IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE
VS
EMMANUEL EKUNDAYO CONSTANT SHEARS-MOSES

BEFORE THE HONORABLE JUSTICE MIATTA MARIA SAMBA, J
DATED THE 27TH DAY OF JANUARY 2019

Counsel:
C.F. Margai Esq, E.S. Abdullah Esq, O. Lisk and C.F. Vandy Esq for the Accused
M. Sowe Esq for the State

Judgment
On file is a two counts indictment against the Accused dated the 24th day of July 2018 for the following offence:

Count 1

Statement of Offence
Abuse of Office contrary to Section 42(1) of the Anti Corruption Act, No. 12 of 2008

Particulars of Offence
Emmanuel Ekundayo Constant Shears-Moses of 156 Regent Road, SS Camp, Regent, Freetown in the Western Area of the Republic of Sierra Leone, being Acting Head of Department of Law Department in the Faculty of Social Sciences and Law at Fourah Bay College in the University of Sierra Leone on a date unknown between the 1st day of July 2015 and the 31st day of January 2016, at Freetown aforesaid, abused his office of Acting Head of Department of Law Department, to wit: Improperly conferred an advantage on Alimatu Tity George, a student of law with registration numbers 28852, by improperly awarding her passing examination grades for the module 'Dissertation' when in fact and truth Alimatu Tity George did not submit any dissertation for grading.

Count II

Statement of Offence
Abuse of Office contrary to Section 42(1) of the Anti Corruption Act, No. 12 of 2008

Particulars of Offence
Emmanuel Ekundayo Constant Shears-Moses of 156 Regent Road, SS Camp, Regent, Freetown in the Western Area of the Republic of Sierra Leone, being Acting Head of Department of Law Department in the Faculty of Social Sciences and Law at Fourah Bay College in the University of Sierra Leone on a date unknown between the 1st day of July 2015 and the 31st day of January 2016, at Freetown aforesaid, abused his office of Acting Head of Department of Law

Department, to wit: Improperly conferred an advantage on Jamilatu Alicia Sesay, a student of law with registration numbers 28684, by improperly inflating her examination grades for the module 'Jurisprudence and Legal Theory'.

On file is a Fiat dated 24th July 2018 under the hands of the Commissioner of the Anti-Corruption Commission, Francis Ben Kaifala authorizing Counsel stated thereon to prosecute this matter. On an application made pursuant to Section 144(2) of the Criminal Procedure Act, Act No. 32 of 1965 as amended by Section 3 of the Criminal Procedure Amendment Act, 1981, this matter was tried by Judge alone instead of by Judge and Jury.

A Final Address for the Defence signed by lead Counsel, C.F Margai Esq was submitted to this Court on Monday, 10th day of December 2018 for and on behalf of the Accused. The Prosecution submitted a Final Address on behalf of the State on the Friday, 11th day of January 2019.

Counsel for the Defence raised issues of jurisdictional challenges and gave reasons why he believes this Court lacks jurisdiction to try this matter. I have decided to deal with the challenges as they appear in the Final Address filed for and on behalf of the Accused.

To start with, the issue of jurisdiction in any legal proceedings is an important issue because it relates to the bedrock of the legal authority or competence of a Court to entertain an action. In the case of *Daniel Caulker V Komba Kangame*, (18th June 1975) Civ. App No. 2/74 (unreported), a Court was said to be competent when:

a. It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and
b. The subject matter of that case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
c. The case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

A. That jurisdictional point knows of no boundary

Being an important issue in respect of the rule of law and in the eyes of justice, I cannot agree more with Counsel when he referred to the cases of *Chief Kwame Asante V Chief Kwame Tawai* (17th January 1949) and *Lansana & 11 Others V. R* (1970-71) ALR SL 186 at 216 (CA), and to *Socfin V Asuamah*, 30th September, 2002 39 WRN 1-54 pp 61-87 at page 11 of the Final Address for and on behalf of the Accused and submitted that 'a jurisdictional point has no boundary or limitation and can be raised at anytime whether in the Court of first instance or on appeal, as long as it is meritorious. The Court agrees that the jurisdictional question put on behalf of the Accused even at this point is in place. As stated in the *Socfin* case, jurisdiction is a threshold issue in that a Court must have jurisdiction before it can enter a cause or matter at all or before it can make a binding order on it. It is settled law that if a Court lacks jurisdiction to hear or

determine a cause of matter, anything done in such want of jurisdiction is a nullity. It is the Plaintiff's claim before the Court that the Court needs ascertain whether it has jurisdiction to determine this matter at all.

