

**IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN**

THE STATE

VS

**PAUL SANDI
MOHAMED SHERIFF
IDRISSA YILLA**

BEFORE THE HONOURABLE JUSTICE MIATTA MARIA SAMBA, J.A
DATED THE 8TH DAY OF APRIL 2020

Counsel:

J. T. Deen-Tarawally Esq Prosecutor for the States
T. Bear Esq for the 1st Accused
A.R Kamara Esq and M. Sesay Esq for the 2nd Accused
I.S. Yillah Esq for the 3rd Accused

Judgment:

1. The matter before this Court commenced by way of an Indictment against all three Accused persons, dated the 21st day of May 2019 for the various offences herein stated:

1.1. COUNT 1

STATEMENT OF OFFENCE

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act No. 12 of 2008.

PARTICULARS OF OFFENCE

PAUL SANDI of No. 4 Barracks Road, Cole Farm, Freetown in the Western Area of the Republic of Sierra Leone, former Permanent Secretary of the Ministry of Information and Communications, MOHAMED SHERIFF of Off Mama Lane, Gloucester, Freetown in the Western Area of the Republic of Sierra Leone, former Managing Director of the Sierra Leone Cable Network (SALCAB) and Idrissa Yillah of 55 Byrne Lane, Freetown in the Western Area of the Republic of Sierra Leone former Chairman of the Sierra Leone Cable Network, on the 1st day of July 2016 misappropriated public funds in the sum of \$300,000 held at the Sierra Leone Cable Network Account No. 201/3118569/2/1/1 domiciled at the Guaranty Trust Bank by causing its withdrawal and transfer, thereby depriving SALCAB of the said public funds.

1.1.1. COUNT 2

STATEMENT OF OFFENCE

Failure to Comply with Applicable Procedures and Guidelines relating to the Management of Public Funds contrary to Section 48(2)(b) of the Anti-Corruption Act No. 12 of 2008.

PARTICULARS OF OFFENCE

PAUL SANDI of No. 4 Barracks Road, Cole Farm, Freetown in the Western Area of the Republic of Sierra Leone, former Permanent Secretary of the Ministry of Information and Communications, MOHAMED SHERIFF of Off Mama Lane, Gloucester, Freetown in the Western Area of the Republic of Sierra Leone, former Managing Director of the Sierra Leone Cable Network (SALCAB) and Idrissa Yillah of 55 Byrne Lane, Freetown in the Western Area of the Republic of Sierra Leone former Chairman of the Sierra Leone Cable Network, all being persons charged with its management of Public Funds, on diverse dates between the 1st day of June and 31st day of July 2016 failed to comply with the applicable procedures and guidelines in the management of Public Funds in the sum of \$300,000.

1.1.2. COUNT 3

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

PAUL SANDI of No. 4 Barracks Road, Cole Farm, Freetown in the Western Area of the Republic of Sierra Leone, former Permanent Secretary of the Ministry of Information and Communications, MOHAMED SHERIFF of Off Mama Lane, Gloucester, Freetown in the Western Area of the Republic of Sierra Leone, former Managing Director of the Sierra Leone Cable Network (SALCAB) and Idrissa Yillah of 55 Byrne Lane, Freetown in the Western Area of the Republic of Sierra Leone former Chairman of the Sierra Leone Cable Network, conspired together and with other persons on a date unknown between the 1st day of June and 31st day of July 2016 to commit a corruption offence, to wit: conspired to misappropriate Public Funds in the sum of \$300,000 held at SALCAB Account No. 201/3118569/2/1/1 domiciled at Guaranty Trust Bank.

2. On the 24th day of May 2019 when this matter was first mentioned, the Prosecutor made an application pursuant to Section 148(1) of the Criminal Procedure Act No. 32 of 1965 for an amendment of the Particulars of Offence in Count 1 of the Indictment to read 1st July 2016 instead of 6th July and submitted that granting the amendment at this stage will cause no injustice to any of the Accused persons. No objection raised by any of the Counsel for the Accused persons, the application for amendment was granted.

2.1. Charges as per the amended Indictment were put to each of the three Accused persons and they all took their plea separately, each pleading, not guilty to each Count.

2.1.1. Referring to an instrument dated the 21st day of May 2019 under the hands of the Attorney General and Minister of Justice, an application that this Court tries this matter by Judge alone was made by the Prosecutor pursuant to Section 144(2) of the Criminal Procedure Act No. 32 of 1965 as repealed and replaced by Section 11 of the Criminal Procedure Amendment Act of 1981. There being no

objection by any of the Counsel for the Accused persons to the said application, same was granted by this Court.

2.1.2. On applications made by their respective Counsel on the 24th day of May 2019, bail was granted to all three Accused persons on the condition as they appear in the Judge's notes on file. The Prosecutor was asked to serve their proofs of evidence and all documents obtained during the investigations, exculpatory and otherwise, on Counsel for each of the three Accused persons. The Court is satisfied that the Court's direction was complied with by the Prosecutor as confirmed by each Counsel.

3. Burden of Proof

3.1. This Court sits both as a tribunal of fact and as a tribunal of law. I must therefore keep in my mind and in my view at all times, that in all criminal cases it is the duty of the prosecution to prove its case beyond a reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or offences with which each of the accused persons are charged.

3.1.1. If there is any doubt in my mind, as to the guilt or otherwise of the any of the Accused persons, in respect of any or all of the charges on the Indictment, I have a duty to acquit and discharge the such Accused person of that charge or charges. I must be satisfied in my mind so that I am sure that the Accused persons have not only committed the unlawful acts charged in the Indictment, but that each or any of them did so with the requisite *mens rea*, that is that the acts were done willfully.

3.1.2. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the Prosecution has not proved its case beyond a reasonable doubt. No particular form of words is 'sacrosanct or absolutely necessary' as was pointed out by Sir Samuel Bankole Jones, P, in the Court of Appeal case of *Koroma V R* (1964-66) ALR SL 542 at 548 LL4-5. What is of importance is that the Prosecution establishes the guilt of the Accused beyond a reasonable doubt. A wrong direction in this all important issue will result in a conviction being quashed. The Court refers to the case of *Sahr Mbambay V The State* App. 31/74 CA (unreported)-the cyclostyled judgment of Livesey Luke, JSC at pages 11-13. At Page 12, where Luke JSC referring to *Woolmington V R* said, that '*if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the Prosecution or the prisoner ... the Prosecution has not made out the case and the prisoner is entitled to an acquittal*'.

3.1.3. I must also bear in mind and keep in view at all times that though the Accused persons are tried jointly, the case against each of them must be treated separately. At no time must I treat evidence which is only applicable to, or which inculpates only one Accused person against the other Accused person(s). Each Accused person is entitled to an acquittal if there is no evidence, direct or circumstantial, establishing his guilt, independent of the evidence against his co-Accused.

3.1.4. The Court notes that after the Prosecution's case, upon being put to their election separately and as required by Section 194 of the Criminal Procedure Act No. 32 of 1965, all three Accused persons chose to testify on oath which they did separately in their defence. I must state that an Accused person need not give evidence on his own behalf but when he does, the Court takes it into consideration and accords to it such weight as it thinks appropriate in the circumstance. The Accused does not bear the burden of disproving the case of the Prosecution, nor of proving his own innocence. What could be considered by the Court is whether the explanation given by the Accused raises a reasonable doubt in the mind of the tribunal of fact. If it does, the Accused is entitled to an acquittal.

