IN THE HIGH COURT OF SIERRA LEONE
ANTI-CORRUPTION DIVISION

THE STATE

vs.

SHEKA SAHID KAMARA,
VICTOR FOH,
MINKAILU MANSARAY,
MOHAMED ALLIE BAH,
IBRAHIM FACKEH CONTEH AND
ABUBAKARR CAREW

C T Mantsebo with him *S Harleston* and *Sow* for the State
YH Williams with him Abdul Karim Koroma, for No.3*, L Dumbuya fo*r Nos 5 &6, *HM Gevao with him TE Bundor* for No.2, *S. James* for No 4 *& A Bundu* for No1

RULING DELIVERED ON 11th October 2019

Reginald Sydney Fynn JA

Introduction and Background

1. In this case there are six defendants. They are Sheka Sahid Kamara a former Special Assistant on Social Affairs to the former President of the Republic of Sierra Leone (hereinafter the Republic), Victor Bocakrie Foh Former Vice President of the Republic, Minkailu Mansaray Former Cabinet Minister, Mohammed Allie Bah Former Deputy Minister, Ibrahim Fackeh Conteh a former community worker with Shandon Mining Company and Abubakarr Carew Former Permanent Secretary in the Ministry of Social Welfare Gender and Children's Affairs. In all, the indictment proffers eight (8) counts charging five (5) offences under the Anti-Corruption Act 2008. The offences charged are:
    i. Conspiracy contrary to section 128,
    ii. Engaging in a project without prior planning contrary to section 48(2)(c)
    iii. Misappropriation of Public Funds contrary to Section 36,
    iv. Knowingly misleading the Commission contrary to Section 127 (i)(b) and
    v. Willfully failing to comply with applicable procedures and guidelines relating to the management of funds contrary to Section 48 (b)
2. The defendants having pleaded NOT GUILTY to all the counts the prosecution presented its case through seven witnesses who were cross examined by defence counsel. The

witnesses amongst them but primarily through PW 1 Joseph Noah ACC Senior Investigation Officer tendered exhibits ranging from "Exhibit A" through unto "Exhibit Z" and "Exhibit AA" through unto "Exhibit DD". I shall refer to the various exhibits and specific testimonies as they may prove necessary for this ruling. I will however state that I have read and reread the testimonies and have examined each of the exhibits tendered.

3. At the end of the presentation of the prosecution's case the defendants have each submitted that they have no case to answer. That is to say that the evidence brought by the prosecution has not been strong enough to warrant any comment from the defendants. They therefore ask that I dismiss the case at this stage. It is that submission of No Case to answer and the prosecution's reply to it that I now have to rule upon.
4. I will first remind myself of the Burden and standard of proof in criminal cases. I will then state what it is that should be considered when ruling on a no case submission guided of cause by the standard required at this stage of the case. After that I will look at the individual offences charged with the object of identifying the nature of each and the ingredients that need to be proved if the prosecution should succeed in each. I will then, turn my attention to each count charged analyze the evidence adduced and find whether the prosecution has made a case worthy of a defence. In conclusion I will offer a ruling on each count charged.
5. As I proceed along this path I shall also make reference to counsel's submissions as may be deemed necessary.

Burden and Standard of Proof

6. It is an undisputed principle that the prosecution has a duty to prove the case which it has brought and that it must prove it beyond reasonable doubt. An accused person is never under a legal obligation to speak unless the prosecution has lifted its burden to prove the case which it has brought. This position is well established and is now trite. All parties in this case appear to be in agreement on this and I do not need to restate the law.
7. However there are situations where the burden is "reversed" by statute. Such situations exist under the Anti-corruption Act 2008 and it has been submitted by the prosecution that there are cases in which the nature of the charge itself immediately demands a response from the defendant. In my considered opinion there is no such offence and certainly not under the Anti-Corruption of 2008.
8. As I have already mentioned some sections of the Act tend to reverse the burden of proof but I opine that in every such section there are always some preliminary conditions which the prosecution must first establish before the burden becomes so reversed. These may include the occupation and position of the accused, the fact that something was given to the accused or found in his possession or that the accused has

raised as his defence: that the thing he is accused of doing was done with lawful authority.