B. The doctrine of Stare Decisis

I refer to Section 122(2) of the 1991 Constitution and state that I cannot agree more with Counsel that as was held in the case of *Onwudinjo V Dimobi & Oths* (2004) 34 WRN 1-164, inferior Courts are bound by decisions of superior Courts as this creates room for certainty but where two superior Courts reach different decisions on the same points of law, the certainty or the law that the inferior Court should be bound by remains misplaced. I refer to the cases of *Aseimo V Abraham* (1994) ENWLR (PT161) 192, *Pascal & Ludwing Inc VAT Kiren* (175) INMLR 74 and *Ebiteh V Obili* (1992) 5 NWLR (PT 243) 599 and state that where a lower Court is faced with two conflicting judgments of a superior Court, the lower Court is free to elect which one to follow and it is not bound to consider which of the conflicting decisions is earlier or later in point of time.

C. That an offence known to the laws of Sierra Leone has not been charged and that the Counts do not reflect the offences as appear in Section 42(1) of the Act No. 12 of 2008.

Section 42(1) of the 2008 Act under which the Accused stands charged provides:

'A public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence'.

Counsel referred to the case of *The State V Adrian Joscelyn Fisher* (unreported) S.C. Crim. App. 2/2009 and in summary argued that Section 42(1) does not create an offence save if recourse is had to the marginal notes on the left of the said section and that it is improper for the prosecution to call in aid marginal notes to cure deficiencies in the wording of sections of the Act charged.

I have read the *Fisher* case; the relevant portion at page 8 of the Final Address reads:

Counsel for the defendant (accused) has also made submissions to the marginal note to section 89(1) of the Anti-Corruption Act, 2008. Our Interpretation Act states that marginal notes do not form part of an Act but shall be deemed to have been inserted for convenience of reference only. The use of marginal notes have had a chequered history and the modern tune in most jurisdiction is that they cannot be an aid to construction. They are mere catch words and cannot be said to make the same sense as the long title or any part of the body of the Act.

The Court notes that Section (2) of our Interpretation Act 1971-Act No. 8 of 1971 allows for insertion of marginal notes for convenience and reference; it allows for giving a meaning to an ambiguous provision of a Statute. I have stated the provision of Section 42(1) of the 2008 Act after which reading, no question ought to be asked but assuming the question, 'which offence'? is asked, it is clear that the Accused, a public officer, using his office to improperly confer an advantage on himself or any other person remains the offence, the elements of which must

be proven during trial. Proof of those elements, if at all, must show a clear sign of an abuse of office as referenced in the marginal notes which the Prosecutor captured in the Particulars of Offence against the Accused. I see the marginal notes inserted in the indictment as a mere reference; the Prosecutor did not use the marginal note to aid the construction of either of the Counts which body clearly read:

Count 1
abused his office ... to wit: improperly conferred an advantage on Alimatu Tity George ....

Count 2
abused his office ... to wit: improperly conferred an advantage on Jamilatu Alice Sesay ....

It therefore is not correct as implied by paragraph 'd' (upper) at page 12 of the Final Address for the Accused that unless recourse is had to the marginal note, the question 'what offence', after a reading of Section 42(1) cannot be answered; the answer is crystal clear in each of the Particulars of Offence. Count 1 as drafted allege the Accused improperly conferred an advantage on Alimatu Tity George for the module 'Dissertation' when in truth and in fact, Alimatu Tity George submitted none for grading; Count 2 as drafted allege that the Accused improperly conferred an advantage on Jamilatu Alicia Sesay by inflating her examination grade for the module 'Jurisprudence'. An indictment must show in clear terms the allegation(s) against an Accused so that he can come to his/her defence properly. I personally see nothing wrong with the Counts as drafted. The Counts as drafted are clear and unambiguous.

D. Has the prosecution fulfilled the necessary procedure in triggering the prosecution of the Accused by filing the indictment herein?

Counsel for the Accused in his Final Address referred to the case of *Philip J. Lukulay V The State* Crim. App. 2011 and submitted the Court of Appeal considered the competence of Joseph Fitzgerald Kamara's signature as Commissioner, Anti-Corruption Commission on the documents filed in light of Section 2(2) of the Anti-Corruption Act No. 12 of 2008 and Rule 42(4) of the Court of Appeal Rules, 1985. I must for clarity state that the documents filed in the *Lukulay* case were a Notice of Appeal and an application for extension of time within which to appeal, both of which were signed by Joseph Fitzgerald Kamara, in his capacity as Commissioner, then, of the Anti-Corruption Commission and not an indictment as that dated 24th July, 2018 referred to by Defence Counsel in the present case. This Court will determine whether or not the Commissioner, Francis Ben Kaifala falls short of what is required of him under the Act.

Section 2(2) of the 2008 Act provides:

The Commission shall be a body corporate having perpetual succession and shall be capable of:

a. acquiring, holding and disposing of movable and immovable property;

b. suing and being sued in its corporate name; and
c. performing all such acts as bodies corporate may by law perform.

The relevant provision, the Court notes is Section 2(2)(b) which empowers the Commission to sue and be sued in its corporate name.