3.1.5. I thank the Prosecutor and all three Defence Counsel for the timely Final Address for the State and each of the Accused persons each of which helped ease my research and each of which made interesting read. Now I will deal with the proof of evidence or otherwise based on the law and evidence, documentary or otherwise before the Court. starting, advisedly, with the charge of conspiracy against all three Accused persons.

4. Count III

Conspiracy-Section 128(1) of the Anti-Corruption Act No.12 of 2008

4.1. Conspiracy is a common law offence, in this situation, made statutory by Section 128(1) of the Anti-Corruption Act of 2008. The term is used here to describe the offence of conspiracy to commit a criminal offence under the Anti-Corruption Act of 2008, contrary to Section 128(1) of the said Act.

4.1.1. Statutory conspiracy as in this case is committed when a person agrees with one or more persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intention, will necessarily amount to or involve the commission of any offence or offences by one or more of them; such agreement has been held to be sufficient to found a conviction for conspiracy.¹ The agreement can be inferred; it needs not be specifically proven.² Also, it is settled law that a conspiracy may be sufficiently proved where the circumstances are such that the overt acts which are proved against some defendants may be looked at as against all of them, to show the nature and the objects of the conspiracy.

4.1.2. The evidence needs not include evidence of some tacit agreement on their part to commit any crime. It is enough that it can be safely inferred that the role of each of the Accused persons show that they were part of a larger scheme which resulted in the loss of money as in this instance, by a public body.

4.1.3. *Mens rea* is important in conspiracy as is in any crime. However, with conspiracy, proof of *mens rea* is found in the Accused' willingness to perform his own part of the plot. The Accused may know full well that the entire enterprise would involve the commission of offence(s) by one or more of the conspirators.

¹ *O'Connell v R* 1844 5 St. Tr.(NS).

² *R v Brisac* (1803) 4 East 164 as per Archbold.

Older authorities have suggested that the Prosecution need not prove that the party to the conspiracy had knowledge of the illegality of the acts to be done.³ However, where proof is available, it is sufficient that the Accused knew that there was going to be the commission of some offence.⁴ In Count 3 as charged therefore, the Court needs to be satisfied by the Prosecutor's case that based on the evidence including the testimonies of A1 and PW7 before the Court, all three persons met and agreed together with PW7, in the office of the then Minister of Information and Communications, (MIC) Mohamed Bangura, PW7, to withdraw \$300,000 from the SALCAB account held at the GTB for purposes other than what such money was meant for.

5. Evidence

5.1. In Count 3, the Prosecution allege that all three Accused persons together with other persons, on a date unknown between the 1st day of June and 31st day of July 2016 conspired to misappropriate \$300,000, same being public funds held in the account of SALCAB at the Guarantee Trust Bank, (GTB) account numbered 201/3118569/2/1/1.

5.1.1. A1 told the Court in testimony that the then Minister of Information and Communications, PW7 called him into his office on a date unknown but during the period covered by the indictment, where he met A2 and A3; that PW7 asked A2 to repeat what he, A2 had told them (i.e. PW7 and A3) in his, (A1's) absence. He said A2 told them all present (i.e. A1, A2, A3 and PW7) that the then President, Ernest Bai Koroma (the then President), had demanded \$300,000 from SALCAB which was to be transferred into the MIC account at the Sierra Leone Commercial Bank (SLCB) for processing and eventual withdrawal. A1 told the Court that he was then instructed by PW7 to facilitate the said transaction; that upon confirmation that the money had been transferred into the WARCIP account at the SLCB, PW7 instructed further that he (A1) prepares the necessary documents for withdrawal which he did. In answer to questions put to him in cross examination, A1 told the Court that the meeting in the Minister's office, that is PW7's office was about two weeks after he had prepared Exhibit J3.

5.1.2. PW2 was an Accountant assigned to the MIC during the period covered by the Indictment, charged with the responsibility of advising the Vote Controller, A1, on financial matters and overseeing the Finance Department, as he said in testimony. He knew \$300,000 had been transferred into the WARCIP account by SALCAB. He told the Court that in his presence, the Project Co-ordinator, Julius Kamara told A1 that the WARCIP account was a dedicated account for World Bank projects and that Kamara asked A1 to cause the removal of the \$300,000 from the WARCIP account.

5.1.3. Also, together with A1, he caused \$100,000 of \$300,000 to be withdrawn in bits through other staff members by signing cheques. Together with A1, PW2 authorized the transfer of \$200,000 from the WARCIP account into A1's personal business account named Base Construction Services account held at the Sierra

³ See para. 4075 of Archbold, 36th Edn.

⁴ *R v Siracusa* 90 Cr. App. R. 340 cited favorably in Archbold 2001 Edn p 2641.

Leone Commercial Bank as in Exhibit B4, knowing fully well as an Accountant would, that he ought not to so authorize. He knew Exhibit B8, part of the documents used to justify the transfer of \$200,000 into A1's Base Construction Services account was a Job Completion Certificate dated 8th March 2016 and he knew that by that date, the transaction as in Exhibit J3 dated 10th June 2016 and Exhibit J4 dated 29th June 2016 had not even come up. He (PW2) also knew that there was no sole sourcing document in respect of the fake contract referred to in Exhibit B4-10 yet together with A1, he effected the transfer of £200,000 into the Base Construction Services account from the Ministry's WARCIP account.

5.1.4. PW7, Mohamed Bangura, told the Court that one morning, on a date he could not recall, A1, A2 and A3 went to his office when A1 informed him about the deposit of \$300,000 into the Ministry's account, same meant for the benefit of the former President. It is noted that A1 told the Court in his defence that he was called upon by PW7 to meet him in his office and that he met A2 and A3 in the Minister's, PW7's office. It is also noted that A1's testimony on oath before the Court is to the effect that it was A2 who informed them about the purpose for which the money was needed and not A1 as PW7 said to the Court. In fact according to A1, PW7 asked A2 to repeat what he had said in A1's absence. Howsoever it may have happened, according to A1 and PW7, a meeting took place in PW7's office. According to A1, this said meeting took place about two weeks before he prepared Exhibit J3. The Court takes note that PW7 knew the \$300,000 referred to was public funds the purpose for which withdrawal was unlawful. According to A1, he, PW7 gave him instructions to effect withdrawal of the \$300,000 from the WARCIP account. PW7 believed the money was withdrawn by A1 and paid to A2 for an unlawful purpose.

5.1.5. My understanding of A1's and PW7's testimony is that all four (4) persons allegedly present in PW7's office, knew in fact that \$300,000 so transferred and which was to be withdrawn and used unlawfully was public funds which belonged to SALCAB. The Court takes note of Exhibit J3 which according to A1 he prepared before the said meeting. A1 said that together with PW2, he withdrew \$100,000 of the \$300,000 from the WARCIP account in bits through other staff members. It is the Court's position that both PW2 and PW7 knew from the very beginning that an offence was to be committed which said offence was in fact committed. The Court notes the powers of the Anti-Corruption Commissioner in respect of who he could or could not prosecute. That said, it is the position of this Court that both PW2 and PW7 are accomplices to the commission of the offences charged on the Indictment.

