

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

1. PHILIP CONTEH
2. ALLIEU KAMARA
3. LANSANA ZANTO KAMARA

COUNSEL:

MS MIATTA SAMBA for the State

J B JENKINS-JOHNSTON ESQ for 1<sup>st</sup> accused

E N B NGAKUI ESQ for 2<sup>nd</sup> accused

A B S SANGARIE ESQ for 3<sup>rd</sup> accused

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,  
JUSTICE OF APPEAL.

JUDGMENT DELIVERED THE 19 DAY OF MAY, 2011.

THE CHARGES AND THE LAW

1. The 3 accused persons stand charged before me on a 17 Count Indictment dated 24 February, 2011. The first Indictment dated 27 January, 2011 was not pursued by the prosecution. The second one dated 23 February, 2011 was likewise not pursued. The third one, dated 24 February, 2011 is the one on which they have been tried and in respect of which each of them took their pleas before me. This Indictment is attached to this Judgment and forms a part of it.
2. Counts 1 and 2 charge the 1<sup>st</sup> and 2<sup>nd</sup> accused with the offence of Failure to comply with applicable procedures and guidelines relating to the management of Funds contrary to Section 48(2)(b) of the Anti-Corruption Act, 2008. Section 48(2)(b) provides that: "A person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property commits an offence if he- .....(b) wilfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement,



Limited, were not donated for personal reasons, or because of any personal liking for 1<sup>st</sup> or 2<sup>nd</sup> accused, but because of the company's belief in, and support of the President's commitment to attitudinal and behavioural change in society. The donations made by that company, and also by Comium (SL) Limited, were made for the benefit of the people of Sierra Leone, and for the personal benefit of any of the accused persons.

*Mba-*

5. The principle guidelines, are those to be found in Regulations 44(1), 69(3), 73(1) and 129(1) of the 2007 Regulations. Essentially, they require proper management and accountability in all public officers tasked with the responsibility of managing or handling public funds. These Regulations specify that, for instance, monies received by an agency should be paid into an account approved by the Accountant-General; that if a Donor makes a payment on behalf of a Government project, the responsible Department and the Accountant-General should be notified; that all disbursements of public monies shall be properly supported by payment vouchers; and that no Public Officer shall, except with the authority of the Accountant-General, open a Bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he is responsible as a public officer or for the transaction of official banking business. That these Regulations were regularly flouted and disregarded will be shown later.
6. There is no specific requirement under Section 48(2)(b) that the person charged should be a Public Officer; only that he should be a person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property. So, if it is proved that the 1<sup>st</sup> and 2<sup>nd</sup> accused were such persons, and that they wilfully failed to comply with the guidelines I have enumerated, they should be found guilty of the offences with which they have been charged.
7. The mens rea required for such a finding, is that the accused person committed the act wilfully or negligently. In the particulars of offence in both Counts 1 and 2, the prosecution have alleged that the acts were done wilfully. It follows that it will not suffice for the prosecution to prove that they were merely negligent, as contended by Ms Samba in her written closing address. The term wilfully has been explained by me in several cases, and I shall here only refer to what I said in the recent case of *The State v Hamza Sesay and Bendu* - Judgment delivered on 10

February, 2011. "As to what "wilfully" under the Act amounts to, I shall refer once more to MANNEH's case where I said, inter alia, "The Learned Editors of the 2002 Edition of BLACKSTONE'S CRIMINAL PRACTICE, have at paragraph A2.8 suggested the relevant meaning of 'wilful.' They submit that it is now a "composite word to cover both intention and a type of recklessness." They cite the explanation given by LORD DIPLOCK in SHEPPARD [1981] AC 394, where, in a case of child neglect, he said that 'wilful' in the context of the UK Children and Young Persons Act, 1933 involved the actus reus of failing to provide the child with medical aid; and the mens rea of the parent, that of being aware of the risk to the child's health if not provided with medical aid, or that the parent's unawareness of this fact was due to his not caring whether his child's health were at risk or not. The Editors submit further that, 'wilfulness' requires basic mens rea in the sense of either intention or recklessness, and that even in the absence of the word 'wilfully' this is the mens rea which will normally be implied by the courts for serious criminal offences in the absence of any other factor indicating a wider or narrower basis. Though dishonesty is not specifically stated to be an element of the offence under Section 12, it is my view that it would be inconceivable to convict an accused of this offence in the absence of proof of dishonesty. In GHOSH[1982] 2 QB 1053; [1982] 2 All ER 689, the Court of Appeal held that dishonesty should be determined in two stages: i) the tribunal of fact should decide whether, according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that should be the end of the matter and the prosecution fails; ii) if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must have realised that what he was doing was by [by the standards of reasonable and honest people] dishonest. The Court said further, that "it is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did."

8. Counts 4 and 13 charge the 3<sup>rd</sup> accused, and the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively with the offence of abuse of office contrary to Section 42(1) of the ACA, 2008. That Section provides that: "A Public Officer who uses his office to improperly confer an advantage on himself or any other person commits an offence." The prosecution must prove that the

accused persons are public officers. In Section 1 of the Act, Public Officer is defined as "an officer or member of a public body including a person holding or acting in an office in any of the three branches of Government, whether appointed or elected, permanent or temporary, paid or unpaid." I have already explained what a Public Body is in the Act. If the prosecution proves beyond a reasonable doubt that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were officers or members of a public body, in their respective capacities as employees of the ABC, it would have succeeded in proving that they were also public officers within the meaning of the Act.

9. The prosecution must also prove here, that the accused persons improperly conferred an advantage on themselves individually or on some other person. In my Judgment in the case of THE STATE v FOFANAH & MANS -Judgment delivered 18 January,2011 I have explained the requirements of the Law in this respect.
10. This is what I said at paragraph 54 of the said Judgment: Section 42(1) provides that "*A Public Officer who uses his office to improperly confer an advantage on himself or on any other person commits an offence.*" I adopt what I said in my Judgment on the No-Case Submission at para 7: "*Further, the essential element in establishing that an accused person has abused his office, is that whilst being a public officer, he has improperly conferred an advantage on himself or someone else. Improperly conferring an advantage could consist, as in this case, of the act of facilitating or causing money to be paid to a person to whom that money is not due. The sum of Le44million was intended for the Food Security Project; it was diverted into an account opened at the behest of 1<sup>st</sup> accused, and with the authorisation of 2<sup>nd</sup> accused. As 2<sup>nd</sup> accused was at the material time an employee of a Bank wholly owned by the Government of Sierra Leone, he is a public officer for the purposes of the Act. 1<sup>st</sup> accused is clearly one also, as he was an employee of the Accountant-General's Department. To cite BLACKSTONE'S CRIMINAL PRACTICE 2007 Edition at para B5.98 when dealing with the then Fraud Bill, now Fraud Act which is in similar terms to Section 42: "the clear intention of the provision is to cover the dishonest abuse of any position of financial trust or responsibility, including that of a trustee, company director or executor, but it is not confined to fiduciary relationships and would extend to frauds committed by employees including those that cannot be prosecuted as theft.*The definition of "Advantage" in Section 1 of the Act

is inclusive, and I hold that it applies to money; it constitutes "any payment" in Section 1(c). He caused monies meant for the Food Security Project to be paid to himself. Likewise, the 2<sup>nd</sup> accused conferred an advantage on another person, the 1<sup>st</sup> accused, by facilitating the payment of Le43,855,000 to the 1<sup>st</sup> accused. The money misappropriated came from the consolidated fund. That is the purport of Exhibits "A" and "B". Exhibit "G" is itself headed in the name of the Ministry of Agriculture.

11. So, in this case, if the prosecution proves beyond a reasonable doubt that the ~~accused~~ 3<sup>rd</sup> accused took for himself, the sum of Le2million, which formed part of the money he had taken from the account of the ABC for the purpose of paying rent for the property at Lunsar, he would have conferred an advantage on himself, as that money falls within the definition of advantage. Irrespective of whether the money came from the consolidated fund, or from donor funds, the accused will be guilty of the offence provided he had the intention to do what he <sup>did</sup> that he was not merely reckless or negligent.

12. Counts 5 and 14 charge the 3<sup>rd</sup> accused and the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively with the offence of Abuse of office contrary to Section 43 of the Act. Section 43 provides that: "A public officer who knowingly abuses his position in the performance or failure to perform an act, in contravention of any law, in his discharge of the functions or duties, commits an offence." The first requirement is that the proscribed act should have been done knowingly; that the accused persons knew, not merely reckless, that their respective actions would have certain consequences. There must also be performance of an act, that is he must do something in the discharge of his duties which he knows contravenes the Law; or, there must be a failure to perform an act which the accused knows he must perform in the discharge of his duties. Here, the prosecution is alleging in Count 5 that 3<sup>rd</sup> accused abused his office by acting as if he had indeed paid the sum of Le6million as one year's rent for the property at Lunsar, when in fact he had only paid Le4million. Likewise, in Count 14 the prosecution is alleging that in failing to pay Victor Tutu Rogers the total sum of USD1,050, when it was their collective duty to pay that amount of money to him, both 1<sup>st</sup> and 2<sup>nd</sup> accused had abused their respective offices. The prosecution is here saying that the accused persons failed to perform an act, that is, to pay Victor Tutu Rogers what was due him.