In the case of *The State V Francis A. Gabbidon* the Supreme Court of Sierra Leone held that prosecution of corruption offences under the 2008 Act is no longer under the direction and control of the Attorney-General and Minister of Justice as hereinbefore stated. The Honourable Mr. Justice Emmanuel Ekundayo Roberts, JSC held in the case of *Adrian Fisher V The State* CR. App. 4/2010 on the 28th day of July 2015 that *'there is no doubt that the Commissioner of the Anti-Corruption has authority to sign and prefer an indictment under the current 2008 Act.'* I therefore do not agree with Counsel's submission that the Anti-Corruption Commissioner lacks the capacity to sign the indictment which commenced this action. I rather hold that the Anti-Corruption Commissioner, Mr. Francis Ben Keifala had the capacity and rightly signed the indictment herein which commenced this action.

I have looked at the indictment dated 24th July 2018 against the Accused together with its extracts of findings and other supporting documents and I am satisfied that they were signed by Francis Ben Kaifala, as Commissioner of the Anti-Corruption on behalf of the State as evidenced by the title on the face of the Indictment. There is no reason why I should think that Mr. Kaifala filed the indictment herein against the Accused in his own interest; it does not read that way to me. The Court still holds the view that the prosecutorial powers endowed on the Commissioner by the Constitutional (Amendment) of 2008 empowers the Commissioner to sign indictments as was held in the ***Fisher*** case hereinbefore referred.

The Court refers to paragraphs 'ii' on page 14 of the Final Address filed on behalf of the Accused and to the backing of the indictment and the Extracts of Findings from which it is clear the Commissioner signed as the Commissioner of the Anti-Corruption Commission. Whilst I agree with Counsel that the Commission's seal gives authenticity to documents from the Commission, I do not see why I should read Section 2(3) of the Anti-Corruption Act 2008 to mean an indictment or any document signed by the Commissioner must be sealed. The plain meaning of that section provides for the Commission to have a seal, which can only be authenticated by the signature of the Commissioner or his Deputy or persons as may be so authorized. My understanding therefore is that a document will not be authentic where the seal is used without the Commissioner's or his deputy's or authorized person's signature; a document will still be authentic where there are such signatures even without a seal where the Section does not provide that a seal must be used to authenticate legal documents filed with the Court by the Commission.

E. How lawful is the preferring and signing of the indictment by the Anti-Corruption Commissioner.

I refer to paragraph 'c' above in the *Komba Kangame* case, which relates to fulfillment of a condition precedent. I also take note of Counsel's submissions on pages 14 through 16 of the Final Address filed on behalf of the Accused, including reference to Section 4(1) of the Interpretation Act 1971 Act No. 8 of 1971, Section 2 of the Criminal Procedure Amendment Act No. 11 of 1981, Section 130 of the Criminal Procedure Act, Act No. 32 of 1965, Section 4(a) of the Supreme Court (Criminal Sessions) Rules, Constitutional Instrument No. 74 of 1965, the provisions of which have been reproduced by Counsel for the Accused at pages 14 and 15 of the Final Address. I take note also to the cases *Zonzouka Degui V The State*, SC. Mis.App. 1/81 and *Adrian Joscelyn Fisher V The State* S.C. Crim. App. 2/2009, *Adrian J. Fisher V The State*, CR. App. 4/2010 hereinbefore referred and Counsel's submission, relying on the aforementioned provisions and cases, that the indictment which commenced the action against the Accused is not valid because it was signed by the Anti-Corruption Commissioner and not a Law Officer:

d. That the indictment has not been lawfully signed by the proper officer, in this case, by a Law Officer, as per sec. 130 of the Criminal Procedure Act, No. 32 of 1965.

I have no doubt that generally, in all criminal proceedings in Sierra Leone, an indictment which as said is the bedrock of all criminal cases in Sierra Leone, ought to be signed by a Law Officer, including the Attorney General and Minister of Justice, the Solicitor General, the Director of Public Prosecutions, the First Parliamentary Counsel, the Head of the Civil and Commercial Division and every State Counsel and Parliamentary Counsel as referred in Section 2 Criminal Procedure (Amendment) Act, 1981.

I cannot emphasis more the importance of the Law Officer's signature on an indictment; it validates the indictment and its omission is fatal where the Prosecution secures a conviction on an 'invalid' indictment. In essence, if this Court is to find that the indictment which commenced this action was signed by one who does not have the authority to so do, this Court cannot be said to be competent to try the Accused herein. This is generally, the law. The jurisdictional issue to be determined is whether Francis Ben Kelfala, as Commissioner of the Anti Corruption Commission has the necessary capacity to sign the indictment hereinbefore referred for which I adopt the points in paragraphs **'C' and 'D' xx** above especially the fact that Counsel's contention was aptly addressed by the *Adrian J. Fisher V The State* Cr. App/4/2010 case as above referred.

