NCBM JSC

CR APPS 10,11,12,13,14,15,16,17/2014

IN THE COURT OF APPEAL OF SIERRA LEONE

ANTI-CORRUPTION CRIMINAL APPEALS

LANSANA ROBERTS - 1ST APPELLANT
DR MAGNUS KEN GBORIE - 2ND APPELLANT
DR EDWARD MAGBITY - 3RD APPELLANT

VS

THE STATE RESPONDENT

CORAM;
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE A H CHARM, JA (later, CJ, now out of office)
THE HONOURABLE MR JUSTICE ALUSINE SESAY
JUSTICE OF THE SUPREME COURT

COUNSEL:
IMRAN KANU ESQ for the State + O.V. Robin-Mason + for the State
A S SESAY ESQ for 1st Appellant
M P FOFANAH ESQ for the 2nd Appellant + SS Lawrence
I S YILLA ESQ for the 3rd Appellant

BROWNE-MARKE, JSC VN

JUDGMENT DELIVERED THE 26thDAY OF AUGUST, 2020 E

INTRODUCTION

1. Eight appeals were filed in this Court's Registry by the 3 Appellants herein, and all 8 of them were heard together as one appeal, as all 3 Appellants were convicted and sentenced at the same trial. The Record of the appeals runs into 3 volumes. The respective Notices of Appeal are in Volume 3 and begin at page 931 of the record. These notices of appeals were subsequently amended. All references hereafter to page numbers, are to pages of the Record.

THE APPEALS

1ST APPELLANT LANSANA ROBERTS' APPEALS

2. We shall start with the 1st Appellant, Lansana Roberts' appeal, Cr App 10/2014 which was filed by him on 17th July, 2014, and it is an application for leave to appeal against sentence alone – pages 931&932. An application for leave to appeal against sentence alone, is a requirement of Section 57(1)(c) of the Courts' Act, 1965, as amended, and of the Court of Appeal Rules, 1985. And as has been the practice in this Court, leave is always perfunctorily granted, and the application itself is treated as the appeal on the first day of hearing. The sentence of the Court below was that the 1st Appellant shall pay a fine of Le132,175,000 and, shall serve a term of imprisonment for 6 years, the same to run concurrently, and that he remain in prison custody until such time as the fine is paid. The grounds of appeal are as follows;
   i. That the sentence pronounced by the Learned Judge is illegal and not provided for in law.
   ii. Alternatively, that a portion of the sentence pronounced by the trial judge is void and illegal.
   iii. That the sentence is manifestly excessive
   iv. That the Judge exhibited bias and malice for the Appellant in his remarks when sentencing.
3. He therefore sought the following reliefs from this Court.
   i. That his sentence be overturned and the same quashed.
   ii. That, alternatively, the Court do substitute its own sentence.
   iii. Any further or other sentence the Court may deem fit and just, taking into account the circumstances of the case in totality.
4. On 27 January, 2015, the 1st Appellant filed amended grounds of appeal against sentence. The grounds are not significantly different from those originally filed, and the reliefs sought, remain the same.
5. The Notice of Appeal against conviction on a question of law, was also filed on 17 July, 2014 – see pages 933 – 934. At pages 935 – 936, is the 1st Appellant's application for leave to appeal against his conviction on mixed law and facts, and it is also dated 17 July, 2014. The grounds of appeal against conviction both on questions of law, and on questions of mixed fact and law,

taken together, amount to this: The Learned Trial Judge did not apply, or, failed to apply the law relating to Misappropriation of donor funds contrary to section 37(1) of the Anti-Corruption Act, 2008 – hereafter, the "ACA,2008", to the facts of the case. The Learned Trial Judge is also said to have ~~to have~~ drawn negative inferences from the 1st Appellant's exercise of his right not to incriminate himself, and to have reversed the legal burden of proof. He also relied on evidence extraneous to the case before him. He is also alleged to have made prejudicial comments during the course of the trial. The verdict reached was therefore unreasonable, or, could not be supported, having regard to the evidence. For these reasons, the 1st Appellant prayed that his conviction be set aside and a verdict of acquittal be entered in its stead.

6. As in the case of his appeal against sentence, on 27 January, 2015, the 1st Appellant amended his grounds of appeal on questions of law. The amendments proper, are not essentially different from those originally filed: what the Appellant did this time round, was to flesh out the grounds by citing passages in the Judgment which supported the grounds filed earlier. I suppose the Record was not available at the time the original notice was filed.
7. The same goes for the amended grounds of appeal against conviction on questions of mixed fact and law. The grounds proper remain the same, but they are now supported by copious quotes from the Learned Judge's Judgment.

2ND APPELLANT DR GBORIE'S APPEALS

8. The 2nd Appellant, DrGborie, likewise filed 2 Applications for leave to appeal against sentence, and against his conviction on mixed fact and law; and an appeal against sentence on questions of law. These respective appeals are at pages 937 to 945. He was convicted on Counts 3, 4 and 17 of the Indictment on which he was jointly tried with the other Appellants. The sentence was that he pay a cumulative fine of Le243,300,000 and that he serve a term of 6 years in prison, the prison terms to run concurrently in respect of the Counts on which he was convicted. One of the grounds of his appeal against sentence, is that specifically, the sentences imposed were not warranted in, nor supported by law. Sections 233, 234, and 235 of the Criminal

ProcedureAct, 1965 as amended, are relied on for this ground. Further, that these sentences were manifestly excessive. He contended also that the Learned Trial Judge exhibited bias during the trial. These grounds were amended by way of Notice filed on 4th February,2015

9. In his appeal against conviction on questions of law - pages 940 -942, the 2nd Appellant contended that he was convicted on allegations not contained in the Indictment on which he was tried; that the Learned Trial Judge cast the legal burden of proof on him; that he was hostile and clearly prejudiced, and that as such, the verdicts were unreasonable and could not be supported by the evidence.These grounds were amended by way of notice filed on 4 February, 2015. Therein, he complained also that the Learned Trial Judge erred in law in that he "*infringed*" his right to silence, and the privilege he held, against self-incrimination. In his new ground 4, he contended that, to quote him: "*The Learned Trial Judge erred in law to have included, without lawful justification, the legal ingredients of the offences of 'accepting an advantage' (as charged in Counts 18 & 19 respectively of the Indictment) and "willfully failing to comply with the law relating to procurement services" as charged in Count 17 of the Indictment, in his analysis of Counts 3 and 4 of the Indictment on the offence of "misappropriation" and vice versa. It is contended that such inclusions rendered the said Counts duplicitous.*"
10. In the appeal on questions of mixed facts and law - pages 943 - 945, additional allegations are made that the Learned Trial Judge did not treat the 2nd Appellant's statement from the dock in the proper and accepted manner, in that he rejected the exculpatory portions, but relied on ~~relieon~~ what appeared to be the inculpatory ones. He contends further that the Learned Trial Judge relied on extraneous evidence in arriving at his respective verdicts, and that he was hostile and exhibited bias throughout the trial. These grounds were also amended and amplified by way of notice filed on 4th February, 2015, particularly, that relating to the way the Learned Trial Judge handled the Appellant's unsworn statement from the dock.

3RD APPELLANT DR MAGBITY'S APPEALS

11. We now turn to the appeals brought by the 3rd Appellant, DrMagbity. They are at pages 946 - 948, 952-54. First, his application for leave to appeal against sentence. He was convicted on 12 Counts in all - 11 Counts for

Misappropriation of Donor funds contrary to Section 37(1) of the ACA, 2008; and 1 for Willfully Failing to Comply with the Laws relating to Procurement of Service contrary to Section 48(2)(b) of the Act. The grounds are not well-expressed - they appear to be expositions of what the Law is, rather than arguments against the propriety of the sentences imposed. Essentially, he was saying, in relation to the appeal against sentence, that the Court's power to sentence was discretionary; and that the Learned Trial Judge was wrong to have imposed a cumulative fine of Le680m in addition to a sentence to serve a term of 6 years in prison. And to obfuscate further, grounds 3 and 4 purport to contend that the 'allocutus', to quote him, *"did not conform to the usual pattern"*, whereas, the allocutus is what a convicted person says to the Court in mitigation of sentence, before his Counsel, if he is so represented, is called upon for the formal plea in mitigation.Since it comes from a convicted person, the allocutus cannot have a set pattern. The sentences imposed on all 3 Appellants, and what the Learned Trial Judge had to say about them, are at pages 949 - 951 and form part of 3rd Appellant's appeal.

12. As in the case of the other 2 Appellants, the 3rd Appellant filed amended grounds of appeal in respect of his appeal against sentence, and that against conviction, on questions of law only. This was on 7th January,2015. That appeal against sentence did not really add much to what had been stated in the original grounds. The sentences are set out in extenso. The complaint again is that they were manifestly excessive.
13. His grounds of appeal on questions of law, are at pages 952 - 954. In ground (1) thereof, he alludes to what transpired during the course of the trial, when the then Counsel for the 1st Appellant herein, C F Margai Esq. applied, on the 1st Appellant's behalf, to the Supreme Court, for that Court to exercise its supervisory powers over the High Court. For the record, that Application was discontinued in the Supreme Court. But the 3rd Appellant contends that the filing of the application appeared to have offended the Learned Trial Judge, and that though he had said he would await the superior Court's determination of that application before delivering judgment, he eventually went on to do so before that Court had determined that Application. He was thus deprived of the right to a fair trial. He contends also that the Learned Trial Judge erred in using one accused person's out-of-court statement

against the others, and that he commented adversely on the failure of each of them to give evidence in their defence. He also contends that the case against him was merely circumstantial, and that he was convicted under a repealed Act, the ACA, 2000. The 7th ground, that he, the 3rd Appellant was convicted because he had cashed cheques which he was authorized to do, is not really a question of law. The certificate of conviction in respect of all 3 Appellants, is at page 955.