13. The particular criminal activities covered in Counts 5 and 14 are the same as in Counts 4 and 13. The difference is that in Count 5, the prosecution alleges that 3<sup>rd</sup> accused abused his position by purporting to make payment for the renting of office space in the sum of Le6million, whilst in Count 4, the accusation is that he improperly conferred an advantage on himself, to wit, the sum of Le2million. Likewise, the difference between Counts 13 and 14 is that in Count 13, the prosecution alleges the 1<sup>st</sup> and 2<sup>nd</sup> accused conferred an advantage on themselves, to wit, the sum of USD1,050; and in Count 14, the allegation is that they abused their positions by failing to pay the total sum of USD1,050 to Victor Tutu Rogers, being salaries due him.
14. Count 3, charges the 3<sup>rd</sup> accused with Misappropriation of Public Funds contrary to Section 37(1) of the Act; and Counts 6-12 charge the 1<sup>st</sup> and 2<sup>nd</sup> accused with the same offence. Count 3, relates to the sum of Le2million which is the balance remaining out of the sum of Le6million given to 3<sup>rd</sup> accused to pay for the rented property at Lunsar. Counts 6-12 relate to the non-payment of salaries to Victor Tutu Rogers for the months of May - November, 2010. The sum of Le6million given to 3<sup>rd</sup> accused is alleged to have come from Donor funds; and the total sum of USD1,050 which should have been paid to Victor Rogers, were also said to have come from Donor Funds. Section 37(1) reads as follows: A person who, being a member or an officer or otherwise in the management of any organization whether a public body or otherwise, dishonestly misappropriates anything whether property or otherwise, which has been donated to such body in the name of, or for the benefit of the people of Sierra Leone or a section thereof, commits an offence. Here, the prosecution must prove, firstly, that each accused was a member or officer in the management of an organization whether a public body or not. I have already held that I am satisfied in my mind that the ABC Secretariat was a public body in the sense described in Section 1 of the ACA, 2008, and that the accused persons were members of its management, 1<sup>st</sup> accused as Executive Director, 2<sup>nd</sup> accused as Programme Manager, and 3<sup>rd</sup> accused as Regional Co-ordinator. The prosecution must also prove that the property misappropriated was donated to the ABC for the benefit of the people of Sierra Leone, or a section of such people. It must prove that when London Mining Company Limited gave the total sum of USD113,000 to the ABC Secretariat, such moneys were donated for

the benefit of the people of Sierra Leone; likewise, when Comium (SL) Limited donated the sum of Le150million, that it was done with the same purpose. As will be disclosed in the evidence led, both Donors made their intentions clear in the various pieces of correspondence between them on the one hand, and the ABC Secretariat on the other, when making donations to the Secretariat. That their intention was to benefit the people of Sierra Leone, and not just the three accused persons, is quite apparent from the correspondence. That the 3 accused persons put themselves out as working for the benefit and well-being of all Sierra Leoneans, is quite apparent from the programmes drawn up by the 1<sup>st</sup> accused, and forwarded to the Donors, <sup>at</sup> a National Pride Week, or a sensitization workshop or seminar. Nee

15. There must be a dishonest Misappropriation. As to what Misappropriates and Dishonest mean in terms of the Act, I reiterate what I have said in the other Anti-Corruption cases I have tried, most recently, the State v Hamzaa Sesay & Bendu, cited above. There I said at paragraph 13 "*As to what Misappropriation is, I adopt my statement of the Law in this respect in the case of the THE STATE v MANNEH & ANOR Judgment delivered 20 May, 2008. "The term "Misappropriates" in the Act, is not in my view, a term of art. It is akin to "appropriation" in the United Kingdom Theft Act, 1968. Appropriation in that Act involves the assumption of the rights of the owner by the Accused. Here, the wilful commission of any act which results in the owner losing funds belonging to it, amounts to misappropriation. There is Misappropriation also whether the owner of the funds consented or not to the deprivation of funds. In the UK Law of Theft, the consent of the owner is irrelevant as was pointed out by the House of Lords in LAWRENCE v METROPOLITAN POLICE COMMISSIONER [1971] 2 All ER 1253, and in R v GOMEZ [1993] 1 All ER 1, both of them cases dealing with theft, where it had been argued unsuccessfully by the respective Appellants, based on the speech of LORD ROSKILL in MORRIS [1983] 3 All ER 288 at Page 295 (where he appeared to suggest that appropriation in the circumstances of that case involved not just the substitution of price labels by the accused, but also that such an act must also "adversely interfere with or usurp the right of the owner...") that the owners in each of those cases had consented to parting with their respective properties. In LAWRENCE it was an extra sum of £6; in GOMEZ, it was the delivery by the owner of*

*electrical goods to a third party, paid for by stolen cheques, to the knowledge of, and through the machinations of Gomez. I also seek support in the words of SELLERS, LJ in a civil case: SINCLAIR v NEIGHBOUR [1966] 3 All ER 988 at 989 paras C-D. There, the Respondent was dismissed because of dishonest appropriation of money. In considering the right test to apply in these circumstances he said, inter alia, "it was sufficient for the employer, if he could, in all the circumstances, regard what the employee did as being something which was seriously inconsistent-incompatible with his duty as a manager in the business in which he was engaged. To take money out of the till in such circumstances is on the face of it incompatible and inconsistent with his duty."*

16. *In GHOSH [1982] 2 QB 1053; [1982] 2 All ER 689, the Court of Appeal held that dishonesty should be determined in two stages: i) the tribunal of fact should decide whether, according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that should be the end of the matter and the prosecution fails; ii) if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must have realised that what he was doing was by [by the standards of reasonable and honest people] dishonest. The Court said further, that "it is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did."*
17. It follows in this case, that the accused persons will only be found guilty of these offences if I were to find that they have each acted in a way which they know ordinary people consider to be dishonest, even if each of them believed he was justified in what he was doing.
18. Counts 15 to 17 of the Indictment charge the 1<sup>st</sup> accused with offences under Sections 130(1) and 127(1) of the Act. In Count 15, it is alleged that the 1<sup>st</sup> accused failed to provide 2 sureties as required by the Commission. In Counts 16 and 17 it is alleged that the 1<sup>st</sup> accused hindered the work of the Commission by failing to attend at the Commission when required to do so. The most I would say about these charges, is that the Commission had a remedy at hand for these failings. They <sup>are</sup> very much the same the Court has: If you fail to respond to a Subpoena, a Judge could Order your arrest. If you fail to provide two sureties when requested by

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the Court to do so, you will be remanded in custody. It is my view, and I so hold that the Commission should employ the coercive powers at its disposal, rather than to resort to the Courts in order to punish those whom it alleges have refused or failed to follow or to respond to its requests and invitations.

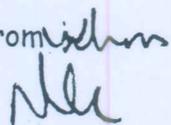
#### THE EVIDENCE

19. I shall now go on to examine and to assess the evidence led by the prosecution in support of its case.
20. 10 witnesses testified on behalf of the prosecution, viz: Joseph Bockarie Noah, an Investigator at the Anti-Corruption Commission (ACC); PW2, Umaru Kamara, a trader, and the Landlord of the property at Lunsar which the ABC rented for a year; PW3, David Farley Keili, former Managing Director of London Mining Company Limited, one of the Donors to the ABC; PW4, Mohamed Lukuley, Assistant Manager at the Sierra Leone Commercial Bank Limited, Siaka Stevens Street Branch, Freetown; PW5, Ms Hawa Jane Bangura, Legal Counsel for Comium Sierra Leone; PW6, Tom Tucker, Corporate and Community Relations Manager, London Mining; PW7 Victor Tutu Rogers, Focal Person in the ABC; PW8, Sylvester Suarry, presently, a Government Spokesman, formerly, National Co-Ordinator, ABC Secretarist; PW9 Allanson Moses Moriba, Accountant, Ministry of Information and Communications; and PW10, Ms Nima Kamara, an Investigator with the ACC.
21. The prosecution tendered in all 37 sets of exhibits numbered consecutively, exhibits 1 -37; of these, exhibit 1 pages 1-42 was the recorded interview of the 1<sup>st</sup> accused given to PW1, and recorded by PW10; exhibit 7 pages 1-21 was the recorded interview given by 2<sup>nd</sup> accused to PW1, and recorded by PW10; and exhibit 38 pages 1-3 and exhibit 39 pages 1-15 were the recorded interviews given by 3<sup>rd</sup> accused to PW10, and recorded by another ACC Investigator, Andrew Demby.
22. The accused persons first appeared before me on 14 February, 2011 on the Indictment dated 27 January, 2011 in respect of which they had taken their pleas before ADEMOSU, JA. The prosecution did not proceed that day, nor on the adjourned date, 23 February, 2011. When next the accused appeared before me on 24 February, 2011 the present Indictment had been filed, and I took their respective pleas to the charges each of them was facing. I also Ordered that they be tried by Judge alone instead of by Judge and Jury, pursuant to Section 144(2) of the Criminal

*adler*

Procedure Act, 1965, and on the Application in writing of the Attorney-General & Minister of Justice dated 23 February, 2011. In view of their pleas, I discharged all the accused persons in respect of the old Indictment dated 27 January, 2011.

