IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

Vs

HAMZZA ALUSINE SESAY

SARAH FINDA BENDU

C MANTSEBO ESQ for the state

R S WRIGHT ESQ for the 1st Accused

E E C SHEARS-MOSES ESQ and S K KOROMA ESQ for 2nd Accused

BEFORE THE HON. JUSTICE N C BROWNE-MARKE

JUDGMENT DELIVERED THE 10 DAY OF FEBRUARY, 2011.

INTRODUCTION

1. The two accused persons are jointly charged in a 10 count Indictment with various offences under the Anti-Corruption Act, 2008. Both accused persons are charged in Count 1 with the offence of Misappropriation of Public Funds, to wit, the sum of Le419,200,000, Contrary to Section 36(1) of the Act; and in Count 2, with the offence of Misappropriation of Public Revenue, to wit, the sum of Le606,400,000 contrary to Section 36(1) of the Act. The prosecution alleges in Count 1 that on or about 23 July, 2009 at Freetown the two accused persons misappropriated public funds in the sum of Le419,200,000 being monies entrusted to the 1st accused as the Managing Director of Mabella Industries Limited by the Sierra Leone Road Transport Authority (SLRTA) on the authorization of the 1st accused, then Acting Executive Director, SLRTA, as part payment for the supply of one heavy duty tow truck to the said to the said SLRTA. In Count 2, the prosecution alleges that on or about 23rd July, 2009 at Freetown, the accused persons misappropriated the sum of Le606,400,000, being monies entrusted to the 1st accused as Managing Director for Maabella Industries Limited by SLRTA, on the authorization of the 2nd accused, then Acting Executive Director, SLRTA, as part payment for the supply of one Towing truck to the said SLRTA
2. In Counts 3, 4, 5, 6 & 7, the 2nd Accused alone, being the Acting Executive Director of Sierra Leone Road Transport Authority (SLRTA), is charged with various offences under Section 48 of the Act. These offences deal with the matter in which the 2nd accused, in her capacity as Acting Executive Director, and thus the Professional and Administrative Head of SLRTA dealt with the procurement of two tow trucks from Mabella Industries Limited, of which the 1st accused Managing Director. Particular of the Rules allegedly breached by the 2nd accused, were filed by the prosecution of 26 October, 2009.

3. In Count 3, the 2nd accused alone is charged with Making an Excessive payment from Public Revenue for sub-standard goods, contrary to Section 48(2) (a) (i) of the Anti-Corruption Act, 2008. It is alleged that on or about 23 July, 2009 the 2nd accused as Acting Executive Director, SLRTA, made an excessive payment out of public revenues for sub-standard goods, to wit, an excessive payment of the sum of Le419,200,000 out of the funds of the SLRTA, to 1st accused, as Managing Director of Mabella Industries Limited, for the supply of one sub-standard and defective tow truck to the SLRTA. Count 4 charges that the 2nd accused, contrary to the same provision in the Act, made another excessive payment in the sum of Le606,400,000 out of public revenues, i.e. out of funds belonging to the SLRTA 1st accused as Managing Director of Mabella Industries Limited, for the supply of one sub-standard and defective tow truck to the SLRTA.
4. Count 5 and 6 charge the 2nd accused with the offence of making a Fraudulent Payment from Public Revenue for defective goods contrary to Section 48(2) (a)(i) of the 2008 Act. The particulars of the Count allege that the 2nd accused made a fraudulent payment of Le419,200,000 out of the funds of the SLRTA to the 1st accused as Managing Director of Mabella Industries Limited as part payment for the supply of one sub-standard and defective tow truck to the SLRTA. In Count 6, it is alleged that the 2nd accused made a fraudulent payment of Le606,400,000 out of funds to the 1st accused as Managing Director of Mabella Industries Limited, for the supply of one sub-standard and defective tow truck.
5. In Count 7, the 2nd accused is charged with the offence of willfully failing to comply with laws, procedures and guidelines relating to the procurement of property tendering of contracts and management of funds, contrary to Section 48(2)(b) of the 2008 Act. The Particulars allege that on a date unknown between 18th September, 2008 and 18th September, 2009 at Freetown, the 2nd accused willfully failed to comply with the laws, procedures and guidelines relating to procurement of property, tendering of contracts and management of funds, to wit: she failed to comply with the provisions of the Public Procurement Act, 2004 and Regulations made thereunder, in awarding the contract for the purchase of the two towing trucks to Mabella Industries Limited.
6. On 16 October, 2009 I Ordered the prosecution to provide, and to file particulars of the 2004 Act, and of the Regulations, 2nd accused allegedly willfully failed to comply with. Such particulars were filed on 26 October, 2009 by Mr Mantsebo. Those particulars allege that the 2nd accused failed to comply with Sections 18, 26, 37, 39, 40, 50, 51, and 52-62 of the Act. As regards the Regulations, the prosecution particularises that Regulations 11, 12, 15, 16, 38-46, 51-76, 118-139, 152 and 153 of Public Procurement Regulations, 2006.
7. The Public Procurement Act, 2004 and 2006 Regulations apply to the SLRTA, it being an Agency created by Government through an Act of Parliament, the Sierra Leone Transport Road Authority Act, 1996. See Section 1(1) of the 2004 Act. The SLRTA is also a Procuring Entity to which the Act applies, by virtue of Section 2 of the Act. It states that a Procuring Entity means " organ of the state ….as well as statutory bodies, public sector corporations which are majority owned by Government, public utilities using revenue collected by the sale of public services, as well as any physical or judicial person to

whom public funds have been allocated for use in public procurement." Sub-section 1(2) makes it clear that all procurement by a body such as the SLRTA is governed by the Act.

8. Section 18 of the Act deals with the establishment and functions of a Procurement Unit. Section 26 provides that the procuring authority shall promptly publish in the Gazette and any news paper of wide circulation notice of each contract award in which the price of the contract exceeds the threshold set in the 1st schedule, indicating the contract price and the name and address of the successful bidder. The 1st schedule sets the threshold for a contract for the procurement of goods, at Le300million. Section 37 deals with the choice of method of procurement. It provides that public procurement shall be undertaken by means of open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without any discrimination, subject only to the exceptions provided in sections 38,39, 40 and 41 of the Act. Those sections set out the set of circumstances in which it is permissible for a procuring entity to depart from the open bidding proceedings. Section 39(2) expressly provides that the procuring entity is not required to employ national competitive bidding procedures if the estimated contract amount is lower than Le300million. Section 40 on the other hand makes it clear that International Competitive Bidding procedures should be employed where the contract sum exceeds Le300million. But also Section 40 permits restricted bidding in certain circumstances. The conditions for utilising those procedures are spelt out in Section 42.
9. Sole sourcing is permitted in the circumstances set out in Section 46(1). Such circumstances could be where there is an urgent necessity, provided the urgency was unforeseen by the procuring entity and the urgency was not the result of dilatory conduct on the part of the procuring entity. I have referred particularly to this provision, though it is not one of those specified by Mr. Mantsebo, because sole-sourcing was the subject of cross-examination by Defence Counsel, and is an exception to the procedures laid down in Section 37, particularised by Mr. Mantsebo, though not so expressly stated in the provision. Section 47 provides that when a procurement entity engage in sole-sourcing it "..shall prepare a written description of its needs and special requirements as to quality, quantity, terms and time of delivery; and shall request submission of a bid or proposal in writing or both, and shall be free to negotiate with the sole bidder. It also provides in sub-section (2) therefore that "publication in the Gazette, a national newspaper ….of a notice of the holding of sole source procurement proceedings is required when the estimated value of the procurement exceeds….." Le300million – i.e. the threshold set in the 1st schedule for the procurement of goods. Sections 48-62 of the Act deal with the bidding process, but as there is credible evidence before me that there was an open bidding in this case. I shall not dwell further on them.
10. Of the 2006 Regulations, I shall only refer specifically to Regulations 40, 45, and 114 and 115 which deal with emergency procurement and sole-sourcing; and to Regulation 41 which deals with restricted bidding. The limitations on sole-sourcing are clearly spelt out in Regulations 45, 114 and 115, I shall return to them later when dealing with the evidence. Regulations 41 merely replicates Section 41 of the Act. I shall also refer specifically to Regulation 135 which deals with advance payment. Regulation 135(3)

provides that advance payment shall not exceed 30%of the total cost price. Regulations 135(4) provides for the provision of an advance payment guarantee by the supplier.

11. In Counts 8, 9 and 10 of the Indictment, both accused persons are charged with conspiracy offences contrary to Section 128(1) of the Act. In count 8, the prosecution alleges that both accused persons conspired to misappropriate the sum of 419,200,000; in Count 9, that both accused persons conspired to misappropriate the sum of Le606,404,000; and in Count 10, that both accused persons "on diverse dates between 1st April, 2008 and 18th September, 2009 at Freetown in the Western Area of the Sierra Leone, conspired to make an excessive and fraudulent payment out of public revenues for sub-standard and defective goods, to wit, payment out of the funds of Sierra Leone Road Transport Authority, in the sum of Le1,025,600,000 to HAMZZA ALUSINE SESAY, Managing Director of MABELLA INDUSTRIES LIMITED, as part payment for the supply of two sub-standard and defective tow trucks to the said Sierra Leone Road Transport Authority."