5.1.6. I am mindful that I must be satisfied that a witness, an accomplice or not, is a credible witness to the Court and that an accomplice's testimony must be treated with caution as it is dangerous to convict on the uncorroborated testimony of an accomplice. I refer to the case of *Davies V DPP (1954) 1 AER 507; (1954) 2 WLR 343* where Lord Simonds, LC said "*In such a case the issue of 'accomplice vel non' is for the jury's decision: and a Judge should direct them that if they consider on the evidence that the witness was an accomplice, it is dangerous for them to act on his evidence unless corroborated: though it is competent for them to do so if after that warning they still think fit to do so*". I also refer to *R V*

Lucas (1981) 2 AER 1008 where Lord Lane, CJ said at page 1010, paragraph 'd', "Having explained to the jury that they were entitled to convict on the evidence of the accomplice even though uncorroborated, provided they heeded the warning of the dangers of so doing, he went on to explain that such corroboration could sometimes be found in the evidence of the Defendant herself".

5.1.7. The Court notes the testimony of PW7 when he told the Court that when he, PW7 was interrogated at the ACC, he denied any knowledge of the said \$300,000; he said he only got to know about the said money through A1. He denied knowing at any time that the money was in fact meant for the then President. PW7 now tells the Court that at the said meeting in his office referred to, A1 did tell him and A2 and A3 present, that the money demanded was for the then President. He also told the Court that he had lied to the ACC that he did not meet A1 before his second interview with the ACC; he agreed with Counsel that it was only when he was confronted by ACC with an audio recording of his meeting with A1 before his second interview, that he admitted meeting A1 a day before his said second interview at the ACC. The reason for PW7's lies may be a fear for the truth; a realization of guilt. He certainly had something to hide.

5.1.8. PW2 told the Court that he assisted A1 in counting \$100,000 in \$100 bills and that he was present when A1 handed over \$100,000 to A2. A1 told the Court that PW2 was present when he handed over \$200,000 to A2. It matters not how much may have been handed over to A2. What is important is confirmation that part of or the \$300,000 was handed over to A2. I have said that I consider both PW2 and PW7 as accomplices to each of the offences charged and I have cautioned myself in respect of convicting on their evidence.

5.1.9. The Court notes that both the A2 and A3 in their defence whether by their respective testimonies or statements to the ACC, denied being present at any meeting referred to by A1 and PW7. The Court finds interesting A1's testimony that he had prepared Exhibit J3 two weeks before the meeting himself and PW7 referred to in their testimonies and their statements to the ACC. According to A2 and A3, they acted as per Exhibit J4, on Exhibit J3 and nothing else; they deny being part of any meeting, in respect of the subject matter of \$300,000 in PW7's office.

5.1.10. I refer to the testimony of the Prosecution's witness in rebuttal, Ibrahim Yusuf and to Exhibit EE1-45 especially Exhibit E1 dated 15th October 2014 from the then Financial Secretary to the then Permanent Secretary, A1, tendered by Yusuf, subject, Government Counterpart Payment under the ECOWAN Project which reads in part:

'As you are aware, the Ebola epidemic has significantly affected budgetary execution ... making it extremely difficult to finance other activities including the ECOWAN project. However, given the fact that SALCAB is now operating commercially by leasing capacity to Telcos and ISPs, it should start meeting its obligation under the Project Appraisal Document and ensure the successful conclusion of the ECOWAN Project'.

6. I shall refer to Exhibits J3 of 10th June 2016 which reads in part:

'You may recall that as per agreement, both the national fibre backbone and the ECOWAN Optical Fibre Network once consolidated would be managed by SALCAB. To facilitate a smooth transition and handover, a number of activities are to be undertaken.... I write to request that you kindly provide financial assistance to the Ministry in the sum of USD300,000'

6.1. The words 'as per agreement' shows that this was not a new topic; the ECOWAN Optical fibre network project had been discussed with SALCAB before. I now refer to Exhibit DD1-15, starting with Exhibit DD4 of 19th January 2016, the minutes of a SALCAB Board meeting under the rubric 'ECOWAN PROJECT' which reads in part:

'The Board requested that the Managing Director writes a letter to the Permanent Secretary of the MIC on the status of the ECOWAN Project.'

6.1.1. The point is that SALCAB and the MIC especially through the Permanent Secretary, A1, had been working on the ECOWAN project referred to by A1 in Exhibit J3 and by the Board in Exhibit DD4. I also refer to another Board meeting minute as in Exhibit DD7 of 25 February 2016 under the rubric ECOWAN which reads:

'The Managing Director reported on the ECOWAN Project and relayed that the project should be completed at the end of March 2016 and handed over to the company. However he noted that the project has been faced with some technical challenges on the Port-Loko-Rogbere Junction Highway. He further reported that skill sets will be needed for the management of the project even though there are some temporary staff members running the project but expressed whether they are capable of managing the system.'

6.1.2. The A2's language that the ECOWAN project should be completed and handed over to SALCAB appears to me to be in the same spirit in which Exhibit J3 was written by A1 to wit: "REQUEST FOR URGENT SUPPORT TO THE MINISTRY".

'I have to refer to the above subject matter and to request urgent support to enable the Ministry undertake a number of activities to facilitate the finalization of plans for the handing over of the consolidated networks to SALCAB'.

7. Based on the evidence before this Court, it is clear that support for the ECOWAN project relating to schools and university connectivity was nothing new for the SALCAB and MIC through A1. The Prosecution has not proven beyond reasonable doubt, the presence or involvement of A2 and A3 in a meeting where they would have conspired with A1 and other person(s) unknown to commit a corruption offence as alleged in the indictment. I also find it difficult to make such inference.

8. Count 1.

Section 36(1) of the Anti-Corruption Act, 2008 reads:

8.1. A person who misappropriates public revenue, public funds or property commits an offence.

8.1.1. According to Section 36(2), *a person misappropriates public funds or property if he willfully commits an act, whether by himself, with or through another person by which a public body is deprived of any revenue, funds or other financial interest or property belonging or due to that public body.* It is therefore incumbent on the Prosecution to prove that:

- a. A public body was deprived of funds due to the act of misappropriation.
- b. The funds misappropriated must belong to that public body.
- c. That what was misappropriated was public funds.
- d. That the act of misappropriation was willful.

9. It is important that the Court first considers whether in fact, SALCAB was a public body as the Prosecution allege. I refer to the interpretation section of the Act, page 9 thereof for the definition of a 'public body' which the Court notes includes:

- a. Cabinet, any ministry, department or agency of Government;
- b. A Government Company;
- j. A company ... set up wholly or partly out of public funds;

9.1. The Court takes note of the Amended and Restated Memorandum and Articles of Association of SALCAB as in Exhibit A16-32 in which shareholders as per Exhibit A22 is the Government of Sierra Leone. In his testimony, A2 told the Court that SALCAB as a Company was set up by Government and that he was the very first Managing Director of that Company. The Prosecution has maintained, as it came out clearly in evidence including the testimonies of A2 and A3 that SALCAB is a Government owned Company. I really could not agree more. There is nothing in evidence to show otherwise.

9.1.1. SALCAB was set up out of public funds. The Court refers to Exhibit Y1-2 especially Exhibit Y2 of 3rd September 2013 under the hands of the then Minister of Information and Communications, Alhaji Alpha Bakarr Sahid Kanu. Exhibit Y2 reads in part:

"... Therefore as of 20th August 2013, government, the owner of SALCAB directs that the appointed Chairman, Managing Director and Director of SALCAB be responsible for the day to day operations and management of SALCAB assisted by an Interim Management Committee to be composed of Presidential nominees, from the Office of the President, Ministry of Information and Communications, Ministry of Finance and Economic Development and the Attorney General's Office ..."

