IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE

VS

MOHAMED OSMAN SESAY (ALIAS ASSASIN)
AND
DENNIS JONES

BEFORE THE HONOURABLE JUSTICE M. M. SAMBA
DATED THIS 31st DAY OF JULY 2016

JUDGMENT

1. This trial involves the accused, Mohamed Osman Sesay who is represented by Counsel, E.S Abdulai Esq who made a submission of no case at the close of the Prosecution's case, for and on behalf of the said accused who stands charged on an 8 Counts indictment dated 16th day of September 2015 for the offences as follows:

Count 1: Conspiracy to commit a corruption offence contrary to Section 128(1) of the Anti-Corruption Act No. 12 of 2008.

Count 2: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 3: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 4: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 5: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 6: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 7: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

Count 8: Deceiving a Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008.

The particulars of all 8 Counts are stated in the indictment hereinbefore referred.

2. Section 128(1) of the Anti-Corruption Act No. 12 of 2008 provides that:

Any ... conspiracy to commit a corruption offence .... shall be punishable as if the offence had been completed and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

In my humble opinion and as would be deliberated upon in line with the evidence before this court, the required ingredients for *prima facie* proof of the offence of conspiracy are:

a. an agreement between two or more persons
b. to commit a corruption offence.

I must add that the corruption offence referred to under the said section is as covered under the Anti-Corruption Act No. 12 of 2008.

2.1 Section 140(3) of the Anti-Corruption Act No. 12 of 2008 provides that:

An agent who, to the detriment of his principal, uses, or gives to his principal, a document that he knows contains anything that is false or misleading in any material respect commits an offence.

Again, in my humble opinion and as would be deliberated upon in line with the evidence before this court, the required ingredients for *prima facie* proof of a section 40(3) offence are:

a. An agent/principal relationship.
b. The agent must have used or given a false or misleading document to his principal
c. The agent must know that the said document so given or used is false or misleading in a material respect.
d. The principal must have acted on the said document so used or given him to his detriment.

2.1.1 This ruling to Counsel's no case submission and reply thereto is addressed as captioned under various heads by Counsel for the accused, E.S Abdulai Esq's as follows:

3. Lack of subject matter jurisdiction

Counsel for the accused, E.S Abdulai Esq argues in his submission that the Anti-Corruption Commission lacks the jurisdiction to charge the accused under Section 40(3) of the Anti-Corruption Act No. 12 of 2008 because according to Counsel, the Commission was created with an objective to address corruption, generally involving public officials and not transactions involving two private individuals.

3.1. I refer to para 11 of Counsel's no case submission where he points out that 'the Anti-Corruption Commission can only charge cases that fall within the

powers conferred on it by the Anti-Corruption Act of 2008'. Counsel referred the court to the definition of 'corruption' under the interpretation section of the Act but concludes that the matter before this court has nothing to do with a public officer in so far as the parties referred to therein are private individuals and this the Commission therefore lacks the power to charge the accused, him being a private individual with a corruption offence. I have already referred to the provisions of Section 7 of the Act and adopt the arguments hereinbefore. The court states further that the definition of corruption includes acts of dishonesty under 'any enactment'. See Section 7(2) para r.

3.1.1. In reply to Counsel's averment on lack of jurisdiction in a no case submission on behalf of the accused, the Prosecutor Jeelo Kainwo referred the court to the Anti-Corruption Act No. 12 of 2008 which she argues is 'replete' with offences that are applicable to private individuals and that where the Act refers to an offence which could be committed by a private individual, the Act refers specifically to such private individual as 'any person'.

3.1.2. The Prosecutor referred the court to Section 39(5) of the Anti-Corruption Act No. 12 of 2008 and stated that under the said section as well as section 40(3) (under which the accused was charged), the words:

a. "agent" means a person who in any capacity and whether in public or private sector, employed by or acts on behalf of another person;
b. "principal" means a person, whether in the public or private sector who employs an agent or for whom or on whose behalf an agent acts.