23. The prosecution commenced by calling its 1<sup>st</sup> witness, Mr Joseph Bockarie Noah, an Investigator with the ACC. He was tasked with the investigation together with other Officers of the ACC, on 21 June, 2010. On 23 November, 2010, in the company of other ACC officers, he went to 1<sup>st</sup> accused's office at Youyi Building to invite him to go to the Commission's Office for an interview. 1<sup>st</sup> accused according to PW1, was unco-operative and to a certain extent, obtrusive. PW1 had to give him the Commission's contact number. 1<sup>st</sup> accused did not go to the Commission's office that day, notwithstanding the invitation. He finally turned up two days later, on 25 November, 2010 on which day he began giving his interview, continued on the 26<sup>th</sup>, and concluded on the 29<sup>th</sup>. On these occasions, 1<sup>st</sup> accused appeared very co-operative: he produced to the Commission 16 cheque stubs in respect of the ABC's Bank account which were tendered as exhibit 3 pages 1-16; a record of salary payments for staff of the ABC for the month of August, 2010 tendered as exhibit 4; the record of payments for September, 2010 tendered as exhibit 5; and a tenancy agreement in respect of the rented property at Bo, as exhibit 6 pages 1-4.

24. PW1 also interviewed 2<sup>nd</sup> accused, and he tendered 2<sup>nd</sup> accused's interview as exhibit 7 pages 1-21. He said further, that during the course of his investigation, he found out that notwithstanding the fact that the 1<sup>st</sup> and 2<sup>nd</sup> accused had informed him that the ABC had received funding from the Government of Sierra Leone through the Ministry of Information, and London Mining, the ABC had also received the sum of Le150million from Comium Sierra Leone as sponsorship for the programme intitled "National Pride Week" covering the country's Independence anniversary celebrations in April, 2009. In December, 2010 himself and two other ACC officers went to Lunsar to verify the existence of the property the ABC had allegedly rented. They contacted the Landlord, PW2 and obtained a statement from him. They also contacted the ABC's focal person in Lunsar, Mr Ishmael Cole who gave them access to the property, and from  a statement was also obtained.

25. On 7 December, 2010, the ACC team went to Bo to inspect the premises rented there by the ABC. There, they met the caretaker Momoh Kamara, of Njala University.
26. Under cross-examination by Mr Jenkins-Johnston, Counsel for the 1<sup>st</sup> accused, he said that on the 23<sup>rd</sup> November 2010 when he first went to the office of the 1<sup>st</sup> accused, he was only there for between 5-10 minutes. He agreed with Counsel that notwithstanding the fact the 1<sup>st</sup> accused had not gone to the Commission on 23 November when he was first invited to go there, he was not arrested when he eventually turned up on 25<sup>th</sup> November. When asked for records, 1<sup>st</sup> accused produced them. He has PW1 exhibit 2, which was in his own handwriting. He finally produced a statement he had himself made to the Commission on 8 February, 2011.
27. The sum total of PW1's evidence is that though 1<sup>st</sup> accused did not respond to the ACC's initial invitation to go to its Office to give an interview, he eventually co-operated with the Commission. He surrendered documents which were needed by the Commission, and he readily gave an interview. Though his attitude on that first occasion was a bit on the side of arrogance, he eventually redeemed himself by his subsequent behaviour. That the ACC may have been satisfied with his behaviour is confirmed by the fact it did not seek his arrest, but waited until he voluntarily attended at the Commission's office two days later.
28. In his responses to the questions put to him in exhibit 1, 1<sup>st</sup> accused was sometimes a bit flippant, sometimes facetious, sometimes didactic, but not deliberately evasive. He however confirmed two important facts in this case: the first was that the ABC was partly funded by the Government of Sierra Leone, and that it worked closely with the Ministry of Information through which it obtained its budgetary allocation - see answers to Qs 12&13 on page 5 of exhibit 1. Second, that the ABC had very scanty records of its financial activities, because, according to him, there was a break-in into the office in August, 2010 and most of the computers and documents were stolen. Third, that the financial system adopted by the ABC, was rather lax and indifferent to basic accounting principles. For instance, at page 18 of exhibit 1, the 1<sup>st</sup> accused in answer to Question 35 said: "*We do not have a voucher system. We request for the agreed amount with our supporters London Mining Company and they disburse the salaries and staff sign for it. We have never received money*

*from Government for salaries since the establishment of the ABC Secretariat. That is the reason for the backlog.*" This last bit is of course untrue. Government did provide salaries as is evidenced by exhibit 37. That the absence of a voucher system could result in several undocumented expenditures is evident when the cheques, exhibit 20 (1-89) tendered by PW4 are examined. For example, cheque No. 0848725 dated 12 May, 2009 for Le40million was payable to cash. On the back of ~~the back~~ of the cheque, the recipient is said to be Mohamed Bangura. And so it goes on. Cheques for Le5million, Le6million, Le14million - No. 0848723 dated 9 May, 2009 - Le11million - No 1153218 of 8 July, 2010 - Le10million No 0985750 of 12 January, 2010; Le15million - No 0848729 of 18 May, 2009 - are all payable to cash. In some cases, the cheques appeared to have been encashed by the 1<sup>st</sup> accused, or by the 2<sup>nd</sup> accused on the basis of the signatures which appear on the reverse of these cheques. The significance of these cash cheques is that it becomes well-nigh impossible for anyone to keep track of what the payments were meant for.

29. As regards exhibit 8, the main purport here, was that Mr JENKINS-Johnston tried to show the Court that PW1 should not be believed when he said he had invited 1<sup>st</sup> accused to the Commission's Office, and he had failed to turn up, as nowhere in that statement has PW1 mentioned that this was the case.

30. PW2 Umaru Kamara's evidence dealt with his dealings with 3<sup>rd</sup> accused as regards renting the ~~same~~ <sup>property</sup> to him. He said that on a certain date he could not then remember, 3<sup>rd</sup> accused went to him in Lunsar and requested that he rent out his property to him. PW2 told 2<sup>nd</sup> accused he should pay Le4million a year. 3<sup>rd</sup> accused agreed and did pay him Le4million for the one year period. He got somebody to prepare a receipt for him, and he gave the receipt to a co-worker of the 3<sup>rd</sup> accused Mr Cole for onward transmission to 3<sup>rd</sup> accused. He said Mr Cole told him he had handed the receipt to 3<sup>rd</sup> accused. He said 3<sup>rd</sup> accused told him he was renting the property to use as an office. He tendered a copy of the receipt as exhibit 9. He concluded by saying that he only rented the property out for one year, and that after the year had expired, 3<sup>rd</sup> accused was expected to leave. There was no agreement for a renewal of the tenancy.

31. He was cross-examined by Mr Sangarie, Counsel for the 3<sup>rd</sup> accused. He had this to say: "I have known 3<sup>rd</sup> accused for many years. I received the

money on the basis that he will leave at the end of the year. I did not rent the house to him because I have known him for a very long time. I was happy when he gave me the money. I asked him to pay that sum and he agreed. He did not say he was going to rent it for two years."

32. The significance of PW2's testimony lies in whether the agreement he had with 3<sup>rd</sup> accused was for two years, or for one year. Exhibit 9 reads as follows: "*Temporary Cash Received Voucher - Being an amount received from Mr Lansana Kamara (Santo) the sum of four million Leones (Le4,000,000) as house rent with effect from July, 2010 for a period of one year respectively. Conditions of the house rentage are as follows: a) anything that is dug, and b)) anything that is nailed should not be removed during the time of vacating the house. Thanks. Yours Sincerely U KAMARA Land-Lord. Dated 20/06/10.*" Now, the 3<sup>rd</sup> accused has given his own version of the transaction in exhibit 39 pages 1-39. There he says, at page 5 in answer to Q8: "*It (the said office space) was rented for the sum of Le4million per annum for a period of two years. The house owner is Pa Kamara (alias Kamara Thousand). Initially, I had speculated that the cost of the said office space would be Three million Leones as that was the cost that was being contended by the last tenant. As such, my head office, through Mr Philip Conteh and Allieu Kamara gave me a cheque for Le6million which I encashed at the Sierra Leone Commercial Bank (SLCB). This money was to pay the said office space rentage for the period covering June, 2010 to June, 2012. However, upon discussion with Pa Kamara he told me about the high competition from London Mining and other companies for the said office space who are prepared to pay double of what I intend to pay. As such Pa Kamara told me to increase the amount to Le4million per annum. Considering the strategic location of the office space, I decided to pay for a year Le4million and informed the programme manager Mr Allieu Kamara and Mr Philip Conteh, the Executive Director who told me to hold the balance two million Leones until such a time when I would be given the balance to complete the payment for two years.*" Q6 was: "*Were you reimbursed with the balance Two million Leones to enable you to pay for the other year?*" Ans: "*Not yet. Am still waiting for it.*" Q7: "*Where is the balance two million Leones.....?*" Ans: "*It is being kept by one lady called Mamusu in Lunsar who is a business woman.*"