F. Are the offences Statute Barred

Counsel for the Accused in his Final Address referred to 'Corruption and Misuse of Public Office' by Collin Nicholls QC, Tim Daniel, Alan Bacarese and John Hatchard, 1st Edition, which I read in its 2nd Edition. Counsel referred to paragraph 3.05 at pp 66/67under the rubric 'The nature and elements of the offence' which Counsel submits is a misdemeanor. It is clear to the Court that this offence is an indictable offence as seen in Russell on Crime found in the same reference point that:

Where a public officer is guilty of misbehavior in office by neglecting a duty imposed upon him either at common law or at statute, he commits a misdemeanor and is liable to indictment unless another remedy is substituted by statute. The liability exists whether he is a common law of statute officer; and a person holding an office of important trust and of consequence to the public ... is liable to indictment for not faithfully discharging the office.

Save for very few sections including sections 35 and 51(1), the penalty for conviction of any of the offences under the Anti-Corruption Act 2008 calls for payment of a fine of not less than Le. 30,000,000/00 (Thirty Million Leones) or to not less than 3 years imprisonment or to both such fine and imprisonment. The above not withstanding, all offences charged under the Anti-Corruption Act, 2008 including the Counts on the indictment herein remain indictable offences which in the eyes of the law are serious offences.

As to whether the offence is statute barred, the Court notes the Prosecution has alleged that the offences in the indictment herein occurred on a date unknown between the 1st July 2015 and the 31st day of January 2016 respectively. From documents before the Court, it is clear that investigations into the allegations as charged started as early as the 4th day of March 2016 with the Anti-Corruption Commission sending Section 56(1)(a) & (b) Notices to the Examination Officer, Mr. Munda Lebbie. It is a fact that the Anti-Corruption Commission would have received a report, in what ever form in respect of the allegations herein before the 4th day of March 2016 when the 1st Notices under Section 56(1)(a) & (b) was served on the recipient therein named. The investigations continued on to the 3rd day of October 2018 when the Reverend Oliver L.T Harding was interviewed. Counsel has not given any authority to the Court to support his submission that the offence is statute barred especially in light of the above continued investigation and gathering of evidence. Counsel has not referred the Court to any statute that prescribes that the offence is statute barred after 'almost three years' of its commission, as Counsel puts it.

G. **Has the doctrine of exhaustion been infringed?**

I have looked at Exhibits C and L, that is the University Hand Book and Code of Conduct for senior staff members of the University and the Anti-Corruption Act, No. 12 of 2008. I found nothing in the said Exhibits C and L nor in Act No. 12 of 2008, which provides that other forms of remedies including investigations and/or discipline at the University must first be exhausted before a report and/or a charge can be brought against a senior staff of the University. The Anti-Corruption Act of 2008 provides for investigation and/or prosecution of any offence under the Act, including Section 42(1) as charged. Counsel might as well argue that the Accused, being a member of the Sierra Leone Bar, ought to have first had his cause heard by the General Legal Council before any charge levied against him by the Anti-Corruption Commission. That line of argument also would have failed woefully because the Legal Practitioner's Act 2000 does not provide for exhaustion of any other remedy before a criminal action, be it by the Anti-Corruption Commission or the Criminal Investigations Department can be levied against a Legal Practitioner, junior or senior. I therefore do not agree with

Counsel's submission that the Accused, as a senior member of staff, ought to have had his cause heard by the University before the charge by the Commission.

I am mindful of the fact that an Accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his guilt. I have cautioned myself that all doubts must be resolved in favour of the Accused person. Having dealt with the jurisdictional points raised by Counsel for the Accused in the Final Address filed for and on behalf of the Accused, I shall now proceed to evaluate the evidence and the law before me.

H. Burden and Standard of Proof

That the principle enshrined in the case of *Woolmington Vs. DPP* applies to all criminal cases, is without doubt. The principle that the burden of proof in all criminal cases rests with the prosecution is applied much more strongly when the Judge is both Judge of law and fact. Numerous Sierra Leone cases have confirmed this principle; those which have been reported include *Hall Vs. R (1964-66) ALR SL 189; Labor-Jones Vs. R (1964-66) ALR SL 471; Koroma Vs. R (1964-66) ALR SL 542; Bob-Jones Vs R (1967-68) ALR SL 267; Amara Vs. R (1968-69) ALR SL 220; Kargbo Vs. R (1968-69) ALR SL 354.* Those not reported include *The State Vs. Francis Mohamed Fofanna Komeh and John Mans* (unreported); *The State Vs. Hamzza Alusine Sesay & Sarah Finda Bendu* (unreported); *The State Vs. Philip Conteh & Two Oths* (unreported) *The State Vs. Philip Lukulay* (unreported) and *The State Vs. Alieu Sesay & Four Oths* (unreported). All of these cases confirm that the legal burden of proof in a criminal case always rests on the prosecution and that the burden rests on the prosecution to prove every element of the offence with which an accused person has been charged beyond reasonable doubt.