THE ANTI-CORRUPTION ACT, 2008

12. Section 36(1) of the Act provides that "a person who misappropriates public revenue, public funds or property commits an offence. Sub-section (2) of the Act provides that "a person misappropriate public revenue, 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." As to what a "public body" means **Section 1** of the Act, a Public Body is defined, inter alia, as including "…. the cabinet, any ministry, department or agency of Government, a Government Company….a company or other body or organization established by an Act of Parliament or out of moneys provided by Parliament or otherwise set up by partly or wholly out of public funds……" SLRTA is a body established by an Act of Parliament – the Road Transport Authority Act, 1996 and so is therefore a Public Body within the meaning of the Act. It is a body corporate and its "…operations, according to Section 18(1) of the Act, shall be financed by a fund consisting of (a) such portion of the vehicle licensing and registration fees as the Authority is allowed to retain before the payment of such fees into the Road Fund….(b) such moneys appropriated from time to time by parliament for the purpose of the Authority; (c) the monies accruing to the Authority in the course of its operations; and loans raised by the Authority with the approval of the Minister."
13. As to what "Misappropriates" and "willfully" amount to in the Act, I adopt my explanation in the case of THE STATE v KOMEH & MANS judgment delivered 18 January, 2011, where I said, inter alia, at paragraph 6 & 8: "As to what Misappropriation is, I adopt my statement of the law in this respect in the case of THE STATE v MANNEH & ANOR Judgment delivered 20 May, 2008. "The term "Misappropriates" in the Act, is not in my view, a term of art. It is akin to "appropriation" in the United Kingdom Theft Act, 1968. Appropriation in that Act involves the assumption of the rights of the owner by the Accused. Here, wilfull commission of any act which results in the owner losing funds belonging to it, amounts to misappropriation. There is

Misappropriation also whether the owner of the funds consented or not to the deprivation of funds. In the UK law of Theft, the consent of the owner is irrelevant as was pointed out by the House of Lords in LAWRENCE v METROPOLITAN POLICE COMMISSIONER (1971) 2All ER 1253, and in R v GOMEZ (1993) 1 All ER 1, both of them cases dealing with theft, where it had been argued unsuccessfully by the respective Appellants, based on the speech of LORD ROSKILL in MORRIS(1983) 3 All ER288 at Page 295 (where he appeared to suggest that appropriation in the circumstances of that case involved not just the substitution of price labels by the accused, but also that such an act must also "adversely interfere with or usurp the right of the owner…',)that the owners in each of those cases had consented to parting with their respective properties. In Lawrence it was an extra sum of 6 Pounds; in GOMEZ, it was the delivery by the owner of electrical goods to a third party, paid for by stolen cheques, to the knowledge of, and through that machinations of Gomez. I also seek to support in the words of SELLERS, LJ in a civil case: SINCLAIR v NEIGHBOUR (1966) 3 All ER 988 at 989 paras C-D. There, the Respondent was dismissed because of dishonest appropriation of money. In considering the right test to apply in these circumstances he said, inter alia, " it was sufficient for the employer, if he could, in all the circumstances, regard what the employee did as being something which was seriously inconsistent-incompatible with his duty as manager in the business in which he was engaged. To take money out of the till in such circumstances is on the face of it incompatible and inconsistent with his duty." I shall later in my Judgment have to consider whether authorizing the debiting of one's employer's account or balance in the books, without authority, amounts to conduct incompatible with the terms of one's employment. Of course I fully realise that much more than incompatibility and inconsistency are required in determining the guilt or otherwise of the accused persons on a criminal trial." Further, the act which causes deprivation of funds, must be willful. The other elements of the offence are that: i) the Accused must have acted willfully, whether by himself, with or through another person; and ii) that these acts must have caused the Public Body to be deprived of revenue, funds or other financial interest, or property belonging to the said public body.

14. As to what "willfully" under the Act amounts to, I shall refer once more to MANNEH's case where I said, inter alia, "The Learned Editors of the **2002 Edition of BLACKSTONE'S CRIMINAL PRACTICE,** have at **paragraph A2. 8** suggested that the relevant meaning of 'wilful.' They submit that it is now a "composite to cover both intention and type of recklessness." They cite the explanation given by **LORD DIPLOCK in SHEPPARD (1981) AC 394,** where, in a case of child neglect, he said the 'wilful' in the context of the UK **Children and Young Persons Act, 1933** involved the actus reus of failing to provide the child with medical aid; and the mens rea of the parent, that of being aware of the of the risk of the child's health if not provided with medical aid, or that the parent's unawareness of this fact was due to his not caring whether his child's health were at risk or not. The Editors submit further that, 'wilfulness requires basic mens rea in the sense of either intention or recklessness , and that even in the absence of the word 'wilfully' this is the mens rea which will normally be implied by the Courts for serious criminal offences in the absence of any other factor indicating a wider

or narrower basis. Though dishonesty is not specifically stated to be an element of the offence under **Section 12,** it is my view that it would be inconceivable to convict an accused of this offence in the absence of proof of dishonesty. In **GHOSH (1982) 2QB 1053; (1982) 2 All ER 689,** the Court of Appeal held that dishonesty should be determined in two stages: i) the tribunal of the fact should decide whether, according to the ordinary standards of a reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that should be the end of the matter and the prosecution fails; ii) if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must have realized that what he was doing was by (by the standards of reasonable and honest people) dishonest. The Court said further, that "it is dishonest for a defendant for a defendant to act in a way which he knows ordinary people consider to be dishonest to act in a way which he genuinely believes that he is morally justified in acting as he did."

15. The offences Charged in Counts 3-7 are offences created by the Act, and were not part of the 2000 Act. Section 48(2) (a)(i) states that "a person whose functions concern the administration , custody, management, receipt or use of any part of the public revenue or public property commits an offence if he: (a) fraudulently makes payment or excessive payment from public revenues for – (i) sub-standard or defective goods…" The Prosecution must here prove, the capacity in which the accused person acted, i.e. that the accused's functions included the administration, custody, management receipt or use of public revenue. The functions of the Executive Director of SLRTA are spelt out in Section 13 of the SLRTA Act, 1996. Though acting in that capacity, the 2nd accused was the Chief Executive Officer of the Authority, and was responsible" …to formulate and implement such operational policies, programmes and plans relating to the functions of the Authority as may be approved by the Board; determine and provide the technical needs of the Authority; ……to provide overall leadership in the conduct and management of the day to day business and activities of the Authority. Further, for the efficient conduct of the day to day business or activities of the Authority including its financial transactions, the Authority may delegate to the Executive Director such of its function as are necessary for the purpose, including the power to administer all matters relating to the organization, control and discipline of the staff of the Authority." The prosecution must also prove that the accused fraudulently and excessive payments from SLRTA's funds for sub-standard or defective goods. The prosecution must have prove beyond a reasonable doubt that the accused person acted fraudulently, and as pointed out to Counsel for the accused persons, I have no intention of convicting any person, including the 2nd accused, of acting fraudulently without cogent and irrefragable evidence that she so acted, notwithstanding the absence of the word "fraudulently" from the particulars of the offence in all four months. I here reiterate what I said in my Judgment on the no-case submissions made by the Defence Counsel on 1st March, 2010 at paragraph 13: "I agree with Mr Wright in his argument that the word "fraudulent" is missing from Counts 3&4 and that they argue to be there. Clearly, those counts have not been elegantly drafted. I agree also, that that word encapsulates the mens rea required for a conviction of the offences in both Counts. As I have repeatedly stated in all the Anti Corruption cases over

which I have presided, I have no intention of convicting any person, where the prosecution has not been able to prove dishonesty or freedom conduct as the case may be. I am satisfied that the absence of the word "fraudulent" does not prejudice the case against the 2nd accused who faces the charges in Counts 3&4, and that she does not run the risk of conviction of those offences, if the prosecution does not prove beyond reasonable doubt that her conduct was fraudulent. "I had no difficulty therefore on 15 March, 2010 in refusing leave to the prosecution to amend both Counts 3 and 4. I thought the amendment quite unnecessary for the reasons I have stated above. The amendment in respect of Count 2, was allowed for the reasons I stated in my minutes that same day: it was allowed in order to bring the Statement of Offence in line with the Particulars of offence, and I was quite satisfied, as I still am, that no injustice was or would be caused to the accused persons. I here rely in part on my judgment on a no-case submission in the case of THE STATE v ALHAJI SESAY judgment delivered 9 February, 2009 in which I also allowed prosecuting Counsel after delivering the Judgment, to amend the Indictment in that case. I said, quoting at the beginning Section 148(1) of the CPA, 1965 "Where, before trial upon Indictment or at any stage of such trial, it appears to the Court that the Indictment is defective, the Court shall make such order for the amendment of the Indictment as the Court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required amendments cannot be made without injustice. All such amendments shall be on such terms as to the Court shall seem just." The Authorities show, consistently, that if the defect in the Indictment renders it a nullity, an amendment cannot be allowed. For instance, an Indictment which alleges an offence unknown to the law, is invalid, ab initio, and cannot be cured by an amendment. Where however, a Count describes a known offence inaccurately, that Count is capable of amendment. Here, the particulars of Count 2, described the offence inaccurately, and thus, an amendment was proper and fair. In support of the position I have taken, I cite BLACKSTONE'S CRIMINAL PRACTICE, 2002 Edition, paragraphs D10.34 to D10.38; and to the case cited in D10.34: POPLE(1951) 1 KB 53 at 54 where the Court Criminal Appeal held that: "The argument for the Appellant appeared to involve the proposition that an Indictment, in order to be defective, must be one which in law did not charge any offence at all and therefore was bad on the face of it. We do not take that view. In our opinion, any alteration in matters of description, and probably many other respects, may be made in order to meet the evidence in the case so long as the amendment causes no injustice to the accused person." The Court upheld the trial Judge's decision to allow an amendment at the close of the prosecution case, to make the property allegedly obtained by deception from a building society a cheque itself, rather than the sum of money for which the cheque was drawn. In JOHAL(1973), the amendment allowed, amounted to addition of new Counts. In our jurisdiction, there are the cases of KAI KAMANDA v THE STATE Cr App 26/79 C. A.; KAMARA v COMMISSIONER OF POLICE (1964-66) ALR SL 75; FAULKNER v COMMISSIONER OF POLICE (1964-66) ALR SL 378; SHUMAN v R (1937-49) ALR SL 59. All of these authorities are agreed, that an amendment of an Indictment or Indictment could be made at any stage, so

long as it causes no injustice to the accused. Count 2 as it presently stands, reflects the evidence led at the of the close prosecution's case