9.1.2. Both A2 and A3 told the Court in testimony that they sought Parliamentary approval before their assumption of office. It is my considered opinion that

SALCAB, being a public entity is the only reason why both A2 and A3 had to seek Parliamentary approval before their assumption of office. I believe that it is clear to all Counsel that both A2 and A3 need not have sought Parliamentary approval for their employment in a private owned Company.

9.1.3. The Court refers to Exhibit D19 dated the 30th day of August 2013 from A3 to the Managing Director of the Guarantee Trust Bank on which A2 and A3 signed as Directors authorized to operate a new account sought to be opened because, in the words of A3 *"We have received funds from the Government of Sierra Leone and are therefore requesting that you open a United States Dollar (USD) and a Leones account in the name of Sierra Leone Cable Network (SALCAB)...."*

9.1.4. The Court further refers to Exhibit D14 under the rubric "Change of Signatories to the Company's Operational Accounts" where it is stated as follows:

The Chairman reiterated that the Government of Sierra Leone has mandated its representatives on the Board to assume full responsibility of the day to day operations and management of the Company until the divestiture process was completed

9.1.5. All three Accused persons told the Court that the MIC was the supervising Ministry of SALCAB during the period under consideration; SALCAB was part of the MIC during the period considered. It is clear therefore to the Court, that SALCAB was not a private owned Company but a Government owned Company as per the interpretation section of the Anti-Corruption Act, No. 12 of 2008 which said interpretation makes SALCAB a public body.

9.1.6. The question now remains whether the \$300,000, the subject matter of this litigation was in fact public funds belonging to SALCAB. I have held that SALCAB is a public body, established out of moneys provided by the Government of Sierra Leone and that SALCAB is a Company owned by the Government of Sierra Leone. Public funds are defined by the Act as moneys paid from funds appropriated by Parliament from the Consolidated funds; any fund under sub section 2 of Section 111 of the Constitution and any moneys... for the benefit of the people of Sierra Leone or a section thereof.

9.1.7. Section 4(1) of the Interpretation Act, 1971 tells us that "In every Act, unless a contrary intention appears "Government" means the Government of Sierra Leone (which shall be deemed to be a person) and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case". It is the evidence before this Court that the moneys used to establish SALCAB is Government money. It follows that if as is alleged, moneys were misappropriated as in the case of Count 1 charging an offence under Section 36(1) of the Anti-Corruption Act, 2008, such moneys must be public funds belonging or due to SALCAB, a public body.

9.1.8. I refer to the SALCAB United States Dollars Account No. 3118569/2/1/1 at the GTB as in Exhibit A3-5 for the period 31st May 2016 to 25th July 2016 and

hold that the moneys in that said account during the period concerned belonged to SALCAB, a public body.

10. Another element of the offence is that the Accused persons must have acted willfully in the misappropriation of public funds whether by themselves, with or through another person. In the instant case, the Prosecution allege that all three Accused in their respective capacities as Permanent Secretary of the MIC, and the Managing Director and Chairman respectively of SALCAB, by their various acts, willfully deprived SALCAB of the sum of \$300,000.

10.1. As to whether there was a misappropriation, in that a willful act was committed by each of the Accused persons which resulted in SALCAB being deprived of funds, I have looked at the evidence very closely and at the testimony of each of the Accused persons and witnesses, even at the risk of repeating myself, as to how \$300,000 laid in the Indictment was appropriated and used, unlawfully as alleged.

10.1.1. To me, misappropriation is synonymous to dishonest appropriation in the sense that dishonest appropriation constitutes misappropriation. So the act of misappropriation must be done willfully and dishonestly. The Prosecutor has argued that misappropriation is a single act. Like any other criminal offence, save for strict liability and status offences, the *actus reus* of any offence must go with a *mens rea*. I shall touch on the issue of misappropriation being a single act in light of the evidence before this Court later in this judgment, appreciating that I have already referred to SALCAB's USD Account No. 3118569/2/111 as in Exhibit A3-5 kept at the GTB.

10.1.2. Using a restrictive interpretation, Lord Roskill's opinion of what appropriation meant in the case of *Morris*⁵ was that the concept of appropriation involved not an act expressly or impliedly authorized by the owner but an act by way of adverse interference with or usurpation of the owner's rights. I have said that what makes it misappropriation is the willfulness of the act and the dishonest intention to deprive the public body of those funds. In essence, the act of depriving the public body, SALCAB, in the instant case, of funds, must be committed willfully or dishonestly.

10.1.3. In Blackstone's Criminal Practice, 2007 Edition, at paragraph A2.8, it is suggested that the relevant meaning of the word 'willful' is now a composite word to cover both intention and a type of recklessness. It includes the "could not care less" approach.⁶ As per Lord Diplock in *Sheppard*, this last state of mind "imports the concept of recklessness which is a common concept of *mens rea* in criminal law".⁷ The Court refers to the case of *Metropolitan Police Commissioner Vs. Caldwell*⁸ and *Newington* which said cases indicate that 'willfulness' requires basic *mens rea* in the sense that either intention or recklessness will suffice and

⁵ (1983) 3 AER 288 HL pgs 292-293.

⁶ Blackstone's Criminal Practice 2003 p. 27.

⁷ *R Vs Sheppard* (1981)AC 394.

⁸ (1982) AC 341.

that even in the absence of the word 'willfully', this is the *mens rea* which will normally be implied by the courts for serious criminal offences in the absence of any other factor indicating a wider or narrower basis. The case of *R V G* (2004) 4 AER 765, HL has confirmed that willfully means intentionally or recklessly but it has departed from the objective test for recklessness suggested by Lord Diplock in *Sheppard* and opted for the subjective approach.

11. The Evidence

11.1. The Court refers to Exhibit A3 to A5, the SALCAB bank statement of Account No. 31185692111 referred to above held at the GTB, especially Exhibit A4 and to transaction dated 1st July 2016 which shows that \$300,000 was transferred from the said SALCAB USD Account No. 3118569211 into the WARCIP Account No. 003001013045030168. The said transfer, the Court notes was based on Exhibit A6, which is also J4 dated 29th June 2016, signed by A2 and A3 with subject matter "Remittance of funds to the WARCIP". The subject matter of this litigation left its source on the 1st July 2016.

11.1.2. The Court now refers to Exhibit C1-42, which includes the Sierra Leone Commercial Bank statement for WARCIP, especially Exhibit C3 and the transaction of 8th July 2016 when \$299,975 reached the WARCIP Account No. 003001013045030168 from the SALCAB USD Account 3118569/211 pursuant to the directives of A2 and A3 through Exhibit A6 also exhibited as Exhibit J4.

11.1.3. A2 and A3 have denied being present at any such meeting or having any discussions about withdrawing \$300,000 from the SALCAB Account for the benefit of the then President.

11.1.4. I have said that PW7 is an accomplice to the plans of unlawful withdrawal of funds. I have put very little weight on his testimony particularly so that he admitted to the Court that he had lied to the Anti-Corruption Commission that he knew nothing about the transaction which led to the withdrawal of the \$300,000 and that he had not met A1 before his second interview; he was confronted with an audio recording of his meeting with A1 before he agreed that he did meet with A1 before his second meeting at the Anti-Corruption Commission. PW2, being an Accountant and co-signatory to the WARCIP account at the Ministry had full knowledge that \$300,000 was transferred into the WARCIP Account and together with A1, authorized the withdrawal, in bits, of \$100,000 of the said \$300,000 and the transfer of the remainder of \$200,000 into A1's personal business account pursuant to Exhibit B4, using fake documents as in Exhibits B5 to 10, all being for an unlawful purpose. I consider PW2 an accomplice and I have cautioned myself on the use of his testimony also.