33. The cavalier attitude of the 3<sup>rd</sup> accused towards funds given to the ABC is quite evident from his responses. He is given excess funds for a certain

purpose. Instead of retiring the excess, he claims he gave it to a woman in Lunsar. In this respect, I have commented above about the 1<sup>st</sup> accused's constant practice of issuing cash cheques, and the absence of vouchers to verify expenditures. Further, the purpose of cross-examination of witnesses, is not only to discredit a witness's testimony, but to put the case of the party on whose behalf the cross-examination is being conducted. It was never suggested to PW2 in cross-examination that the agreement or arrangement between himself and 3<sup>rd</sup> accused was for two years. He was emphatic that it was for one year only. He was also emphatic that *"I asked him to pay that sum and he agreed. He did not say he was going to rent it for two years."* In other words, there was no haggling between the two parties. If as 3<sup>rd</sup> accused claims in exhibit 39, he had estimated that the annual rent would be in the region of Le3million, it is strange then that there was no haggling between himself and PW2. Perhaps the true answer is that 3<sup>rd</sup> accused may have then formed the intention to benefit himself by holding on to the balance Le2million. And I must say at once, that I do not hold the view that it was the business of the prosecution in this case to find out whether 3<sup>rd</sup> accused left the sum of Le2million with Mamusu or not. He had no business doing so. His business was to return the balance Le2million to the ABC's account.

34.PW3 David Keili, set out the beginnings of the relationship between the ABC and London Mining. London Mining came to the conclusion that as part of their corporate social responsibility, they should fund the activities of the ABC. He first met 1<sup>st</sup> accused, in Lunsar in March, 2010 where London Mining had an event. Further discussions were held in the Freetown office between the Company's Chief Executive Officer and 1<sup>st</sup> and 2<sup>nd</sup> accused. The CEO told PW3 he had pledged on behalf of the company, the sum of USD200,000 per year for a two year period, as support to the ABC. He tendered in evidence as exhibit 10, a copy of the letter the CEO had written to H E The President. In that letter, the CEO, Mr Graeme Hossie committed his company to supporting the ABC to the tune of USD200,000 per year for 2 years. It is clear from the contents of the letter that the CEO was committing his company to this form of sponsorship not because of any personal reasons, but because, according to him, in exhibit 10: *"....It is with true solidarity with the aims of the ABC programme that we London Mining, wish to support and help its*

success. I have today met with Philip Conteh and Allieu Kamara from the ABC Secretariat who discussed the need for a credible sponsor and partner in this programme.....Shortly, I am to receive detail on the full plans and actions including those to now move the activities and influence more fully to the regions outside of Freetown.....we have today discussed a support plan for the next two years of USD200,000 per year based on a specific plan and regular reviews of its achievements.....”.

35. Subsequent to that letter, PW3 held meetings with 1<sup>st</sup> and 2<sup>nd</sup> accused to 'flesh out the scheme'. 1<sup>st</sup> accused sent him a table of activities and a covering letter. The letter and its attachments were tendered as exhibit 11 pages 1-6.
36. Page 1 of exhibit 11 is a letter written by the 1<sup>st</sup> accused to the Managing Director, London Mining. It is dated 7 April, 2010. It is written on the letter-head of the Government of Sierra Leone. It bears the Coat of Arms of Sierra Leone. The 1<sup>st</sup> accused gives as his address, "Office of the President, Attitudinal & Behavioral Change Secretariat...." In it, 1<sup>st</sup> accused states, inter alia: "....Let me take this opportunity on behalf of His Excellency the President, to thank you for agreeing to support the President Program on Attitudinal and Behavioral Change....As agreed, please find enclosed plan and activities to achieve the above." Pages 2-6 set out the details of the programme for the Provinces. I have highlighted the use of Sierra Leone's Coat of Arms by 1<sup>st</sup> accused, because of the argument put up by his Counsel, that there is no evidence that the ABC was part of the Government of Sierra Leone - see pages 9-10 of his written address. If indeed, apart from the rest of evidence which was led by the prosecution, this argument is to be maintained, then the 1<sup>st</sup> accused must be a monster of impudence for thanking a prospective Donor on behalf of the President of this Republic, and for using the crest of the Republic. He must then be guilty of the grossest false pretence, of being a braggart and a name dropper, for pretending to a well-meaning foreigner that he was part of the Government of Sierra Leone. That argument, as I shall go on to show later, is untenable.
37. PW3 went on to say that London Mining decided to fund the ABC on a quarterly basis. 1<sup>st</sup> accused presented a programme for the 1<sup>st</sup> quarter, May-July, 2010. Because it was not funded in May, 2010 it became a work-plan for June-August, 2010. He went on to tender the break-down of expenditure for that period as exhibit 12 pages 1&2. His scribbles appear

on the exhibits. The total bill for the 1<sup>st</sup> quarter was USD88,660. That figure included the sum of USD2,000 as rental for office space in five Provincial Towns, including Lunsar. In 2010, USD2,000 was, in my estimation approximately Le8million. The budget does not state whether this amount was the expected annual rent, or rent for the full two year term. If it was for the 1<sup>st</sup> year only, then the sum given to 3<sup>rd</sup> accused as rent for the Lunsar property, was far in excess of the that required for that purpose. But if it was for the full two year period, then 3<sup>rd</sup> accused should have been in funds to pay for that period too, as he was only asked by PW2 to pay Le4million a year. In any event, as the evidence shows, the property was only rented for one year, notwithstanding the proposal in the budget submitted to London Mining. And, the sum of Le2million, has not, according to the evidence, been returned to the ABC' account.

38. London Mining committed itself to donating USD85,000 and PW3 wrote a letter setting out this commitment. That letter is dated 12 June, 2010. Mr Jenkins-Johnston objected to the witness tendering the letter because it was unsigned, and because, according to his instructions, the ABC Secretariat never received it. I overruled his objection as appears at pages 16-17 of my minutes. It was tendered as exhibit 13. PW3 after tendering it, said he did not see the letter before it went out, but that it was definitely in the files of the company. I am not surprised he did not wish to acknowledge seeing it before it went out, as it is riddled with grammatical errors and wrong spelling, a shortcoming which obviously could not be attributed to the witness, as he acquitted himself very well in the witness box. I directed the witness to sign the letter in Court, and to give it the date of that hearing which was 1 March, 2011. The letter itself bears little significance, because the payment which it promised, is it itself evidenced by several other documents which were subsequently tendered. 1<sup>st</sup> accused had himself admitted as much in his statement that the total sum of USD85,000 was donated to the ABC by London Mining. This was one reason why I had no difficulty in overruling Mr Jenkins-Johnston's objection.

39. PW 3 testified further and tendered in evidence as exhibit 14, London Mining's instruction dated 18 June, 2010 to Rokel Commercial Bank (SL) Limited to transfer the sum of USD45,000 from the company's account held at the Bank, to the account of the ABC held at Sierra Leone Commercial Bank Limited, Siaka Stevens Street, Freetown. Exhibit 15

tendered also by PW3, was another instruction from his company to Rokel Commercial Bank, authorising the Bank to debit the Company's account with the sum of USD40,000 and to credit the same to the account of the ABC held at the S L Commercial Bank. Later evidence would show that the ABC's account was indeed credited with both amounts of money. The witness ended his testimony by saying that 1<sup>st</sup> accused kept him informed of what the ABC was doing periodically. He was not cross-examined.