16. Now, Counts 3 and 4 charge the 2nd accused with "making an excessive payment from public revenue for sub-standard goods"; Counts 5 and 6 with "making a fraudulent payment from public revenue for defective goods", all four of the contrary to Section 48(2)(a)(i) of the Act. In my respectful view, Counts 3 and 4 are alternative counts to 5 and 6. If I hold that the goods supplied were sub-standard, I need not go on to hold that they were also defective for the simple reason that both adjectives mean the same thing: the goods supplied were not fit for purpose. The difficulty about those Counts, for a start, is that the offences created are not "making a fraudulent payment" or "making excessive payment" but "fraudulently making payment or excessive payment from public revenues.. for sub-standard or defective goods." The proscribed act, is not a "fraudulent payment" or an "excessive payment" but fraudulently to make payment or excessive payment for sub-standard or defective good. A payment which is within the threshold set out in the 1st schedule of the Public Procurement Act, and therefore not excessive, could be fraudulent. It is perhaps a misunderstanding of the nature of the offences created in Section 48 that has led to the duplication of Counts 3 and 4, in Counts 5 and 6.

17. A more fundamental problem with them, is the time frame set by the Indictment, as against the evidence led. The Indictment alleges that the payments were made in July, 2009. But the evidence led shows that the payments to the 1st accused were authorized, and were made in April and May, 2008. At that point in time in the Anti-Corruption Act had not come into existence. Prior to the coming into force of the Act, the acts proscribed in Section 48(2)(a)(i) were not offences under any law in force in Sierra Leone. The closest parallel one could draw, is with Section 32(1) of the Larceny Act, 1916, i.e. Causing Money to be paid by False Pretences. The difference of course between that statutory provision and Section 48, is that Section 48 does not require a false pretence for the offence to be committed. So long as the payment for the defective or sub-standard was made dishonestly, the offences would be committed; whilst section 32(1) would require that the person or authority making the payment was deceived by the pretence into paying out the monies to the recipient in the same, in this case the 1st accused in his capacity as Managing Director of Mabella Industries Limited. It is true that in my Judgment on 1 March, 2010 I did say in part in paragraph 15 that "but in criminal jurisprudence and procedure, what matters is that the offence must be stated to have occurred on a date or dates before the date of the Indictment. The time of the commission of the offence is usually only important when an accused person raises an alabi. Then, it would be absolutely imperative that the prosecution be tied down to a particular date or dates. Here, alibi is not an issue. "At that stage, the prosecution was only required to show the Court that the accused persons had a case to answer. Evidence for the defence may well have tilted the case one way or the other. The prosecution may have been permitted, for instance, to lead evidence in exproviso pursuant to Section 196 of the Criminal Procedure Act, 1965 as was done in the case of THE STATE v FISHER by SEY, J. At the present stage however, I have to decide whether the prosecution has prove element of the offences with which the accused person is charged beyond all reasonable

doubt. And in doing so, I must also decide whether the charges are proper in law in the sense that they are not new offences, and that though the Anti-Corruption Act, 2008 is not retrospective; the accused persons acts and declarations and alleged criminal conduct committed between April and May, 2008 fall within the ambit of the Law.

18. In THE STATE v ARCHILLA & OTHERS I had cause to deal with similar situation. There, I drew a distinction between the commission of an act which was never an offence before, and an act the commission which contravened the existing Law. In my Judgment on an Application made for the case to be referred to the Supreme Court, on 30 December, 2008 I explained the position in Law. There, I said, inter alia, at paragraphs 28-29 and 32-33 "I now turn to the next question or issue: that is whether Counts 1 and 4 of the Indictment, as appear, constitute contraventions of sub-sections 23(7) & (8) of the Constitution. Are they indeed new offence? And do they indeed impose penalties severer than those in existence at the time the offences in those Counts were alleged to have been committed? Sib-sections 23(7)(8) of the Constitution read as follows: "No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence; (and) No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed." Section A1 of the Act defines 'drug' as 'a prohibited drug, a high risk drug or preparation'. A 'prohibited drug' means ' a substance listed in the First Schedule to the Act. ' In the 1st Schedule, we find cocaine listed as a prohibited drug. The question I have to answer is whether, as of 13 July, 2008 the acts of possessing and of importing cocaine without lawful authority in Sierra Leone, were criminal offences. A similar question was canvassed by the late TERRENCE TERRY in the Supreme Court in the ADEL OSMAN case, in which MR WRIGHT appeared with MR TERRY, as Junior Counsel. There, the Question was whether the offence of causing money to be paid under false pretences under the then PEER was the same as that in Section 32(1) of the Larceny Act, 1916. KUTUBU, CJ's response to this question is to be found at page 23 of his typed Judgment. "I have looked at the charges preferred under Regulations 40(a) and 44 of the PEER. On reflection, I cannot but agree with the submission of the Learned DPP that these offences at the time the consent order was sought and obtained, and that they are still in part and parcel of the criminal law of this Country. I can find no legal justification in support of the submissions of Counsel for the applications on this question. I hold that the charges are correct, valid and property laid." The Learned CJ now long deceased seems to point out the path I should take. Cap 154 which has now been repealed by the NDC Act, 2008 criminalised the importation into Sierra Leone of Cocaine, in Section 13 and 14 thereof…… Whether Cocaine has been described as a 'dangerous drug' or a 'prohibited drug' is in my Judgment, of no moment. The essential factor is that its importation and possession without lawful authority has always been proscribed.

19. In April – May, 2008 the fraudulent making of payment or an excessive payment for sub-standard or defective goods was not an offence, nor a proscribed Act. And since the Act is not retrospective, whatever may be that factual evidence probative of the 2nd accused's guilt of the offences charged, she cannot in law be convicted on Counts 3, 4, 5 and 6. The

same analysis does not however apply to Counts 1, 2m 7 and 8-10. Misappropriation of public funds was an offence in 2008 chargeable under the Anti-corruption Act, 2000. Conspiracies to commit any offence, be it felony, or misdemeanour such as Trespass – see KAMARA v DPP (1972). And since misappropriation of public funds was an offence in 2008, a Conspiracy to commit the same would be indictable. Willfully failing to comply with procurement Laws was not punishable by fine or imprisonment prior to 2008, but was clearly proscribed by the Public Procurement Act, 2004 and the 2006 Regulations. It was clearly a wrongful act. What was in my respectful opinion the 2008 Act has done, is to prescribe a punishment for the contravention of the 2004 Act and 2006 Regulations. As of 2004 it was unlawful to willfully do an act or omit to do an act contravening the provisions of the Public Procurement Act, 2004.

20. As I have stated above, Counts 8, 9 and 10 charge the accused persons with Conspiring to Misappropriate contrary to Section 128(1) of the Anti-corruption Act, 2008 in that between 1 April, 2008 and 18 September, 2009 they conspired to misappropriate the respective sums of 419,200,000 and Le606,400,000; and Conspiracy to Make Excessive payment in that between 1st April, 2008 and 18th September, 2009 they conspired to make an excessive payment in the total sum of Le1,025,600,000 to the 1st accused. They are charged with Conspiring with other persons unknown.