3.1.3. The court refers to Section 7 of the Anti-Corruption Act No. 12 of 2008 which sets out the objects for which the Anti-Corruption Commission was created. Parliament did not shy away from setting out the objects for which the Commission was created. In the whole of that section, Parliament did not for once suggest that the Anti-Corruption Commission should only combat corruption in public service. I must state that the definition of corruption includes acts of dishonesty under any enactment. See Sect 7.2 (r). some statutes like the Anti Money Laundering Act and the Procurement Act 2004 do give powers to prosecute for offences under the said Acts.

3.1.4. Section 40(3) of the Act appears to me to be very much unambiguous as to an agent and a principal not necessarily being a public official. The Anti-Corruption Act is quite specific in its reference to people liable under its provisions. It is clear from the Act, read as a whole, that where the intention is to refer to public officers in certain sections, it says so specifically. See Sections 38(1), 42(1), 43, to name a few which requires the Prosecution to prove that the accused is a public officer. When the Act refers to persons who may not necessarily be public officers or have any dealings with public officers, the Act also makes specific references to such persons as in Sections 40, 41(1) and 128(1) of the Act to name a few. When the Act requires proof of corruption offences by non-public official directed at monies meant for the public good, it is also clear in that respect. See Section 36(1) and (2) of the Act.

3.1.5. The court agrees with Counsel for the accused that the parties involved in the matter herein to wit, the accused as an Agent and PW 7, the Principal are not public officials. The court also agrees that the company, Network Proximity Ltd is not a public body within the definition section of the Anti-Corruption Act No. 12 of 2008. It is also agreed that no public funds or public revenue as defined by the interpretation section of the Anti-Corruption Act No. 12 of 2008 was involved in the matter herein. Of importance however is the fact that the Anti-Corruption Act No. 12 of 2008 is a specific Act designed to curb corruption. It therefore provides for offences to be charged under its ambit, inclusive of Section 40(3) of the Act for which an agent, as described in Section 39(5) of the Act can be prosecuted by the Commission where he commits an offence as in Section 40(3) of the said Act.

3.1.6. It is therefore the considered opinion of this court that the Anti-Corruption Commission has powers to charge the accused under Section 40(3) of its Act of 2008.

4. The law

4.1. The leading authority on a submission of no case on behalf of an accused is that enunciated in the case of *R v Galbraith (1981) 1 WLR 1039 and 73 Cr. App. R. 124, CA* where the earlier authorities on a no case submission were reviewed and guidance given as to the proper approach. Lord Lane, CJ, in that case at page 127 stated as follows:

How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness of vagueness or because it is inconsistent with other evidence. (a) Where the Judge comes to a conclusion that the prosecution evidence, taken at its highest is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant s guilty, then the judge should allow the matter to be tried by the jury.

4.1.1. There is no problem in the first limb of the test laid by Galbraith. Where there is no evidence to prove an element of an alleged offence against a defendant after the prosecution's case, a submission of a 'no case to answer' must be upheld. The second limb of Galbraith's test involves the Court considering the quality and reliability of the evidence adduced rather than its legal sufficiency. It therefore involves the Court carrying out the assessment of evidence and witnesses that would otherwise be the exclusive prerogative of the jury. Lord Lane CJ observed then that borderline cases could be left to the discretion of the Judge.

4.1.2. In *R V Pryer, Sparkes and Walker, unreported, 7th April 2004, CA (2004) EWCA Crim. 1163*, Turner J. held that the requirement to take the prosecution evidence at its highest did not mean 'picking out all the plums and leaving the duff behind'. The Judge should assess the evidence and if the evidence of the witness upon whom the prosecution case depended was self-contradictory and out of reason and all common sense then such evidence was tenuous and suffered from inherent weakness. In *Galbraith*, His Lordship Lane CJ said it was necessary to assess the evidence as a whole; that it was not simply a matter of the credibility of individual witnesses or of evidential inconsistencies between witnesses although those matters will play a subordinate role. In *Brooks v DPP (1994) 1A.C. 568 at page 581*, it was said that questions of credibility, except on the clearest of cases, do not normally result in a finding that there is no *prima facie* case. The proper test to apply on a no case submission remains that enunciated in Galbraith and which is as follows:

1. If there is no evidence to prove an essential element of the offence, a submission must obviously succeed.
2. If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury.
3. If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from it being of a type which the accumulated experience of the Court has shown to be of doubtful value.
4. The question of whether a witness is lying is nearly always one for the jury but there may be exceptional cases such as in *Shippey (1988) Crim LR 767*, where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that the witness is untruthful and that it will not be proper for the case to proceed on that evidence alone.

5. Element of Deception

5.1. Counsel for the accused argues that the Prosecution has not shown any element of deception in its case as required for an offence as that under Section 40(3) of the Anti-Corruption Act No. 12 of 2008. He claims the accused acted in good faith while serving the company and made only payments authorized by the company's Directors. He relied on the case of *R Vs. Ghosh* (1982) 75 CR App. R. 54.

5.1.1. The Court of Appeal in the *Ghosh* case established a dishonesty test that applies both to theft and to other offences of dishonesty. According to Ghosh, a two part test must be applied. A jury must first be directed to decide:

... whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails.

5.1.2. If (but only if) the accused conduct was dishonest by those standards, the jury must consider the second question, which is:

... whether the Defendant himself must have realized that what he was doing was (by the standards of reasonable and honest people) dishonest.

5.1.3. The first part of the *Ghosh* test deals with the *actus reus* of the accused while the second limb deals with the *mens rea* of the accused. The Court of Appeal in the *Ghosh* case gave further explanation of the second question when it said:

In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the Defendant himself knew that he was acting dishonestly. It is dishonest for a Defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did.

5.1.4. So far, the Prosecution has provided this court with prima facie evidence that the accused was deceptive in his actions with his Principal. I need not go into all of the evidence led and exhibits tendered but my understanding of the Prosecution's case is that based on the evidence led including documents given to the Principal, which, according to the Prosecution, the accused knew were wrong or misleading, the Principal PW 7 believing the said documents to be true, acted on same to his own detriment. It is for the court, after having heard the accused case to determine whether the accused was honest or dishonest in his dealings with his Principal. The element of deception was generally not shaken by cross-examination and it is for the accused to dispel it by opening his case.

6. In respect of specific counts on the indictment, the arguments are as follows:

6.1. Count 1, Abdulai Esq states that the Prosecution did not adduce any evidence of an agreement of minds to do an unlawful act by an unlawful means nor did the Prosecution adduce any evidence, beyond reasonable doubt, that the accused connived with anyone at the bank or PW2 or with any one unknown to carry out any unlawful conduct.

6.1.1. I draw Counsel's attention to the wording of the particulars of offence in Count 1 to wit: Mohamed Osman Sesay (Alias Assasin) ... and Dennis Jones ... conspired together with other persons unknown to deceive Dominic Anselm Joseph Beary ....

6.1.2. I cannot agree more with Defence Counsel Abdulai Esq, that an agreement to commit a crime does constitute the crime. The agreement is the essence of conspiracy. See Blackstone's Criminal Practice, 2012 Edn, page 94 para. A5.37. When two or more persons agree to carry their criminal scheme into effect, the very plot is the criminal act itself. See *Mulchahy Vs. R* (1868) L.R 3 H.L 306 at 317. It is however important to note that with the offence of conspiracy, the agreement may be proved in the usual way or by proving circumstances from which the jury may presume it. See *R Vs Parsons* (1763) 1 W.BI. 392; *R Vs Murphy*

(1837) 8 C. & P. 297. Proof of the existence of a conspiracy is generally a 'matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. See R Vs. Brisac (1803) 4 East 164 at 171, cited with approval in *Mulcahy Vs. R* (1868) L.R 3 H.L 306 at 317 as referred in Archbold Criminal Pleading, Evidence and Practice, 2011 Edn. Page 2876 para. 33-14 under the rubric "Proving the agreement".