40. PW4 was Mohamed Lukuley of the S L Commercial Bank. He tendered in evidence as exhibit 16 (1&2) 2 specimen signature cards. Exhibit 16(1) is a card bearing the names of 1<sup>st</sup> and 2<sup>nd</sup> accused, and one Mohamed Bangura described therein as National Co-Ordinator. Later during the course of the trial, whilst cross-examining PW7 Victor Tutu Rogers, Mr Ngakui suggested to that witness that there was no National Co-Ordinator in office in November, 2009. Here is evidence that prior to PW8 Mr Suarray's appointment, there was a National Co-ordinator in office.
41. To return to PW4's evidence, Mohamed Bangura's name, it appears, was later deleted. The first card is dated 13 March, 2009. The mandate is for two signatures: that of the 1<sup>st</sup> accused as "A" signatory; and either 2<sup>nd</sup> accused or Mr Bangura as alternative "B" signatories. The name Mohamed Bangura, as I have mentioned above, appears on several of the cash cheques signed by 1<sup>st</sup> accused. The second card, exhibit 16(2) is undated, but it gives the mandate to sign cheques, unusually, to 1<sup>st</sup> accused alone, though the 2<sup>nd</sup> accused's name appears in it as well. It is in respect of the same account: 001-115897-09-00-01
42. PW4 tendered also, as exhibit 17 (1&2), a credit advice dated 22 June, 2010 and transmission details in respect of the crediting of the sum of Le164,155,100 to the ABC's account held at the Bank, by London Mining. The US Dollar amount received was USD44,974. The transmission details 16(2) show that the sum of USD26 was deducted as charges. This is confirmation of the payment of USD45,000 made by London Mining.
43. Exhibit 18 (1&2) are respectively the credit advice dated 25 June, 2010 and transmission details in respect of the crediting of the sum of USD39,974 by London Mining, to the ABC's account held with the Bank. Again, PW4 testified that the sum of USD26 had been deducted from the sum of USD40,000 actually transferred by London Mining.
44. PW4 tendered also as exhibit 19 pages 1-16 the statement of account of the ABC Secretariat held at the Bank. An entry for 5 May, 2009 shows

that the sum of Le150million was credited to the ABC's account by a cheque which was specially cleared. It shows also, that on 22 June,2010 the sum of Le164,155,100 was credited to that account; and that on 25 June,2010 the sum of Le145,905,100 was also credited to that account. He went on to tender 89 cheques drawn on the ABC's account, some of which I have dealt with above, as exhibit 20 (1-89); three debit vouchers as exhibit 21(1-3); and two credit deposit slips as exhibit 22(1&2). Exhibit 21(1) is a debit voucher dated 14 January,2010 evidencing the debiting of the ABC's account in the sum of Le6million as cash payment to 1<sup>st</sup> accused. Exhibit 22 (1) is the credit deposit slip dated 4 May,2009 showing that the sum of Le150million was credited to the ABC's account; and exhibit 22(2) is a credit deposit slip evidencing the crediting of the ABC's account with the sum of Le317,275,000 on 17 November,2009. PW4 was not cross-examined.

45.PW5 was HAWA JANE BANGURA, a representative of Comium (SL) Limited. She tendered in evidence as exhibit 23 pages 1-4 a letter addressed by her to the ACC forwarding thereunder, copies of entries in the passport of 1<sup>st</sup> accused; a copy of a Guaranty Trust Bank cheque dated 4 May,2009 drawn by Comium in favour of the ABC in the sum of Le150million; and a receipt dated 4 May,2009 signed by the 1<sup>st</sup> accused acknowledging receipt of the cheque. She also tendered the following as exhibit 24 pages 1-11: a letter addressed by her to the ACC; a letter dated 5 February,2009 addressed by 1<sup>st</sup> accused to Mr Paul Hyde, CEO, Comium (SL) Limited requesting sponsorship for the 'Pride Week'; another letter from 1<sup>st</sup> accused dated 2 March,2009 addressed to Mr Hyde, again seeking sponsorship for the National Pride Week; an estimated budget for the activities for that week, the total bill coming to Le361,000,900; the programme of activities; and lastly, an undated letter from Mr Hyde promising, on behalf of Comium, to make a cash contribution of USD50,000 towards the Pride Week activities. She was asked just one question by Mr Ngakui, Counsel for 2<sup>nd</sup> accused.

46.PW6 was TOM ISSIC TUCKER, Government and Community Relations Manager, London Mining. He confirmed that the respective sums of USD45,000 and USD40,000 were paid over to the ABC. Further, that additional sums were paid over by London Mining - USD8,000, USD10,000 and the Leone equivalent of USD10,000, making a grand total of USD113,000. He tendered several documents, beginning with exhibit 25

pages 1-7. Page 1 is a copy of a letter addressed by 1<sup>st</sup> accused to London Mining's Managing Director dated 27 September, 2010. It acknowledges London Mining's contribution to the ABC, and states further: "...As agreed, we are presenting our proposals and support request for the period October 2010 to December, 2010. Let us also thank you for providing salary support to the Secretariat in the tune of \$10,000 for the month of August 2010. As usual, we will produce an end-of-quarter report outlining our achievements in line with our set plans...". Page 2 sets out the salary needs for the months of August to December, 2010. Though 1<sup>st</sup> accused has acknowledged receipt of salary support for August, 2010 in the sum of USD10,000, that same month is the beginning of the period for which payment was requested. The total requirement is USD50,000. Page 3, itemises operational costs, publicity and outreach activities totalling USD5,300 + USD530 miscellaneous, bringing the grand total for August - December, 2010 to USD55,830. Pages 4-7 <sup>is</sup> a report on activities covered by the ABC.

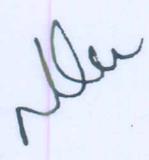
47. PW6 said further that when exhibit 25 was received at his office, 1<sup>st</sup> accused was invited to attend at the office to enlighten London Mining as to the employees in respect of whose salaries the sum of USD10,000 per month was being requested. He went on to tender exhibit 26 pages 1-4. Page 1 is a London Mining Payment voucher dated 30 August, 2010 for the sum of USD8,000. The payment is to be effected by Bank transfer to the account of the ABC, but also, in the payee name column, cash is entered. The payment was received by 1<sup>st</sup> accused who appended his signature in the received by column. Pages 2 & 3 are copies of email messages relating to the request made by the ABC. Page 4 is a written instruction dated 30 August, 2010 sent by the company to its Bankers authorising the Bank to pay USD8,000 to George Ansumana. Exhibit 27 pages 1 and 2 relate to a cheque payment in the sum of Le39million representing USD10,000 with ABC as the payee. Page 1 is the payment voucher, and page 2 is an email from Mr Mohamed Conteh, the company's Community Development Officer to Andrew Lane, and copied to PW6 and one Rachel Rhodes. On page 1, 1<sup>st</sup> accused, according to PW6 signed acknowledging receipt of the cheque. His signature appears in the received by column and is dated 3 September, 2010. Lastly, he tendered exhibit 28 pages 1-2. Page 1 is a payment voucher for the sum of USD10,000. Payee name is given as cash. The sum of USD <sup>10,000</sup> was received by Mr Suarray, PW8. He later confirmed

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this when he testified in Court. PW6 was briefly cross-examined by Mr Jenkins-Johnston.

48. PW7 was Victor Tutu Rogers, a very important witness as Counts 5 - 13 are based on matters relating to him, in particular, the non-payment of salaries to him. I shall therefore deal with his evidence in detail, and where necessary, add my comments. He said; "...I started working as staff at the ABC on 2 November, 2009. Before that I was with the Secretariat as Volunteer. That was in 2008. As Focal Person, my duties were to sensitize and promote the attitudinal programme for H.E. and the ABC. I know the 1<sup>st</sup> accused as Executive Director; 2<sup>nd</sup> accused as National Co-Ordinator; 3<sup>rd</sup> accused as regional Co-Ordinator. I have an appointment letter. It has attachments. There is another appointment letter. A document headed Attitudinal Change. I tender them as exhibits 29 pages 1-4." Page 1 is a laminated copy of a memorandum dated 2 November, 2009 addressed to whom it may concern by 2<sup>nd</sup> accused. It certifies that PW7 *"has been selected as the Bo District Focal person for the ABC Secretariat. he is mandated to help propagate HE'S vision for positive change in the District under the strict supervision of the Regional Coordinator."* It is not the sort of letter of appointment one is accustomed to, but, as I have noted above, things were not always done in a regular manner at the Secretariat. Yet it was mandated to teach us to mend our ways. As is the case of communications originating from 1<sup>st</sup> accused, this document, and also page 2 which is not laminated, bears the Coat of Arms of Sierra Leone. Pages 3 and 4 set out the vision of the Secretariat. Remarkably for such a visionary document, which sets out how we should all be taught to change our bad ways, it says nothing about financial probity and rectitude. It reminds one of George Orwell's Animal Farm. Some appear to be more equal than others.

49. Mr Jenkins-Johnston objected to pages 1 and 2 being tendered, but I overruled his objection as the documents concerned the witness, and not some other person. PW7 continued, *"...1<sup>st</sup> and 2<sup>nd</sup> accused both do payment of salaries. I did not receive salary for May, 2010. I did not receive salary for June, 2010. I did not receive a salary for July, 2010. I did not receive a salary for August, 2010. I did not receive a salary for September, 2010. I did not for October, 2010. I did not for November, 2010. I see exhibit 4. It is payment voucher for August, 2010. My name is on it. It is my signature against my name. I did not receive a salary. I see exhibit 5. My*

name is on it. It is my signature besides my name. I did not receive a salary for September, 2010. It was late in October, 2010 when 2<sup>nd</sup> accused called me into his office and placed before me these 2 documents at the same time that I should sign them. After signing I was expecting that he should pay me. So when I asked his response was it was just a protocol. You will hear from me later. He took the 2 documents to Mr Conteh in his office. Before signing these documents, the following people were present: Mr Lansana Zanto Kamara, Major (rtd) David U A Sesay; Mr Minkailu A M Kamara and Mr Sylvester Sheku Suarray. After signing with no money given to me, I got them informed. they told me that I will hear from them. They will talk to Mr Kamara. I did not receive salaries between May and November, 2010." 

