered. He said when he watched exhibit "E" he couldn't come to any conclusion save that it depicts alleged malpractices in the timber trade. On the question whether during the course of the investigation he spoke to either Seyram or Albert Momoh, the witness said no. when the witness was further cross examined after PW1 had been interposed, the witness maintained that up to that time of his further cross examination, no statements were obtained from Bilal, Abdul Segrem and PW5.

The prosecution's next witness was Sorious Samura (PW 2). He told the court that he was a journalist and together with three of his colleagues they produced the documentary titled "Sierra Leone Timber". He gave the names of his other colleagues as Mike Healey, Annas Arameyaw Annas (PW5) and Bilal. He said in the year 2011 he and his colleagues decided to put up a strand; the essence of which was to give African journalists the opportunity to tell their stories. As deforestation and corruption in timber was one of the suggestions put up during their discussion, the witness and his colleagues decided to do documentary on it. To set the ground for the filming of exhibit "E" the witness first flew into Sierra Leone and had discussions with relevant stakeholders including the President of

Sierra Leone who he told he was in the country to work on corruption without giving him much details. He said the president gave him his blessings.

Testifying further, the witness said he and his team came to Sierra Leone on two occasions to make the documentary. The first visit was in early October 2011 during which they filmed for two weeks and the second was on the 30th October 2011 when they filmed for three days up to the 1st of November 2011; that during the course of filming, they used both normal and hidden cameras.

It is pertinent at this stage to quote portions of the evidence in chief of the witness and I quote:

“On the second visit, because I knew Sierra Leoneans know me and that I would not be able to get the scoop I wanted if I appeared in person, I directed my colleague to the accused who would let us have access to the Vice President. I had the cell member of the accused and I gave it my colleague to set up a meeting with the accused. I gave the accused’s number to Annas. Annas reported back to me after giving him the accused’s cell number. Based on Annas’ report, we decided to fly back to Sierra Leone, and that was the second time. We arrived on the 30th of October 2011. I got my colleagues to initiate contact with the accused person. My colleagues and I drove in two separate vehicles to the meeting point with the accused. I was outside whilst my colleagues went in. My colleague brought to me the material they had filmed and the document they had signed. What was brought to me was film material.”

I shall have to return to this evidence later.

The witness said after the second visit to Sierra Leone they went to London where the film was edited. That his colleagues met with Alex Mansaray and the Vice President and that those meetings were also filmed. Exhibit “E” was played and the witness identified the accused in the documentary. He also identified one Mr. Sinah who he said was an environmentalist. The witness said a few montages were in the documentary and he described a montage as a way of introducing a film; to tell the viewers what they should expect from the film.

Under cross examination, the witness told the court that he deceived the characters in exhibit "E" in order to get to the root of the matter he was investigating. He said when his colleague journalists went to speak to the people in exhibit "E", they told the people that they were business people, but that that was not the truth. The witness said he used montages in the documentary which he described as techniques used to put shots together to tell viewers about what is coming. He said it is a way of creating curiosity and engaging the viewers to ask more questions. He said his goal in doing exhibit "E" was to expose illegal logging in a country which has lost 90% of its forest and that he was determined to expose the people who were responsible for that.

Answering question on the character depicted in exhibit "E" as an environmentalist, the witness said that Mr. Sinah is his wife's half brother who lives in Kono. He denied setting him up to say what he said in exhibit "E" but admitted that the said Mr. Sinah knew that he was being filmed while the Chief in Masingbi did not know that he was being filmed. He said he lied to the Chief in Masingbi to get what he wanted.