12. The evidence before the Court is that Exhibit J3 was authored by A1 for payment at his request, of \$300,000. The Court considers both the SALCAB Account at the GTB and the WARCIP Account as Accounts into which public funds are kept. If it is accepted that misappropriation is a single act, it will mean that the moment the \$300,000 was transferred from the SALCAB account on the 1st day of July 2016, there was misappropriation if such funds are used for purposes other than for what they were intended. I have said that the funds in

the WARCIP Account are also public funds. With Exhibit J3 and J4 being evidence before this Court, I will rather consider what happened to the funds after the transfer of \$300,000 less bank charges into the WARCIP Account on the 1st day of July 2016. I do not consider the single act of transfer from the SALCAB Account into the WARCIP Account to be misappropriation because the transfer was still clothed as public funds even as it was in the WARCIP Account. I would have had a different view if for instance, the money was dishonestly transferred from the SALCAB Account into the Base Construction Services account, which is a personal account. In the instant case, the \$300,000 was transferred into another account, a WARCIP Account where public funds are kept and so, the \$300,000 remains, public funds.

12.1. The Court refers to the testimony of A1 when he told the Court that together with his office Accountant Donald Newman, PW2, he caused to be withdrawn from the WARCIP Account, through Desmond Bailor, Mohamed Fofannah, Willie Njai and Ruth Simbo, a total of \$100,000 of the \$300,000, less bank charges, transferred into the WARCIP Account from the SALCAB Account. He also told the Court that he further caused to be transferred a balance of \$200,000, less bank charges from the WARCIP Account into his personal business account, Base Construction Services Account held at the SLCB.

12.1.1. I refer to Exhibit C4, transaction dated 25th July 2016 and note that on that day, \$200,000, less bank charges, was indeed transferred from the WARCIP SLCB Account into Base Construction Services Account, which bank statement is exhibited herein as Exhibit E1-9. The Court refers to Exhibit E2, against the transaction dated 27th July 2016 and note that \$199,953 was received in the Base Construction Services Account No. 208658321 based on Exhibit B4 dated 19th July 2016 signed by A1 and his office Accountant, Mr. Donald Newman, PW2. I wish to note that on the 27th July 2016 when an amount of \$199,953 was transferred into the Base Construction Services account at the SLCB, the opening balance of the Base Construction Services Account was a mere \$134.22.

12.1.2. I have said that on the instructions of A1 and PW2, \$100,000 was appropriated in cash and in bits from the WARCIP Account by the four staff officials hereinbefore referred to. I now refer to Exhibit E2-9, the bank statement of Base Construction Services and note the following appropriations on the days stated:

- a. 28th July 2016 - \$40,000 in \$10,000 withdrawal bits;
- b. 3rd August 2016 - \$40,000 in \$10,000 withdrawal bits;
- c. 4th August 2016 - \$30,000 in \$10,000 withdrawal bits;
- d. 5th August 2016 - \$ 10,000
- e. 11th August 2016 - \$30,000 in \$10,000 in bits and \$30,000 bulk withdrawal;
- f. 23rd August 2016 - \$10,000;
- g. 19th September 2016 - \$700;
- h. 9th November 2016 - \$600;
- i. 18th November 2016 - \$400;
- j. 3rd February 2017 - \$300;

12.1.3. It is noted that the date covered by the indictment for all three charges including the charge on misappropriation is the period 1st July to 31st July 2016. It is also worthy to note that no money was credited into the Base Construction Services account after the receipt of \$199,953 on the 27th July 2016, the said transfer made pursuant to fake documents according to A1's and PW2's testimony on oath before the Court. The transfer of \$199,953 on the said 27th July 2016 from the WARCIP Account into the Base Construction Services Account is therefore within the period covered by the Indictment.

13. I shall now show the evidence of willfulness and dishonesty with which public funds were treated as personal funds which said act deprived SALCAB of much needed funds.

13.1. The Court refers again to Exhibit J3 of 10th June 2016, addressed to A2 in his capacity as Managing Director of SALCAB, prepared and signed by A1 by which A1 asked for financial assistance in the sum of \$300,000 from the SALCAB for purpose therein stated, knowing fully well that the money was to be used for another purpose other than that which he stated in Exhibit J3. It was a shock for the Court, when A1 told the Court that in fact, Exhibit J3 had nothing to do with Exhibit J4, that is, the letter of authorization to the GTB signed by A2 and A3. In his words, A1 told the Court that "Exhibit J3 was used merely as a pretext to facilitate the transfer of \$300,000 from the SALCAB account".

13.1.2. A1 did reiterate his answers to questions put to him in cross examination by the Prosecutor that he had no written authority to make the withdrawals or transfers from the WARCIP account. I have said that it is my view that the moneys in the WARCIP account were still public funds. What could be more willful, dishonest and deliberate than the method employed by A1 for the withdrawal and transfer of public funds of the remainder of \$300,000 from the WARCIP account into his Base Construction Services account? A1 had this to tell the Court:

That, "Exhibit B 5, 6, 7 and 8 includes an Agreement between the Ministry of Information and Communications and Base Construction Services dated 12th March 2013; that he filed these said Exhibit B 5, 6, 7 and 8 with the Bank for purposes of effecting the withdrawals and transfer of the remainder of \$300,000 from the WARCIP account but that "there was really no such contract awarded by the Ministry of Information and Communications to Base Construction Services for the fixing of cubicles".

13.1.3. This piece of evidence, the Court holds is most willful, dishonest and deliberate.

14. The Court refers to Exhibits J3 and J4, the letter of request for transfer of \$300,000 signed by A1 and the letter of authorization for the said transfer from the SALCAB Account into the WARCIP Account signed by both A2 and A3.

14.1. A2 and A3 have maintained that their letter of authorization as in Exhibit J4 was in furtherance of Exhibit J3 authored by the A1. The Court notes that there are no account details on Exhibit J3 into which payments were to be made but the Court notes from other documents as in Exhibits AA that payments based on these Exhibits which also had no bank details or names of beneficiaries, were made by SALCAB in the same manner it was made in Exhibit J3.

14.2. A2 told the Court that the World Bank had suspended Sierra Leone from accessing its account. He said the suspension was lifted and a World Bank meeting held between the 16th and 23rd March 2016 where stakeholders including SALCAB, NATCOM, MIC represented by A1 and Ministry of Finance were present, during which the closing date for the World Bank project was extended from 30th September 2015 to 30th March 2016. He said A1 advised in his capacity as Permanent Secretary, that time was *'not on our side and that he will write to NPPA for a letter of no objection for an auditor to audit the network for us to fix the school connectivity. The Permanent Secretary suggested that MIC had no money and that SALCAB takes financial responsibility to have the network ready.'* I must note that this piece of evidence was not controverted by A1;

14.1.3. A2 told the Court that Exhibit J4 was a direct reaction by SALCAB to Exhibit J3. He said that based upon discussions he had with the Permanent Secretary, A1, the \$300,000 was meant for schools and university connectivity, a pilot project under the World Bank project, hence the reason why the money was transferred into the WARCIP account.

14.1.4. In answer to questions put to him in cross examination on behalf of A1, A2 reiterated that A1 was present at the World Bank meeting of 16th to 23rd March 2016 where the project was extended to March 2017. He told the Court that the project in respect of the schools and universities connectivity was housed within MIC in consonance with the PIU headed by the vote controller, A1. He agreed with Counsel for A1 that the \$300,000 was meant for the networks which included the schools connectivity, which he considered a crucial part of the WARCIP project. A1 never denied being part of the said World Bank meeting where discussions as to schools and universities connectivity were held.