50. Before moving onto his cross-examination, I believe it would be worthwhile to examine in closer detail, whether salaries were indeed paid to staff for the months of May to November, 2010. In exhibit 2 page 2, which is in 1<sup>st</sup> accused's own handwriting, he states that the proceeds of cheque No. 1045393 dated 21 June, 2010 (not 31. June has only 30 days) in the sum of Le70,490,000 was used to pay backlog of salaries for May, June, 2010. 1<sup>st</sup> accused's signature and name appear on the back of that cheque as the recipient of the funds. On page 3, he states that the proceeds of cheque No 1153216 dated 6 July, 2010 in the sum of Le6million, were used, to quote him, to pay "part 2 years rent for the ABC office in Lunsar (balance Le2m)". The entry in Exhibit 19 page 11 shows that indeed a cash withdrawal was made on 6 July, 2010 with cheque No. 1153216. But exhibit 9 states that PW2 was paid on 30 June, 2010 (though at the bottom, the date is given as 21 June, 2010.) 3<sup>rd</sup> accused in exhibit 39 at page 7 thereof in answer to Q8, states that the proof of the payment is in the receipt. The Bank's cashier, in noting the details of payment wrote: £1,000 - 6,150,000; \$400 - 1,620,000 - 7,770,000. Does this mean that the proceeds were actually used for the purchase of foreign currency, and not for payment of rent? I shall return to this point later when dealing with the elements of Section 48(2)(b) of the Anti-corruption Act, 2008.

51. To return to payment of salaries, exhibit 4 is the salary record for August, 2010 which shows that salaries were paid. Exhibit 5 is that for September, 2010. Neither shows the date on which payments were made. But exhibit 25 page 1 which is dated 27 September, 2010 is an

acknowledgement with thanks by 1<sup>st</sup> accused of the receipt of the sum of USD10,000 from London Mining to cover salaries for August,2010. Page 2, as noted above is the salary budget for August -December,2010. 'X' is marked against the entries for Focal person in Lunsar and in Bo. The significance of this is not clear, and as it was tendered by PW6, it could be that the 'X' was written in by London Mining officials. But it is clear the salaries for the Focal persons are included in the grand total of USD50,000. In the Report at pages 4-7 1<sup>st</sup> accused sets out the achievements of the ABC. At page 7 he states that '*Salaries were paid in full for May, June, and July as per our request. All staff team, for the first time were able to receive their salaries for three months.*'. It seems to me also, on a close perusal of Exhibits 25 - 28 tendered by PW6, that at the date 1<sup>st</sup> accused penned exhibit 25 page 1, the ABC Secretariat had already received the respective sums of USD8,000, and Le39million. The last payment of USD10,000 was that received by PW8, and evidenced in, among other documents, exhibit 31. But according to PW9, Mr Moriba who tendered exhibit 37, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused, and also PW8 received salaries from the Government of Sierra Leone in arrears for the 4 month period, September - December,2010. PW7's name does not appear on this document which is headed: Government of Sierra Leone - Ministry of Information and Communication - Attitudinal and Behavioural Change Secretariat - Schedule of Salary for the months of September, - December,2010 - 4 months.

52.I shall now return to PW7's cross-examination. He was shown exhibits 4 and 5 by Mr Jenkins-Johnston, and asked whether he signed them. He agreed he signed them, but insisted that he did not receive any money. He reiterated that he started work in November,2009. He tendered a letter dated 1 October,2009 addressed by him to the National Co-Ordinator, ABC, as exhibit 30 pages 1&2. He agreed that in that letter he was applying for a partnership but that he was never made a partner. Instead, he became a focal person on 2 November,2009. He said further that he knew payment of salaries would depend on funds available, but that he never received payment for the work he had done.

53.In answer to Mr Ngakui, he said that he was ordered to sign both exhibits 4 and 5. There was no office in Bo before August,2010. He was travelling between Bo and Freetown and was in the Freetown Office. He was sent to Bo to secure office space. When he had got the office in

July,2010, he came back to Freetown and reported. It was to start operating on 1 August,2010. He was shown the agreement for the Bo office, but he said he had never seen it before. It had been tendered as exhibit 6 by PW1. It was for one year beginning 1 August,2010. at an annual rent of USD3,500. There was no provision to renew the tenancy though the budget which I have referred to earlier requested rent for a two year period. He insisted that there was such an office as National Co-Ordinator as of 1 October,2009. And as I have pointed out above, he was quite correct. In March,2009 one Mohamed Bangura was described as National Coordinantor in the S L Commercial Bank's mandate form.

54.In answer to Mr Sangarie, PW7 said he was happy signing the vouchers for August and September because he was expecting money. He signed of his own free will.

55.My assessment of PW7 is that he was a truthful witness. I believe him when he says he signed the vouchers for August and September,2010 but did not receive payment for those months. In exhibit 25 page 7, 1<sup>st</sup> accused did say that salaries had been paid in full for May to July,2010. There are no vouchers to verify to whom payments were made. I however believe the witness when he said he did not also receive payment for these months as well. PW7's name does not appear in exhibit 37 but his position was included in exhibit 25 page 2. Provision was there made for him to the tune of USD750. I have noted above the 'X' marked against that figure, and as the total payment made after 27 September,2010 amounted to USD28,000 USD22,000 less than the total amount requested in exhibit 25 page 2, it is difficult to estimate whether provision was indeed made for his salary for the full period of October - December,2010. On 1<sup>st</sup> accused's own admission in exhibit 25 salaries for May - July were paid in full. It just happens that PW7 did not get his. But PW8 confirms that the sum of USD10,000 which he received on 1 October,2010 was indeed in respect of payment of salaries in arrears for September,2010.As to August,2010 funding must have been received because PW7 was asked to sign exhibit 4, which he did, but still got nothing.

56.I shall now turn to the evidence of PW8. He was National Co-Ordinator between May and November,2010. He was paid a salary of USD2,000 per month. During the period he was at the Secretariat, London Mining was responsible for salaries. He collected the September salaries amounting

to USD10,000 and handed same to 1<sup>st</sup> accused. He wrote out a receipt which he asked 1<sup>st</sup> accused to sign. They had some disagreement which nearly degenerated into a fight as to the contents of the receipt during which, to use his own words, the document "was ruffled." However, in the end both 1<sup>st</sup> and 2<sup>nd</sup> accused signed the receipt. It was nearly torn into pieces during the confrontation, but it was preserved by piecing it together and by lamination. It was tendered as exhibit 31. PW8 said further that he knew PW7 and that he was told by staff working there including 2<sup>nd</sup> accused that he would be working with PW7 after he had established offices in Bo. He travelled with PW7 on two occasions to Bo to look for office space. When cross-examined by Mr Jenkins-Johnston, the witness said he was paid throughout the period he was at the Secretariat. In answer to Mr Ngakui, he said that though he was the first National Coordinator, he had heard that somebody else had been acting in that capacity before he took over. This I suppose answers Mr Ngakui's challenge to PW7 that he could not have addressed exhibit 30 to the National Coordinator on 1 October, 2009 because there was no such person in office at the time. PW8 said further, that he made two trips to Bo to secure office space. He identified several offices in Bo, but 1<sup>st</sup> accused through his contacts was able to get one. He was asked to go and see whether it was suitable.

57. PW8's evidence shows that all was not well at the ABC. I accept and believe his evidence. He appeared to be a man of integrity and I have no reason to think that what he said about his confrontation with 1<sup>st</sup> accused is untrue. He wanted proper accountability for the funds he had received. Sadly, it appeared, 1<sup>st</sup> accused had no interest in this.

58. PW9 was Mr Allanson Moriba, the Accountant at the Ministry of Information and Communications. As Accountant, he is the principal adviser to the permanent Secretary as Vote Controller. He said his Ministry receives quarterly allocations from the Ministry of Finance to run it. The allocation is done by circular. His Ministry received 4 allocations for the ABC in 2010. He tendered as exhibit 32 pages 1-5, the circular from the Financial Secretary, Ministry of Finance dated 18 January, 2010 together with its attachments. Pages 1-3 <sup>are</sup> the circular. Pages 4-5 contain the several allocations. The amount of Le149,800,000 is allocated to the ABC for Non-salary, non interest recurrent indicative budgetary requirements for the year. Exhibit 33 pages 1 contains the

minutes of a meeting held on 22 January, 2010 by the Budget committee of the Ministry of Information at which 2<sup>nd</sup> accused was present, representing the ABC. Page 2 shows that the total sum of Le30million was allocated out of the annual budgeted sum of Le149,800,000, to the ABC for sundry expenses such as imprest, stationery, fuel and oil, and public relations. Exhibit 34 pages 1-13 deals with the 2<sup>nd</sup> quarter allocation. Page 1 is the circular dated 12 April, 2010 from the Financial Secretary to the Ministries. Page 4 shows that in the 1<sup>st</sup> quarter the sum of Le14million was committed to the ABC, but that it was still outstanding at the end of that period. The allocation for the 2<sup>nd</sup> quarter should therefore total Le67,650,000. Pages 5-7 contain the minutes of the meeting of the Ministry's Finance committee held on 30 April, 2010. Page 8 is the profile of expenditure for the 2<sup>nd</sup> quarter of Fiscal year 2010 April - June to be committed. It is signed by 2<sup>nd</sup> accused and dated 10 May, 2010. Pages 9-12 are the minutes of another meeting of the same committee. Page 13 is the profile of expenditure. The total sum committed or spent, it is not clear which it is, is Le67,500,000 which as I have said above had already been committed to this quarter.