9. Usually the "reversal" occurs by way of a rebuttable presumption. Examples of the reversed burden can be found in S.92 the presumption that an advantage was given as a reward, S.44 the presumption that a public officer used his office for advantage or S 27 the presumption that unexplained wealth is the proceed of corruption. In each of these sections and there are many others in the act, the presumption only arises or the burden only shifts after the prosecution has established certain required conditions.
10. In my opinion none of the offences charged in this indictment raises any such presumptions nor is the burden reversed in any of the counts at all (except of course in the event a defence is required and resort is made by the defendants to lawful authority). This means that in this case the prosecution remains under its traditional and legal burden which was so well put in **Woolmington and DPP** and has since then been so observed.

No Case Submissions

11. In considering whether a No case submission should succeed a two limb test has been suggested by Lord Lane in **Galbraith** and simply put the limbs are as follows:
    a. Whether the evidence adduced has failed to prove the offence charged. This failure might relate to a single ingredient of an offence or it may well be a complete and utter lack of evidence proving the offence.
    b. Where even though there may be some evidence that the defendant committed the offence the evidence is such that it will be unsafe to convict the defendant on it.

    If any of these limbs are satisfied then the no case submission must succeed.

The Offences Charged

Conspiracy S.128

12. Defence counsel in their submissions; have raised objections to the correctness of bringing a charge of conspiracy under S. 128 of the Act. I have recently had the opportunity in the case of the State v. Isha Johansen to express an opinion on the appropriateness or otherwise of charging a defendant for conspiracy under S. 128 of the Anti- Corruption Act and this was in response to similar objections as those raised in this case. As I have not been persuaded to change my posture on this issue I will repeat that position here.
13. It is my opinion that the ingredients of common law conspiracy are the same as those of statutory conspiracy provided for in the Anti-Corruption Act.
14. It has been mentioned by some of our most senior Judges that S 128 of the Anti-Corruption Act may not be an example of excellent draftmanship. It has even been suggested that in its present form it leaves "much room for doubt as to whether it does

create an offence at all". I have in the recently mentioned case suggested that the "Commission should consider sponsoring an amendment to bring certainty to this section, which will no doubt lead to much relief and a possible end to the persistent calls for a determination of whether an offence is created by it or not." I repeat that suggestion.

15. I hold however here as I did there that read with a purposive mind one cannot but conclude that section 128 can be used by the Commission to properly bring on a charge for conspiracy. I fail to see how an accused person can possibly be prejudiced by such a charge and I so hold.

Engaging in a project without prior planning contrary to section 48(2)(c)

16. This offence is one among several that can be committed under this section by "a person whose functions concern the administration custody management receipt or use of any part of the public revenue or public property". Counsel for the defence have severally submitted that the words "prior planning" should be given their every-day ordinary meaning as provided for by the literal rule of interpretation. The prosecution submits the exact opposite urging upon the court a need to invoke the mischief rule of interpretation or the purposive approach.
17. Counsel has rightly observed that this offence has not been charged in this jurisdiction before now. This is the very first outing of the offence of "engaging in a project without prior planning" and we may therefore be breaking new ground with this case. Whilst this observation does not assist me with deciding what approach might be best applied it does point at the explorative nature of both counsel's advances and even the conclusions that I may come to in this regard.
18. The first and cardinal of all rules of construction must be the literal rule. It is only when the literal rule leads to an ambiguity or absurdity that there will be a need for the aid of any other rule of interpretation. According to Odgers:

> *" General statutes will be prima facie presumed to use words in their popular sense….the grammatical and ordinary sense of the words must be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument…"*

19. It would follow therefore that if the statute is clear then there is no need for stretching the meaning of words or foraging around the pillars of parliament's intentions for the meaning of the words used in a statute. When the words of the statute are clear and unambiguous their meaning must reside within the four walls of the statute itself and indeed within the section that is desired to be interpreted.
20. "To plan" involves to prepare and to lay the groundwork for the intended project. This may take many different forms. On the one hand it may start and end with a thought out intention on how to proceed. That thought may be deep and extensive or merely preliminary and speculative. It may even be scribbled comments on a piece of paper to

aid the memory. But then "planning" may also involve meetings, minutes, committees, sub-committees, budgets, reports, inspections and a complex web of activities depending on the nature of the project and its demand. Planning can and does reside within such a wide ranging spectrum of possibilities and the literal rule will embrace the whole of that range.