14. It is necessary to state the order in which the accused were arraigned in the High Court. Dr Gborie was 1st accused, Dr Magbity, 2nd accused, and Lansana Roberts, 3rd accused. DrGborie was charged in Counts 1, 3, 4, 15, 16, & 17. DrMagbity was charged in Counts 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17. Mr Roberts was charged in Count 1, together with DrGborie; alone in Count 2, and with both DrsGborie and Magbity in Count 3. Counts 18 and 19 were added on during the course of the trial, the propriety of which will be dealt with later in this judgment.

CONSPIRACY TO COMMIT A CORRUPTION OFFENCE NOT AN OFFENCE CONTRARY TO LAW IN A TRIAL BROUGHT UNDER THE ANTI-CORRUPTION ACT, 2008 (ACA,2008)

15. Count 1 charged the offence of Conspiracy to commit a Corruption offence, contrary to Law. It alleged that between April and September, 2009, both DrGborie and Mr Roberts, conspired together and with other persons unknown to misappropriate donor funds in the sum of Le46,237,500. I think it is pertinent to state at the outset that a statutory conspiracy cannot be charged as an offence at Common Law. Simply put, the ACA,2008 has created its own offences, and its own peculiar regime for the prosecution and trial of, and punishment for offences charged under the Act. Minimum sentences have been imposed under the Act. There are no minimum sentences at Common Law. Lastly, the AC Commissioner has no authority to bring a prosecution for a Common Law offence. He can only prosecute offences brought under the ACA,2008. The point was eventually conceded by prosecuting counsel, and as a result, the Learned Trial Judge was therefore partly right, in his judgment, at page 378, to discharge the Appellant DrGborie, and the Appellant, Roberts. We are of the view however, that as the trial had progressed to conclusion, the Learned Trial

Judge should have entered a verdict of not guilty, and should have proceeded to acquit and discharge both Appellants, rather than merely discharging them.

EFFECT OF AMENDMENT TO SECTION 64(3) 1991 CONSTITUTION

16. The power to prosecute offences under the ACA,2008 was taken away from the AG&MJ by the amendment to Section 64(3) of the Constitution of Sierra Leone, 1991 through the Constitution of Sierra Leone (Amendment)Act - No. 9 of 2008. Thenceforth, only the Anti-Corruption Commissioner, hereafter "ACC" was permitted to bring prosecutions under the ACA,2008. All other offences had to be brought at the suit of the Attorney-General & Minister of Justice -"AG&MJ". Regrettably, section 136(1) Criminal Procedure Act, hereafter, "CPA, 1965" as amended, was not at the same time amended, so as to bring the new prosecutorial process accorded the ACC in line with the other processes recognized by that statutory provision. Those processes permit preferment of an indictment after committal proceedings; preferment of an indictment after committal based on the verdict of an inquest; preferment of an ex officio information by the AG&MJ; and preferment of an indictment with the consent in writing of a Judge.
17. The proper course of action of course, would have been for the Court below to have severed the Indictment, and to have ordered separate trials for the common law offence, as well as for the offences under the ACA, 2008. MrKanu's written reply to the No-Case submission made by MrMargai, at pages 187 - 188 of the Record, in this respect, does not save the day. He was, with the greatest respect to him, wrong. The Learned Trial Judge was also wrong in law in this respect as well, to conclude, as he did when delivering his ruling on MrMargai's no-case submission at page 208 of the Record, that a charge of Conspiracy at Common Law could be brought by the AC Commissioner. In any event, at the end of the day, he discharged all three Appellants on that Count.

COUNTS 2 - 16

18. Counts 2 to 16, charged the offence of Misappropriation of donor funds contrary to section 37(1) ACA, 2008. In Count 2, Mr Roberts is said to have

misappropriated donor funds in the sum of Le51, 375,000 (originally,5,147,500).It should be noted that the amendment does not appear on the Record as required by section 148(2).In Count 3, all three Appellants are said to have misappropriated donor funds in the sum of Le242,400,000. In Count 4, the 2nd Appellant, DrGborie was charged with misappropriating donor funds in the sum of Le62,500,000. In Counts 5 to 14, the 3rd Appellant, DrMagbity, was the only accused indicted for misappropriation of donor funds. The sums said to have been misappropriated between several consecutive dates were: Le47,500,000; 26,320,000; Le60,000,000; Le65,000,000; Le45,000,000; Le53,000,000; Le20,000,000; Le70,000,000; and Le30,000,000. In Count 15, both DrsGborie and Magbity were charged with misappropriating donor funds to the tune of Le50,000,000. In Count 16, both Doctors were again charged together, but this time round, with misappropriating donor funds in the sum of Le49,070,000. In the last charge, Count 17, both DrsGborie and Magbity were charged with Wilfully Failing to comply with the law relating to the procurement of services, contrary to section 48(2)(b) of the ACA, 2008.

19. Now, Count 17 was curiously drafted. It alleges that on one particular date between 1st April, 2012 and 31st December, 2012, both Doctors willfully failed to comply with the law relating to procurement in respect of securing the services of Seventy Eight Enterprises and General Merchandise for the leasing of vehicles. Counts 4, 5, and 16 allege that various sums of money were misappropriated by both doctors between 1st and 30th May, 2012. In other words, there were three distinct consecutive periods during which it is alleged that the respective amounts charged in these three Counts were misappropriated.May, 2012 evidently falls within the period between 1st April and 31st December, 2012. But, as later events were to disclose, the offence charged in Count 17 did not actually relate to Counts 4 and 5 . They actually related to monies which were said to have been paid out by Seventy Eight Enterprises to both DrsGborie and Magbity.

AMENDMENT OF INDICTMENT - INITIAL COMMENTS

20. Between pages 128 and 144, we find arguments relating to the application made by prosecuting counsel, MrKanu, for the Indictment to be amended to include two more Counts. These two Counts charge the offence of Accepting

an Advantage contrary to section 28(2) of the ACA, 2008. They allege, ~~in Count~~ in Count 18, that DrGborie accepted the sum of Le62,500,000 from Seventy Eight Enterprises; and in Count 19, that DrMagbity accepted the sum of Le47,500,000 from the same entity. As stated in paragraph 19, supra, these two proposed Counts are connected directly to Count 17. The propriety of these two Counts being added will be dealt with later.

21. Further, by amending the Indictment to include both Counts 18 and 19, both DrsGborie and Magbity were made to face two separate Counts for the same transaction: In both Counts 4 and 5, they were said to have misappropriated the respective sums of Le62,500,000 and Le47,500,000. In Counts 18 and 19, they were accused of having accepted an advantage in the respective sums of money, an offence contrary to section 28(2)(a) of the ACA,2008. It seems to this Court, at this stage, that in allowing the inclusion of both Counts 18 and 19, the Court had in effect, gone on to act in contravention of section 43 of the Interpretation Act, 1971, but the Learned Trial Judge eventually saved the day by dismissing both Counts 18 and 19 in his judgment at page 378. Section 43 of the 1971 Act states that though an accused could be prosecuted for the same act under two enactments, or, under an enactment and at Common Law, he cannot be punished twice for the same offence.

22. For present purposes, as the trial stood as of 29th October, 2013, no predicate offences had been charged relating to Count 17.

23. It seems to this Court, and for the reasons stated above, that Count 17 ought to have been struck out at the beginning of the trial for being uncertain, at best, or, for being duplicitous, or, quasi duplicitous at worst. Taken at its highest, the offence of failing to comply with the law relating to procurement of services envisages a continuous process, rather than just a single transaction. The offence implies that procurement was required; that measures were taken by the persons accused to effect the procurement; that these measures failed to comply with the law relating to procurement; and that this failure was a willful act on the part of the two Appellants. Further inquiry will show that the alleged failure to comply with the law relating to procurement, was directly connected to the allegation of the wrong application of donor funds which were later charged in the two additional Counts. The result was that while the failure to comply with

procurement law,was charged in one Count only, i.e. Count 17, the substantive offences were charged, as it transpired, in two separate Counts. At this stage, the question arises, was it proper to charge what evidently were a series of transactions in one Count, i,e, Count 17?.

VOLUNTARY CAUTIONED STATEMENTS OF ACCUSED NOT READ OUT

24. The Record also discloses certain procedures which ought not to be encouraged in our criminal Courts. On page 49, it is recorded that the voluntary cautioned statements of both DrsGborie and Magbity were tendered respectively as exhibits FF1-38 and GG1-54 respectively. At the top of page 49, the Learned Trial Judge has recorded the following exchange: *"Kanu – I seek to tender. Fofanah – I have no objection. Court: Cautioned statement of the 1st accused is received in evidence. Marked exhibit FF1-38. Kanu: shall we take FF1-38 as read? Court: Taken as read."*

25. The same procedure was adopted after the voluntary cautioned statement of the DrMagbity was tendered as exhibit GG1-54. In our jurisdiction, documentary exhibits are not just entered, or "read" into the record. That may be the practice in other jurisdictions. Statements of accused persons have to be read out. There is a good and valid reason why this is done. Only copies of statements are given to the defence. Some statements are handwritten, whilst others may have been typed out. Whichever method is adopted, only photocopies are handed over to the defence. Photocopies, as we are all aware, may not necessarily be exact replications of originals. There have been known cases, ~~were~~ where words have been omitted from photocopies. This is why it is absolutely necessary that all statements of accused persons should be read out in Court, notwithstanding the indulgence granted by defence counsel.Defence Counsel could follow the reading in their respective copies.