The witness admitted that he did the voice over (which he said was a narration) in exhibit "E" and that was how his voice came to be in it. That the voice over was done during the editing of exhibit "E" and not during the filming. The witness said he knew a Lansana and an Albert but did not know any Lansana and/or Albert who were his informants. An email which was sent to the witness by one Lansana was tendered through him and marked exhibit "G". The witness said exhibit "D" was registered by him and his colleagues and that Abdul Seyram who is also known as Bilal was a shareholder in exhibit "D". That Bilal is the same person as Annas; that Annas actually used the identity of Abdul Seyram to unearth corruption in Sierra Leone adding that they used misleading practices to unearth corrupt practices. Giving evidence further, the witness said he personally did not give any amount to the accused but that his colleague Annas (PW5) gave the accused the sum of US\$2000 which was for the registration of exhibit "D", stating that the accused requested the said amount as both part payment for the registration of exhibit "D" and also to clear the way. He said the US\$2000 given to the accused by PW5 Annas was not to bribe the Vice President. The witness admitted that he did not at any time sit in any conversation between the accused and PW5. That part of the filming was done by him and the other part was done

by PW5; that he did the normal filming whilst the undercover filming was done by PW5. When exhibit "D" was replayed in court, the witness said there was nothing in it showing the presence of the accused in the Vice President's office. The witness said that they hired the services of the accused to prepare and register exhibit "D".

The 3rd Prosecution witness (PW3) was Kate Mayella Bridget Garnet who was tendered by the prosecution after the formal questions as to names, residence, occupation, etc and was not cross examined by the defence.

The next prosecution witness PW4 was the Acting Director of Forestry, Forestry Division in the Ministry of Agriculture, Food and Forestry (MAFF). He told the court that sometime in October the accused and two other gentlemen (one of whom dressed like an Arab) went to his office. He was introduced to the two gentlemen by the accused whom told him the two gentlemen were business people interested in timber. The gentleman who dressed like an Arab told the witness that they were interested in exporting a specific type of timber called "Beni" which scientific name is "Pteracarpus species". The witness told them that they needed to register and put their papers in order before they could do any business.

Exhibit "B" was shown to the witness and he said it contained the transcript of the meeting he had with the accused and the two gentlemen in his office. The witness was referred to columns 3-24-35, 3-24-49 and 3-25-07 in exhibit "B" and he admitted that the statements therein were made by the accused but that he did not know who the accused was referring to or speaking about. He went on further to say the accused was just speaking generally. The witness said he had seen the video recording of the meeting he had with the accused and the two gentlemen and also the documentary "Africa Investigate" but denied having any prior discussion with the accused before the meeting in his office. When shown columns 3-25-3 and 3-25-28 in exhibit "B", the witness said the word "Yes" therein was his.

Under cross examination, the witness had this to say:

"This is the first time I am seeing exhibit "B". I see the title on page 49. It reads: SLSC Filming 1st November 1001. I understand what the title means. It means the conversation in my office was filmed. According to the heading, the filming was done on the 1st of November. I was not aware that I was being filmed or recorded.

I did not do the filming nor the recording. I have not read exhibit "B" before today. The figures therein refer to the timing. I cannot interpret the figures as I did not prepare it. In what I have been shown and read, no amount of money is mentioned."

Under re-examination, the witness said the transcript represented the true picture of what happened in his office on the day of the meeting.

The prosecution's last witness whose attendance was delayed because of his busy schedule was Annas Arameyaw Annas (PW5). The witness told the court that the accused was one of the contacts they had in Sierra Leone before they started their investigation into the documentary, exhibit "E". He said he phoned the accused from Ghana and they agreed on when to meet in Sierra Leone with his team for the accused to take them to the Vice President of Sierra Leone. The witness and his team subsequently came to Sierra Leone in October 2011 and met the accused. They had in total seven meetings, three of those meeting were held in a hotel, one meeting at the office of the Vice President and two other meetings were held in the office of the accused. The witness said and this is very important, that the meetings were about getting him and his team to meet the Vice President and the Director of Forestry in order to give them political protection in the timber business they were to embark on. The witness was shown exhibits "A", "B" and "C" which he identified as the copies of the transcripts of the video footage of exhibit "E". At the request of Mr. Fynn prosecuting counsel, the witness read out portions of exhibits "A", "B" and "C" and told the court who were in those meetings and who and what those portions read out represented. The witness said he used the hidden camera to do the recording of the meetings. He told the court that he also used the hidden camera to capture the date and time indicated in the footage but that the date of the 1st November was not correct because he did not have time to reset the camera as he had to do back to back meetings.