6.1.3. In answer to Defence Counsel's submission on Count 1 above, Jeelo Kainwo, learned Counsel for the Prosecution argued that conspiracy occurs when two or more persons agree to do an unlawful act by an unlawful means. She went on to state the actions of the accused together with one Dennis Jones in respect of publication of a newspaper article in the Champion Newspaper which said publication according to the Prosecution Witness 7 was sent him as an attachment to an email, which he believed leading him to part with $100,000/00 purportedly as fees for an international gateway licence.

6.1.4. The Prosecution in its reply to a no case submission and indeed throughout its case brought out a series of event alleging the accused conspired with Dennis Jones hereinbefore referred and with other unknown persons to commit a corruption offence. I hold that the evidence led so far by the Prosecution establishes sufficient ingredient of the offence of conspiracy which I hold, is not of a tenous character nor is it weak of vague. It is for the accused to explain his side and debunk the Prosecution's allegation.

7. In Count 2 under which the accused was charged with an offence of deceiving his principal, Abdulai Esq submits that there is no direct link in a purported receipt of payment, Exhibit J, allegedly signed by the Director General of NATCOM, to the accused, nor does the document show any intention on the part of the accused to deceive his principal; he argued that the origin of Exhibit J has not been proven by the Prosecution.

7.1. Kainwo, Counsel for the Prosecution argued in reply on there being a principal and agent relationship between the accused and PW 7 which to my mind is not the point at issue or rather is not an argument raised by Abdulai in this particular instance. I refer to the particulars of the offence in Count 2 and note that it is alleged thereunder that the accused deceived his principal PW 7, by giving PW 7 a receipt for payment of $108,000 purportedly signed by one Mohamed Bangura, knowing the same to be false to the detriment of PW 7.

7.1.1. I refer to para 33 of the Prosecution's reply to Abdulai's no case submission and note that as the particulars of the offence under that Count points out, the accused must have given the said Exhibit J to his principal, knowing same to be false as charged.

7.1.2. In his testimony under cross-examination, PW 7, the supposed principal told the court that contrary to what he had said in chief, he received Exhibit J from Mr. Mason, i.e PW 2 and not the accused.

7.1.3. It is said in testimony by PW 2, the majority shareholder of the company, Network Proximity International, Sierra Leone Ltd, that Exhibit J was shown to him by the accused. PW 7 told the court that Exhibit J was sent him via email by the accused. PW 6 who was the Director General on the date in Exhibit J, in testimony in chief and during cross-examination told the court that he did not sign Exhibit J. It is for the accused to explain his version of event to the court by him coming to his defence. At this stage, I hold that in respect of count 2, a sufficient link between the accused and Exhibit J has been established.

8. In Count 3, the accused was charged with the offence of deceiving his Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008 by the accused giving his Principal a letter dated 11 day of July 2014 purportedly signed by Bakarr Tarawally, the Director of Communications of the Ministry of Information and Communications. The court notes that Counsel for the accused did not submit a no case in respect of Count 3.

8.1. The court however refers to the testimony of PW 4, Bakarr Tarawally, on 15th day of December 2015 who identified the accused as his church mate. He referred to Exhibit K 1 & 2 dated 11th July 2014 at which said period he was Director of Communications at the Ministry of Information and Communications. PW 4 denies making Exhibit K 1 & 2 or instructing any one to make same. He denies the signature thereunder as his. I hold that the Prosecution led enough evidence to establish ingredients sufficient enough of the offence as charged and that it is now left with the accused to give evidence in contradiction to what the Prosecution has alleged in Count 3.