WRONGFUL ADMISSION OF PREVIOUS STATEMENT

26. Another anomaly recorded in page 105 of the Record, is that the statement of the witness MomohGbao, PW5, was admitted into evidence when he was being cross-examined, and the Court directed that it form part of the Record. A previous statement made by a witness, even in cases dealing with sexual offences, is admitted only to show consistency, or, inconsistency. This

is the sum effect of section 190 of our Criminal Procedure Act, 1965 as amended, and section 4 of the English Criminal Procedure Act, 1865 which forms part of our laws by virtue of section74 of the Courts' Act, 1965 as amended. Proper grounds had not been laid before the Court ruled that this statement should form part of the Record. It had not been suggested to the witness that his testimony in Court, or, some part of it, had contradicted what he told the ACC in that written statement. The contradiction, so-called, only came after the statement had been admitted as part of the Record. This was palpably wrong. And for the edification of all, section 4 of the 1865 Act states as follows: "*If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such a statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.*"

WRONGFUL EXPUNGING OF DOCUMENTARY EXHIBITS

27. On pages 112- 113 of the Record is also to be found a palpable error made by the Learned Trial Judge. It also highlights the shortcomings in the use of photocopies. Whilst the additional witness, PW6, Amanda Macarthywas testifying, it became apparent that there were some documents missing from the set tendered as F1-14. Prosecuting Counsel Mr Imran Kanu applied to withdraw portions of exhibit F, and to add to the same, three more pages. Both MrMargai and MrTejan-Cole objected to the withdrawal of documents which had been tendered, on the ground that these documents had become the property of the Court. The Learned Trial Judge, wrongly, in our view, overruled these objections, and ordered, at page 113, that exhibit F8 be expunged from the Record. In criminal trials in this jurisdiction, documents tendered during the course of a trial cannot be expunged thereafter. If a document has been tendered wrongly by the prosecution, or, the defence, all that Counsel for either side needs to do, is to draw the Court's attention to the error, and in the closing address, as this was a trial by Judge alone, indicate to the Court that it would not be relying on that document in

support of its case. But it would be wrong to expunge a piece of evidence in any circumstances during the course of criminal proceedings. The style often seen on television dramas of a judge saying: "*...that piece of evidence should be struck off the record; members of the jury, you will ignore it....*" is not practised in our criminal jurisdiction.

AMENDMENT TO THE INDICTMENT - DETAILED ANALYSIS

28. It is now appropriate to review the amendment of the Indictment which was ordered by the Learned Trial Judge in his Ruling delivered on 1st November, 2013 at pages 145 to 155 of the Record. Notwithstanding the fact that at the end of the day, His Lordship acquitted the Appellants, DrsGborie and Magbity, respectively, of those charges, it is necessary perhaps, to provide guidance to our Courts on the true implication, and the boundaries of the power to amend established in that statutory provision. The primary piece of legislation is Section 148(1) CPA, 1965. It states: "*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 made upon such terms as the Court shall seem just.*"

29. It was eventually agreed by the Court and by Counsel on both sides in the Court below, that section 148(1) is in the same terms as section 5(1) of the UK Indictments Act, 1915. Therefore, English authorities on its effect constitute persuasive authority in our Courts. In this, they were quite correct. What was in dispute, in the view of this Court, was the interpretation to be given to its terms. Clearly, in our jurisdiction also, an Indictment can be amended at any stage provided the same can be done without injustice to the defence. What the Court below, and Counsel for both sides failed to take into consideration, in the view of this Court, is the difference in the form of trial obtaining, and which obtained in the UK, as against what obtains in this jurisdiction. The form of trial, in our view, has a distinct bearing on how and in what circumstances an indictment can be amended.

30. Both MrTejan-Cole, now of blessed memory, and MrFofanah highlighted the various procedures for bringing a criminal matter to trial in our High Court. These have been adumbrated in paragraph 16, supra. But regrettably, they failed to actually pinpoint, for the benefit of the Learned Trial Judge, who had not practiced in our jurisdiction, certain peculiarities which would not arise in a case tried by a judge and jury in the UK. First, the trial was by Judge alone, sitting without a jury. As I am aware, His Lordship had been a Judge in the Gambia, he would be familiar with this mode of trial, as there are no more jury trials in the Gambia, unlike here, in Sierra Leone, where such trials are still permissible. Under our laws,a specified authority has to give its consent to the trial being conducted by Judge alone, rather than by judge and jury.

EFFECT OF THE AG&MJ's APPLICATION FOR TRIAL BY JUDGE ALONE - SECTION 144(2) CPA, 1965 AS IT AFFECTS ASUBSEQUENT AMENDMENT

31. The Application was made by Franklyn B Kargbo, the then Attorney-General & Minister of Justice, pursuant to section 144(2) CPA, 1965 for the accused persons to be tried by Judge alone. The Application was dated 26th March, 2013. It is at pages 13 and 14. Therein, the AG&MJ gave his permission for the Appellants herein to be tried on a 17 Count Indictment. The Order was made as of course by the Learned Trial Judge on 15th April, 2013 after the Appellants had pleaded to the several charges in the Indictment, and as recorded by His Lordship at page 28. As there was no jury, the process of putting the accused persons in charge of the jury as required by section 187 CPA, 1965 was unnecessary.

32. As readily adverted to above, section 148(1) empowers the trial Court to amend an Indictment, but it does not state whether an amendment could be made by addition of a Count. It was taken as implied in the Courts of the UK because of the procedure obtaining in its Courts. Our section 148(1) is silent upon the issue. In order to determine whether this could be done or not, it is imperative that we first consider the effect of section 136(1) CPA, 1965 as amended by Act No. 1 of 1970. There, the second proviso states as follows: *"Provided further that where the accused has been committed for trial the indictment may include either in substitution for, or, in addition to, counts charging the offence for which he was committed, any counts founded on*

facts or evidence disclosed in the depositions being counts which may lawfully be joined in the same indictment."

33. Of course, the reference in the proviso to section 136(1) CPA, 1965 is a reference to the indictment which is to be preferred, not one that has been preferred, and on which accused persons are being tried. But the proviso clearly indicates situations in which Counts could be added which an accused person had not been faced with in earlier proceedings, even though those proceedings were conducted in a lower court. Section 136(1) CPA,1965as amended states the several ways in which a criminal case could be brought to our High Court. And as indicated in paragraph 16, supra, the preferment of an indictment by the AC Commissioner is not one of the procedures sanctioned by that statutory provision for initiating a prosecution in the High Court. But the second proviso to section 136(1), limits the addition or substitution of Counts to cases where there has been a committal. What a close reading of the proviso suggests, is that save where there has been a committal for trial, once an Indictment has been preferred, counts could only be added in cases where there has been a committal for trial, and not in cases where there has been no preliminary inquiry or inquest.Further, the counts added, or, proposed to be added, must be those which could be lawfully joined to the existing charges – see the judgment of TAMBIAH, JA in LANSANA & 11 OTHERS v R [1970-71] ALR SL 186, CA at page 249 LL19 - 24.

34. The Learned Editors of ARCHBOLD 2012 Edition have argued otherwise: that for the purpose of exercising the powers of amendment conferred on the Court in section 5 of the 1915 Act, no distinction ought to be drawn between an indictment preferred as a result a committal for trial, and an indictment preferred as a result of leave being given by a High Court Judge under the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1933. This latter Act is in nearly all respects similar to our own section 136(1). But then, in the UK, committals for trial are the norm, rather than the exception. And further, there are no trials by judge alone. And following the indication given by TAMBIAH, JA in the LANSANA appeal, could two charges be added on to an indictment in respect of which the application for trial by judge alone had been for a trial on 17 counts alone? A right to trial by judge and jury is a constitutional and statutory

right, and can only be taken away in cases where the AG&MJ, or, the DPP has certified that the general interest of justice would be served thereby. This is so, notwithstanding the fact that the person accused is given the same right in section 144(1), even though, there, that right has to be exercised at least two clear days before trial.

35. Further, the difference outlined in the second proviso to section 136(1) is easily explicable when one considers that where there have been committal proceedings, the person accused has been informed in some detail of the case against him before his trial commences for real. The evidence of prosecution witnesses would have been tested, however briefly, in cross-examination by the defence. But in cases where there has been no preliminary inquiry or investigation, a person accused is informed of the strength of the case against him only when the Indictment is preferred. This is the situation an accused person faces when the AC Commissioner prefers an Indictment against such an accused pursuant to powers conferred on the Commissioner in that behalf by section 89 ACA, 2008. Worse, still, in ACC cases, the Commissioner is only obliged to serve on the person accused, summaries of what witnesses will say in Court, rather than the full statements made by these potential witnesses to the ACC. This is in itself, a further inroad into the rights of an accused person, and constitutes deprivation of his ability to give detailed instructions to his solicitor. Further," paragraph 149 Canons: construction of Act or other Instrument as a whole", BENNION's STATUTOTRY INTERPRETATION, 1st ledition, 1984" is instructive in this respect. The Learned Author states therein: *"An Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone but is interpreted in its context."* This principle of construction is acknowledged by the Learned Trial Judge at page 204 of the Record whilst he was giving his ruling on the no-case submission made by MrMargai.