In cross examination, the witness said that they had to use hidden cameras because the people they were investigating would not talk freely if they used conventional cameras. The witness said he did the undercover footage whilst the rest was done by PW2; that he did the filming of the meeting in the Vice President's office and also those in the offices of the accused and the Director of Forestry. The witness told the court that exhibits "A", "B" and "C" contained the undercover footage of exhibit "E", but stated that since all the footage could be put in a film, they

therefore had to select the important ones to be included. The voice over and narration in the documentary was done by P.W.2. The witness did not take part in the editing of the documentary.

On the issue of the US\$2000 given to the accused by the witness, the witness said he gave the said amount to the accused as part payment of the sum of US\$10,000:00 for the preparation and registration of the company by the lawyers. He said the accused did not at any time ask for a specific amount either for himself or for somebody else. Finally, the witness said at the time he and his colleagues came to Sierra Leone to do the documentary, there was a ban on the logging of timber.

Under re-examination, exhibit "J" which is the hard drive containing the raw footage of exhibit "E" was tendered through the witness.

At the close of the prosecution's case, the accused was put to his election. The accused chose to rely on his statement to the Anti-Corruption Commission and did not call any witness. I must state here that the accused's statement exhibit "F" is a denial one. The prosecution and defence submitted written closing addresses and made oral submissions on the 3rd of May, 2013.

The law

The accused is charged with two counts of Conspiracy, two counts of soliciting and one count of peddling influence. I shall state the laws with respect to these offences.

Conspiracy

Conspiracy is defined as the agreement between two or more persons to do an unlawful act or to do a lawful act by an unlawful means. See Archbold 35th Edition at page 1466. The offence is grounded on the agreement, which means there can be conviction even where there are no overt acts. In an offence charging conspiracy, the acts and declarations of the co-conspirator may be used against a co-accused if those acts are done in furtherance of the common design. In R v

Hater (2005) UKHL 6 Lord Steyn quoting from Keane, *The Modern Law of Evidence* 5 Edition (2000) at page 385-386 said:

*“In two exceptional situations, a confession may be admitted not only as evidence against its maker but also as evidence against a co-accused implicated thereby. The first is where the co-accused by his words or conduct accepts the truth of the statement so as to make all or part of it a confession statement of his own. The second exception, which is perhaps best understood in terms of implied agency, applies in the case of conspiracy: statements (or acts) of one conspirator which the jury is satisfied were said (or done) in the execution or furtherance of the common design are admissible in evidence against another conspirator, even though he was not present at the time, to prove the nature and scope of the conspiracy, **provided that there is some independent evidence to show the existence of the conspiracy and that the other conspirator was a party to it.**”(Emphasis mine).*

Soliciting an advantage

The words “Solicit” and “advantage” are defined in the Anti-Corruption Act 2008. The Act Provides

For the purpose of this Act:

A person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicate willingness to receive, any advantage, whether for himself or for any other person

An advantage is defined to include:

Any gift, loan, fee, reward, discount, premium or commission, consisting of money or of any valuable security or of other property or interest in property of any description, or other advantage other than lawful remuneration.

To ground a conviction for soliciting, the prosecution must prove that the accused or a person acting on his behalf either demands, invites, asks or

indicate a willingness to accept a gift, loan, fee, reward, discount etc for himself or for any other person other than lawful remuneration. In the case of *THE STATE V. BAUN & ORS, 2009 UNREPORTED*, cited and relied on by the Prosecution Justice N. C. Browne-Marke JA had this to say on soliciting:

“soliciting ...its ordinary meaning is to invite, or to importune, or to request earnestly, or to seek. So therefore, when according to PW10, 1st accused said to him that he was broke, and that he should help him with Le500,000 when he went to collect the C48 Form from him, this could amount to soliciting...”

It seems to me that in order for an accused to be convicted of soliciting an advantage there must be either the asking by him or by another person on his behalf and/or the acceptance of a gift, fee, reward, etc by him or by another person on his behalf in the performance of a function.

Influence peddling

Influence peddling is defined as the illegal practice of using one's influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for money. Thus in a charge of influence peddling the prosecution must prove that influence or rather undue influence was used by the accused to secure favours for another person and for which he the accused received reward. Failing to prove these two elements, the charge must fail.