21. What is it that section 48(2)(c) of the Anti-Corruption Act seek to criminalize? Read in its context especially keeping in view the preamble of the section, it is my opinion that the "planning" referred to must necessarily relate to the protection of public property or public revenue whilst such property or revenue is in the administration custody management receipt and or use of a particular person- the defendant. In my opinion any plan would therefore not be sufficient. It must be a plan that relates to, satisfies or has the capacity to achieve the protection of public revenue or property.
22. The literal rule will in my opinion make absolute nonsense of the provision in s. 48(2) (c). Where will one draw the line, if any plan can be held to be a sufficient plan? The defendant will merely be required to proffer any preparatory step as his plan and that will loosen him from the net. I do not think that this will aid the purpose of the section. It will not help to protect public property or public funds. It will not aid the fight against corruption. In my opinion, to give effect to the section one must interpret it so as to give it and indeed the statute its intended effect.
23. It is to be noted however that the offence is framed as one of omission rather than one of commission. Proving a negative can be a very difficult task but it is my opinion that this does not absolve the prosecution of its burden nor does it immediately impose any obligation on the defendants.
24. In my opinion in proving this offence the prosecution in addition to showing that the defendants fit the description in the section must also demonstrate with clarity one or more if not all of the following:
    i. what a proper plan would have been,
    ii. what aspects if any or all of that proper plan is missing,
    iii. the section of the statute or regulation if any that directs the use of that plan and
    iv. Where there has been a loss or undesirable outcome, that loss or undesirable outcome.
25. In the absence of such specificity the whole enterprise is reduced to but a fishing expedition bearing in mind that that there is out there an ocean of regulation that public officers are obligated to observe.
26. I find encouragement for this opinion in three Kenyan cases in which this same offence was charged. The cases do not address the question of the meaning of "prior planning" nor do they lay out what the prosecution must establish to prove this offence. However the degree of specificity captured in the indictments by which these cases were brought does support the opinion I have just expressed. The cases are: S v. Koskei Kimosop ACEC

MISC. NO. 33 OF 2019, The Republic v. BENEDICT MAURICE OMOLLO OLWENYO Criminal Appeal no.8 of 2018 and REPUBLIC vs. DIRECTOR OF PUBLIC PROSECUTIONS and ABDI SAHAL ALI, MOHAMUD H. MOHAMED and DR. SOFIA MOHAMED (being Interested Parties) (kenyalii website)

Misappropriation of Public Funds contrary to Section 36,

27. Misappropriation contrary to S.36 is not new in our courts it has received much judicial attention. It requires that a person *"by himself willfully or through another person…commit an act by which a public body is deprived of any funds or other financial interest or property belonging to that public body"*

28. "Misappropriation" is defined in Black's Law dictionary as *"The unlawful taking of money for an unauthorized purpose"* and it has been opined further that:

> *"The assumption of rights of the owner is a pointer to an appropriation by the defendants and it forms the basis of key ingredient of this offence: dishonest appropriation."*

29. *I* have already recently in the Johansson case highlighted my opinion that one big difference exists between misappropriation under S.36 and that under S.37 if no other exists. That difference is that in S.36 despite evidence of defendant's best actions he may still be guilty of misappropriation if his actions are shown to have "deprived" a public body of funds or other financial interest and property. Of course this assumes he is also shown to have been *"willful".* On the other hand S. 37 requires positive proofs of "dishonest appropriation" this in my opinion will always be defeated by proof to the contrary ie that there was no such appropriation in the first place.
30. In the present case the charges are under S.36 of the Act and the question then will be whether the defendants' action "willfully" deprived a public body of funds. There has been no dispute that the Hajj Committee is a public body for the purposes of the act and that the funds it controlled were similarly so public funds. I hold them to be so.
31. The true question that should then next be addressed is whether there is evidence in that public property has been lost due to the defendant's "willful" conduct. "Willfully" has been approached as indicative of a state of mind. It describes the mens rea necessary for the commission of this offence.
32. The defendants would have acted "willfully" if at the time when they acted they knew that their conduct would result in depriving the public body of funds or they were simply reckless as to the outcome of their action. This mental element is usual inferred from the defendant's conduct.

Knowingly misleading the Commission contrary to Section 127 (i)(b)

33. This offence seeks to punish persons who mislead the commission. To "mislead" will involve sending the commission in the wrong direction on an issue. Synonyms for

"mislead" will include: fool, lie, misinform, hoodwink, dupe, misrepresent and misguide, all of which include an element of deception.

34. A person would have misled the commission when a person creates an impression either by act or by word that a certain state of affairs or a set of facts is true when in fact that state of affairs or fact are really untrue.
35. In my opinion the offence will only be complete though if the defendant knew what the truth was but then *"knowingly"* tells the commission or its officers that something else is the truth.