Section 42(1) Anti-Corruption Act, 2008 reads:
A public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence.

To succeed on a Section 42(1) offence, the Prosecution must prove the following:

i. **that the Accused is a public officer** – I refer to Exhibit D, the Accused' letter of appointment as Head Of Law Department, University of Sierra Leone. It is clear that the Accused is a public officer working at the period under consideration at an educational institution, the Fourah Bay College, as a law lecturer and Head of Department. His place of work, being an educational institution qualifies under the interpretation section of the 2008 Act as a public body and his being a member of that institution makes the Accused a public officer, also as provided by the interpretation section of the 2008 Act.

ii. **that the Accused used his office 'to improperly confer an advantage on another'** – It is clear to the Court that the Accused being a Head of the Law Department at the period concerned was a Public Officer. The allegation against the Accused is that Alimatu Tity

George and Jamilatu Alicia Sesay referred to in both Counts '1' and '2' respectively on the Indictment herein were, during the period when the Accused was Head Of Department, final year students at the Faculty of Law. It is also clear that the allegations of abuse covers the period when the Accused acted in the capacity of Head Of the Law Department; it also covers the period when the Accused acted as Supervisor for Ms. Alimatu Tity George.

iii. **that the Accused 'improperly conferred an advantage on another'** – the word 'improperly' connotes an element of dishonesty.

The elements of the offence of abuse of office was considered by the Court of Appeal in the *Attorney General's Reference* (No. 3 of 2003) (2004) 3 WLR 451 where Pill LJ emphasized the need for 'a serious departure from proper standards before the criminal offence is committed' and that 'for such a departure to be criminal will not be merely negligent'. He went on to say that a mistake, even if it is a serious one, will not itself suffice. For Lord Widgery, CJ, the neglect, if at all must be willful and not merely inadvertent and it must be without reasonable excuse.

Lord Widgery, CJ, rejecting the argument in the *Dytham* (1979) QB 722 case stated that '*misconduct in a public office is more vividly exhibited where dishonesty is revealed ....*'

In *R V Borron* (1820) 3 B (and) Ald 432, Abbott, CJ stated:

The questions has always been, not whether the act done might upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive or corrupt motive under which description fear and favour may generally be included or from mistake or error. In the former case, alone, they have become the objects of punishment.

In the Hong Kong Court of Final Appeal in *Sin Kam Wah and anor V HKSAR* (2005) 2 HKLRD 375, Sir Anthony Mason NPJ in giving the leading judgment set out a mental element solely in relation to misconduct whether by act or omission:

The present position, then, is that the misconduct must be deliberate rather than accidental in the sense that the official either knew that his conduct was unlawful or willfully disregarded the risk that his conduct was unlawful. Willful misconduct which is without reasonable excuse or justification is culpable.

It is clear from the above that there needs to be proof of a mental element, an element of dishonesty to succeed on a Section 42(1) Anti-Corruption Act, 2008, charge. Having stated the applicable law and its elements, I shall now proceed to evaluate the evidence before the Court.

I. Exhibits tendered

The prosecution led 10 witnesses in proof of its case. PW1, Faustina L'Fevere. Lead Investigations Officer at the Anti-Corruption tendered the following Exhibits:

a. Exhibit A(1-8) which are Sections 56(1) and 57(1) Notices of the Act.
b. Exhibit B(1-47) which is the Voluntary Caution Statement of the Accused.
c. Exhibit C(1-10) is a copy of the University of Sierra Leone Handbook
d. Exhibit D is a copy of the Accused' letter of appointment
e. Exhibit E(1-3) is mark sheet dated 13th November 2015
f. Exhibit F(1-20) is an exams answer booklet for 'Jurisprudence'.
g. Exhibit G is mark sheet for two (2) students dated 8th January 2016
h. Exhibit H(1-2) is mark sheet for 50 students dated 19th February 2016.
i. Exhibit J is an undated mark sheet for 17 students for 'Dissertations'
j. Exhibit K is mark sheet for 2 students for 'Dissertations' dated 9th March 2016.

PW3 tendered Exhibit L, PW4 tendered Exhibit M(1-5); PW6 tendered his statement as in Exhibit N(1-3) and PW7 tendered his statement to the ACC as in Exhibit O(1-9); PW8 tendered Exhibit P(1-9) and PW10 tendered his statement to the ACC as in Exhibit Q(1-8).

The Prosecution closed its case on the 23rd day of November 2018. On the 28th day of November 2018, the Accused was put to his election on how he would conduct his defence. He chose to testify on oath, rely on his statement and call two witnesses to his defence. The Accused opened and closed his defence on the said 28th day of November 2018.

J. Evidence Analysis

Count 1

PW1 Told the Court that her investigations revealed that student numbered 28852, Alimatu Tity George did not submit a final dissertation for the year 2014/15.