AMENDMENT BY ADDING COUNTS IN AN INDICTMENT

36. The question of whether a count in an indictment could be amended before judgment so as to add to it, two other accused persons already charged in other counts in the same indictment arose in the Court of Appeal in THE STATE v ISAAC DURING & 6 OTHERS, Judgment delivered 14th October,

1974, SLBALR [1974-82] 22 by C A HARDING, JA, Presiding. There, the Learned Trial Judge had adjourned for judgment, and on judgment day, decided to amend a count in the indictment the appellants were facing by adding the 6th and 7th accused persons to counts 1 and 2 in the said indictment. Paradoxically, even after he had done so, the Judge also proceeded to acquit all the accused persons. The State appealed against these acquittals to the Court of Appeal on a point of law. This right of appeal on questions of law alone, was conferred on the prosecution by the amendment to section 57(1) in Act No. 21 of 1966. In giving judgment for the Court, HARDING, JA said at page 27 of the Report: "*We are satisfied that the purported joinder of the 6th and 7th respondents to the 1st and 2nd counts could not in any sense be deemed to be correcting a count in the indictment.....rather, it was altering its substance....*" But as the party thereby prejudiced was not the prosecution, but rather those accused persons who had been wrongfully joined, the Court held that though the joinder was bad in law, no prejudice had been caused to the State, and therefore, there had been no miscarriage of justice.

37. The "*During*" case gives some guidance as to what should influence the Court of trial when the amendment sought, alters the '*substance*' of the case. Amendments to existing Counts, by substituting names, perhaps wrongly spelled, or, amounts of money, or, names of places, or, even dates, are rudimentary, and would ordinarily not merit much argument. In this respect, I ordered the amendment of the indictment in the case of THE STATE v BAUN & 3 OTHERS. But in THE STATE v HAMZA ALUSINE SESAY & SARAH FINDA BENDU, Judgment delivered 10 February, 2011, I had, during the course of the trial refused an amendment to the indictment because I had thought it unnecessary. The adjective "*fraudulently*" had been omitted from a Count, and the prosecution had applied ~~form~~ for it to be included. I refused to allow the amendment because, as I explained in that case, it would make no difference to the result. I had nointention of convicting an accused person for theoffence charged if he had not acted fraudulently. But where the amendment involves adding two more counts to an indictment after a period of 6 months, and after 7 witnesses have testified, we are of the view that this may have amounted, to adopt the words of HARDING, JA in the "*During appeal*", to altering the substance of

the caseDrsGborie and Magbity were being confronted with towards the end of the trial.

38. One has only to look at the course of events during the trial, to conclude that an amendment at this late stage was perhaps, a bit unfair. The witness called thereafter as PW8, was Mohamed Musa, an employee of the National Public Procurement Agency. He was called to explain the method relating to the procurement of services for the hiring of vehicles. He was shown exhibits M1&2, and N1&2. These had been tendered in evidence by PW1 Musa JamiruBalaJawara, Senior Investigator, ACC, on the second day of the trial, 26th April, 2013 – page 37. They were cheques drawn on UTB. They were described by PW1 as payments made to 78 Enterprises for vehicle hiring services rendered to the Ministry of Health and Sanitation. Further down on the same page 37, PW1testified as follows: "*My findings were that the two payments in M1&2 and N1&2 are in respect of the same one (sic) transaction. One was advance payment and the other as final payment. There were several findings in regard to these payments in the course of our investigation. The contract of (sic) the vehicle hiring services for which these monies were paid to 78 Enterprises from the DPI account did not follow the laid down procurement laws and rules. And also from the proceeds of these payments, the proprietor of 78 Enterprises, MomohGbao, issued two cheques in favour of the 1st and 2nd accused.....*"

39. MomohGbao was PW5. He testified on 10th July, 2013. At page 101, he did say that he issued exhibit PP2, a PHB cheque in the sum of Le62,500,000 in favour of DrGborie; and exhibit PP1, PHB cheque in the sum of Le47,500,000 in favour of DrMagbity. The first thing this Court would observe is that as of that date, i.e. 10th July, 2013, this piece of evidence was not admissible as it did not relate to any count in the indictment as it then stood. It was of course the duty of defence counsel to object to its admission. But also, it was the duty of the Learned Trial Judge to refuse to allow both cheques into evidence as they did not at the time relate to any of the charges he was presiding over. If an amendment was necessary, it should have been done immediately after PW1 testified, or, at the latest, before PW5 testified. As of 10th July, 2013 the Appellants were not facing charges relating specifically to those two cheques. There was nothing stopping the prosecution filing another indictment charging both Appellants,

DrsGborieand Magbity with the offences charged in counts 18 and 19. The crucial issue still remains whether at that late stage, allowing the addition of the two counts was proper, and also whether their addition caused injustice to these two Appellants. Clearly, they could not have been possibly convicted of any offence relating to those two cheques without the amendment.

40. An earlier case dealing with the issue of adding a count to a charge sheet during the course of a trial in our jurisdiction, is SHUMAN v R [1937-49] ALR SL 204, HC. This was a case which had first been brought in a District Court in the then Protectorate of Sierra Leone. Two witnesses had already testified; a third was in the witness box, when a second charge was added to the information. The accused pleaded not guilty to the additional charge. The trial proceeded; the accused was acquitted on the original charge, but convicted on the additional charge. In his Judgment, GRAHAM PAUL, CJ said, inter alia, at page 206 LL20 39: "*....On the appeal coming before this court the Learned Solicitor-General quite rightly stated at once that he could not possibly support the conviction for the reasons (a) that there has beena misjoinder of the second charge, and (b) that there was no evidence that the appellant was not entitled to buy gold..... It is quite clear that under section 44 of the Criminal Procedure Ordinance, 1932 that in the District Court - 'for every distinct offence of which any person is accused there shall be a separate charge.....and every such charge.....shall be tried separately'. From that it follows that in adding during the course of a trial on one charge, a second charge for a distinct offence, and in proceeding to try the two charges together, the district court in this case was acting completely without any jurisdiction, and that the whole proceedings in the Court below, including the addition of the charge, the conviction and sentence were therefore null and void and of no legal effect whatever.....*"

41. Another case in point is: BRAVO-JONES v R [1937-49] ALR SL, 59, WACA. There, the appellant had been charged under the Forcible Entry Act, 1381. After the close of the case, the Court amended the charge by substituting the Forcible Entry Act, 1623 for that of 1381. In delivering the judgment of the Court, KINGDON, CJ (Nigeria), had this to say at page 63, beginning at LL3-15: "*The penultimate sentence of this quotation (i.e. from R v Tuttle, 21 Cr App R, 89-90, Per AVORY, J) suggests that it is not competent under the sub-section (i.e. ss5(1) Indictments Act, 1915) to amend an indictment so as*

to charge a person with an offence different from that for which he has been committed for trial (and presumably, indicted). This is confirmed by reference to the case of R v HUGHES (20 Cr App R, 4) which clearly established that the amendment must be an amendment of a defect in form and must not amount to an alteration and revision of the substance of the charge. This being so, it seems that the information in the present case could not have been amended as it was at any stage at all of the trial since an offence contrary to the Forcible Entry Act, 1623 (if indeed, that statute creates any offence at all) is definitely a different offence from that created by the Forcible Entry Act, 1381. Moreover, we are clearly of opinion that an amendment such as this, going to the root of the whole case could not be made at the late stage at which it was, namely, after the close of the defence, without injustice to the appellant....."

42. Another case of importance is R v IJOMA & 2 OTHERS 12 WACA 220. There, the statute under consideration was very specific as to the extent of amendments which could be allowed at trial. Section 163 of the then Nigerian Criminal Code provided as follows: "*Any Court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the accused.*" As the provision allowing for amendments included adding counts to the charge sheet, the appellants' appeal in that case were dismissed by the Court.

EFFECT OF AMENDMENT ON THE ORDER FOR TRIAL BY JUDGE ALONE

43. Further, even if this Court were to hold that our jurisprudence authorizes we the addition of counts to an indictment by way of amendment of the same, we would still have to consider the authority for the trial to proceed by Judge alone. The application made by the AG&MJ was for the trial by judge alone of a 17 count indictment, and not for a 19 count indictment. The offences in respect of which he made this application were specified and specific. They did not include the offence of Accepting an Advantage contrary to section 28(2)(a) ACA, 2008. We hold that the Learned Trial Judge made a wrong decision of law in permitting the amendment to be made, even though at the end, in his judgment, he dismissed those charges, i.e. Counts 18 and 19 - see page 378. There was no authority for the

continuation of the trial by judge alone of a nineteen count indictment. There was only authority for a trial on a 17 count indictment.