Willfully failing to comply with applicable procedures and guidelines relating to the management of funds contrary to Section 48 (b)

36. This offence requires that the prosecution show in addition to the required status of the defendant, the prosecution must show what applicable procedure he has failed to comply with which has been prescribed for the management of funds.
37. At this stage suffice it to say thatas long as the failure has been so identified and the regulation too then the defendant cannot claim that he has no case to answer.

The Evidence Count by Count

Count 1 & 2

38. The evidence relied upon for these counts will necessarily be the same. The counts both relate to *"Engaging in a project without prior planning"* contrary to section 48(2)(c) of the Anti- Corruption Act 2008. In this regard, the prosecution has presented evidence through PW3 Mr. Sulaiman Issa Turay Head of the Consular Section in the Ministry of Foreign Affairs and International Co-operation; PW5 Mr. Ibrahim Sesay the Accountant attached to the Ministry of Social Welfare and PW7 Mr. Richard S R Williams the Accountant General of the Republic.
39. Mr. Sulaiman Issa Turay PW3 in his role as Head of the Consular section at the Ministry of Foreign Affairs was involved with receiving and hosting the delegation that had come from Saudi Arabia to issue visas to pilgrims going to the Hajj. He testified regarding the initial difficulties encountered in placing the guests in a hotel, the challenges with the ***Muasasah*** (which is an electronic tool used in the approval and issuance of visas by the Saudi guests). He testified about the attempts made by 3rd accused to secure extra spaces for pilgrims from Sierra Leone. This resulted in 20 extra visas. He told the court about 17 self-paying pilgrims who were rejected by the Muasasah and the efforts made to secure those places for other Sierra Leonean pilgrims.
40. Under cross examination this witness admitted that to qualify to take pilgrims on the Hajj a country must satisfy certain arduous prerequisites which he said included; payment for the pilgrims accommodation in Mecca, payment for transportation of the candidates from Mecca and Madina, Arafat and Mina, tents for accommodation in Mina

and Arafat and arrangements for feeding the pilgrims throughout their stay in Saudi Arabia.

41. The witness told the court that qualifying for the Muasasah required the committee to meet certain strict deadlines. The Muasasah had to be strict otherwise "there would be chaos if the pilgrims showed up in their numbers without the pre-arrangements mentioned". The committee met those deadlines.
42. This witness conveyed the impression that there had been a significant measure of pre-planning without which it would have been impossible for Sierra Leone to send pilgrims to Saudi Arabia at all. In my opinion his testimony did not help the count on *"engaging on a project without prior planning"*. The witness all but applauded the planning committee. I have not found anything in the testimony of this witness which can lead me to conclude that the accused persons or any of them has a case to answer on this count.
43. PW5 was not a member of the Hajj Committee but as the accountant at the Ministry of Social Welfare he was involved in processing requests for Hajj related payments. He made a record of all funding received for the Hajj. He was signatory to Hajj Accounts operated at The Sierra Leone Commercial Bank, Rokell Commercial Bank and the Bank of Sierra Leone. He named the other signatories. He testified that disbursement from these accounts followed the same process as that used for other accounts held by the ministry. He described how the requests for payment were processed.
44. The Hajj Committee operating from the Vice President's office will send a payment request to the Ministry of Social Welfare. On receiving a request the Permanent Secretary will minute it to the witness for action. PW5 Mr. Sesay would then conduct some due diligence and confirm availability of funds. He would cross cast the figures in the budget and assure himself that the arithmetic was correct. In fact in one request from the Hajj Committee he found that it was not.(Exhibit L1-3).
45. Regarding Exhibit L1-3 on which the arithmetic did not add up. The minister had approved the payment giving clear instructions in green ink "*the maths does not add up but for exigencies let us release the above amount with a strong written advise for them to provide retirement ASAP preferably before they leave for Mecca"*
46. Once the witness had satisfied himself that the request was regular and that the funds were available he would then prepare the payment voucher. This is the process that was used to honour all requests from the Hajj Committee. This witness did not direct the courts attention to any irregularity or failing in any of the Hajj requests. He did testify that he was unaware of the authorization of the transfer of money to Saudi Arabia on 28th July 2017. He also denied ever seeing Exhibit M which is a request for payment rejected by the minister (but more on that later). This witness did not provide testimony that questioned the planning done by the committee or the accused. He did not on any occasion allude to anything they ought to have done but which they had failed to do.