PW2 was Francis Aime Dandeson Gabiddon. He told the Court that he was part of the Dissertation Committee for the period 2014-2015 academic year, with Dr. Abu Bakarr Binneh-Kamara as Head of the Committee and Mr. Rashid Dumbuya as Committee member. He said their mandate as Committee members was to collate dissertations and that all completed dissertations were forwarded to the Committee, which assessed and graded dissertations received.

PW3 was Zylette Olive Domingo, Registrar at the University during the period under investigation. She told the Court that sometime between 2015 and 2017, Alimatu Tity George, requested a print out of her transcript; that she directed the Examinations Officer, Mr. Yusuf Lansana to do the print out and asked the student to verify the content of her transcript. She told the Court that the student drew her attention to a grade on her transcript for the module 'Dissertation' when in fact she did not submit a Dissertation. Upon her request, PW3 was presented with an original grade sheet as in Exhibit K, which showed the name, Alimatu Tity George, graded 55% for her Dissertation, signed by the Head of the

Dissertation Committee, Dr. Binneh-Kamara, the Accused as Head Of Department and by the Dean of Faculty.

PW8 was the Hon. Dr. Mr. Justice Abubakarr Binneh-Kamara, the current Head of the Law Department. He told the Court that he acted as External Examiner for marking of Dissertations together with Mr. Francis Gabiddon and Mr. Rashid Dumbuya during the period covered by the indictment. He referred to Exhibit H(1-2) in respect of Dissertations for 50 students submitted to the Committee, which himself, Gabiddon and Dumbuya collectively marked, upon submission of the said Dissertations by the Head Of Department, which said grade sheet he signed and handed to the Head of Department.

The witness told the Court that seventeen (17) more Dissertations were handed over to him by the Accused for marking which said Dissertations together with his team, he graded as in Exhibit J. He told the Court that before he, the Accused, submitted the 17 Dissertations as in Exhibit J, the Accused had told him that the Committee had marked one Dissertation which he, the Accused supervised, which grade was not included in the grade sheet, that is in Exhibit H(1-2). He told the Accused he does not recall leaving out any name in Exhibit H(1-2) but asked the Accused to resubmit the said Dissertation so that its grade can be included in the mark sheet which he said the Accused never did.

He referred to Exhibit K and told the Court that the Accused only submitted one last Dissertation to him for the student Salamy S. Kamara. He told the Court that upon submission of Salamy Kamara's Dissertation, the Accused again reminded him about the said Dissertation he, the Accused told him he supervised which the Committee had marked which grade was not included in the grade sheet as in Exhibit H(1-2). It is the Court's understanding that this was the supposed Dissertation of Alimatu Tity George. He said that the Accused being the supervisor for Ms. George's Dissertation and being a member of the Sierra Leone Bar for more than 30 years, he believed in the information given him by the Accused for the award of 55% as in the grade sheet as in Exhibit K for Ms. George's Dissertation which he believed was in the Accused' office.

In answer to questions put to him in cross examination, PW8 reiterated that the Accused told him he supervised Alimatu Tity George's Dissertation and that he told him that the said Dissertation was in his (the Accused's) office; he said he had every reason to believe the Accused. He also informed the Court that he is privy to a correspondence written by the said Alimatu Tity George to the Accused in respect of an award of a grade for her module, 'Dissertation' when in fact, PW8 was not her supervisor.

PW10 was Dr. Dante Alie Bendu present Dean of the Faculty of Social Sciences and Law, a position he assumed in February 2016. He referred to Exhibit H(1-2), mark sheet for the module, 'Dissertations' of 50 students signed by the Lecturer in charge of the Dissertation Committee, Dr. Abubakarr Binneh-Kamara, the Accused as Head Of Department and himself as Dean of Faculty; Exhibit J, another mark sheet for the module 'Dissertations' signed by the Head of Dissertations Committee and the Head Of Department only. He referred to

Exhibit K, mark sheet again for the module 'Dissertations' for two students including Alimatu Tity George with a grade of 55% which he signed as Dean as did the Head of the Dissertation Committee and the Accused as Head Of Department. My understanding of the witness' testimony is that he did not check whether or not Dissertations referred to in Exhibits H, J and K were in fact submitted by students; he told the Court that he relied on the integrity of the Accused, then Head Of Department, after whom he signed mark sheets including Exhibits H and K.

DW1 told the Court that he supervised Ms. George's dissertation and that he had a lot of rough time with her in the delays in writing her various chapters but that the student wrote as far as the concluding chapter. He referred to his answer given to question 99 of his statement to the Anti Corruption Commission and he told the Court that as at the time of making his statement to the Anti Corruption Commission, he was satisfied that Ms. George submitted a Dissertation; that he only got to know she did not submit a Dissertation after his interviews at the Anti Corruption Commission when he got the office Administrative Officer to check on submitted Dissertations. The Accused told the Court that Alimatu Tity George not submitting a Dissertation and yet being graded is a matter for the Dissertation Committee to answer.