21. Section 128(1) reads as follows. "Any …conspiracy to commit a corruption offence….shall be punishable as if the offence had been completed and any rules of evidence which apply with respect to the proof of such offence shall apply in like manner to the proof of conspiracy to commit such offence." As I agree with both Prosecuting Counsel on the one hand, and Defence Counsel on the other hand with their respective submissions on the definition and elements of the offence of Conspiracy, and of the propriety of Charging both Conspiracy and substantive offences in the Indictment, I need not here dilate on them any further. I will only adopt in part, what I said at paragraphs 225-226 in my judgment in the case of THE STATE v ARCHILLA & others: "The Law is quite clear, that accused persons could be indicted for conspiracy even though they have never met. I had cause in delivering Judgment in the case of THE STATE v WINSTON WILLIAMS & OTHERS to dilate on this offence at length. There, I said, inter alia: The Learned Editors of **BLACKSTONE'S CRIMINAL PRACTICE 2002 Edition** (hereafter **BLACKSTONE'S)** opine at **para. A6. 14 page 89** under the rubric "Agreement" that "Agreement is the essence of conspiracy if negotiations fail to result in firm agreement between the parties……nor is there a conspiracy between A and B merely because each has conspired separately with C. It is possible however, to have conspiracies in which some parties never meet others. These include chain and wheel conspiracies……in either case, however, the alleged conspirators must each be shown to be a party to aa common design, and they must be aware that there is a larger scheme to which they are attaching themselves….If B and C each believe they have their own individual agreements with A, there are two separate conspiracies, and a single Count will not be valid, even if B and C are aware that A is Making agreements with others." This has been the Law since at least R v GRIFFITHS (1965) 2 All 448 per PAUL, in the Court of Criminal Appeal at page 453 para I: "…. For in law all must join in the one

agreement, each with the others, in order to constitute one conspiracy. They may join in at various times, each attaching himself to that agreement; any one of them may not know all the other parties; any one of them may not know all the other parties but only that there are other parties; any one of them may not know the full extent of the scheme to which he attaches himself. What each must know, however, is that there is nothing coming into existence, or is in existence, a scheme which goes beyond the illegal act which he agrees to do." Later, at page 455 para A he says: "It is right and proper to say that the Learned Judge correctly pointed out the principle, saying that the Crown had to prove that the conspirators put their heads together to defraud the ministry…….As is indicated in WRIGHT ON CONSPIRACIES p.69 it must be shown that the alleged conspirators were acting in pursuance of a criminal purpose held in common between them." In R v GREENFIELD & OTHERS (1973) 3 All ER 1050, CA Crim Div per LAWTON, LJ at page 1053 para j: "A conspiracy count is bad in law if it charges the accused with having been members of two or more conspiracies. This is the elementary law." Though adverse comments were made by the respective Courts in both cases, and later on in **GRAY (1995),** about the efficacy and propriety of joining a conspiracy count with counts for substantive offence in one Indictment, the practicability of such a course taken by the prosecution was acknowledged; that there might be cases of fraud where it would be well nigh impossible to charge a suspect with a substantive offence, even though there might be abundant evidence of that suspect's participation in the fraud which has been perpetrated. In such a case, it is perfectly proper for the prosecution to charge conspiracy in addition to charges for substantive offences." In my view, arrived at after examining the authorities, that on the facts of this case, it was proper to charge conspiracy as well as substantive offences. I seek strong support from the Judgment of **LORD BRIDGE** in the House of Lords in **R v COOKE (1986) 2 All ER 985 at page 989 paras b-e:** after dilating on the distinction between cases where a conspiracy charge would be appreciate in an Indictment including substantive offences, and where it would not, he said: "…… The difficulty arises in the many cases, to which I regret I did not apply my mind in R v Ayres, where a course of conduct is agreed to be pursued which involves the commission of one or more specific criminal offences, but over and above such specific criminal conduct the agreement, if carried out, will involve substantial element of fraudulent conduct of a kind which, on the part of an individual, would not be criminal at all. In this situation….. the sensible conclusion (is that) it is perfectly proper for the prosecution to charge one or other or both of two conspiracies: (a) statutory conspiracy…..(b) a common law conspiracy in respect of that part of the course of conduct agreed on which is fraudulent but would not be criminal on the part of the criminal working alone…..if, in addition to any specific offences which conspirators have agreed to commit, they have agreed to pursue a further course of conduct which defrauds a victim in a manner which does not amount to or involve the commission of any specific offence, I can see no reason why that should not also be charged and proved as a separate conspiracy." The Crown in this case won an appeal on these points from the decision of the Court of Appeal that the Crown could not charge Conspiracy to Defraud where the facts alleged, proved a conspiracy to commit a substantive offence under Criminal Law

Act, 1977. Our own second Schedule to the Courts Act, 1965 in paragraph 7 thereof (as amended in 1981) recognizes the existence of statutory conspiracies as well: that is, conspiracies to commit summary offences).

BURDEN AND STANDARD OFF PROOF

22. Having dealt with the Law applicable to this case, I shall restate the principles governing the burden of proof, and the standard of proof in criminal cases. I shall here adopt what I said most recently in my judgment in the case of THE STATE v KOMEH & MANS: This Court is sitting both as a Tribunal of Fact, and as a Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused persons, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused persons of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused persons have not only committed the unlawful acts charged in the Indictment, but that each of them did so with the requisite Mens Rea: i.e. the acts were done willfully as explained earlier in this Judgment. I am mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by **SIR SAMUEL BANKOLE JONES, P** in the Court of Appeal in **KOROMA v R (1964-66) ALR SL 542 at 548 LL4-5.** What is required is that it is made clear by or to the tribunal of fact, as the case maybe, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed: see also **GARBER v R (1964-66) ALR SL 233 at L27 – 240 L14 per AMES, P; SAHR M'BAMBAY v THE STATE Cr. App 31/74 CA** unreported – the cyclostyled Judgment of **LIVESEY LUKE, JSC at pages 11-13**. At page **12LUKE, JSC citing WOOLMINGTON v R** say, inter alia, that "if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or prisoner…….the prosecution has not made out the case and the prisoner is entitled to an acquittal. "**KARGBO v R (1968-69) ALR SL 354 C. A. per TAMBIAH, JA at 358 LL3-5:** The onus is never on the accused to establish this defence any more that it is upon him to establish provocation or any other defence apart from that of any defence apart from that of insanity." There, the accused pleaded self-defence. See further: **BOB-JONES v R (1967-68) ALR SL 267** per SIR SAMUEL BANKOLE JONES, p at 272 LL21-39; **SESAY and SAFFA v R (1967-68) ALR SL 323 at 328 LL20-23** and at 329 LL12-18 and **SAMUEL BENSON THORPE v COMMISSIONER OF POLICE (1960) 1 SLLR 19 at 20-21** per BANKOLE JONES, J as he then was. The point was again hammered home by AWOONOR-RENNER, JSC in **FRANKLIN KENNY v THE STATE Supreme Court Cri App 2/82** (unreported) at pages 6-7 of her cyclostyled judgment. I must also bear in mind, and keep in view at all

times the fact that thought both Accused persons are tried jointly, the case against each of them has to be treated separately. At no time must I treat evidence which is only applicable to, or which inculpates only one Accused person, against the other Accused person. Each Accused person is entitled to an acquittal, if there is no evidence, direct or circumstantial, establishing his guilt, independent of the evidence against his co-Accused.

23. Further, where as in this case, an accused person gives sworn evidence, certain principles apply, as I stated in the case of THE STATE v KOMEH & MANS at paragraph 52: "When an accused person testifies from the witness box, his evidence is treated like any other piece of evidence. It could be evidence for, and against a Co-Accused, and is admissible and probative of the guilt of the co-accused. This has long been the Law in English Jurisprudence. **In R v AKATIA** and others (1946) 12 WACA 98 Judgment delivered 12 December, 1946 HARRAGIN, CJ Gold Coast said at page 99: " a prisoner who goes into the box to give evidence may exculpate or inculpate a co-prisoner…. He is in the same position as an ordinary witness and may be cross-examined by the co-prisoner." Two years later in the case of **R v RUDD (1948) 32 Cr App** R 138 HUMPHREYS, J stated at page 140 that the evidence of the accused will be treated as evidence for all purposes, including the purpose of being evidence against any co-accused. That such an accused may have a purpose to serve is recognized by the Law. The English Court of Appeal in **JONES (2004) 1 Cr App R 60** therefore recommends the following guidelines for Judges in giving directions to juries: (1) the jury should consider the case for and against each accused separately. (2) the jury should decide the case on all the evidence, including the evidence of each accused's co-accused. (3) when considering the evidence of the co-accused, the jury should bear in mind that he may have an interest to serve or an axe to grind. (4) the jury should assess the evidence of co-accused in the same way as that of the evidence of any other witness in the case. I have borne these guidelines in mind, as I am sitting as the tribunal of both fact and Law.

PRELIMINARY MATTERS

24. This Indictment is dated 30 October, 2009 and was the third one filed by the prosecution. The first one was undated, and thus had to be abandoned. The second one was dated 28 September, 2009 but had to be abandoned as well as a result of several objections taken to it by Defence Counsel relating to the Temporal Jurisdiction of the charges: that some of them were laid on dates prior to the passing of the 2008 Act. The third one, dated 30 October, 2009 was the one on which the accused persons were eventually tried, after once more, some amendments had been made to Counts 8, 9 and 10. The accused persons' respective pleas to the charges in this Indictment were taken on 3 November, 2009.

25. Prior to this, I had on 28 October, 2009 Ordered that the accused persons be tried by Judge alone, instead of Judge and Jury, pursuant to the written Application of the Attorney-General and Minister of Justice dated 19 October, 2009 and the oral Application in Court, of Mantsebo.

BRIEF HISTORY

26. The prosecution called 12 witnesses, and closed it case on 4 December, 2009. No-case submissions were made on behalf of both accused persons, and as stated above, they were overruled by me on 1 March, 2010 for the reasons stated in my Judgment. The accused persons were put to their election. 1st accused made unsworn statement from the dock, and called one witness. The 2nd accused testified on oath.