47. PW7 Mr. Richard Williams is the Accountant General of the Republic. I will reproduce verbatim two portions of his testimony which are vital to these counts. The witness said

> *" the provisions relating to processing public funds are in the Public Financial Management Act 2016, which was previously the Government Budget Act…and in the Financial Management Regulations of 2017. These detail the procedure for processing public funds....In addition to these laws there are also procurement laws and regulations that provide guidance for the use of public funds. I do not have much details of the Hajj 2017 issue except what I read in the papers. In carrying out their functions Hajj Committee are bound by the laws I have mentioned."*

48. The witness testified further that

> "*the regulations provide that before expenditure there must have been budgeting , approval by the head of the of the MDA (usually the minister) the vote controller will implement."*

49. Suffice it to say at this stage that this witness referred to three statutes that govern public funds management and use. Included among these are the Public Procurement Act and the Public Procurement Regulations. He did not make references to any specific sections and in utmost candor he told the court that he was not familiar with the Hajj Committee 2017 situation except what he had read from the newspapers. He certainly did not tell the court what the defendants had done wrong if anything.
50. **The indictment:** The indictment does not set out what it is that the accused had failed to do. Usually it is the particulars of offence that give the prosecution room to outline with some degree of specificity, what it is, that the accused have failed to do. In Anti-Corruption cases a further opportunity to particularize the charge is afforded the prosecution via the extract of findings. It is in the Extract of findings that a Judge must first see clearly the prosecution's theory that they set out to prove.
51. In this instance ie on these counts there is a complete omission to provide such particulars in any of these documents. How did the accused engage in a project without prior planning? What vital planning steps did they miss? What is it that they should have done that they did not do? Is there some law or statute that they should have complied with in their planning that they did not follow? What section of it, did they not follow?
52. The prosecution's address does afford it a final opportunity to make clear and with specificity what the charge is and indeed what the evidence is that supports it. The prosecution attempted to take this opportunity in their reply to the No-case submission with respect to this count. The prosecution's submissions in this regard are as follows:

> *"they are under an obligation to ensure that they follow the provisions of the relevant law…the provisions of the Public Finance Management Act of 2016 and the Financial Management Regulations 2017…there is no evidence that a proper*

budget was undertaken…(and) there is a duty on the accused to properly account and demonstrate that every single Leone of what they received was used for purpose"

53. This is very well put and is certainly desirable but the prosecution has to go a step further to demonstrate criminal culpability as charged. Two pieces of legislation have been casually mentioned here. Each of the legislation creates several duties and obligations. Some sections are directory in nature others are prohibitory. Which part or parts of these legislation have the accused ran foul on that should result in my holding them guilty of "engaging in a project without prior planning? The prosecution has not said. Is it then, the allegation that the accused have broken every section in both of the legislation? Should the court now take each law mentioned apart and by itself and seek out where the infraction lies? That surely is not a viable presentation of an indictment.
54. Regarding the allegation that no proper budget has been presented but pieces of paper, I find that the prosecution has submitted several correspondence and dispatches between the Hajj Committee and the Ministry of Social Welfare. Included amongst these is Exhibit K1-6 a letter in which the Permanent Secretary of the Ministry of Social Welfare on the instructions of the Minister clarified that what that Ministry wanted was an "Indicative budget" not "an expenditure list".
55. I have asked myself whether this was but an objection to form rather than to substance whilst noting of course that the minister proceeded to take the requested action. The answer to this query in truth ought to have been laid out in the evidence if not specified in the indictment. Whilst planning a project should the estimated expenditure, be presented in a particular form? The prosecution appears to allege so but has not suggested what that form ought to be; nor what authority prescribes that it must be in that particular form.
56. I have also carefully perused Exhibits L(1-3),M(1-2) and N(1-5) each of them being communications exchanged between the Hajj Committee and the Ministry of Social welfare. Each is headed **Request for Approval of Payment for Hajj Operation in Sierra Leone** (/in Saudi Arabia) as the case may be. Each of them would have an attachment containing a list of the expected expenditure entitled severally; "Expenditure in Sierra Leone", "Hajj Payments in Saudi Arabia in US Dollars", "Expenditure in Sierra Leone", and "Payments in Saudi Arabia". Without commenting on the truth or otherwise of their contents, in my opinion they communicate what should be in a budget properly so called. I note in particular the careful and clear comments in the minutes of the Minister who had received these communications. It is evident to me that though the Minister would have preferred to have received the information submitted in a different form she nonetheless was able to use them in the form presented.
57. It would have been very helpful if the prosecution could have been more precise on this allegation, especially as to whether some rule relating to the form of a budget had been

flouted. In fact PW5 had testified that "I do not remember any requests which did not have a budget". This suggests to me that "the pieces of papers" tendered in court if they were not budgets properly so called had in fact served the purpose of being budgets thereby undermining the prosecution's contention in this regard.