59. Exhibit 35 pages 1-6 deals with the 3<sup>rd</sup> quarter allocation. Pages 1 and 2 are the circular from the Financial Secretary. Page 3 shows the amount allocated to the ABC for the 3<sup>rd</sup> quarter. Page 4 is a copy of the minutes of the meeting of the same committee held on 16 August, 2010 at which 2<sup>nd</sup> accused was present. It is recorded in these minutes that the sum of Le43.5million had been allocated to the ABC. A programme scheduling the details of the expenditure is page 5. The two expenditures covered are office and general and fuel and oil. Page 6 gives the breakdown of the different activities and uses to which the money is to be put.

60. Exhibit 36 pages 1-6 deals with the 4<sup>th</sup> quarter allocation. Pages 1-2 are the circular from the Financial Secretary dated 18 October, 2010. Pages 5-6 contain the minutes of the same committee's meeting held on 11 November, 2010 at which the 2<sup>nd</sup> accused was present. ABC Secretariat was allocated Le20million. Exhibit 37 as I have stated above, is a schedule of payments of salary made to ABC staff for the months of September - December, 2010.

61. PW9 went on to say that the Ministry operates an account at the Bank of Sierra Leone. For an MDA, that is, Ministries, Department and Agencies, an application must be made to the Accountant-General, stating the

reason for wanting to open the account. He then explained the procedure which would follow. He concluded by saying that when an Agency receives funds, it should report to the Permanent Secretary. Clearly, in this case, the ABC did not operate an account at the Bank of Sierra Leone, nor did it go through the Accountant-General before opening the account at the S L Commercial Bank. As it was receiving funds from the Government, and as the evidence has established that it worked as an arm of, and in the offices of the Ministry of Information, it behoved the ABC to confirm with good practice and make periodic reports to the Permanent Secretary.

62. Under cross-examination, PW9 said that an imprest of Le1million per month was given to the ABC. He said he had a notebook in which he entered the amounts which were actually given to the Secretariat, but that book was not tendered in evidence. He said further that Le2million was paid to Mr Kamara, presumably 2<sup>nd</sup> accused. He said it was agreed after one of the Committee's meetings that the sum of Le2million should be paid to the Secretariat to cover fuel costs. He was supposed to obtain receipts for all monies to the ABC, but that he only had receipts for the sum of Le6million. The bulk of the ABC's allocation was actually disbursed by the Ministry on its behalf. In answer to Mr Sangarie, he said that the ABC was a part of the Ministry of Information and that their allocation fell under the Ministry's head of expenditure. Here his testimony ended.

63. The last witness was Ms Nima Kamara an investigator at the ACC. She tendered the statements of the 3<sup>rd</sup> accused as exhibits 38 pages 1-3 and 39 pages 1-15. She also tendered as exhibit 40 the ACC Section 63(1) Notice. This Notice was addressed to, and served on 1<sup>st</sup> accused as evidenced by an entry in a way book of the ACC which was tendered as exhibit 41. A photocopy of the particular entry evidencing service was tendered as exhibit 41A. She testified as to how she and other ACC officers went to the 1<sup>st</sup> accused's office to invite him to go to the ACC, but that he did not do so. My short response to this complaint is that the ACC has powers of arrest, and if a suspect is proving to be obstinate, intransigent, or just down-right uncooperative, then those powers should be exercised rather than wait until trial, and rely on the Court to punish the recalcitrant suspect.

64. The prosecution at this stage, sought leave to dispense with several witnesses whose names appeared on the back of the Indictment, and

whom they intended to call as additional witnesses. I went through the proper procedure of asking Defence Counsel whether they wished any or all of those witnesses to be brought to Court for cross-examination. All of them indicated that they were not so minded. I therefore Ordered that the prosecution need not call these witnesses. The prosecution closed its case after this Order. The Defence requested an adjournment to take further instructions from their respective clients, before each of them was put to his election. On Wednesday 16 March, 2011 each of them was put to his election. Each of them elected to rely on his statement made to the ACC. None of them had witnesses they wished to call. The Defence closed at this stage. Written addresses were submitted by Counsel on both sides, and at the oral hearing on 4 April, 2011 those present said they had nothing more to add to what they had submitted in writing. Mr Jenkins-Johnston filed his written address after Judgment had been reserved. I thank Counsel for the attention to detail and the Law exhibited in their respective addresses. They have each done justice to their respective cases.

65. However, I do not agree with defence counsel in their respective submissions, that the prosecution has failed to prove that the accused persons were public officers, or employed by a public body as defined in the ACA, 2008. On the contrary, there is abundant evidence that the ABC Secretariat was set up by the President, and was initially housed in the office of the President at State House, before the move to the office of the Ministry of Information and Communications. There is abundant evidence also that the ABC, and the accused persons in particular, received monies from the consolidated fund, as evidenced in exhibit 37. As such, they were public officers, and were employed by a public body within the meaning of the Act.

66. In their respective statements to the Police, each of the accused persons has denied the commission of each of the offences which he has been charged. I have already alluded to their various explanations when dealing with the evidence of the prosecution witnesses. 1<sup>st</sup> and 2<sup>nd</sup> accused expressly deny that they held on Victor Roger's salaries for the months of May to November, 2010. As far as the payment of rent to PW2 is concerned, 3<sup>rd</sup> accused's explanation is that he did not appropriate the balance Le2million to himself. He handed it over to the lady Mamusu for safekeeping. Why 3<sup>rd</sup> accused should think it proper to hand over money

which he had been given in his official capacity to someone who has nothing to do with his office, defies one's imagination. As regards the evidence of PW7, it is clear, that if I accept and believe it, I must reject and disbelieve the case presented by the 1<sup>st</sup> and 2<sup>nd</sup> accused that he was paid his salary for the various months. 1<sup>st</sup> and 2<sup>nd</sup> accused have not actually given any clear explanation in their respective statements as to why there are no vouchers, invoices or any other documents to support any of their expenditures, save that 1<sup>st</sup> accused says that there have been a series of thefts at their office, and documents have been stolen. I should have thought that even if this were so, the donors would have favoured with copies of such documents. All that 1<sup>st</sup> accused did, was to send reports purportedly detailing these expenditures with no documents to support their authenticity. When one is dealing with monies which are not one's own, but which are intended for specific purposes, the least one is expected to do would be, in my judgment, to let the persons who made these monies available aware of how they were spent. There are no authentic documents to support any of the expenditure purportedly undertaken by 1<sup>st</sup> and 2<sup>nd</sup> accused, other than the payment of salaries to themselves, and to PW8, Mr Suarray. Even exhibits 4 and 5 which bear Mr Rogers' signature is said by him not to be authentic in that though he signed it, he did not receive any monies. Further, the issuing of cash cheques, and the encashing of the some of them by 1<sup>st</sup> and 2<sup>nd</sup> accused does not make for proper accountability. As I have tried to show above, the explanations given by 1<sup>st</sup> accused in exhibit 2 as to what the monies encashed through those cheques was used for, were in some cases untrue. In my view, and in my judgment, the only reason why proper and adequate records of expenditure were not kept was to use the monies donated for purposes other than those for which they were meant.

67. I have taken note of the defence argument relating to duplicity. Counts 13 and 14 are indeed duplicitous. ~~It~~ <sup>It</sup> charges more than one offence in one Count. Notwithstanding the use of the phrase 'on a date unknown between' it is clear that ~~it~~ <sup>it</sup> charges both 1<sup>st</sup> and 2<sup>nd</sup> accused with offences alleged to have been committed between May and November, 2010. Without even referring to the earlier individual Counts dealing with the non-payment of salaries to Victor Tutu, it is clear that these Counts refer to several transactions. They are therefore bad for Duplicity. That being the case, the accused persons could only be discharged, as duplicity

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deprives the Court of jurisdiction. 1<sup>st</sup> and 2<sup>nd</sup> accused are therefore discharged on Counts 13 and 14.

68. I have also noted the fact that the charges for Abuse of Office whether contrary to Section 42(1) or 43 of the Act, are actually alternatives to the Counts charging Misappropriation of monies. They are different offences, but the complaint in all of them is essentially the same: the accused misappropriated a certain sum of money; he abused his office by misappropriating the same sums of money. This view of the facts and of the Law will be reflected in the sentences I shall impose.