27. The case presented by the prosecution through its witness, and the exhibits tendered in evidence was, briefly, as follows. The ministry of Transport and Aviation set up a committee which decided that there was a need for the purchase of Tow trucks to help ease the traffic congestion in Freetown. Already, the SLRTA had included in its Budget for 2008, and had proposed buying one Tow truck and twenty wheel clamps for the same purpose, but the Ministry suggested purchasing, four Tow trucks, and 100 wheel clamps. SLRTA decided on buying at first, just one truck and 20 wheels clamps, and later, in May, 2008 another tow truck and the 80 wheel clamps. The process for purchasing these vehicles was conducted by the procurement committee of the SLRTA. This committee was headed by the 2nd accused, and PW3 MOHAMED TEJAN KELLA, the SLRTA's Head of Finance who signed the contract with Mabella Industries Limited, was a member. The Ministry, through its Permanent Secretary, PW1 gave its approval, for the procurement of the first tow truck and 20 wheel clamps, and as stated in exhibit 3, dated 13 May, 2008, urged the 2nd accused to use her "good offices to fast track this programmme as to enhance road safety". But in an earlier letter, exhibit 1 dated 25 April, 2008, in response to 2nd accused's own letter of 22 April, 2008, S A KARGBO signing on behalf of the Permanent Secretary, PW1, had asked for "strict adherence to the procurement procedures…" 2nd accused has said she did not receive this letter.

28. On 23 April, 2008 according to PW2 KELFALA AHMED YANSANEH, the current Acting Executive Director of SLRTA, then the Acting Deputy Executive Director, he was called upon by the 2nd accused to provide specifications for the purchase of a tow truck. He submitted the specification to her. That document was tendered by him as exhibit 4. When the two tow trucks arrived at the quay, he was again called upon by the 2nd accused to inspect them. He did so, and prepared a Report which he tendered as exhibit 5. He took photographs of the tow trucks, and had them printed at Genet & co. under cross-examination by Mr Shears-Moses, he said he became worried when he saw the condition of the tow trucks. Curiously, even though PW2 only submitted his specification on 23 April, 2008, on that very day, the contract between the SLRTA and Mabella, i.e. exhibit 7, was signed. Further, payment in the sum of Le419,200,000 for one tow truck, and for an unspecified number of wheel clamps, which presumably were 20 in number, on a perusal of exhibit 11, was made to Mabella by PW3 that very day, even though the payment voucher which one would have thought should come first, was only prepared on 30 April, 2008.

29. Correspondence between the Authority and Mabella only arose thereafter, between 12 and 13 May, 2008, though there is reference in the contract to a proposal submitted by Mabella on 7 April, 2008. Those pieces of correspondence relate to the procurement of the second tow truck and presumably for 80 wheel clamps. That second transaction was based on exhibit 1, 2nd accused's letter dated 12 May, 2008 addressed to Mabella's

Director. In that letter, 2nd accused refers to sub-clause 3(3) of the conditions of contract in exhibit 7 which, it seems, authorizes an addition to the original order without invalidating the contract. The importance of the date of this letter, is that it comes a day before PW1 gave his approval for the purchase of " a minimum of four heavy duty towing vehicles and one hundred wheel clamps." MR KARGBO's letter, dated 25 April, 2008, exhibit 1, only gave approval for the procurement described by 2nd accused in exhibit 2. i.e. approval for the purchase of "..a heavy duty towing vehicle and wheel clamps."

30. Payment for the second order, that is for the additional tow truck and eighty wheel clamps, in the sum of Le606,400,000 was made on 14 May, 2008 though, again, the payment voucher (exhibit 5) was only prepared on 19 May, 2008. According to PW3, he received 3 quotations, exhibits 17 a, b, & c respectively; and all three of them were considered at a management meeting, where the decision was taken to award to award the contract to Mabella, it's bid being the "most responsive."

31. Another witness, PW…PIUS JOSEPH MBAWA explained the procurement process at the SLRTA. He was, until he retired on 30 September, 2008, Procurement Officer at the SLRTA, but he was not, according to him, involved in the procurement of the tow trucks; he also said that the Procurement Committee could meet without him as he could appoint someone to represent him. PW7, ALFRED HERBERT KANDEH, the Chief Executive Officer of the National Public Procurement Agency, spelt out the duties of his Agency, and the manner in which procurement involving large sums of money should be carried out. He said the procurement of two tow trucks was not referred to his agency.

32. Lastly, in terms of importance, was the testimony of Mr DENNIS NICOL, an Automobile Engineer carrying on business as Denco Motors at Madongo Town. He was asked by the Anti-Corruption Commission to examine and report on the two tow trucks. He tendered his two Reports as exhibit 18 A&B respectively. He also opined in answer to a question put to him in cross-examination by Mr Wright, that he could smell the paint, grease and oil which indicated that the vehicles was very old, probably 25 years old, and only fit for the dumping ground.

33. This is essentially the case for the prosecution. The Defence case, as presented in the respective recorded interviews given by both accused persons, and by the 1st accused's unsworn statement from the dock, and the 2nd accused's evidence in the witness box, is that the procurement process was regular, and that there was no criminality involved in the same; further, the 1st accused's contends that the contract was not for the supply of new tow trucks, but for the second hand ones, thus the price; SLRTA was not, and ought not to have expected tow trucks in a pristine condition. In any event, SLRTA still owe his company an outstanding balance in respect of the procurement. There was consequently, no misappropriation of public funds, nor fraudulent misapplication of the same.

EVIDENCE

34. I shall now go through the evidence led by both the prosecution and Defence. The prosecution, I have said, called 12 witnesses. PW1 was ABDUL RAHMAN WURIE, Retired civil servant, and one time Permanent Secretary in the Ministry of Transport. He

in fulfilknew 1st accused as a friend, and 2nd accused as the Ag Executive Director, SLRTA. In early 2008, as a result of the congestion in the city, the committee in charge of "free-flow" headed by the then Deputy Minister Capt Pat Sowe, decided to procure heavy duty vehicles to enhance the free flow of traffic. SLARTA was represented in this committee. 2nd accused wrote to him in his capacity as Permanent Secretary. He gave his 'no objection' in a letter written by Mr Samuel Kargbo, provided the SLRTA went through the procurement procedure. A copy of that letter was tendered as exhibit "1". It is addressed to the 2nd accused, and it reads: "I am directed to refer to your letter dated 22nd April, 2008 on the above subject and convey this Ministry's no objection to the proposals therein. I am however to ask for the strict adherence to the procurement procedures and to keep the Ministry posted on developments." 2nd accused claims she never received this letter. That notwithstanding, it is clear that the Ministry was reminding the 2nd accused that inspite of the urgency of the situation, there should be strict compliance with the Rules and Regulations governing procurement, not that the 2nd accused should have needed a reminder. The letter referred to in exhibit "1" was that written by the 2nd accused dated 22 April, 2008 and tendered as exhibit "2". It bears the same heading as exhibit "1" and it reads: "it is in connection with meetings held with your Ministry hinging on the above subject matter that we write to furnish you with development in respect thereof. In fulfillment of our obligations on the decisions reached, the Road Transport Authority will procure as a matter of urgency, a heavy duty towing vehicle and wheel clamps. Further more, we wish to inform you that we are in negotiations with some land owners in the Western Area and the Ministry of Lands for the acquisition of land to be use as an impound yard. We trust these initiatives will augment the Ministry's effort in making our roads safer and ease traffic congestion. Looking forward to your directives in this matters." Nothing is mentioned of bids received, or costing of the procurement. The third letter is one written and signed by PW1, dated 13 May, 2008 tendered as exhibit "3". It reads: "I acknowledge receipt of your letter dated April, 22, 2008 on the above subject. I however wish to state that your proposal to procure only one heavy duty towing vehicle and a few wheel clamps falls far short of the minimum requirements for the huge operation to clear derelict vehicles off the streets. In this regard, and considering the urgency of the operation, the Ministry suggest that you procure a minimum of four heavy duty towing vehicles and one hundred wheel clamps to give meaning the good to the free flow of traffic in the Western Area. Please ensure that you use your good offices to fast track this programme so as to enhance road safety." PW1 said this was a follow up letter. Under cross-examination, he said the SLRTA was at the time dealing with …….. directly as the Authority was without a Board of Directors. It was the committee that decided to acquire 4 tow trucks.

35. PW2 was the current Acting Deputy Executive Director, SLRTA, now Acting Executive Director. Prior to his current Acting appointment, he was also Head of Transport at SLRTA. He is a Mechanical Engineer by profession. On 23 April, 2008 he was called up by 2nd accused to provide specifications for a towing truck. He submitted the specifications to her. He went through the internet to get them. He tendered the specifications for the two tow trucks as exhibit "4." Later, in January,2009 he was called

upon by 2nd accused to inspect the two tow trucks at the QEII Quay. He went Kolo Kamara. He took photographs of the vehicles, and prepared a Report which he submitted to 2nd accused. It was tendered as exhibit "5". The Report was damning. The vehicles did not conform with the specifications laid out in exhibit "4". They had been extensively used, and they would be a liability rather than an asset to the Authority considering the terrain they would be operating on. He suggested that the Authority reject them. He took his memory stick with the photos uploaded to them, to Genet & Partners at Gloucester Street for printing. He tendered the memory stick as exhibit "6" and identified the printed pictured as exhibits "A1-32". Under cross-examination, PW2 said that in his specifications, he did not stipulate the make of the truck, and that, these specifications were in respect of one truck. The item lettered (B) were the specifications of the truck; and those lettered (C) were for the towing end of the truck. The towing part was mounted on the truck.