14.1.5. A2 reiterated that when the Board met on the 23rd March 2016, he was tasked to liaise with MIC especially A1 to ascertain both the technical and WARCIP projects so that the schools and universities connectivity will be completed within the required time period. He said that it was after this that he informed the Board that \$300,000 should be paid based on Exhibit J3. He said that \$400,000 had been approved before Exhibit J3 because SALCAB had already had discussions at the MIC with A1 and the technical team in respect of the schools and university connectivity project. Again, this was never challenged by Counsel for A1.

14.1.6. A2 referred to Exhibit J3, authored by A1 which he told the Court was related to the WARCIP project. He said upon receipt of Exhibit J3, Management sought the Board approval of \$300,000 requested out of \$400,000 which said approval had been sought for purposes of ensuring the links between the

networks as there were challenges in operations of the networks. With Exhibit J3 in hand and upon approval from the Board, according to A2, himself and A3 authorised the transfer of \$300,000 as in Exhibit J4 to the WARCIP account at the SLCB.

15. I note that the purpose for which the \$300,000 was authorized as in Exhibit J3 authored by A1 was for schools and universities connectivity project, a World Bank funded project. The WARCIP account, based on evidence before the Court is a World Bank project account. I refer again to Exhibits DD and EE and the contents therein in respect of discussions on the schools and universities connectivity programs under the ECOWAN project. The question therefore remains, what happened to the funds after authorization and transfers?

15.1. In answer to questions put to him in cross examination by the Prosecutor, A2 told the Court that Exhibit J4 was written after the Board's approval. He agreed with the Prosecutor that the WARCIP project is a World Bank project and that the ECOWAN project was an ECOWAS project; both projects had interconnectivity. He said he did not present documents to the ACC when he was interrogated because he had no access to documents. In any event, he tendered Exhibits Q, R and T to the Court which were not objected to by any of the Counsel including the Prosecutor.

15.1.2. The Court refers again to Exhibit EE1-45 especially Exhibit EE1 dated 15th October 2014 from the then Financial Secretary to the then Permanent Secretary, A1, subject, 'Government Counterpart Payment under the ECOWAN Project' which reads in part:

'As you are aware, the Ebola epidemic has significantly affected budgetary execution ... making it extremely difficult to finance other activities including the ECOWAN project. However, given the fact that SALCAB is now operating commercially by leasing capacity to Telcos and ISPs, it should start meeting its obligation under the Project Appraisal Document and ensure the successful conclusion of the ECOWAN Project.'

15.1.3. At the risk of repeating myself, I shall refer to Exhibits J3 of 10th June 2016 which reads in part:

'You may recall that as per agreement, both the national fibre backbone and the ECOWAN Optical Fibre Network once consolidated would be managed by SALCAB. To facilitate a smooth transition and handover, a number of activities are to be undertaken.... I write to request that you kindly provide financial assistance to the Ministry in the sum of USD300,000'

15.1.4. The words 'as per agreement' shows that this was not a new topic; the ECOWAN Optical fibre network project had been discussed with SALCAB before and indeed as early as October 2014 as in Exhibit EE1 hereinbefore referred to.

15.1.5. I must note that Exhibits DD1-15 and EE1-45 were tendered to the Court by the Prosecution. I now refer to Exhibit DD1-15, starting with Exhibit DD4 of

19th January 2016, the minutes of a SALCAB Board meeting under the rubric 'ECOWAN PROJECT' which reads in part:

'The Board requested that the Managing Director writes a letter to the Permanent Secretary of the MIC on the status of the ECOWAN Project'.

15.1.6. The understanding of the Court is that SALCAB and the MIC especially through the Permanent Secretary, A1, had been working on the ECOWAN project referred to by A1 in Exhibit J3 and by the Board in Exhibit DD4.

15.1.7. I also refer to another Board meeting minute as in Exhibit DD7 of 25 February 2016 under the rubric ECOWAN which reads:

'The Managing Director reported on the ECOWAN Project and relayed that the project should be completed at the end of March 2016 and handed over to the company. However, he noted that the project has been faced with some technical challenges on the Port-Loko-Rogbere Junction Highway. He further reported that skill sets will be needed for the management of the project even though there are some temporary staff members running the project but expressed whether they are capable of managing the system.'

15.1.8. The A2's language that the ECOWAN project should be completed and handed over to SALCAB appears to me to be in the same spirit in which Exhibit J3 was written by A1 to wit: "REQUEST FOR URGENT SUPPORT TO THE MINISTRY".

'I have to refer to the above subject matter and to request urgent support to enable the Ministry undertake a number of activities to facilitate the finalization of plans for the handing over of the consolidated networks to SALCAB'.

15.1.9. It is the A2's testimony that the money, \$300,000 was for the schools and universities connectivity, one which he said was a World Bank Project. It is also A2's testimony that SALCAB had a loan to be paid to NATCOM and even though the \$300,000 requested by MIC was for the school connectivity and ECOWAN projects, it was constructive repayment of part of its loan owed to NATCOM. I also refer to Exhibit DD8 under the rubric Connectivity to Universities and Secondary Schools and Hospitals which reads:

'It was reported that the Company has plans of providing free capacity/bandwidth for universities and four (4) government secondary schools in Freetown and eventually, government hospitals. It was noted that NATCOM is to purchase an equipment to assist in this venture and that the company is working with the MIC for its implementation. It was also noted that the Company is collaborating with NATCOM in respect of this project and that is a way of paying off a loan owed to NATCOM'.

16. I also refer to Exhibit DD12 and 13 of 23rd March 2016 under the rubric ECOWAN PROJECT which reads in part:

The following issues were noted:

- . connectivity challenges between the ECOWAN project and the National Fibre Backbone;
- . proper structure and processes;
- . operational expenses.

16.1. It was advised that the Managing Director must liaise with the Permanent Secretary of the MIC on the way forward.

16.1.2. I also refer to the rubric CONNECTIVITY FOR SOME GOVERNMENT INSTITUTIONS: *It was discussed and agreed that the following institutions will have connectivity:*

1. *All Universities;*
2. *Government Secondary Schools in Freetown;*
3. *Two (2) All Male Government Secondary Schools from each province;*
4. *Two (2) All Female Government Secondary Schools from each province;*

It was noted that it is a pilot project and the Company is looking forward to see how well it will work

16.1.3. The Court notes that Exhibits DD and EE which are very crucial to this trial were tendered in evidence by the Prosecutor through the Prosecutor's last witness, Mr. Yusif Ibrahim. Any reasonable person will believe that the contents of Exhibits DD and EE as above referred advised Exhibit J3 and, therefore, Exhibit J4. I will encourage the Prosecutor to read the contents of both documents, Exhibits DD and EE and relate them to especially Exhibit J3; the Prosecutor will realise that the Schools and Universities connectivity program as appear under the ECOWAN project in Exhibit J3 is not new to the ears of A1, A2 and A3.

16.1.4. I consider SALCAB and its supervisory Ministry, the MIC, public bodies and, being public bodies, the moneys held in their various accounts above were at the period under consideration, public funds of which SALCAB was deprived. I accept the testimony of A2 and A3 being that their testimonies are supported by documentary evidence to the effect that the \$300,000 was actually transferred for purposes as stated in Exhibit J3, prepared by A1. What this Court is interested in is what happened to the money after it was removed from especially the WARCIP account.