9. In Counts 4, 7 and 8 the accused was charged with the offence of deceiving his Principal contrary to Section 40(3) of the Anti-Corruption Act No. 12 of 2008 by the accused giving his Principal, PW 7, letters titled 'Letter of invitation' as in Exhibit L1-2, 'process for your invitation for an international gateway' as in Exhibit **P1-2** dated 3rd day of July 2015 and 'public notice to all operational and none-operational companies' as in **Exhibit Q** dated 2nd day of March 2015.

9.1. Counsel for the accused E.S Abdulai Esq submits that because the supposed maker of the said Exhibits, the then Minister of Information and Communications, Alhaji Alpha Khan did not testify as to the authenticity of the said Exhibits, the falsity alleged thereunder by the Prosecution cannot be ascertained.

9.1.1. Counsel for the Prosecution in her reply to Abdulai's no case submission on this point, agrees that the best person to have commented on the authenticity of Exhibits L1-2, P1-2 and Q is the maker of those documents, that is Alhaji Alpha Khan, the then Minister of Information and Communications. In the absence of the said Khan, Counsel has asked this court to refer to the contents of the said Exhibits and the circumstances thereto and make a determination in its favour in respect of Counsel's no case submission on the various Counts.

9.1.2. I refer to the particulars of the offences as charged in Counts 4, 7 and 8 which is to say that the Exhibits hereinbefore referred to, which allegedly are

false, were purportedly signed by Alhaji Alpha Khan, the then Minister of Information and Communications and whether or not same was given to the PW 7 who acted on same to his detriment. The alleged deceit to my mind in the offences as charged is that the said Exhibits which the accused 'gave' and 'portrayed' to his principal to have been signed by the said Khan was in fact not signed by Khan; that is basically the case of the Prosecution.

9.1.3. The court notes the testimony of PW 2 who informed the court that Exhibits L1-2, P1-2 and Q were sent to him via courier by the accused. He explained the circumstances and instructions received from the accused to which according to him, he complied by forwarding the said documents to PW 7. There is also evidence to the effect that during the period covered by the indictment, there was a monopoly as to international gateway licences. Be that as it may, it is my opinion that this does not prove whether or not the said Alhaji Alpha Khan signed and gave Exhibits L1-2, P1-2 and Q to the accused. It was for Khan to say to the court that he did not sign the documents hereinbefore referred and that he did not give same to the accused.

9.1.4. As to determining the falsity or otherwise of the said documents, it is my considered view that it was necessary for the then Minister of Information and Communications, Alhaji Alpha Khan to have performed his civic duty to the State by availing himself to the court and testify to the authenticity or otherwise of Exhibits L1-2, P1-2 and Q as referred in Counts 4, 7 and 8. Suffice it to say that the authenticity or otherwise of the said documents is very *garmain* to proof of the element of deceit as charged under the said counts. I hold therefore that the Prosecution has not proven sufficient elements of the offences as charged in any of those counts.

10. In Count 5, the accused was charged with deceiving his principal contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 by him giving his principal a letter as in Exhibit M dated 19th day of June 2015 purportedly signed by Momoh Konteh, knowing the same to be false.

10.1. I note that Counsel for the accused did not submit a no case in respect of Count 5. I also note Counsel's arguments in respect of lack of jurisdiction, contradictions in the testimonies of witnesses and vagueness of the Prosecution's case as he puts it, which Counsel may have considered. The court already has its views in respect of Counsel's submissions. For the records though, I refer to the testimony of PW 8 on the 16th day of March 2016 where he denied signing Exhibit M. It is now left with the accused to prove otherwise in his defence and I so hold.

10.1.1. In Count 6, the accused was charged with deceiving his principal contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 by him giving his principal a letter as in Exhibit N 1-4 signed by the then Deputy Minister of Information and Communications, Mr. Theo Nicol, knowing the same to be false.

10.1.2. Counsel on behalf of the accused submits in his no case address that the Prosecution failed to link the accused with Exhibit N1-4; that rather, the

false, were purportedly signed by Alhaji Alpha Khan, the then Minister of Information and Communications and whether or not same was given to the PW 7 who acted on same to his detriment. The alleged deceit to my mind in the offences as charged is that the said Exhibits which the accused 'gave' and 'portrayed' to his principal to have been signed by the said Khan was in fact not signed by Khan; that is basically the case of the Prosecution.