36. He said further he was not a member of the committee which ordered the trucks, but he was aware the committee decided to import the trucks. When he was Head of Transport, the Transport Manager attended the procurement committee meetings. He said he became worried about the vehicles when he saw their condition. He discussed their condition with the 2nd accused when he submitted his Report. She said the Minister wanted it.

37. PW3 was Mohamed Tejan Kella, the Head of Finance at the SLRTA. He described his duties. There is a procurement committee, and a procurement unit at the SLRTA. The Committee is headed by the Executive Director, and its membership includes himself as the Head of Finance, the Procurement Officer as Secretary, and a representative of the procuring department. The unit has two members of staff: the Procurement Officer; and the Assistant Procurement Officer. The Committee is the decision making body, and the Unit does the groundwork.

38. He knew the 1st accused. Sometime in 2007 the 1st accused went to his office and introduced himself as a businessman carrying on business in mining, transport and other trades. He also saw him in 2nd accused's office. PW3 was involved in the procurement of the towing vehicles. The purchase of a towing vehicle was part of the SLRTA's budget for 2008 when 2nd accused signed the performance contract with the then Minister of Transport, Mr Kemoh Sesay. It was one of the activities included in the performance contract. In the first quarter of 2008 the Minister set up a task force to clear vehicles of the streets. During that exercise, the need for a towing vehicle became apparent. The Ministry requested SLRTA to purchase a towing vehicle as a matter of urgency. The Ministry was exerting pressure on SLRTA. 2nd accused was being called to the Ministry, a Committee of Management was set up to look into the purchase of the towing trucks. The Committee was made up of the Executive Director, Deputy Executive Director, Head of Finance, Head of Licence, Head of Transpport, Head of Human Resources, Chief Traffic Warden and the Internal Auditor. He processed the payments for the transactions after approval by the Chief Executive. He also signed the contract for the tow truck 20 wheel clamps. He signed 3 copies, with one being handed over to the contractor, and the other two retained by the Authority. He tendered the contract as exhibit "7'. He signed for and on behalf of the Executive Director, and the 1st accused signed for and on behalf of

the supplier. The third signature on the contract was that of B K Mansaray, the Management Accountant, who signed as witness. The first payment to Mabella Industries was made the same day the contract was signed, 23 April, 2008. The payment instruction to Guaranty Trust Bank (SL) Limited dated 23 April, 2008 and issued by the 2nd accused and PW3 was tendered as exhibit "8". It instructed the Bank to transfer to the account of Mabella Industries Limited held at Ecobank (SL) Limited, the total sum of Le419,200,000 the sum charged in Count 1 of the Indictment.

39. The contract states, inter alia, that "the Authority is desirous that the supplier Supply Heavy Duty Towing Vehicle and Universal Wheel Clamps as specified in the proposal dated 7th April, 2008." This proposal was that submitted to the 2nd accused by the 1st accused by letter dated 7th April, 2008 and attachment headed performa invoice. It is clear that at the time 2nd addressed exhibit "2" to PW1, she already had received this proposal from 1st accused but had failed to disclose it to PW1. A respect for proposals is a method of procurement permitted by Section 42 of the 2004 Act in the circumstances circumscribed therein. It is a method used when the goods to be procured are readily available commercially standard goods, not specially manufactured to the particular specifications of the procuring entity. This is certainly not a description one could ascribe to tow trucks or vehicles. Even if this was permissible in the circumstances existing in April, 2008, there is no evidence of a request being made to any potential supplier. PW3 says 1st accused's bid was the most responsive, but there has been no documentary evidence, nor oral evidence elicited during cross-examination of any of the witnesses, that bids were sent out or published in the manner prescribed by the Act prior to 7 April, 2008. PW3 who was himself according to him, a member of the committee set up within the SLRTA did not say this was done. How did the 1st accused know that SLRTA required tow trucks? Exhibit "17A page 1" does not shed any light on it. There is no reference in it to any bid, nor to any request for proposals. Was the request made in secret? Why then did 2nd accused request PW2 to prepare his own specifications on the very day a contract was signed based on specifications provided by the 1st accused? Was 2nd accused carefully crafting a web of deception to cover non-compliance with provisions of the Procurement Act and its Regulations? This question will be answered below. There was so much haste that the contract, exhibit "7" did not specify the number or types of wheel clamps. The breakdown of the total figure is only given on a piece of paper headed computation of initial payment to Mabella Industries Limited – exhibit "9". There, we see that the cost of the towing vehicle was given as Le446,000,000; the cost of 10 heavy duty wheel clamps as Le52,000,000; the cost of 10 standard wheel clamps as Le26,000,000 making a grand total of Le524,000,000. An advance payment in the sum of Le419,200,000 was made. Ironically, the payment voucher which, in my view, should have been first prepared, but was only prepared on 30 April, 2008. PW3 tendered it as exhibit "10".

40. PW3 also tendered in evidence exhibit "11" which is a letter dated 12 May, 2008 written by 2nd accused to 1st accused. It states: "our contract with you on the above matter refers. In accordance with clause 3.3 of the conditions of contract, we wish to place an additional order for one heavy duty towing vehicle, forty heavy duty wheel clamps and forty

standard wheel clamps. Please confirm your willingness to supply the said items at the prices on the conditions already agreed with you." 1st accused's response was very prompt. On 13 May, 2008 he replied by letter stating that: "we are in receipt of your additional order for the above items and pleased to inform you that we will supply these items at prices already agreed with you. We can supply also clamps within our initial delivery period. Delivery of the towing vehicles will, however be delayed to confirm we will deliver the total quantity of wheel till 14th August, 2008 as we have to customize the additional vehicle to meet your specification." Promptly, also the very next day, both PW3 and 2nd accused instructed Guaranty Trust Bank (SL) Limited to transfer to the account of Mabella Industries Ltd held at Ecobank (SL) Limited, the sum of Le606,400,000. The breakdown of the payment was tendered by PW3 as exhibit "14". It shows that the total sum of Le606,400,000 was paid to Mabella Industries Limited. The payment voucher, exhibit "15" was only prepared on 19 May 2008.

41. Regulations 144 and 145 of the 2006 Regulations deal with situations where the contract is to be varied. Regulation 144 reads: "Where any change to the terms and conditions of a contract is required, other than a contract variation permitted in accordance with regulation 145, the procurement unit shall prepare a written modification. (5) where a contract modification would cause the contract value to be increase by more than twenty five percent of the original contract value, the additional requirement shall be treated as a new procurement requirement….where the additional requirements can only be obtained from the existing supplier, the end user shall justify the procurement as a sole source procurement and seek approval from the appropriate award authority." The situations envisaged in Regulation 145 do not apply here, because there was no "variation to the description of goods, works or services, the price or the completion date."

42. On the evidence, no new written contract modification was prepared by the procurement unit, though the Authority was committed to spending a much larger sum than before. The 2nd accused committed the Authority.

43. I have set out in detail exhibits 7-11, in view of the statement from the dock made by the 1st accused person, when he said, inter alia, at the bottom of page 55 of my minutes unto page 56: "…But in all honesty I proceeded with the fulfilment of the contract purely and clearly on the understanding that my Company had been contracted to provide 2 used tow trucks in accordance with the specifications. I must therefore emphasise that the document prepared by Yansaneh never played a role in the entire contractual agreement, certainly not when the signing of the agreement took place…..it is my important to point out the very crucial fact that even though my Company was contracted for the supply of the tow trucks, I myself never saw those tow trucks before their arrival. I relied on the licensed suppliers in the USA who identified, selected, purchased and shipped the tow trucks to Sierra Leone. They only preview of the trucks I had was the pictures taken by the supplier in America which they sent to me and indeed I gave copies of these pictures to the SLRTA for giving their comments before the tow trucks left the USA for Sierra Leone." On page 57, he says, inter alia, "….the quotations in my company's invoice was presented to the SLRTA based on quotations I received from USA, originally for one truck after I made enquires by email and telephone. So therefore it stands to reason that if

I did not personally travel to the USA to select the vehicles in question, but simply relied on the skill and judgment of the supplier in the USA, there is no way at the point of the contract and even up to the actual arrival of the trucks in Sierra Leone that I could have formed the intention to defraud the Government of Sierra Leone allegedly." Several conclusions could be drawn from this unsworn testimony. First, that it is true, as claimed by 1st accused that in his proforma invoice forwarded to 2nd accused under cover of his letter dated 7th April, 2008, exhibits "17A pages 1-4" the item to be supplied is described as " one unit USED Heavy Duty Towing and Recovery Truck as specified below." As I have stated above, the letter sheds light on another mystery: there was no request for proposals made, nor bids invited. If there had been, 1st accused surely would have referred to it or to them in exhibit 17A page1. Second, that 1st accused had no experience in the business of procuring specialized goods such as tow trucks. There was no reason why he should have been favoured with such largesse by SLRTA. Third, PW2 was merely used as a pawn by 2nd accused to satisfy unwanted curiosity. She had to go through the motions in order to show that things were being done correctly.