58. Finally on these counts; the prosecution submits that there should be accounting (retirement) for every penny of the state's money that is spent by the accused and members of the Hajj Committee and on this I cannot but again agree with them. However retirement is an action point that comes after the project not "prior" as required under these counts. In my opinion it would follow therefore that a failure to account for every penny; if there is in fact such a failure, is not evidence of engaging in a project without prior planning rather it is an indication of misappropriation which is a completely different offence.
59. The prosecutions' factual witnesses have not helped the prosecution's case; neither the Accountant Mr. Sesay PW5 nor the Consular Officer Mr. Turay PW3 pointed at any wrong doing by the defendants. On the contrary their evidence before me is that there was much planning "prior" to the Hajj 2017. The evidence amongst other things show:
    a. a pre-Hajj delegation from Sierra Leone to Saudi Arabia,
    b. clear indications that transportation, accommodation feeding and other necessaries for the pilgrims in Saudi Arabia had been pre-arranged,
    c. several meetings of the Hajj Committee,
    d. drawn up indications of what the expected expenditure of the event would likely be,
    e. exchange of correspondence between the committee and the supervising ministry and
    f. the receiving of the delegation from Saudi Arabia and facilitating their tasks in Sierra Leone.
60. If I am to have all this evidence before me and still should find that the defendants have "engaged in a project without prior planning" then to safely do so the prosecution must first have shown;
        i. what a proper plan would have been,
        ii. what aspects if any or all of that proper plan is missing,
        iii. the section of the statute or regulation if any that directs the use of that plan and or
        iv. Whether there has been a loss or undesirable outcome stemming from the defendants conduct.
61. As the prosecution has not done any of this I do not see these counts succeeding as presented; the evidence tendered to support them does not make out the case charged at all. The first limb of Lord Lane's test is satisfied. In my opinion the counts are fatally flawed.

Counts 3 & 4

62. Count three relates to the alleged misappropriation of $80,000 by Sheka Sahid Kamara and Victor Bockarie Foh, whilst count 4 alleges a conspiracy to misappropriate that $80,000 which is alleged to have existed between Sheka Kamara and Victor Foh,
63. Part of the evidence before me on this resides in the statement of Sheka Sahid Kamara (exhibit X). The first accused is unequivocal in his claim that he gave the sum of $80,000 to the second accused. The second accused in his statement denies receipt of this $ 80,000. He makes short shrift of it and says "*it is a lie and an insult*".
64. However, also in evidence on this $80,000 is the testimony of PW4, Abass Sesay whose testimony under oath is that he was present and he saw the first accused packing the $80,000. The witness mentioned in detail that the money was in eight bundles of $100 dollar bills. The witness testified that the Sheka Sahid Kamara had told him that he Kamara was taking the money to Victor B. Foh. The witness said that after packing they left (ie the witness, Sheka Sahid Kamara and one Alhaji) for the office of Victor Bockarie Foh. According to the witness they arrived at Victor Bockarie Foh's office; the witness did not go in but his testimony is that Sheka Sahid Kamara went in with Alhaji the driver and the latter was holding the $ 80,000.
65. In his statement Ibrahim Fackeh Conteh also refers to the amount of $80,000 in relation to the second accused and I will reproduce that bit of his statement. Ibrahim Fackeh Conteh was telling the investigators what Sheka Sahid Kamara had told him and he explained *" I should take the $60,000 to Victor B. Foh so that he (Mr. Foh) could add the sum of twenty thousand ($20,000) to make it eighty thousand dollars ($80,000)"*
66. But for the evidence mentioned above there is nothing more on this $80,000. If this evidence is held as true does it support an allegation of misappropriation? Without commenting on the truth or otherwise of the evidence presented it does in my opinion establish all the ingredients necessary for misappropriation in respect of the first accused who on his own word becomes implicated. The testimony of PW4 Abass Sesay and the statement of Sheka Sahid Kamara as well as that of Ibrahim Fackeh Conteh does create circumstances which demand an answer from the 2nd accused beyond a blanket denial.
67. With respect to the conspiracy charge the evidence outlined above will similarly support a case for conspiracy against the defendants named which case now needs to be answered

Counts 5 & 6

68. These counts allege that Sheka Sahid Kamara, Victor Foh, Mohamed Allie Bah and Ibrahim Fackeh Conteh had knowingly misled the ACC with respect to the $80,000 allegedly misappropriated by the 1st and 2nd defendants. The counts also allege a conspiracy to so mislead. The evidence led does narrate an effort at subterfuge.