44. This Court is of course aware that the leading case in this area of the Law is still R v JOHAL & RAM [1972] 2 All ER 449, CA. But it should be borne in mind that in that case, the amendment, adding four more counts to the original indictment was done before trial, not six months into the trial. And even there, ASHWORTH, J added these cautionary words at page 452: "*On the other hand, this Court shares the view expressed in some of the earlier cases that amendment of an indictment during the course of a trial is likely to prejudice an accused person. The longer the interval between arraignment and amendment, the more likely it is that injustice will be caused, and in every case in which amendment is sought, it is essential to consider with great care whether the accused person will be prejudiced thereby.*" This Court holds the view that there is a limit on the latitude granted the prosecution in our section 148(1) in view of the conclusion reached by ASHWORTH, J cited above.In the premises, and for the reasons given above, based on the state of our laws and our jurisprudence, we do not think such an addition as was allowed in this case, is permissible. But, we also hold the view that it would be for our Supreme Court to lay down the law in this regard. We limit ourselves to the issue of the effect an amendment has on the authority to continue a prosecution of a criminal matter being tried by judge alone.

45. In addition, and for jurisprudential purposes, this Court wishes to cite two reported cases dealing with the right to apply for trial by Judge alone. Both cases confirm that, as the CPA,1965 then stood, i.e. before the amendment to section 144(2) by the CPA(Amendment) Act, 1981, conferring the same power on the DPP, only the Attorney-General (now AG&MJ under the 1991 Constitution), could apply for trial by judge alone. It was a power which could not be delegated. But both cases do not however deal with the specifics of the application. The cases are: R v MANYEI (1970-71) ALR SL 58, CA; and A-G v KAMA [1970-71] ALR SL 175, CA.

ABSENCE OF NOTE OF AMENDMENT - SECTION 148(2) CPA, 1965

46. To compound the error of law, section 148(2) stipulates that: "*Where an Indictment is so amended, a note of the order for amendment shall be*

endorsed on the indictment, and the indictment shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form." The record contains no such note. What is to be found in the Record is a draft, undated, and unsigned Indictment at pages 156 - 164. A judgment given on such an indictment would be a nullity. Rule 11, 1st Schedule CPA, 1965 is quite specific as to what is a proper and valid indictment. It states: "*Every indictment shall bear the date on the day when the same is signed and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form:.....*" The draft Indictment at pages 156 -164 does not conform to the said Rule 11. Further, in a trial by judge and jury, a jury can only return a verdict on the charges an accused is facing. Section 201(1) CPA, 1965 states: "*Unless otherwise ordered by the Court, the jury shall return a verdict on all charges on which the accused is tried, and the judge may ask them such questions as are necessary to ascertain what their verdict is.*" There is no specific provision for trials by judge alone, but by parity of reasoning, a trial judge cannot give judgment on charges an accused person is not lawfully facing. If the amendments made have not been recorded in the manner authorized by section 148(2), the terms of which have been set out above, the indictment remains unchanged, and any judgment given thereafter on the presumed amended indictment becomes a nullity.

FAILURE TO CALL WITNESSES WHOSE NAMES ARE ON BACK OF INDICTMENT

47. Another irregularity is noted on page 171. There the Learned Trial Judge has noted that MrKanu applied for the prosecution to be allowed to dispense with calling two witnesses whose names appear on the back of the indictment, namely, Maureen Walters and WusuSamura. As SorieBrimaSamura was an additional witness, no leave was required if the prosecution did not wish to call him. The proper procedure where the prosecution wishes to dispense with the calling of a witness whose name appears on the back of an indictment, is to ask the defence whether it has any objection to this, and/or whether it would wish to cross examine such a witness. If the defencesays it may wish to cross-examine such a witness, the prosecution would be obliged to make the witness available for cross-

examination. If the defence does not wish to do so, the Court can then proceed to allow the application, and permit the prosecution to close its case without calling those witnesses. It is noteworthy that two of the witnesses whose names appear on the back of the Indictment were eventually not called to testify.All the witnesses called were additional, save one. See: R v KELFALLA 5 WACA 157; [1937-49] ALR SL, 85. At page 87 of the latter Report, KINGDON, CJ, Nigeria, gives the reasons for this procedure to be followed. At LL14-35, the Learned CJ said, inter alia: "*.....The question of the proper procedure to be followed when the prosecution does not consider it necessary or desirable to call one or more of the witnesses on the depositions was considered by the West African Court of Appeal in the case of R v Chigeri (1937) 3 WACA 201. The conclusion arrived at was that the usual and proper practice was that set out in 9 Halsbury's Laws of England, 2nd Edition at 164: All the witnesses whose names are on the back of the Indictment should be called by the prosecution. Even if it is not proposed to examine a witness whose name is on the back of the indictment, counsel for the prosecution should, unless there are exceptional reasons to the contrary, place him in the witness box so that the defendant may have an opportunity of cross-examining him." We now endorse the opinion then expressed and state that it is intended as a guide to all courts from which an appeal lies to this court in order to resolve a doubt which is apparent on the face of the English decisions and text books....*" See also, R v YEBOAH 14 WACA, 484. And for the avoidance of doubt, the practice of printing the names of prosecution witness on the back of the indictment no longer obtains in the UK.

PUTTING ACCUSED PERSONS TO THEIR ELECTION

48. The Court has studied the Learned Trial Judge's minutes at page 172 of the Record. They disclose that there was a clear non-compliance with the provisions of sections 192 - 194 CPA, 1965. The duties of the Court are clearly spelt out in those statutory provisions. It is the Court's duty to inform an accused person of his "*rights*". In this jurisdiction, we refer to it as "*putting the accused to his election*". The language used in both subsections of Section 192 is that the Court should '*require*' the accused person to do certain things. Nowhere is it recorded by the Learned Trial

Judge that he invoked this procedure. In addition, it is absolutely necessary that he should inform the accused of his right to call witnesses. This, the Learned Trial Judge failed to do.

49. After the Court had overruled MrMargai's no-case submission on 10 January,2014, MrKowa, who appeared as Counsel for the 3rd accused Lansana Roberts, applied to the Learned Trial Judge to state a case for the Court of Appeal, pursuant to the provisions of section 68 of the Courts' Act,1965. This is at pages 209 – 210. This is the legitimate right of an accused person. Section 68 states as follows: "*In addition and without prejudice to the right of appeal conferred by this Act, and Judge of the High Court may reserve for the consideration for the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial before such Judge of any person charged, and if a verdict of guilty be returned, may postpone judgment, or, may direct judgment to be entered provisionally, subject to the opinion of the Court of Appeal, respiting execution of the judgment, and the Court of Appeal shall have power to hear and determine every such question.*" It is a little known procedure, and it is hardly used, but it is still available. I have utilized it in a civil matter whilst presiding as a High Court Judge – FINDA KOROMA v PHILIP NEVILLE. See also: KAMARA v R [1967 -68] ALR SL 355, CA. There, CORNELIUS HARDING, J was presiding over a trial in which a confession had been ruled inadmissible. He however decided to state a case for the consideration of the Court of Appeal. The Court of Appeal held that he was right to have ruled the confession inadmissible, and sent the case back to him. Another example in which a case was stated for consideration of the Court of Appeal, was the case of BANGURA (AFT) v R (No. 2) [1964 – 66] ALR SL, 408, CA. As such, stating a case for consideration by a superior court during the course of a criminal trial is not really a time-wasting exercise as the Learned Trial Judge would want us to believe. It leaves room for doubt as to the impartiality of the Learned Trial Judge in deciding the fate of the Appellant, Roberts, and also of the other Appellants.

50. MrKowa's application was denied. One of the reasons given by the Learned Trial Judge for dismissing the application, at page 210 is that he considered the application was "*....a ploy to delay or frustrate the expeditious disposal of this matter...*". We think it is Counsel's duty in Court to advance such

arguments which he believes are supported in law, and which may assist his client facing trial. To denounce them as being a mere ploy, is we hold, rather unfair and could, in our view, amount to an attempt to stultify the defence. Such comments, coming from the trial judge may sound confrontational, and may well have intimidated Counsel of much less experience at the Bar. Again, noticeably, at the end of this exchange between the Bench and MrKowa, the Learned Trial Judge failed to put the 3rdaccused to his election. Rather, he called upon 3rd accused's Counsel to indicate the accused's election, whereupon MrKowa stated that the 3rd accused wished to rely on his statement made to the ACC. Again, the Learned Trial Judge failed to ask the 3rd accused whether he intended to call witnesses.

51. The proper procedure to be followed was considered, wrongly, in our view,by the Court of Appeal in KUDADU v R[1970-71] ALR SL, 97, CA. At the trial before BROWNE-MARKE, J (later, JSC),(that is my late father,not me), the Learned Judge had recorded the following: "*Accused informed of their rights. All accused relied on their statements to the police.*" The appellants therein, were convicted and sentenced. On appeal, MARCUS-JONES, JA, delivering the judgment of the Court, at page 101, first referred to KPANGAY v R 16 WACA 21. There, the issue was whether the obligation for a Magistrate to record reasons for his decision was directory or mandatory. The court held that it was only directory. The Learned Justice then went on to cite 36 HALSBURY's 3rd Edition at page 435. That portion of Halsbury's Laws merely explained how a court should determine whether a particular statutory provision was directory or mandatory. It did not deal with the specific provision relating to the issue of explaining the rights of an accused where statute says this should be done. In fact, that excerpt from Halsbury's was based on the case of Caldow v Pixell 2 CPD, 562, a case dealing with the Ecclesiastical Dilapidations Act, 1871.It had nothing to do with the rights of an accused during a criminal trial. The particular provision in the statute which was in issue in the Caldow case was one which related to the time within which a Bishop could give directions to a surveyor. The Court therein rightly held that the provision was directory, only. The issues in dispute in the Caldow case are far removed from those dealing with the rights of an accused in a criminal trial.