16.1.5. A1 told the Court that \$100,000 was handed over to A2. PW7 said in testimony that A1 told him he gave A2 moneys; he was never present when moneys, were handed over to A2 by A1. A1 also told the Court that he gave the remainder of \$200,000 to A2 in his office in the presence of PW2. PW2's testimony is to the effect that A1 handed over \$100,000 to A2 in A1's office in his, PW2's presence. A2 denies any of the \$300,000 transferred from the SALCAB Account was given to him by A1. Having cautioned myself in respect of the use of the testimony of PW2, who as I have said severally is an accomplice, I do believe his testimony when he told the Court that:

- a. Together with A1, he participated in endorsing cheques in the name of staff members hereinbefore referred to for the withdrawal of \$100,000 in bits from the WARCIP Account;
- b. He assisted A1 in counting \$100,000 in \$100 bills;
- c. He was present when A1, in his office, handed over \$100,000 withdrawn from the \$300,000 transferred from SALCAB Account into the WARCIP Account.

16.1.6. Further, I have no doubt on my mind that A1 willfully and dishonestly misappropriated \$200,000, less Bank charges by causing same to be transferred into his personal account using fake documents, thereby depriving SALCAB, a public body use of its funds contrary to Section 36(1) of the Anti-Corruption Act No. 12 of 2008.

Count 2

17. All three accused persons are jointly charged under Section 48(2)(b) of the Anti-Corruption Act, 2008 with the offence of willfully failing to comply with the law relating to the management of public funds, in the instant case, \$300,000, during the period covered by the indictment.

Section 48(2)(b) provides as follows:

(2) 'A person whose functions concern the administration, custody, management, receipt or use of any part of ... public property commits an offence'.

(b) 'willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the ... management of funds'.

17.1. All three accused persons in their testimonies described themselves as public officers. A2 and A3 told the Court that they were appointed by the then President, and gained Parliamentary approval before their assumption of office as Managing Director and Board Chairman of SALCAB.

17.1.1. The Prosecution needs to prove that the accused persons' functions concern the administration, custody, management, receipt or use of any part of public revenue or public property; in the instant case, the management of \$300,000 which this Court has adjudged to be public funds.

17.1.2. The functions of the 1st, 2nd and 3rd Accused persons during the period under consideration concerned administration and management of public funds acting in their separate capacities as Permanent Secretary, Managing Director and Chairman of SALCAB.

17.1.3. The Court is guided by the judgment of the Hon. Mr. Justice Browne-Marke JA as he then was in the case of *The State Vs. Hamzza Alusine Sesay & Sarah Finda Bendu*⁹ with respect to proving the capacities in which the accused persons acted as referred to in paragraph 17.1.2 above.

⁹ (Unreported) paragraph 15 lines 7 & 8

17.1.4. A1 said in his statement to the ACC and the Court that he was the Permanent Secretary, Vote Controller and a signatory to the MIC account including the WARCIP account. He also told the Court that he was in charge of the financial matters at MIC. A1 was certainly the administrative head of the MIC in charge of management of funds of the MIC during the period covered by the Indictment. A2 in answer to questions put to him by investigators at the ACC and in his testimony before the Court referred to Exhibit P and told the Court that being appointed by the then President and having gone through Parliamentary approval, upon assumption of office as Managing Director of SALCAB, he was in complete management of the day to day operations of SALCAB during the period covered by the indictment. A2 told the Court that himself and A3 were signatories to the SALCAB USD Account and agreed with Counsel that the funds in the SALCAB USD Account (which the Court notes includes the \$300,000 herein, the subject matter of this litigation), was SALCAB's and that same was meant for the people of Sierra Leone. I have held that those were public funds.

17.1.5. A3 referred to Exhibit W, his letter of appointment of 29th May 2013 and Exhibit X of 4th July 2014 which set out his terms and conditions of service as Board Chairman for SALCAB having been so appointed by the then President and having gone through Parliamentary approval. The Court refers to Exhibit Y1-2 which reads in part:

"Therefore as of 20th August 2013, government, the owner of SALCAB directs that the appointed Chairman, MD and Director of SALCAB be responsible for the day to day operations and management of SALCAB"

17.1.6. In line with the above quotation, the Court notes A3's testimony when he said that his duties and responsibilities as Board Chairman includes a special responsibility to be part of management. A3 also told the Court as is evidenced by Exhibit D14 and 15 that himself, A2 and PW3 were signatories to the SALCAB USD Account. Still related to his managerial responsibilities, A3 told the Court that he was responsible for overseeing the affairs of SALCAB.

18. The Court notes the definition of public property in Section 48(4) of the Anti-Corruption Act No. 12 of 2008 to include *public funds and money of a public body or under the control of ... or due to a public body.*

18.1. The Court again refers to Section 1 of the Anti-Corruption Act 2008, which defines public funds to include (C) *any moneys ... for the benefit of the people of Sierra Leone or a section thereof.*

18.1.1. A Public Body is defined at page 9 of the Act to include:

- c. Cabinet, any ministry, department or agency of Government;
- i. A Government Company;
- j. A company ... set up wholly or partly out of public funds;

18.1.2. It is clear to the Court that all three accused persons' functions as they relate to SALCAB and the Ministry of Information and Communications

concerned the administration, custody, management, receipt or use of ... public property including public funds.

18.1.3. The Prosecution needs also to prove that the failure to comply with the law relating to management of funds was willful or negligent. For the definition of the term 'willful' the Court is guided by past judgments of the Honourable Court,¹⁰ relying on Lord Diplock's opinion¹¹ that 'willful' includes where a person does an act being aware of a risk and acts negligently where, being unaware of the risk due to his not caring about whether there was a risk or not.

19. PW8, identified himself as the nation's current Accountant-General and he told the Court that he was Deputy Accountant General during the period under consideration. He explained the procedures to be followed by Ministries Departments and Agencies (MDAs) in respect of withdrawals of public funds.

19.1. PW8 told the Court that SALCAB is a state owned entity. I have already adjudged in that respect. In terms of management of funds, PW8 told the Court that SALCAB has a Management which reports to the Board which said Board is supervised by the National Commission for Privatization as well as the MIC. He told the Court that before the start of every year, a budget is prepared by management which is sent to the Board for approval after which management executes in accordance with the Board's approval.

19.1.1. He said where the activity is immediate and therefore not in the budget and no approval has been sought from the Board, the onus remains on management to take the activity for approval. In answer to questions put to him in cross examination by Counsel for A3, PW8 referred to page 2 of his statement as in Exhibit M2 lines 14 to 19 thereof where he said '*I wish to state that with State owned enterprises, the management of funds including budget execution rests with the Management and Board of such institutions*'. It appears to the Court therefore, that it is the responsibility of Management and the Board to state the requirement of how a State enterprise such as SALCAB's budget should be executed albeit it must be executed in line with responsible financial management, as PW8 puts it, in line with the Public Financial Management Regulations. PW8 told the Court that a request for financial assistance by MIC to SALCAB ought to be approved by the Board before same can be executed.

19.1.2. It is the testimony of A2, A3, PW3 and DW4 that the SALCAB Board was made up of A2, A3 and PW3 and that the Board had a Secretary in the person of Mrs. Edith Chaytor, DW2.