44. PW3 also tendered in exhibits "17 B & C. 17b" purports to be a proforma invoice issued by a nondescript entity described as SMR Group Limited of 2 Sawley Road, Manchester, UK whose email address is info@smr.ee.uk. As stated above, there is no evidence before me that requests for proposals or bids were sent out or invited. I am therefore mystified as to how this outfit came to know about the SLRTA's requirements. There is no individual's name on it; nor is there any evidence on its face to show how it was communicated to SLRTA: i.e. whether by hand, by post, by email or fax. The other document is exhibit 17C a proforma invoice issued by an outfit described on the headed notepaper as Mitco Limited of 139 Pademba Road, Freetown. There is no reference in it as so, as to how the company came to know about SLRTA's requirements. The proforma is extremely brief. There is no indication as to delivery date, or to the make of the tow truck to be procured and delivered. PW6 MOMODU SITTAR said that he went to the address, but he could not say whether any such company had offices at that address.

45. The next witness was PW4, Mr Dennis Nicol, the proprietor of Denco Motors. PW4 was invited to evaluate the tow trucks as a professional man. He did so, and submitted his report to the ACC, which he tendered as exhibit "18A&B". he was quizzed under cross-examination about the size and price of tyres and about the between a truck intended for general use, and a specialized one, to show that the valuation he had put on the vehicles was incorrect. He admitted he had not placed any value on the equipment he found on the vehicle, but he opined that the vehicle had recently been repaired. Most tellingly, he said that the vehicles had been recently painted; that one could even smell the fresh paint and grease, suggesting recent overhauling. In his estimation the vehicles were old – over 222 and 25 years old, and only fit for the dumping yard – this under cross-examination. He gave his estimated value of both trucks in exhibit 18A & B. I have not dwelt on his estimates simply because this is not a civil case for breach of a contract for sale. This case is about whether both accused persons acted in a criminal manner in effecting the procurement of the tow trucks. PW4 Report's shows that SLRTA probably got nothing for the money it had spent. It shows that notwithstanding 1st accused's claim that he was

only requested in the first instance to supply a USED vehicle, what he in fact supplied in the end were complete scraps, only fit for the dumping yard. All of this for the princely sum of Le1billion plus.

46. PW5 was Mr Pius Joseph Mbawa, retired Procurement Officer of the SLRTA. He explained in great detail the methods of procurement as laid out in the 2004 Act and in the 2006 Regulations. I have already dealt with the relevant provisions above. His evidence is consistent with my understanding of these statutory provisions, and I need not say much more about it.

47. PW6 was Mr Momodu Sittar, Investigator at ACC. He tendered in evidence the recorded interviews of 2nd accused as exhibit 19 pages 1-5; and as exhibit 20 page1-102; of the 1st accused as exhibit 21 pages 1-11. and as exhibit 22 pages 1-6, and exhibit 23 pages 1-19. He also tendered the M&A of Mabella Industries Limited as exhibit 24 pages 1-18. The M&A show that the company was 90% owned by 1st accused and came into existence after 13 May, 2007.

48. PW7 was Mr Mohamed Lansana Deen, Director, Human Resources, SLRTA. He produced and tendered in evidence the minutes of the meetings of the Board of SLRTA for 23 July, 2009 and 30 July, 2009 as exhibit 2 and 26 respectively. The minutes of July 23 show that the Board did accept that the vehicles did not meet the specifications required by the Authority; and that the 2nd accused has, prior to the meeting, circulated a draft letter written by her stating that management had rescinded its decision not to accept the trucks: and that some members of the Board were prepared to accept management's decision on this matter, which in this case, as the chairman pointed out, were communicated by 2nd accused as Head of Management. The Board finally accepted Management's decision. The minutes of the follow-up meeting disclose, that action on taking delivery of the vehicles was stayed pending action of the ACC.

49. PW8 was Mr. Alfred Herbert Kandeh, Chief Executive Officer, NPPA. He explained the mechanics and dynamics of procurement as authorized by the 2004 Act, and the 2006 Regulations. He said in the case of the purchase of the tow trucks by the SLRTA, the method used should have been made known to the NPPA. He agreed with Mr. Wright 1st accused's Counsel, that tow trucks are not readily sold in Sierra Leone. I should have thought that that should have indicated to the SLRTA that an international bidding process should be initiated.

50. PW9 was Ms. Faustina Sei an attendant at genet & partners, Gloucester Street, Freetown. She printed pictures which one Ahmed requested her to print from a memory stick. She did not identify, nor tender the prints. She tendered in evidence a receipt issued for payment for the prints as exhibit 27.

51. PW10 was Mr. Abdulai Sesay, Banker at EcoBank, Lightfoot Boston Street, Freetown who tendered in evidence as exhibits 28 pages 1-28 the statement of account of Mabella. Page 4 shows that on 23 April, 2008 the sum of Le419,200,000 was credited to that account; and page 12 shows that on 16 May, 2005 the sum of Le606,400,000 was credited to the account as well.

52. PW11 was Mr. Emile Barber, Banker at Guaranty Trust Bank (SL) Limited who tendered in evidence as exhibits 29 pages 1-4 the statement of account of SLRTA. He identified an

entry dated 23 April, 2008 showing that the sum of Le419,200,000 was transferred to Mabella.

53. PW12 was Mr. Wusu Koroma, a Banker at Union Trust Bank (SL) Limited who tendered in evidence as exhibit 30 pages 1-6 the statement of account of SLRTA; and as exhibit 31, a letter of instruction dated 14 May, 2008. Page 5 of exhibit 30 shows that on 16 May, 2008 the sum of Le606,400,000 was transferred from that account to the Manager EcoBank.

54. The prosecution closed it case at the end of this witness' testimony. Counsel for the accused persons made the submissions dealt with above, and on 1 March, 2010 I overruled those submissions as I have also said above. Contrary to the submission made by Mr Shears-Moses in his written closing address that after the amendment of Count 2, it was not read out to the accused persons again, and that the trial was therefore a nullity, on 29 March, 2010 the amended charge was read over to the accused persons, and they again pleaded not guilty to the same. Mr. Shears-Moses was present in Court and the proceedings for that for that day are recorded on page 49 on my minutes. No further proceedings were taken after the amendment was allowed on 15 March, 2010. I had noted down on page 48 that I put the 1st accused to his election. I was about to do so, when Mr Wright requested an adjournment for 10 days to take further instructions from his client. So, 1st accused made no election that day. On the next adjourned date, i.e. 29 March, 2010, Mr Wright applied for leave to be granted the prosecution to reopen its case so that he could recall PW1 and PW3 for further cross-examination. I gave leave to the prosecution to do so and adjourned the matter to 9 April, 2010.

55. On 9 April, 2010 PW1 was further cross-examined by Mr Wright. He said that 2nd accused was present at the meeting where it was decided that 4 tow trucks should be purchased. There were several telephone calls between them. He said exhibit 3 was written a while after that meeting, and that it was a mere formality. In his further testimony, in answer to Mr Wright, PW3 said that the Management Committee's decision to award the contract to Mabella was based on exhibits 17a, b, and c. he said he first saw exhibit 4 on 23 April, 2008. He was aware that 1st accused was expected at his office to sign the contract that morning. He used a template in preparing the contract, but he did not transfer the contents of exhibit 4 unto the template. In other words, to my understanding, the specifications made by PW2 did not form part of exhibit 7 as it should have, if there had been due compliance with the 2004 Act, and the 2006 Regulations. This is obvious from the evidence of PW2. In further answer to Mr Shears-Moses, PW3 said that it is a regular practice for vouchers to be prepared after payment – text book example of putting the cart before the horse. In answer to a question put by the Court, PW3 said that the approval gives rise to the preparation of the voucher. On the evidence, it seems to me that in the case of the two payments made to Mabella, the approval gave rise to the payment, and only subsequently to the preparation of the payment vouchers.

56. At the end of his testimony, the 1st accused was put to his election, and as recorded above, he elected to call one witness and to make an unsworn statement from the dock. That statement, from which I have quoted above, is recorded at Pages 53-59 of my minutes.

57. His witness, an Engineer, Mr. Aiah Matturi, testified on 16 April, 2010. He gave evidence of his experience and expertise in the field of engineering, though during cross-examination, it turned out such experience was confined to the field of civil engineering, and not Mechanical engineering. He examined both tow vehicles at the SLRTA's compound. Both vehicles were started and the engines ran for a while. The towing arms of each vehicle were extended backwards and forwards. Each vehicle was used to tow the other. He was shown the accessories which were in sealed packages by the 1st accused. He wrote a report, but it was not tendered in evidence. He would describe the vehicles as roadworthy and suitable for the purpose for which they were procured. In his estimation both vehicles cost between Le400-Le500million each.

58. Under cross-examination, it was revealed that his branch of engineering was concerned with infrastructure, and that he had never worked as mechanic, though in the past he had supervised the mechanical section at the Ports Authority, and had mechanical engineers working under him. He said he did not look at the mileage of the trucks. The group had specific areas of interest. In examining a second hand vehicle, one had to see its functionality. At the end, Mr Wright closed the case for 1st accused.