DW1 told the Court at page 71 of the judge's notes that Alimatu Tity George's Dissertation was submitted to the Dissertation Committee of three hereinbefore referred to on the advice of PW10. In answer to question put to him at Q 54 of his statement to the Anti Corruption Commission which he has told the Court he relies on, i.e Exhibit B, the Accused said: *'Alimatu Tity George was one of the students I supervised for the dissertation module. I recall scolding her for being late with her dissertation. However she submitted hers and it was marked by the panel of examiners set to mark dissertations'*. Well, PW8, the head of the Dissertation Committee told the Court that no such Dissertation was submitted to the Committee by Alimatu Tity George either directly of through the Accused.

It is clear to the Court, that Dissertations, during the period covered by the indictment were submitted to the Committee of three by the Accused in his capacity as Head Of Department. From the evidence, Exhibit K was the last mark sheet and only one Dissertation for Salamy Kamara was submitted by the Accused to the Dissertation Committee. Exhibit K had just two student names of which only one, Salamy Kamara submitted his Dissertation through the Accused as Head Of Department to the Committee. The second name on Exhibit K is Alimatu Tity George who the evidence has revealed never submitted a Dissertation. She was supervised by the Accused; she delayed in writing her Dissertation; the Accused 'scolded' her to write her Dissertation. The Accused recalled that she wrote up to the concluding chapter.

Exhibit K was handed over to the Accused signed by PW8, the Head of the Dissertation Committee with, as said just two names including that of Alimatu Tity George. The testimony by PW8 is that he was approached on a few occasions by the Accused in respect of the award of grade to Alimatu Tity George whose Dissertation, according to PW8, he believed, based on the information he

received from the Accused, was in the Accused' office; this was not challenged in cross examination. No suggestion was put to the witness that the Accused never caused him to award 55% in favour of Alimatu Tity George or that the Accused never spoke to the witness about Ms. George's Dissertation.

For sure, the Accused must recall when he received Exhibit K, a list of just two names, one of whom he supervised, from the Head of the Dissertation Committee with a grade of 55% in favour of Alimatu Tity George that Ms. George never turned in a Dissertation; the Dissertation was supposed to be in his office; he knew he had a rough time, according to him, supervising the said Ms. George. It is the Court's position that the Accused was in a position, as any reasonable person would have been, to know that out of a list of two, he never received a Dissertation from Ms. George despite his scolding her in her own best interest. It is not in evidence that he supervised the second student whose name appears on Exhibit K. So picking up that Alimatu Tity George did not submit a Dissertation which he supervised from a list of two, and a 'troublesome student,' ought to have been an easy job.

Even if its is accepted that Exhibit K was submitted by the Head of the Dissertation Committee in its form without the Accused having had the discussions referred to above with the Head of the Team, PW8, which as said was not challenged or controverted in cross examination, one would expect that the Accused, as a reasonable and honest person would return the mark sheet, Exhibit K to the Committee on the basis that, him being the supervisor, he never received a final Dissertation from Alimatu Tity George. Just two names are stated on Exhibit K.

The Court takes further note of the testimony of PW8 which was never challenged or controverted, when he said that he was privy to a correspondence written by Alimatu Tity George to the Accused complaining that the witness, not being her supervisor returned a grade for her Dissertation. That correspondence (which was not denied) in itself ought to have drawn the Accused mind to some anomaly which ought to have been corrected, if indeed the award of grade to Alimatu Tity George was not the Accused' directive. Being the Head Of Department, nothing was done by the Accused to correct the situation. The Accused did not return Exhibit K upon receipt and even after the complaint by the said Alimatu Tity George because he was satisfied that the grade of 55% awarded to Alimatu Tity George, the information of which he passed a few times to PW8 had been so awarded as per his directive.

It is the Court's position that the award of 55% by PW8 to Alimatu Tity George as in Count 1 of the indictment herein could only have been caused by the information the Accused passed on to PW8, and rather dishonestly. The word 'award' in the Particulars of Offence should not be read as if the Accused physically inscribed the grade 55% on Exhibit K; certainly, he caused it to be awarded and that is how the Court understands the evidence.

Count 2

The Court appreciates the testimonies of witnesses who testified before the Court and to supporting documents tendered by the Prosecution. The Court takes note particularly of Exhibits E, F(1-20), and G. The Accused has not denied inflating the total grade of Jamilatu Alicia Sesay to 69% instead of 61% for the module 'Jurisprudence and Legal Theories'. My understanding of the Accused person's testimony is that he inserted the inflated grade for Ms. Sesay in Exhibit G inadvertently.