69. Ibrahim Fakeh Conteh's actions as a go between the first accused who was in a "safe house" at the material time and with Victor Bockarie Foh were manipulative and probably obstructive. By his own admission he took $60,000 to Victor Foh which the latter was meant to have topped-up to $80,000. This appears to me to have been an attempt at a cover-up. Done at a time when the ACC was already investigating the whole saga it appears to be an act to mislead the Commission. It appears to me that any adult would have known that what he was doing was wrong and probably illegal, when Ibrahim Fackeh Conteh penetrated an ACC "safe house" and received and carried out the instructions of a detained person.
70. This evidence would support the demand of an explanation from him as to his role in the conspiracy to mislead the commission about the true nature and quantum of the money that was exchanged between the 1st and 2nd defendants. It will similarly demand a defence from Sheka Sahid Kamara who initiated the cover up and from Victor B. Foh to whom the money was sent to execute that cover up.
71. I will repeat that there is no further material evidence before me regarding this $80,000. The first accused does say in his statement to the ACC that Mohamed Allie Bah was present when the approval of the request of a $314,000 was given. The statement reads; *"In the case of the $314,000 Nuru Deen Sankoh Yillah, Allie Bah (who I assume is the 4th accused) and Alhassan Bangura were all present".* Contrary to the suggestion of the prosecution in its address that the *"fourth and fifth physically handled the money"* I have found no evidence on record that supports this statement as far as it relates to the fourth accused.
72. I note that it was from this $314,000 that the alleged misappropriated $80,000 was taken from. I note also that prima facie the request for the $314,000 was for a legitimate purpose, for this conclusion I rely on the minutes of the Minister of Social Welfare etc.. where she does not hold back at all on her concerns regarding that request. Her main concern it appears was the proposed method of transmission of the money to Saudi Arabia. She neither queried the amount nor the purpose but she had strong concerns about the mode of transmission (but more on that later). Being present when the request for this seemingly legal request was made cannot in and of itself and without more become a criminal activity.
73. It appears to me that the prosecution has made no connection whatsoever between the fact of Mohammed Allie Bah being present when the approval was given for the request of $314,000 on the one hand and the alleged conspiracy to misappropriate a portion of it in the sum of $80,000 on the other. It is my opinion that it is quite a monumental leap to take from merely being present when an amount is approved for a prima facie legitimate purpose to that fact being evidence supportive of a charge for the conspiracy to knowingly mislead the commission as to the quantum and nature of a portion of that amount which is now alleged to have been misappropriated.

74. There is absolutely no hint of evidence to support a charge against Mohamed Allie Bah on any of these two counts and I so hold.

Counts 7

75. This count alleges that the first accused Sheka Sahid Kamara misappropriated the sum of Le 300,000,000. The evidence provided on this issue is simple straight forward and mainly not denied. The defendant paid public funds into his private account at ECOBANK. The evidence is that the first accused ordered the opening of another account in the joint name of his wife Mrs. Marie Kamara and in his own name (this portion of the evidence is denied by the line of cross examination employed by counsel for the first). Some of the money deposited in his personal account (a current account) was found to have been transferred to the new account (a savings account). I do not need to analyse this evidence any further it is very clear and PW2 Magrette Michaela Goba from the ECOBANK Teller was highly credible. I am satisfied that without more the evidence available on this count establishes a case with all the necessary elements for misappropriation that needs to be answered by the first accused.