I now turn to the various counts with which the accused is charged and the evidence adduced by the prosecution to prove those charges.

Counts 1 and 3

In counts 1 and 3, the accused is charged with soliciting specific sums of money from PW5 and Bilal. The particulars of Count 1 read thus:

***MOMOH KEMOH KONTE** being a businessman, and the chief Executive officer (CEO) of Transtech international Ltd of No. ... Percival Street, Freetown, and **ALEX MANSARAY**, CEO of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011 and 31st December 2011** at Freetown in the Western*

Area of the Republic of Sierra Leone, Solicited the sum of Fifty Thousand United States Dollars (\$50,000 USD) from Annas ... and Bilal... journalists attached to the Al Jazeera international Television Network, to wit: being the sum purportedly to be given to the vice president chief Alhaji Sam Sumana for his assistance in the lifting of the Ministry of Agriculture Food and Forest (MAFF) ban on timber export in favor of TAYBAR SERVICES.

Those of count 3 read as follows:

***MOMOH KEMOH KONTE** being a businessman, and the Chief Executive Officer (CEO) of Transtech international Ltd of No. ..Percival Street, Freetown, and **ALEX MANSARAY**, CEO of African Sunshine Limited, Freetown, on a date unknown between the **1st October 2011 and 31st December 2011** at Freetown in the Western Area of the Republic of Sierra Leone, solicited the sum of one Thousand United States Dollars (\$1,000) from Annas and Bilal, ... journalists attached to the Al-Jazeera international Television Network, to wit; being the sum purportedly to be given as an advantage to one Sheku Mansaray, Director of Forestry, Ministry of Agriculture Food and Forestry (MAFF) to expedite issue of license for the export of timber in favour of TAYBAR SERVICES.*

The prosecution's case against the accused is that he solicited these amounts from Bilal and PW5 Annas through his co-conspirator Alex Mansaray. That the accused and Alex Mansaray were acting in concert. That it was the accused who introduced Alex Mansaray to Bilal and PW5. The Prosecution submitted that accused and Alex Mansaray were in a con game. That the accused and Alex Mansaray were a tag team leading the "prospective investors" (Bilal and PW5) on towards a grand counterpoise, where the said prospective investors were to part with various sums of money. It is the prosecution's contention that the accused and Alex Mansaray had their roles divided (goo-cop bad cop like); that whilst the accused dazzled the bait with his influence, power and connection whilst all the time stressing that he was not interested in any reward, Alex Mansaray was naming the price, which he did without hesitation. The prosecution relied on the transcripts exhibits "A", "B" and "C" in which the accused is quoted to have told

Bilal and PW5 to take care of the Director of Forestry in order for the Director to give them support. See File 14 of exhibit "B". In File 22 of exhibit "B" accused is said to have asked the prospective investors to arrange something for the Vice President and the Director of Forestry. The prosecution submitted that whilst the accused did not name any price, that task was given to Alex Mansaray who was calling the amount to be given. The prosecution referred the court to File 14 page 30 of exhibit "A" timeline 13:29:43 through to 13:30:56.

The prosecution submitted that on the above evidence, they have proved their case against the accused on counts 1 and 3.

Counts 1 and 3 charge the accused with the offence of soliciting specific sums. In Count 1, its US\$50,000.00 and in count 3 the amount is US\$1000.00. The prosecution has invited this court to adopt the reasoning of Justice N. C. Browne-Marke JA in the case of *THE STATE V. BAUN & ORS*, (*supra*). In that case, the 1st accused admitted receiving the sum of Le500,000.00 from PW10 but denied that he solicited the same. The question Justice Browne-Marke had to determine was whether when the 1st accused told PW10 that he was broke and he should help him with some amount, that amounted to soliciting. In this case, the accused never admitted asking anyone for money nor did he receive any money on behalf of any one save that paid to him for the preparation of Exhibit "D".