I have said that the word 'improperly' found in the body of Section 42(1) connotes dishonesty. Therefore, the issue for consideration by the Court is whether or not the grade so awarded was dishonestly awarded. I take note of Exhibit L(1-7). The Court also takes note of the testimony of DW2, Abu Bakarr Sheriff in respect of mistake of grade in respect of the module, 'Sierra Leone Legal system'. The Court agrees 'mistakes' could happen during the insertion of students' grades.

For the sake of better understanding the evidence, the Court refers again to the back of Exhibit F(1-20) and note there are three different grading by three persons thereon. The Court understands the module lecturer, awarded a total of 27/70 as the 1st examiner; the 2nd examiner agreed with the grades awarded by the 1st examiner. With the student's dissatisfaction according to the Accused, Mr. Gabbidon was asked to remark the said examination answer booklet and he returned 44%/70%. The Court notes that the Accused failed to comply with the laid down procedures at page 31 of Exhibit C(1-10) as confirmed by the PW3 in testimony, for the remark of examination scripts which states:

i. That the student shall address the request for remarking to the Deputy Vice Chancellor through the Head of Department and the dean of the Faculty.
ii. That the request for remarking shall be made within one month after the approval of the results by the Academic Board.
iii. That a panel for remarking shall be constituted in such a way that it is completely independent of the department concerned.

The Court now refers to Exhibit E, mark sheet for the module, 'Jurisprudence and Legal Theories', signed by the Lecturer, the Head Of Department and the Dean. I refer particularly to students at Nos. 59, Jamilatu Alicia Sesay with a total grade of 36, No. 61, Smith Jimmy Broni with a total grade of 16 and No. 72 Dauda L. Bangura with a total grade of 34. It is accepted, though the remark was not in compliance with Exhibit C as above referred, that Mr. Francis Gabbidon returned a grade of 44%/70% for Ms. Sesay for the module, Jurisprudence but that no such remark was done for Dauda L. Bangura.

The Court now refers to Exhibit G processed by PW5 who told the Court that he questioned the authenticity of Exhibit G which he believed did not conform with the requirement of processing; it lacked the module Lecturer's signature. PW5 returned Exhibit G to the Law Department through the Administrative Officer, Mr. Anel Cole-Lewis but on quite another day, the same document was presented

to him for processing which caused a meeting to be called by PW4, the then Director of Examination, after a concern was raised in respect of the signatures and/or lack thereof to Exhibit G. The evidence before the Court is that in attendance at the said meeting were the Exams Officer, the Deputy Registrar, Mrs. Domingo, the Head of Department, that is the Accused and the Dean of Faculty.

Exhibit G was presented at the said meeting and even though Exhibit E had been processed with fail grades in respect of the two students named on Exhibit G, PW5 was still authorized to process Exhibit G with pass grades for both students; 33% more (based on Exhibit E) for Jamilatu Alicia Sesay and 34% more for Dauda L. Bangura. It could not be argued (as it would have been baseless) that the Accused did not want to see the students have a fail grade for the module 'Jurisprudence and Legal Theories' because the third student who failed the module, Smith Jimmy Broni's upgrade was not considered even though he needed 24% for a pass less than the percentage added to Jamilatu Alicia Sesay and Dauda L. Bangura. That Exhibit G was the reason for a meeting and that a meeting was held in that respect was not controverted even when the Accused took the witness stand to his defence. The Court refers to the Accused' defence of mistake in the award of the total grade of 69% instead of 61%, (appreciating the upgrade by Mr. Gabbidon) for Ms. Sesay. Certainly, it could not have been a mistake for the Accused to award 34% more for Dauda L. Bangura also. All three students referred to above failed the said module as per the Lecturer's mark sheet per Exhibit E. No upgrade was given to students who scored average grades or rather, just above pass grades either.

Again, there are only two names on Exhibit G with two conflicting grades to Exhibit E. Mr. Eke Holloway, the module lecturer's testimony before this Court is that he never awarded the grades including the grade 68% for Dauda L Bangura. Exhibit E shows Dauda L Bangura with a total of 34% for the module Jurisprudence and Legal Theories. I find it difficult to accept mistake as a defence in the face of a similar fact for Dauda L. Bangura with no explanation by the Accused to Mr. Halloway's testimony that being the module lecturer, he never awarded 68% to Dauda L. Bangura. It is not possible for the Accused to single out just two names from a list 74 students as in Exhibit E and upgrade their total scores by mistake. The Court considers the Accused' act to be willful misconduct with no excuse, reasonable or otherwise.

Conclusion

I have read the indictment and supporting Exhibits in respect of the charge against the Accused. I have listened with keen interest to witnesses both for the State and the Accused and I have read the Final Address for and on behalf of the State and the Accused including the Addendum to the Accused' Final Address. I have read and considered the authorities referred to and submitted by both Counsel for the State and the Accused and now return the following verdict.

Count 1 – Guilty as charged.

Count 2 – Guilty as charged

.....J

Hon. Justice Miatta M. Samba, J