Count 8

76. It is alleged in this count that the defendant Abubakarr Carew failed to follow the laws and procedure applicable when he authorized the payment of the sum of $314,000. The evidence which has been adduced on this count revolves around Exhibits M1-2 and N1-5. These are copies of the same letter dated 11th August 2017 from Alhaji Sheka S. Kamara in his capacity as Secretary Hajj Committee. The letter is headed "Request for Approval of Payment for Hajj Operations in Saudi Arabia". The letter is addressed to; The Permanent Secretary Ministry of Social Welfare Gender and Children's Affairs. Exhibit M1-2 has on it two minutes. The first is a set of minutes from the defendant who had received the letter in his capacity as Permanent Secretary and with his minutes he was forwarding the letter to his Minister. He had written on 14th August 2017 : *"Hon Minister Forwarded for your approval"*

77. The second set of minutes on this exhibit is the Minister's minutes in green ink. The Minister's minutes are almost a page long with some words embolden and underlined. Clearly the Minister was greatly concerned about the issues she had raised in the minutes. In brief the Minister withheld her approval of the request. She did not simply reject the request but rather she suggested a completely different, safer and accountable way for the matter to be handled. Excerpts of the Minister's minutes written on 14th August 2017 are as follows and they are self-explanatory:

> *"PS Carew, Hajj Committee wants to hand carry $314,000 cash to Saudi? This is **NOT** approved…. PS Carew this request for $314,000 is **NOT** approved…. Tell*

Alhaji Sheka Shekito Kamara to re-submit a breakdown of the Hajj Committee members and I will approve we pay each separately….amounts for students in Saudi are to be quantified line by line as well as for the medical team…let the Hajj Committee give us Bank details and quotes of the Medical Insurance Company. We will wire the funds to that Company"

78. It would appear that upon meeting this stumbling block with the Minister the Permanent Secretary decided to ignore this refusal. Exhibit N1-5 shows an alternative path that was used to circumvent the Ministers refusal. It has on it the defendant's minutes to the minister for approval but it does not have her minutes in response. There is a second set of minutes by the Permanent Secretary on N1. This set is directed to the Accountant: *"Accountant please prepare transfer letter for my signature while we wait for the Ministers Approval".* N3 is the Request for the disbursement of the amount address to the Sierra Leone Commercial Bank for the sum of $314,000 and signed my the accountant and the defendant.
79. It has not been lost on me that the accountant PW6 Mr. Ibrahim Sesay in his testimony when shown Ex M with the Minister's minutes of non-approval said that he had not seen that document before *"I am only seeing this document for the second time having seen it first at the ACC"*. Similarly I have taken especial note of the fact that it is from this amount of $314, 000 which the defendant approved contrary to the Minister's direct instructions that $80,000 is now in limbo between the 1st and 2nd defendants.
80. No evidence has been brought which show that the Minister ever approved this amount even though both minutes made by the defendant suggest strongly that the Minister's approval was necessary. I recall that PW7 Mr. Richard Williams had testified that

"Regulations provide that before expenditure there must be budgeting, approval by the Head of the MDA (usually the Minister) then the Vote Controller will implement"

81. Testifying under cross examination Mr. Williams (PW7) referred to several sections of The Public Finance Management Act of 2016 including Ss; 11, 12 and 13. I have gone back and read the Act and the specific sections the witness had referred to. I have found it consistent with the witness' testimony that:

"The PS is the Vote Controller…The PS is answerable to the Minister…not all expenditure is approved by the Minister…these are not (the) usually (for) the day to day activities which rest with the PS".

82. S. 12(3) of The Public Finance Management Act of 2016 has in particular caught my attention and I now produce it in whole:

"Every vote controller shall perform his responsibilities in accordance with this Act, regulations made thereunder, any other enactment, **any instructions or directions given by the Minister** or the Accountant-General or the head of the budgetary agency."

83. It is my opinion therefore that the prosecution has shown that the defendant Abubakarr Carew in violation of procedure has clearly taken a step which countermanded the express directives of his Minister on a specific issue and his actions have resulted in alleged significant and identifiable loss. This defendant needs to defend the action he has taken. It is my opinion that a case has been made against the 6th defendant on this count which he now needs to answer and I so hold.

Conclusion:

84. The forgoing discussions and analysis lead me to the now obvious conclusion that the No case submission must succeed wholly with respect to counts 1 and 2 and in part, with respect to Counts 5 & 6 (*and that is as far as those counts 5 & 6 relate to the fourth defendant Mohamed Allie Bah*). With respect to Counts 3, 4, 5, 6, 7 & 8 the No Case submission fails except otherwise already stated.
85. Consequently, as I have found no case made out on the following charges:
    i. Engaging in a project without prior planning
    ii. Knowingly misleading the Commission or
    iii. any conspiracies in respect of these two offences

    as brought against **Minkailu Mansaray** the 3rd defendant and **Mohamed Allie Bah** the 4th Defendant I hereby discharge the two of them accordingly.

    I hereby order that the other defendants may proceed to open their defence or as they may elect.

Reginald Sydney Fynn JA……