20. A2 told the Court that he was a Board member of SALCAB, a Board which he said was responsible for setting policies and approving Management decisions as an oversight responsibility. He confirmed the procedures stated by PW8, the

¹⁰ See NC Browne-Marke JA in *The State Vs Manneh & Kpaka 2008* (unreported); see also *The State Vs. Hamzza Sesay & Sarah Finda Bendu* (Unreported).

¹¹ *R Vs. Shepard (1981) AC 394*; see also *Metropolitan Police Commissioner Vs. Caldwell (1982) AC 341*.

Accountant General including instances when activities are not budgeted for before the start of the financial year. He referred to Exhibit AA based on which he told the Court for example about a situation when the MIC asked for financial support in respect of salaries for two of its staff Julius Kamara and Ibrahim Conteh, under the WARCIP project. Payment of these salaries were not budgeted for, therefore, A2 informed the Board about the MIC's request which was approved then by the Board. This I must note is in line with the testimony of PW8, the Accountant-General.

21. A3 referred to Exhibit J3 which he described as an urgent request for assistance by MIC signed by the A1, copied A3 and PW7, as then Minister of MIC. I must note at this juncture that PW7 did tell the Court that he only saw Exhibit J3 for the very first time in Court even though he was in copy.

21.1. A3 referred to Exhibit J4 which he said was done by himself and A2 as a direct reaction to Exhibit J3. He reiterated the testimony of A2 in respect of approval by the Board of \$300,000 as in Exhibit J3 for the schools and universities connectivity project.

21.1.1. A3 told the Court that the WARCIP project was responsible for providing internet broadband to the whole of Sierra Leone in three components all of which must be interconnected.

- a. The submarine cable;
- b. The national fibre backbone;
- c. The ECOWAN

21.1.2. A3 said SALCAB received several requests from MIC for support including Exhibit AA of 19th November 2015 which he said was approved by the Board.

21.1.3. In answer to questions put to him in cross examination by Counsel for A1, A3 referred to Exhibit J4 which he said was approved by the Board and from which \$300,000 as approved by the Board was transferred into the WARCIP Account.

21.1.4. In answer to questions put to him in cross examination by the Prosecutor, A3 reiterated that the payment referred to in Exhibit J4 was for the schools and universities connectivity project. He said that the Board approved \$400,000 of which \$300,000 was transferred to be used for the WARCIP project.

22. I refer to the testimony of PW3, a SALCAB Board member during the period under consideration. In chief, he told the Court that he was not aware about the transfer of \$300,000 from the SALCAB Account into the WARCIP account and knew nothing about a Board Resolution in respect of same. In answer to questions put to him by Counsel for A1, PW3 told the Court that he attended about 90% Board meetings. In answer to questions put to him in cross examination on behalf of the A2 and A3, PW3 told the Court that during the period that he served as Board Member of SALCAB, 2013 to 2018, the MIC asked on several occasions for financial assistance from SALCAB. He then said he was

aware of a Resolution for the transfer of \$300,000 to the WARCIP Account. He said he was aware about the approval of \$400,000 by the Board but that he cannot tell the Court whether the \$300,000 now in contention was part of the \$400,000 approved by the Board.

23. DW4 was Mrs. Edith Chaytor, the SALCAB Company Secretary during the period covered by the indictment. She told the Court that she was present at a Board meeting in 2016 when discussions were held for funding in respect of schools connectivity project. She told the Court that she had the minutes of the meeting where the approval was made but that upon the termination of her services as Board Secretary, all documents in her possession, including the said minutes of approval was returned upon request to the current Managing Director of SALCAB. She tendered Exhibits BB1-2 of 23rd October 2018 and CC of 16th October 2018. I am minded to relate Exhibits DD and EE to DW4's testimony in respect of the schools and universities connectivity project. I have quoted extensively from Exhibits DD and EE and given my views about the said project as they relate to Exhibit J3.

24. The State was allowed to call a rebuttal witness Yusuf Ibrahim, Chief Financial Officer, in respect of the testimony of DW4 re return of Board meeting minutes approving the said \$300,000.

24.1. Yusuf Ibrahim told the Court that upon assumption of office in August 2018, certain documents were submitted to SALCAB relating to Board minutes which were handed over to the Executive Assistant of the current Managing Director which were then later submitted to him.

24.1.1. In answer to questions put to him in cross examination on behalf of the A2 and A3, Yusuf Ibrahim told the Court that it is not part of his responsibilities to keep minutes of the current Board although he can have copies of same, for example when there is a Board approval relating to finance. He tendered Exhibits DD1-15 and EE1-45 which was before his tenure and in respect of which he had no further payment to make.

24.1.2. The witness told the Court that the Executive Secretary to the current Managing Director who received Exhibits DD and EE, Mariama Nassar, is still an employee of SALCAB. He said SALCAB's past Administrative Manager, Mustapha Sillah took certain documents, which he said were procurement documents, away but that same were returned to SALCAB.

24.1.3. I cannot emphasise more the burden on the Prosecution to prove its case beyond reasonable doubt. One would expect that with an institution like SALCAB, receipt of documents requested by their good selves and forwarded them must be acknowledged in proper form. In sum, each document, including minutes received ought to have been acknowledged by SALCAB. Also, I would have expected the Executive Secretary to the Managing Director who is the proper custodian of these documents, Exhibits DD and EE, and who in any event received the documents requested by her boss (Exhibits DD and EE) to speak to the documents received.

24.1.4. It is also noted that other persons used documents including documents returned by the then Company Secretary for purposes of forensic audit and that another ex-staff carted away with certain documents even though the Court is informed that these were procurement documents which were returned. It is the Court's understanding that these documents returned by the erstwhile Secretary of SALCAB, including Board minutes changed a few hands. It appears to me that whether or not there was a Board approval for payment of \$300,000 to the MIC as requested by Exhibit J3 remains for this Court to accept the allegation by the State or the evidence of the A2 and A3.

24.1.5. I have said that Exhibits DD and EE hereinbefore referred to speak volumes of the purpose why A1 wrote out Exhibit J3 and why A2 and A3 told the Court that they acted pursuant to Exhibit J3. Exhibits DD and EE have caused a lot of strain on my mind to accept that such discussions were never held or that such approval were never sought from the Board. The Testimonies of PW3 and the last Prosecution witness from SALCAB have not helped in any way. I am left with giving A2 and A3 the benefit of the doubt and hold that procedures especially in respect of internal controls were followed in the management causing the transfer of \$300,000 from the SALCAB Account into the WARCIP account.

24.1.6. In respect of the withdrawal of \$100,000 on the authority of A1 and PW2, no lawful plan or reason was given to the Court. A1 did tell the Court that these withdrawals were made from the WARCIP account in the manner hereinbefore stated and that same was handed over to A2. This piece of testimony was corroborated by PW2 Issa Donald Newman. In respect of the transfer of \$200,000, less bank charges into A1's personal business account, Base Construction Services, it has been stated above in no uncertain terms and as confirmed by A1 and PW2, Issa Donald Newman, that all documents used as in Exhibits B4-10 are all fake documents, dishonestly used in breach of laid down financial rules and procedures in respect of management of public funds. I have no iota of doubt that A1 did not comply with laid down rules and procedures with regards the management of public funds to wit: \$300,000.

25. In light of the above, I return the following verdict:

Count 1

A1 - Guilty

A2 - Guilty

A3 - Not Guilty

Count 2

A1 - Guilty

A2 - Not Guilty

A3 - Not Guilty

Count 3

A1 - Guilty

A2 - Not Guilty

A3 - Not Guilty



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Hon. Justice Miatta M. Samba, J.A