69. Also, as I have noted above, it is not clear whether 1<sup>st</sup> and 2<sup>nd</sup> accused received monies for payment of salary to Victor Tutu for the months of ~~November~~ <sup>October</sup> and December, 2010. In this respect, I shall have no alternative but to give both accused the benefit of the doubt.

70. Before concluding, I must here reiterate that though I am sitting as both the Tribunal of Law and of fact, I must bear in mind, and keep in view at all times, the cardinal principle of Law, that the prosecution must prove the case against each accused person beyond all reasonable doubt. The prosecution must prove beyond all reasonable doubt each element of the offence with which each accused is charged. Even in instances where the burden of proving or disproving any fact or any particular piece of evidence rests on the accused, I must bear in mind that he only bears the evidentiary burden, and not the legal burden; that the legal burden never shifts, save in cases where the accused person relies on the defence of insanity. I also cite, and rely on the statement of law laid down by me in most recently in the case of THE STATE v FOFANAH & MANS judgment delivered 18 January, 2011. *This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused persons, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused persons of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused persons have not only committed the unlawful acts charged in the Indictment, but that each of them did so with the*

requisite *Mens Rea*: i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by SIR SAMUEL BANKOLE JONES, P in the Court of Appeal in *KOROMA v R* [1964-66] ALR SL 542 at 548 LL4-5. What is required is that it is made clear by or to the tribunal of fact, as the case may be, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed: see also *GARBER v R* [1964-66] ALR SL 233 at 239 L27 - 240 L14 per AMES, P; *SAHR M'BAMBAY v THE STATE* Cr. App 31/74 CA unreported - the cyclostyled Judgement of LIVESEY LUKE, JSC at pages 11-13. At page 12 LUKE, JSC citing *WOOLMINGTON v R* says, inter alia, that "if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal." *KARGBO v R* [1968-69] ALR SL 354 C.A. per TAMBIAH, JA at 358 LL3-5: "The onus is never on the accused to establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insanity." There, the accused pleaded self-defence. See further: *BOB-JONES v R* [1967-68] ALR SL 267 per SIR SAMUEL BANKOLE JONES, P at 272 LL21-39; *SEISAY and SIAFA v R* [1967-68] ALR SL 323 at 328 LL20-23 and at 329 LL12-18; and *SAMUEL BENSON THORPE v COMMISSIONER OF POLICE* [1960] 1 SLLR 19 at 20-21 per BANKOLE JONES, J as he then was. The point was again hammered home by AWOONOR-RENNER, JSC in *FRANKLIN KENNY v THE STATE* Supreme Court Cr App 2/82 (unreported) at pages 6-7 of her cyclostyled judgment.

I must also bear in mind, and keep in view at all times the fact that though both Accused persons are tried jointly, the case against each of them has to be treated separately. At no time must I treat evidence which is only applicable to, or which inculpates only one Accused person, against the other Accused person. Each Accused person is entitled to an

acquittal, if there is no evidence, direct or circumstantial, establishing his guilt, independent of the evidence against his co-Accused.

71. I <sup>have</sup> carefully gone through the whole case, particularly the statements made by each accused person. Where there has been no evidence, or evidence which does not satisfy the burden of proof required before conviction, I have given the benefit of the doubt to the accused. But in cases where I believe on the evidence the prosecution has proved its case beyond all reasonable doubt, I have returned verdicts of guilty. mlh

72. In the result, I return the following verdicts:

Count	accused	verdict
1	1 <sup>st</sup> and 2nd	Guilty
2	1 <sup>st</sup> and 2nd	Guilty
3	3 <sup>rd</sup>	Guilty
4	3rd	Guilty
5	3rd	Guilty
6	1 <sup>st</sup> and 2nd	Guilty
7	1 <sup>st</sup> and 2nd	Guilty
8	1 <sup>st</sup> and 2nd	Guilty
9	1 <sup>st</sup> and 2nd	Guilty
10	1st and 2nd	Guilty
11	1 <sup>st</sup> and 2nd	Guilty <del>NOT Guilty</del> <span style="float: right;">mlh</span>
12	1 <sup>st</sup> and 2nd	Not Guilty
13	1 <sup>st</sup> and 2nd	Discharged
14	1 <sup>st</sup> and 2nd	Discharged
15	1 <sup>st</sup>	Not Guilty
16	1 <sup>st</sup>	Not Guilty
17	1st	Not Guilty

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, Justice of Appeal.

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Jan May 2011

Before the 1st of Jan 2011  
Justice M.C. Browne-Monice In

care called.

and parents present.

Michael Smith 1st end for the 1st end

J.R. Jenkins 1st end for the 1st end

N. Palmer 2nd end.

S. G. 3rd end.

J. Palmer  
M. J. A.

### Allocating -

1st end - Monthly my lord, I entered in good faith. We acted without suspicion. Myself -

2nd end - unity is the UK. When I had the no simple chair in the office. I tried to

do my best. Did not misappropriate any money. Money paid to salaries.

Tate never member of the Team Never

held no representation relating to Browne  
representation. It believed it was the right thing to do. Never misused the money.

he used dishonestly money paid.

Rules to continue payment. Got the money for National Pride Week. 2009. Got new game.

money for this..

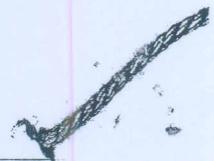
I read this article. I am still committed to President's vision.

I still believe that he was a member of the APC. I had no knowledge of the document headed to which it was given.

I sometimes used to give him money.

Never knew N-Browne Representation

(48)



2nd end.

Today is a very difficult day for me & family  
Newly misappropriated a leave.

ABC set up in a hypothetical scenario.

Not a 1/2 hr cut but for my writing  
Paper investigation not done.

We were going to research the needs of people  
Please for me.

I have not misappropriated funds. We  
submitted funds.

We went out with some funds.

Have me.

I write the letter including Tatra

3rd end.

Ask for me.

Cancelled my printer to get it in hand.  
explains his transaction with PW2.

explains why he kept the money in hand.  
Factor of 4 - 3 areas.

Spending abroad. Wife abroad. I have not  
done as much.

Plus in mitigation  
Funding - I wish to see the bill.  
Tupper practice bill me.

Ngahni as per 2nd end.  
please for me.

Sargent as per 3rd end.  
Meds for me.

I have looked carefully at the Allegations of each accused person. Each of them has exhibited a lot of self-righteousness. Each of them has claimed that they did their best for this country. My judgment is that in doing their best for this country, they must account to this country for what they receive on behalf of its people. Their office was not a private office. In their correspondence they used the coat of arms of the Republic. Using the country's coat of arms means a lot and comes with it a heavy responsibility. I shall however temper justice with mercy. The real complaint in the case is the lack of accountability. The cheques exhibited are 20 papers 1-89 which could have perhaps helped to explain what the 1st and 2nd and the dump with the funds given to them, were invariably cash cheques, and were created by their very selves or by Richard Barrow. This is unsatisfactory in any person who holds himself out as wanting to change the attitude and behavior of the citizens for the better.

The Anti-Compton Act 2008 imposes minimum sentences. It is not something I am happy about. Apart from cases of murder, the courts must be given a discretion as to sentences to be imposed in a particular case. A guilty verdict in respect of offences under Sections 37, 42 and 43 comes with it a minimum sentence of 30 months or each case. To impose a minimum

will be manifestly unfair in all the  
circumstances of the case.

The conviction is in itself more than adequate  
punishment. With these facts in view.  
I shall impose the following sentences

Count 1

1st and - Fine of £30 million or 3 years  
imprisonment.

2nd and - Fine of £30 million or 3 years  
imprisonment.

In view of the sentence in Count 1,  
~~1st and~~

In Count 2

1st and - Continued and Discharged.

2nd and - Continued and Discharged

Count 3

3rd - Fine of £30 million or 3 years  
imprisonment.

Counts 4 & 5

In view of the sentence in Count 3,

3rd and is Continued and discharged  
in Counts 4 & 5.

Count 6.

1st and - £30 million or 3 years imprisonment

2nd and - £30 million or 3 years imprisonment

In view of the sentence in Count 6

In Counts 7, 8, 9, & 10

1st and 2nd and are continued and discharged

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(43)

Court 11 -

1st and NA Quills

2d and NA Quills.

Courts 13 & 14

1st and - ~~NA Quills~~ Discharged.

2d A - Discharged.

Courts 15, 16, & 17

1st and - Admitted & Discharged.

Wille JA

19/05/11.

Find as a matter of course. sentences of imprisonment  
to be commuted.

Wille JA

19/05/11..

ms further applies for return of Chems.

and - the order that each of the 20 (1-89).

16(1+2) 17(1+2) 18(1+2) 19(1-16)

21(1-3) 22(1+2) 23(1-4) 24(1-11)

32(1-5) 33(1P-2) 34(1-13) 35(1-6)

36(1-6) and 37(1+2) to be returned

to ms. Gander and <sup>the</sup> seeds in photographs  
of all of them.

Wille JA.

19/05/11.

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