52. Further, the Court in KPANGAY did not consider the decision of the same Court in the earlier case of OLADIMEJI v R 13 WACA 275. There, the sameCourt held that where section 287 of the Nigerian Criminal Code applies to trials before the then Supreme (now) High Court, and is read in conjunction with section 288 thereof, the effect is that if an accused person is not asked if he has witnesses to call, the trial is vitiated. If a trial is vitiated, it is of no effect, and is therefore a nullity. VERITY, Ag P, held at page 276 that the obligation to ask the defendant if he has witnesses is a statutory requirement and if it has not been complied with, the trial is vitiated.Section 287 referred to therein provided that at the close of the prosecution case, the court shall ask the accused if he has any witnesses to call.

53. In the premises, we are of the view that when it comes to upholding the rights of an accused person, the views expressed by the Court of Appeal in MACAULAY v ACTING ATTORNEY-GENERAL (No.2) [1968-69] ALR SL, 365 bear on the issue at stake in this appeal. The issue for decision there was whether, at that point in time, i.e. before the amendment to section 136 in 1970, Treason was an offence in respect of which an indictment could be preferred with the consent in writing of a judge, rather than as a result of committal for trial by a magistrate's court. The Court of Appeal decided that it was not. SIR SAMUEL BANKOLE JONES cited with approval the case of Secretary of State for Defence v Warn [1968] 2 All ER 300, and in particular, LORD HODSON's judgment at page 303 of that report, to wit: "*Procedural sections are usually mandatory and there is nothing which points to the contrary in this case. Procedural provisions* are, as here, often inserted for the protection of accused persons." LORD HODSON's statement of the law was echoed by MARCUS-JONES, JA at page 378 [1968-69] ALR SL. TAMBIAH, JA was more emphatic. At page 378 LL30 etseq, of the Report, he had this to say: "*.....Whenever the word 'shall' is used in a procedural statute, it should be regarded as peremptory unless there is a contrary intention.....Procedural provisions to protect an accused are mandatory. Where an accused is prosecuted for serious crime the intention of the legislature is to have preliminary investigation proceedings before he is arraigned before a trial court*". Above, I have earlier alluded to the fact that this right, that is, to a preliminary investigation, is lost in an

ACC prosecution, and as to how this impacts negatively on the right to amend an indictment by the inclusion of additional counts to an indictment tried by judge alone on the application of the AG&MJ. We hold, following the Court of Appeal's decision in the MACAULAY case cited above, that the provision in section 192 is mandatory: In the absence of MrMargai and MrKowa, the Learned Trial Judge should have put the Appellant, Roberts, to his election in the manner set out in section 192 CPA, 1965. The same consideration applies to the other two Appellants as discussed below.

CLOSING ADDRESSES

54. This Court has also noted that the Learned Trial Judge noted at the top of page 211 that he had ordered written addresses. Written addresses are not mandatory in our jurisdiction. Again, sections 192 - 194 CPA, 1965 govern what should happen at this stage of proceedings. The submission of written addresses has become the practice. But also, it is our understanding that it is still the duty of the Learned Trial Judge to invite Counsel to indicate how they would wish to address the Court in closing. Even if all Counsel elect to submit written addresses, it is our view that a date is usually fixed thereafter for them to address the Court orally if they so desire. The right to a closing oral address has not been taken away by statute.

SECTIONS 192 - 194 CPA, 1965

55. We have made these preliminary comments, in view of what came later. In paragraph 49 supra, we have reviewed some of the events at the trial on 10th January, 2014. As was stated above, at page 209, the Learned Trial Judge minuted immediately after dismissing the 3rd accused's no-case submission, the following: "*Learned Counsel for the 3rd accused is hereby directed as to his election in the defence of the 3rd accused.*" First point of note is that the Learned Trial Judge should have addressed the 3rd accused himself, instead of Counsel acting on his behalf. Further down the page, the Learned Trial Judge records MrKowa's response: "*I apply that the case be stated pursuant to section 68 of the Courts' Act, No 31 of 1965 for certain questions to be determined, namely.....*" MrKowa continued on the following page, 210, followed by MrKanu in reply. Further down page 210, the Learned Trial Judge dismissed the application. His Lordship again noted: "*.....And for*

this purpose, learned counsel is again directed as to the 3rd accused's election in his defence." MrKowa responded by saying: "The 3rd accused wishes to rely on the statement made to the Anti-Corruption Commission (for) his defence." The Learned Trial Judge then posed this question to MrKowa: "*That would mean then that is the case for the 3rd accused defence (sic)?*MrKowa's response was: "*Yes, My Lord.*" On the next page, 211, His Lordship continued at the top: "*I order written addresses.*"Hearing was adjourned to 24th March, 2014.

56. On 24th March, 2014 at page213, this is what the Learned Trial Judge recorded and had to say at the bottom of the page about 3rd accused's Counsel: "*The Counsel for the 3rd accused has not filed an address as ordered by this court. There is on file a statement dated 25th March, 2014 and intitled closing address/arguments on behalf of the 3rd accused Lansana Roberts that is not an address. It is a rubbishy (sic) piece of paper to all intents and purposes. This court hereby forecloses the right of counsel, C F Margai to address this court, having waived such right, and staying away without the courtesy of an explanation to account for his absence." 3rd accused: My Lord, I would like to be allowed. Court*: "Very well, you may go ahead." 3rd accused: "*MyLord, Iwish to thank you for giving me this opportunity; this is my first time of coming to court. So, I don't know court procedure. I want to speak concerning my business.*"The Court's response was this: "*We are now at the stage of adjourning for judgment. This court would not entertain explanations from the3rd accused concerning his business as it relates to matters for which he is charged before this court. This matter is hereby adjourned to May 27th 2014 for judgment. Authorities relied upon by counsel to be produced within 3 days hereof.*" Hearing was adjourned to 27th May, 2014 for judgment.

57. The Record does not disclose that there was a hearing on the adjourned date. Judges ought to be reminded that adjournments in criminal cases are both at one and the same time judicial as well as administrative acts. For example, a surety who has entered into a recognizance on behalf of a person charged is only required to produce that person on the day stated in open court, and not necessarily on any other day not so stated.

58. However, on 11th June, 2013 there was a hearing and all accused persons were present. Judgment was however not delivered that day though,

according to the Learned Trial Judge, it was ready. He noted on page 215 that he had been informed of a Supreme Court hearing on an application made relating to the trial, and that in due deference to that Court, he would adjourn delivery of the judgment, sine die. Notices would be sent out to Counsel. I am of course aware that the Supreme Court did sit on that application that day, as I was a member of the panel of Justices. Much later, that application was abandoned by Counsel for the Appellant, Lansana, in order to allow this appeal to proceed.

59. Here, we have a trial judge departing completely from the requirements of the law. Clearly, on 7th April, (not 7th March, as wrongly appears in the Record) 2014, the Appellant, Roberts, was in the position of one not defended by counsel, notwithstanding what MrKowa had said to the Court on 10th January, 2014. It was therefore incumbent on the Learned Trial Judge to proceed in accordance with the provisions of sections 192 & 193 CPA, 1965, this time directing his query to the 3rd accused himself who was now unrepresented.

60. The relevant portion of section 192(1) states: *"At the close of the evidence for the prosecution.....the Court shall in cases where the accused is not defended by counsel inform him of his right to address the court, to give evidence on his own behalf, or to make an unsworn statement and to call witnesses in his defence, and in all cases shall require him or his counsel to state whether it is intended to call any witness as to the fact other than the accused person himself. (2) Upon the accused having been so informed the judge shall record the fact and shall then observe the appropriate procedure set out in section 193"*

61. *Section 193 states: "193(1) Where the accused person is not defended by counsel and states that he does not intend to call witnesses as to the facts except himself, the Court shall forthwith call upon the accused to make his statement or say nothing, or, give evidence on oath as to the facts, and after his cross-examination (if any) he shall be permitted to address the Court if he so desires and to call any witnesses as to character. (2) Where the accused is not defended by Counsel but states that he intends to call witnesses (other than himself) as to the facts, the Court shall call upon him to open his case if he so desires. The accused shall then make his own unsworn statement, or, give his evidence on oath, and thereafter, he shall*

*call his own witnesses (including witnesses as to character). At the conclusion of the evidence for the defence the accused shall be permitted to sum up his case to the Court and counsel for the prosecution shall be entitled to reply."*See ATUNDE v COMMISSIONER OF POLICE 14 WACA 171. See also ARCHBOLD 35th Edition, where the Learned Editors have stated at paragraph 549 rubric: "*Where prisoner is unrepresented: "It is essential that a prisoner not defended by Counsel should be asked by the judge whether he wishes to call any witnesses in his defence, and omission to do so may lead to the quashing of a conviction".* The case of R v CARTER 44 Cr App Rep 225 is cited in support of this proposition. The position in the UK is now governed differently as evidenced in PRACTICE DIRECTION (criminal proceedings: Consolidation) para. IV. 44 [2002] WLR 2870. See also, KUDADU v THE STATE [1970-71] ALR SL 97 CA cited above.