9.1.3. The court notes the testimony of PW 2 who informed the court that Exhibits L1-2, P1-2 and Q were sent to him via courier by the accused. He explained the circumstances and instructions received from the accused to which according to him, he complied by forwarding the said documents to PW 7. There is also evidence to the effect that during the period covered by the indictment, there was a monopoly as to international gateway licences. Be that as it may, it is my opinion that this does not prove whether or not the said Alhaji Alpha Khan signed and gave Exhibits L1-2, P1-2 and Q to the accused. It was for Khan to say to the court that he did not sign the documents hereinbefore referred and that he did not give same to the accused.

9.1.4. As to determining the falsity or otherwise of the said documents, it is my considered view that it was necessary for the then Minister of Information and Communications, Alhaji Alpha Khan to have performed his civic duty to the State by availing himself to the court and testify to the authenticity or otherwise of Exhibits L1-2, P1-2 and Q as referred in Counts 4, 7 and 8. Suffice it to say that the authenticity or otherwise of the said documents is very *garmain* to proof of the element of deceit as charged under the said counts. I hold therefore that the Prosecution has not proven sufficient elements of the offences as charged in any of those counts.

10. In Count 5, the accused was charged with deceiving his principal contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 by him giving his principal a letter as in Exhibit M dated 19th day of June 2015 purportedly signed by Momoh Konteh, knowing the same to be false.

10.1. I note that Counsel for the accused did not submit a no case in respect of Count 5. I also note Counsel's arguments in respect of lack of jurisdiction, contradictions in the testimonies of witnesses and vagueness of the Prosecution's case as he puts it, which Counsel may have considered. The court already has its views in respect of Counsel's submissions. For the records though, I refer to the testimony of PW 8 on the 16th day of March 2016 where he denied signing Exhibit M. It is now left with the accused to prove otherwise in his defence and I so hold.

10.1.1. In Count 6, the accused was charged with deceiving his principal contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 by him giving his principal a letter as in Exhibit N 1-4 signed by the then Deputy Minister of Information and Communications, Mr. Theo Nicol, knowing the same to be false.

10.1.2. Counsel on behalf of the accused submits in his no case address that the Prosecution failed to link the accused with Exhibit N1-4; that rather, the

Principal herein, PW 7 barely referred to Exhibit N1-4 as being part of Exhibit EEE 1 and that no explanation was given as to how he, PW 7 got Exhibit N 1-4. Abdulai argues that the *actuc reus* of the offence of deception was not proven by the Prosecution and that it was not proven that it was the accused who sent the attached document as in Exhibit N 1-4 to PW 7.

10.1.3. In reply, Jeelo Kainwo, Counsel for the State argues that the then Deputy Minister of Information and Communications Mr. Theo Nicol having denied making the said Exhibit as in Exhibit N 1-4, the prosecution has met the elements of the offence of deception.

10.1.4. I refer to the testimony of PW 7 on 3rd day of February 2016 when he told the court that he received an email from the accused as in Exhibit EEE1 to which was attached N 1-4. I do not see how else Counsel for the accused would expect an explanation as to how PW 7 received Exhibit N 1-4. I hold that the Prosecution has established the ingredients of the offence as charged in Count 6 and that it is for the accused to come to his defence and disprove what the Prosecution has alleged in respect of Count 6.