59. 2nd accused elected to give evidence on oath, and did so on 21 April, 2010. She had no witnesses. He testimony is recorded at pages 63-75 of my minutes. She tendered in evidence another copy of the contract as exhibit 32 pages 1-8. The difference between this exhibit and exhibit 7, is that in exhibit 7, PW3 says he is signing there on behalf of the Acting Executive Director, and the signature of the witness is on it. "ff Acting Executive Director" and the signature of Mr Mansaray are absent on exhibit 32. Whatever may be the truth of the matter, on the evidence, 2nd authorized the contract with 1st accused payments to be made to Mabella Industries Limited. At page 67 of my minutes, she said she did not sign the contract, nor did she authorize anyone to sign it on her behalf. Strangely, PW3 said on 16 November, 2010 at page 18 of my minutes, that he signed the contract for the acting Executive Director. He was not contradicted in this respect. Indeed at page 23 of my minutes, it is shown that 2nd accused's Counsel had noo questions for him. 2nd accused's denial therefore carries no weight in this Court. It does not amount to an exculpation as she does not deny specifically, authorizing payments to be made to Mabella when being cross-examined by Mr Wright at page 70 of my minutes. And she herself admitted on page 71, she did not take any disciplinary steps against PW3 for the signing without he authority. Indeed, she could not have done so, for she later concurred in, and ratified his decision to sign the contract.

60. She said she became aware of Mabella's bid when the Technical Committee of which PW2 and PW3 were members, submitted their report to management. PW2 has denied he was a member of any such committee. He was only asked to prepare specifications by 2nd accused on the day the contract with Mabella was signed, 23 April, 2008. She said the technical committee was asked to inform Mabella of the ……. of its bid, and referred to exhibit 16 which was in fact written by her, and not by the Technical Committee. She tendered as exhibit 33, a copy of a letter addressed by Mr Shears-Moses & Co to the Director, Mabella Industries Limited complaining about the company's failure to fulfil its contractual obligations. She also tendered a letter dated 20 January, 2010 addressed by

her to Mabella as exhibit 34 which she relays the complaints of the inspection team, presumably, that headed PW2. There were no manufacturer's manuals; the vehicle could not be tested, and they did not meet the Authority's specifications, which unhappily, she herself had not communicated to Manbella, when she was busy authorising payments to the company.

61. She tendered also an email she sent to 1st accused on July, 2008. She there referred to a previous telephone conversation between the two of them, and as attachment, copies of the Board and Management's decision on the vehicles. We have a copy of the Board's decision which is that contained in exhibit 25. But we do not have management's decision. We only know that according to exhibit 25, management had decided, as communicated to the board by 2nd accused, to accept the vehicles. Exhibit 36 was another email addressed by 2nd accused to 1st accused, attaching thereto, a copy of exhibit 26. It is therefore not true, as stated by 2nd accused at the end of her cross-examination by Mr Wright at the bottom of page 72 of my minutes, that "..on my part, the vehicles were rejected."

62. Now, under cross-examination by Mr Mantsebo, 2nd accused said, at page 73 of my minutes, "…… I see exhibit 2. There is handwritten the words 'PI give no objection with strict adherence to procurement procedures.' I had no communications with 1st accused before 23 April, 2008 (not 2010 as appears here)…. I see exhibit 7 (reads 1st paragraph) it refers to proposals dated 7/04/08 (not 10 as appears there). I see exhibit 17. I received it. I do not know whether the specifications Yansaneh prepared were sent to 1st accused. I looked at the agreement before it was signed. I did not receive exhibit 17. I cannot remember when it was received by me. I came to know about it before 23 /04/08 (not 10 as appears there). I found it acceptable to enter in a contract based on the specifications provided by the supplier. We undertook limited bidding. It is restricted bidding…." In these few words, 2nd accused has shown how indifferent she was, despite her exalted position at Authority, and the immense responsibility imposed on her, to the financial implications of the transaction she authorized. In my judgment it suffices to ground an inference that she willfully failed to comply with procurement procedures. The conditions for restricted bidding as explained above, were never met by the 2nd accused, nor by any other person or committee at SLRTA. She ended by saying at page 74: "the vehicles were defective. They did not match specifications."

63. Here, the 2nd accused closed her case. Thereafter, Counsel on both sides addressed the Court in writing, and orally. I am indebted to them for the scholarship exhibited, and the depth and breath of the research each of them embarked on. Mr Wright's address is recorded at pages 76-83 of my minutes. In addition to his written address, Mr Shears-Moses addressed the Court orally on May 24, 2010. After which Judgment was reserved. I apologise to Counsel and the accused for the delay in delivering the Judgment. Between the middle of last year and the end of this year, I was dogged with ill health; and the issues I have been called upon to decide on this case are novel, and may easily set a precedent, and I had to take extreme care to consider each and every one of them before arriving at a decision.

64. I have set out what the law requires in a case of this nature. It only remains for me to deal with the point raised on behalf of the 1st accused that the monies in question in this case, were not paid to 1st accused, but into an held in the name of a company in which he was the principal shareholder, Mabella Industries Limited. I think, and it is my judgment that the prosecution were entitled to, and were right in laying the charges in Counts 1 and 2, and in Counts 8 and 9, and against the 1st accused, and not against his company. The 1st accused has acted on all occasions, on his own admission as well as in addition to the evidence led by the prosecution, for and on behalf of the company. In fact, he is the company. I need only refer to the case of TESCO SUPERMAKETS LIMITED v NATTRASS (1971) 2 All ER 127, per LORD REID at page 131 paragraphs h&i: "I must start by considering the nature of the personality which by fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corruption has none has non of these; it must act through living persons, though not always one and the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of his company. There is no question of the company being vicariously liable. He is an embodiment of the company, or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company." This was a criminal case in which Tesco was prosecuted for the acts of one of its employees in putting up a poster indicating goods were being offered for sale at a price less than at which they were in fact offered. The position is the reverse here. Here, the 1st accused is being prosecuted for monies received in the name of a company in which he is the principal shareholder, and of which according to him, in exhibit 17 page 1, he is Director. Nobody else communicated with 2nd accused or SLRTA in respect of the tow trucks, other than 1st accused. I am satisfied in my mind, and so I hold, that 1st accused is Mabella Industries Limited, for the purposes of this trial.

65. On the evidence, and in view of the law I have referred to above, I find that there was no conspiracy to misappropriate any sums of money by 1st and 2nd accused persons together. 1st accused may have conspired with other persons not mentioned in the indictment. That is why as a prosecutor, it was our practice to charge the persons named in the indictment with having conspired with other persons unknown. The ACC chose not to do so in this case. Though I have not found that 1st accused conspired together with 2nd accused, but with other person or persons unknown, 1st accused guilty of conspiracy, but 2nd accused not guilty. There is a clear evidence that there was a well-known and approved decision taken not only by the SLRTA, but also its supervising ministry, to purchase tow trucks. Provisions had been made in the 2008 budget for this. In the nature of things, 1st and 2nd accused could not therefore conspire to misappropriate monies for the purchase of the tow trucks. It would have been otherwise, if for instance, there had been evidence that no such no such decision was taken by SLRTA nor the Ministry, and that procurement was something put together by 1st and 2nd accused persons.

66. That 1st accused may have conspired with another person or persons unknown is impossible. At pages 100-102 of exhibit 20, the 2nd accused explains in vivid language the pressure which was being exerted on her by the then minister of Transport., Mr Kemoh Sesay. He threatened her, he was harassing her to go through with the contract with the minimum of a delay. She herself admits to page 102 of exhibit 20 that "….with this time frame given it was impossible to go through the procurement procedures as stipulated in the NPPA Act, hence limited bidding." She chose to give in to the unlawful pressures, and got herself into trouble.

67. But there is clear evidence that 1st accused misappropriated the respective sums of Le419,200,000 and Le606,400,000. He had no knowledge of the vehicles he was contracted to supply. As is evident from the state of the vehicles which were examined by the SLRTA's expert in the person of PW2, they were unfit for purpose. They did not accord with his specifications, nor could they, when examined be able to perform the duties they were procured to perform. All of this is to be found in exhibit 5, his report. PW4 confirms this. DW1 Mr Matturi, was and is not a Mechanical Engineer. 1st accused's intention all along, as could be gleaned from the oral and documentary evidence, was to extort monies from the SLRTA. He was dishonest in the GHOSH sense.

68. It is true that but for 2nd accused's willful failure to comply with procurement procedures, 1st accused would not have been able to do this. But that does not make her guilty of misappropriation. She was not dishonest in the GHOSH sense. But she must bear responsibility for her willful disregard of procurement procedures.

69. In the result, I find as follows:

Count 1 – 1st Accused Guilty
2nd Accused Not Guilty
Count 2 – 1st Accused Guilty
2nd Accused Not Guilty
Counts 3, 4, 5 and 6 – 2nd Accused Not Guilty
Counts 7 – 2nd Accused Guilty
Counts 8, 9 and 10 – 1st and 2nd Accused Not Guilty

70. As result of the guilty verdicts in Counts 1 and 2, 1st Accused shall refund to the Sierra Leone Road Traffic Authority the total sum Le1,025,600,000 in addition to any other sentence I shall impose, within 4 weeks of today's date. As soon as he does this the tow vehicles should be released to him.

N C BROWNE-MARKE

Justice of Appeal

10 February, 2011.