62. The right of an accused to give evidence on oath, or, to make an unsworn statement from the dock in his defence, is enshrined in our laws. First, section 2 of the Criminal Procedure Act, 1865 which is still part of the Laws of Sierra Leone by virtue of section 74 of the Courts' Act, 1965. It states, for the purposes of an undefended accused, in part, as follows: section 2: "*and upon every trial.....whether the prisoners or defendants or any of them be defended by counsel or not, each and every such prisoner or defendant or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening or, of all such openings if more than one, such prisoner or prisoners, or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit....*"

63. Section 87 CPA, 1965 deals with evidence related matters. It states: "*Every person charged with an offence.....shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows: (a) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application;.....(h) Nothing in this Act shall effect the provisions of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.*" Paragraph (h) is that which conferred the right on an accused person to make an unsworn

statement from the dock. That right has been taken away in some jurisdictions, but remains in force in our jurisdiction

64. Clearly, in his own words, the Learned Trial Judge deprived the Appellant Lansana Roberts of his rights enshrined in these laws. In saying "*I want to speak concerning my business*....", the Appellant, Roberts intended to let the Court know that he intended to either make an unsworn statement from the dock, or, to give evidence on oath, to explain his own side of the story. He was deprived of this opportunity by the Learned Trial Judge. It seems to us that the Learned trial Judge took umbrage at the absence of MrMargai, and not being able to give him, i.e. MrMargai, a piece of his mind, he took it out on the Appellant, Roberts. An accused person in a criminal trial should never be punished for the short-comings or wrong-doings of his Counsel. All the Learned Trial Judge should have done, in our opinion, was to have allowed the 3rd accused to say his piece. We cannot say at this late stage whether what he would have said, may have led to him being exonerated of all the charges he was facing, but the purpose of the criminal law, and of criminal jurisprudence is not to speculate about what a person accused had in mind when confronted with the whole panoply of prosecutorial might possessed by the ACC.

65. Section 194 applies to the Appellants, DrsGborie and Magbity, respectively. They were represented at the stage where section 194 kicked in. Again, they were only informed of their rights in the most perfunctory manner. It is the view of this Court, that it is the accused who should be put to his election, and not his counsel.

THE JUDGMENT OF THE COURT

66. We now turn our attention to the judgment of the Court. It is at pages 277 - 379. We are gravely concerned by some of the incendiary language used by the Learned Trial Judge. The use of language, on page 287, for instance, such as '*roundly deprecated, the submissions which bear on the said issues are therefore better ignored and not to be countenanced*..... directed at MrFofanah in his written closing address, is not encouraging. But there was more to come. At page 288, the Learned Trial Judge states that the 3rd accused "*made his election*". As has been repeatedly pointed out above, at no time did the Learned Trial Judge put the Appellant, Roberts, to his election.

At page 289, even though he eventually discharged the Appellants on that charge, His Lordship held that the ACC could properly charge the accused persons with the offence of conspiracy under the Common Law. We have already held that he was wrong in this respect. The reference to this Court's decision in THE STATE v ALPHAJOR BAH & OTHERS, is not authority for the proposition that a Common Law offence is triable under the ACA,2008. The decision of that Court was that Conspiracy was an offence under the Act.

JUDGE'S VERBAL ATTACKS ON COUNSEL FOR APPELLANT ROBERTS

67. The language of His Lordship gets worse as the judgment progresses. At pages 290 - 291, he lambasts both MessrsMargai and Kowa. To quote him: *"It is therefore troubling that the law firm of C F Margai& Associates represented by Charles F Margai and R B Kowa would engage in sharp practice aimed at defeating the course of justice. Their conduct is an irritation to this Court and their motive is clearly unwholesome. Their motive is clearly to frustrate the conclusion of this matter by this Court. The application for a case stated and judicial review on the same issues is a ruse and a subterfuge. It is unbecoming of Counsel of the status of C F Margai and R B Kowa. My Lord, Hamilton, JSC is presiding in the Supreme Court panel on the so-called review application by C F Margai. E E Roberts, JA is also a member of the said panel. To show that this was a carefully hatched plan by C F Margai& Associates to frustrate these proceedings, C F MargaiEsq has since resorted to all forms of intimidation and blackmailwith a view to making it impossible for me to conclude this matter. In a decidedly petulant manner, he has resorted to the gadfly activity of writing mischievous and tendentious letters and filing frivolous processes with the object of removing me, if possible from continuing with this matter, even after successfully (sic) tried same."*

68. In further exhibition of his bile, His Lordship strayed into the territory of what goes on between lawyer and client. In the last paragraph on page 291 following on to the next page, he says the following: *".....The matter was adjourned to 7th April, 2014 for adoption of addresses. On 7th April, 2014, neither MrMargai nor R B Kowaesq appeared in Court. They both kept away. Although the 3rd accused was present in Court, they characteristically did*

not extend to the Court any courtesy, even by a letter to explain their absence. When the Court enquired from the 3rd accused as to their reason for being absent, the 3rd accused could not provide any. Asked by the Court if he did not pay C F Margai for his services, he told the Court that he paid fees to him....."

69. No judge in our jurisdiction, or, for that matter in any Common Law jurisdiction, is entitled to enquire into relations between an accused appearing before him and his lawyer; much less to record the enquiry in his judgment in a trial by judge alone.

70. The duty of defence counsel in a criminal trial was explained by the Court of Appeal in R v McFADDEN 62 Cr App R 187 at 193: "*It is the duty of counsel when defending an accused on a criminal charge to present to the court, fearlessly and without regard to his personal interests, the defence of the accused. It is not his function to determine the truth or falsity of that defence,nor should he permit his personal opinion of that defence to influence his conduct of it. No counsel may refuse to defend because of his opinion of the character of the accused nor of the crime charged. That is a cardinal rule of the Bar..... Counsel also has a duty to the court and to the public. This duty includes the clear presentation of the issues and the avoidance of waste of time, repetition, and prolixity.*"

71. This statement of the role of defence counsel applies with equal force to criminal practice in our jurisdiction. It is not a waste of the Court's time for Counsel to ask the Court to refer an issue in dispute to a superior Court, where the principle of law involved has not been settled beyond dispute. The challenge to the AC Commissioner's right to prosecute on indictment has been brought up in several cases, at first instance, some of them referred to by His Lordship. In not one of them has Counsel been castigated for bringing up the point for decision. The High Court Anti-Corruption case of THE STATE v JUSTICE M O ~~TEJAU~~ TAJU-DEEN generated at least 4 separate actions/applications in the Supreme Court before it was concluded with the conviction of the Learned Judge. These were S.C. Misc App3/99; Misc Apps 1, 5 & 6/. Some of the grounds canvassed in the Supreme Court, were not dissimilar to those canvassed by MrMargai on behalf of his client. Not once did PATRICIA MACAULEY, J, the trial Judge in the Taju-Deen case, make any adverse comment on the conduct of Mr Terrence Terry, who was counsel

for the accused during the trial, and also in the Supreme Court. Also, SEY, J had to stay proceedings in the case of THE STATE v ADRIAN FISHER whilst applications were made to the Supreme Court on very much the same grounds. There is no record of the Learned Judge making adverse comments in her judgment on the conduct of Counsel who appeared for the accused before her.

JUDGE DESCRIBES MR MARGAI'S WRITTEN ADDRESS AS 'A RUBBISHY PIECE OF PAPER'

72. At page 292 the Learned Trial Judge returns to his favourite epithet, describing MrMargai's closing written address as "*.....a rubbishy piece of paper....*" He went on further to say this: "*.....I had questioned whether Mr C F Margai had, by his conduct, justified the fee paid to him by the 3rd accused to defend him in this matter and I still do. This is because Mr Charles Margai has engaged in sharp practice unbecoming of his standing at the Bar. He appears unable to appreciate the fact that his first and paramount duty, as Counsel, is to the Court, and above all, to seek the promotion of the supreme welfare of justice. His duty is not to treat this Court with disdain and contempt while priding himself as a senior practitioner. Seniority comes with responsibility, without which, age at the Bar is reduced to a mere number. It is not his duty to engage in sharp practice aimed at defeating the ends of justice. Neither is it part of his duty as Counsel to engage in mischievous shadow-boxing or tilt (sic) at windmills. It is not part of Counsel's duties to cast unwarranted aspersions or make devious innuendo about a judge as he set out to do in one of his numerous letters which he copied His Excellency the President of the Republic, His Excellency the Vice President of the Republic and the rest of the world. Suggesting enormities (sic) and seeking to scandalize the Court is not one of the duties of a lawyer. Filing motions for recusal and alleging bias where none exists, is not one of his duties.....The instant matter relates to corruption offences. Addressing the scourge of corruption must be of importance to MrMargai if he believes in anything that must commend his aspiration to the people of this great country. It is not to attempt to stymie or hinder the Anti-Corruption effort by skullduggery. It is not ennobling. A man who has not the sense to discriminate between what is good and what is*

bad is well-nigh as dangerous as the man who does discriminate and yet chooses the bad. Nothing is more distressing to a country man and a good patriot than the hard scoffing spirit which treats allegations of corruption in a citizen as a cause for shenanigans. It is worse than the crackling of thorns under a pot, for it denotes not merely the vacant mind, but a heart in which high emotions have been choked before they could grow to fruition." These are the views of MrMargai expressed by His Lordship in typed pages 289 - 293 of his judgment. These views have been set out in extenso to highlight some of the egregious errors in His Lordship's judgment. Judgment in a criminal trial is given on the basis of the evidence led, and not on the conduct of Counsel at the Bar.