11. The Prosecution's case being weak and contradictory

11.1. I have held above, that the Prosecution's case is not of a tenous character, nor is it weak or vague and that the contradictions are not in any material particular. The key test of importance is whether or not the Prosecution has led evidence sufficient to disclose all the elements of the offence charged; that is, sufficient evidence to found a conviction if the same is not controverted. If the evidence led by the Prosecution is said to be contradictory, then same must be contradictory to a material particular. If the contradiction is not to a material particular, then I fail to see any issue as to its effect on the Prosecution's case. I fail to see for example, how a contradiction as to a charge for a total sum of $800,000 when according to the Principal the amount in contention is $ 600,000 has anything to do with an allegation of deceiving a Principal as charged under Section 40(3) of the Anti-Corruption Act No. 12 of 2008; what has PW 2's averment that he did not know that PW 7 was traveling to Sierra Leone before he spoke to him when he had arrived in Sierra Leone and PW 7's averment that he did inform PW 2 the day before he left for Sierra Leone have to do with the offences as charged in the indictment?

11.1.1. The test and question remains, are the inconsistencies referred to material? Do they undermine the *actus reus* that the accused conspired together with other persons (unknown) to commit a corruption offence? Do they undermine the *actus reus* that the accused deceived his Principal?

11.1.2. The elements of the offence as charged under Section 40(3) of the Anti-Corruption Act No. 12 of 2008 are establishment of a Principal and Agent relationship; establishment that a document or documents given by the Agent to his Principal; establishment that the said Agent knew that the document(s) given by himself to his Principal was/were false; or misleading in any material respect;

establishment that the Principal acted to his detriment on the false or misleading document(s) so received from his Agent.

11.1.3. I hold that the inconsistencies, referred to by Counsel for the accused are nothing material that would undermine the case of the Prosecution in respect of the offences as charged.

11.1.4. I have dealt with Exhibit J above in so far as it relates to Count 2 and will leave it at that. As to reliability of the Prosecution Witnesses, it is for this court to attach weight, if at all on testimonies before this court by the said witnesses and I hold that it is premature to so do at this stage based on the evidence before the court.

12. Conclusion

12.1. Making a no case submission by Counsel for the accused is an important right. The success or failure of a no case submission on behalf of an accused turns mainly on the State's evidence against an accused as adduced by the Prosecution. See Lawton LJ in *R Vs. Mansfield* (1978) 1 AER 134 at p 141. It is therefore the duty of the prosecution, at the close of its case to ensure:

1. That all the ingredients to prove the guilt of the accused have been placed before the court.
2. That the said ingredients and evidence in proof of them were not discredited in cross-examination.
3. That the evidence in proof of the said ingredients were not contradictory or manifestly unreliable.

12.1.1. A submission of no case to answer may properly be made and upheld when there has been no evidence to prove an essential element, that is, an element without which the offence cannot be sustained in law. It is an inevitable, indispensable and important element of an offence. See. Lord Parker's, C.J's Practice note reported in (1962) 1 AER 448.

12.1.2. I am mindful of the fact that I am obliged at this stage to stop the case where the necessary minimum evidence to establish the facts of the offence as charged has not been called by the Prosecution. It is not for the court to weigh the evidence, decide who is telling the truth and to stop the case merely because the court thinks that a witness told a lie. That is a function to be left to the end of the entire trial when the evidence is evaluated. See Lord Widgery C.J in *R Vs Barker* (1975) of 7/11/75 (Unreported).

12.1.3. The Judge will stop the case and not require an accused to make a defence, where the Judge reaches the conclusion that the Prosecution evidence, taken at its highest is such that a jury properly directed could not properly convict upon it. See Lord Lane C.J in *R Vs Galbraith* (1981) 2 AER 1060.

12.1.4. After a careful consideration of the evidence led by the Prosecution in proof of the charges against the accused, I am of the opinion that the evidence is

such as to warrant some answer from the accused in his defence in respect of Counts 1, 2, 3, 5 and 6. The submission on a no case in respect of Counts 1, 2, 3, 5 and 6 therefore fails and is overruled accordingly. The submission of no case in respect of Counts 4,7 and 8 succeeds and the accused is discharged on those said counts accordingly.

12.1.5. Learned Counsel for the accused is hereby directed as to his election in the defence of the accused.

.....J.

HON. JST. MIATTA MA SAMBA
DELIVERED ON: 8th July 2016