PW5 from whom the above stated amounts are said to have been solicited said under cross examination that the accused did not at any time demand any amount or specific amount either for himself or for somebody else. The prosecution also accepted this but would want to impute Alex Mansaray's acts and declarations to that of the accused.

The question that I have to grapple with is, can the acts and utterances of Alex Mansaray in File 14 of exhibit B be attributed to the accused? As I have earlier stated the law with regards to the admissibility of acts and declarations of one conspirator as evidence against a co-conspirator, the acts and declarations of Alex Mansaray can only be admissible as evidence against this accused if I am satisfied that those acts and declarations were done and/or said in furtherance of the common design hatched by the accused and the said Alex Mansaray. The

uncontroverted evidence before me is that the accused never asked PW5 and his colleague for any amount either for himself or for anybody. The prosecution's theory is that the accused was dazzling the bait whilst Alex Mansaray (his co-conspirator) was calling the amounts. Whilst I quiet agree with the law that the utterances and deeds of one conspirator are admissible against another conspirator, I cannot hold the same with respect to this accused. In File 16 of exhibit "B", the accused told PW5 and Bilal that he was not asking them for a dime for himself or any other person for the assistance he was rendering them. If as the prosecution will want us believe, Alex solicited money from PW5 and Bilal, this cannot be admissible against the accused as the accused had categorically told PW5 and Bilal that they shouldn't develop any other relationship other than that based on mutual trust and respect and an intention on his own part (the accused) to assist them without any expectation of a reward from them. See pages 38-39 of Exhibit "B". Again there is no evidence that the accused agreed with Alex that he Alex should be asking PW2 and his colleagues for moneys.

It must also be noted that it was not Alex Mansaray who actually asked for money from PW5 and his colleague Bilal. It was PW 5 and Bilal who offered to do something as a way of appreciation to some people, who the prosecution would want us to believe were the Vice President and the Director of Forestry. Perhaps it is relevant at this state to reproduce excerpts of the conversation relating to the US\$50,000.00 alleged to have been solicited by the accused and Alex Mansaray. The conversation goes this way:

13:29:59	Annas – he wants to send some money just to say thank you to some people. In that..... how much do you think is? Is there....
13:30:05	Alex - (inaudible) 50,000? First it would be fine. Annas – Ok we do 15,000. Alex - 50 Annas - 50,000 and what about the forestry guy?
13:30:25	Alex – we split 20 or thirty amongst them (?) have a budget of 100,000. Annas - Ok that's is fine, that's is fine. Alex – with all the introductions you want to do about 100,000.

13:30:45	Alex - If you email me. I will email you my bank account in America (?bank) if you want to send something there for me that is fine (inaudible)
13:30:45	Annas - Ok that's fine but don't you think that.... Who will talk to the VP for us on that? Alex - I can. But this type of things you have to come up with the money and then....
13:30:56	Annas - Ok. Alex - (?) you have to come with the money, come up with the money you come and say thank you for the last time.

From the above excerpts it is crystal clear that the issue of giving money as appreciation to "some people" was introduced by PW5 and not by Alex Mansaray and that Alex Mansaray only negotiated the amount to be given. If Alex Mansaray had asked for the money in the first instance and there is proof that the accused had agreed with him to do so, then his acts would have been admissible as evidence against the accused herein.

It must be noted that the accused is not charged with the offence of soliciting an advantage for government officials simpliciter, but is charged with soliciting specific amounts. In the manner in which counts 1 and 3 are couched, the prosecution has a duty not only to prove solicitation, but also the amount said to have been solicited. The evidence before me is that the accused did not ask anyone for anything either for himself or for any other person and there is no evidence that the accused is a party to the alleged solicitation of Alex Mansaray his alleged co-conspirator. The introduction of PW5 and Bilal to Alex Mansaray by the accused cannot without more prove any conspiracy between the accused and the said Alex Mansaray. For the alleged acts and declarations of Alex Mansaray to be admissible against the accused, there should have been independent evidence to establish conspiracy between them. See *R v Hater supra*. As there is no evidence that the accused solicited anything from PW5 and Bilal and as the prosecution has failed to establish conspiracy between the accused and Alex Mansaray, the prosecution has therefore failed to prove its