BIAS: HOW SHOWN

73. Learned Counsel for all the Appellants have addressed this Court on what amounts to bias in a trial judge, and why such bias should result in the quashing of the resulting convictions. These comments in a judgment, in our view would lead the uninvolved onlooker or bystander to believe that such comments could only be the preface to convictions; and so it happened in this case.

FURTHER ERRORS IN THE JUDGMENT

74. The many egregious errors appear in the rest of the judgment. At page 299, the Learned Trial Judge opines that objection to the formal parts of an indictment should be taken immediately after plea, or, not at all. Pleading to an imperfect indictment, does not in our jurisdiction amount to submission to the jurisdiction of the Court in the sense that no further or other objection could be taken to the form or substance of the indictment. When an objection is taken to the form of an indictment, the accused is there saying that the court has no jurisdiction to try him. Section 149 CPA, 1965 does not deprive an accused of the right to submit at the end of the trial that the Court has no jurisdiction to try him. For instance, if a fiat is required for the commencement of the prosecution, its absence could render a trial a nullity irrespective of whether, the point was taken at the beginning of the trial, or, thereafter. Section 149 reads, as follows: "*No judgment shall be stayed or reversed on the ground of any objection, which if stated after the*

indictment was read to the prisoner, or, during the progress of the trial, might have been amended by the Court, nor because of any informality in the swearing of witnesses or any of them." It implies that that to which objection is taken could have been cured before judgment. But, decided cases show that where an Indictment charges an offence which is unknown to the law, for instance, any conviction resulting from the trial would be overturned on appeal. LANSANA v R referred to above, is one such case where the objections were taken during the course of the trial, and the same were raised by counsel in their respective closing addresses. But even there, the Learned Trial Judge in the Court below himself admits on the same page that: "*.....Pleading to it (i.e. the indictment) is thus a submission to trial on a defective charge, if the defect does not deprive the Court of jurisdiction."* This last dictum by the Learned Trial Judge is either a contradiction of what he has said before, or, a tacit admission that he misunderstood objections taken to the indictment.A defective charge could deprive the court of jurisdiction.

75. The Learned Trial Judge's misunderstanding goes further in his reference to, and reliance on section 133(2) CPA, 1965. Clearly, that subsection applies only to cases committed for trial to the High Court, and not to prosecutions brought by the AC Commissioner. An accused putting himself on trial in terms of section 133(1) CPA,1965 does not deprive him of his right to object to the Court's jurisdiction to try him. He might be deprived of that right, if, for instance, his objection is either autrefois acquit or autrefois convict. An objection based on either autrefois convict or acquit has to be taken at the first instance.

76. Further, the Learned Trial Judge made light of the submissions made by respective Counsel about the accuracy of describing the funds misappropriated as funds belonging to GAVI, or, to the World Bank or, to the Global Fund. But, these were matters which required active consideration. It would not be sufficient to allege in an indictment that funds belonged to GAVI, whereas the proof tendered by the prosecution was that these funds belonged to another organization.

BURDEN AND STANDARD OF PROOF

77. At page 309, the Learned Trial Judge propounded an astonishing principle of law. There, he said, inter alia: "*.....It must be said that any exculpatory or denial statements by an accused to an investigator to be acted upon by the court must form part of the sworn evidence of the defence, and pass the acid test of cross-examination. The effect of a reliance by the accused on an unsworn extra judicial statement is to rest his defence on the case of the prosecution. What an accused is then saying is that even if all the prosecution witnesses are believed, yet still the offence charged has not been proved. Indeed, it is permissible to rest on the case for the prosecution. But the accused will be taking a big risk where issues of fact will have to be decided in favour of an accused person before his defence will succeed. To rest his case on the prosecution then will be highly prejudicial. It is something of a lottery and always a gamble to so do. If the defence rests and refuses to put an accused into the witness box to depose to his own version of events, then the court is denied the opportunity of listening to the accused tell his story, of watching his demeanour, of assessing his credibility, and of making the necessary choice between his story and that of the prosecution. In the final result, the Court will have to decide the case on the evidence before it undeterred by the incompleteness of tale from drawing all the inferences that properlyflow from the evidence of the prosecution. The defence has shut itself out and will have itself to blame. The Court will not be expected to speculate on what the accused might have said if he testified.....In such a situation, the accused stands or falls with the case of the prosecution.*" Here again, the Learned Trial Judge has incorrectly stated the law as it is in Sierra Leone. He attempted to cite in support of his stance, cases which were decided on in jurisdictions where there is a criminal code, unlike the position here in Sierra Leone. Where there is a criminal code, the code sets out precisely what should happen or, be done in certain situations. In our jurisdiction, the criminal law is partly statutory, and partly common law. As far as the law of Sierra Leone is concerned the legal burden of proving the guilt of an accused person rests on the prosecution, even in the case of offences provided for in the ACA,2008. It is true that in some of the clauses in that Act, adverse inferences could be drawn against an accused person, if the prosecution has proved beyond reasonable doubt that the criminal acts were indeed

committed by the person charged and with the requisite intent, be it, willfully or, fraudulently. Such adverse inferences when drawn, could properly and lawfully found a verdict of guilty. But first, a trial judge has to remind himself, of where the burden of proof lies, and of how it is discharged. We have found it useful to utilize a particular formula which is all embracing, when dealing with the burden and standard of proof in a criminal trial, and we will here, reproduce it:

78. "This Court is sitting both as a Tribunal of Fact, and as the 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, e.g. willfully, or, fraudulently. 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 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 may be, 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 239 L27 - 240 L14 per AMES, P; SAHRM'BAMBAY v THE STATE Cr. App 31/74 CA** unreported - the cyclostyled Judgement of **LIVESEY LUKE,JSC at pages 11-13**. At page **12 LUKE,JSC citing WOOLMINGTON v R** says, 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 the prisoner.....the prosecution has not made out the case and the prisoner is*

entitled to anacquittal." **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 than it is upon him to establish provocation or any other 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; **SEISAY andSIAFA 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] 1SLLR 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 Cr 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 though the 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, or, other accused persons. 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.

79. It would have served the interest of justice better, if the Learned Trial Judge in the Court below, had borne in mind these guidelines before hastily concluding that in the absence of testimony given in the witness box, each of the Appellants was guilty of the offences charged in the indictment.

80. As the Learned Trial Judge had taken the position, wrongly we believe that once evidence had been led by the prosecution that certain sums of money had been withdrawn by either the Appellant DrGborie, or, the Appellant, DrMagbity, from the GAVI account at one or all of the banks named, the irresistible conclusion was that there had been a misappropriation of public or donor funds, it was inevitable that he would go on to conclude that it behoved these Appellants to prove, or to show that the withdrawals had been done innocently, or, without a fraudulent intent. This is clearly the reason why he repeatedly said during the course of his judgment that the 'tale' was incomplete without evidence from the Appellants.

THE PRACTICAL EFFECT OF CHARGING UNDER SECTION 37

81. We are of the view that the Learned Trial Judge should have carefully studied the ACA,2008 before hurriedly concluding that without explanations coming from the Appellants, guilty verdicts were inevitable. The principal charges were brought under section 37(1) ACA,2008. The offence is committed if the persons described therein dishonestly appropriate anything whether property or otherwise. Property obviously, and in terms of the Act, includes money, so, we need not consider any other thing which could possibly be dishonestly appropriated and which may fall under the anomalous description of *"otherwise"*. In the nature of things, one cannot dishonestly appropriate and thereafter claim that it was done with lawful authority or, with reasonable excuse. A dishonest act cannot be reasonably explained away. Once the prosecution has proved that the appropriation was dishonest, or, has led evidence from which a tribunal of fact could reasonably infer that dishonesty was involved in the appropriation, there the matter ends. It is not for the defence to prove that it was not dishonest. It follows that the supposed reversal of the burden of proof in section 94 ACA,2008, cannot practically apply to offences brought under section 37. Section 94 could properly apply to offences brought under, for instance, sections 26, 27, 28, and the like. The supposed reversal of the burden of proof in section 97, is restricted to specific offences: the giving or, accepting of an advantage. Paradoxically, even those two counts charging a specie of the offence in section 28 ACA,2008were, very late, during the course of the trial added on, wrongly in our view, eventually dismissed.

82. We have observed that the Learned Trial Judge also made light of the defence's submission that the prosecution ought to have led documentary evidence that the Appellants, DrsGborie and Magbity respectively, were formally appointed to the positions they were alleged to have held. It is true they admitted in their respective statements to the ACC that they held those positions. But a letter of appointment, or a document setting out their respective conditions of employment may have for instance, set down in writing their respective total emoluments. Based on such documentary evidence, it would have been fair to call upon the Appellants to explain away the presence of various sums of money over and above their respective monthly emoluments. If such was the finding of the Court, then charges under section 26 ACA, 2008 would have been appropriate on the basis that

they were found in possession of resources suspected of having been acquired corruptly.

COUNTS 4 & 5

83. We have used the adjective 'paradoxically' in paragraph 81 supra in dealing with the dismissal of the charges in the added Counts 18 and 19. Those additional charges dealt with the supposed payment of kick-backs to the respective Appellants, DrsGborie and Magbity. Also, the proprietor of 78 Enterprises, PW5 MomohGbao, was not treated as an accomplice by the Learned Trial Judge in his judgment. The irresistible and reasonable conclusion one should draw from this outcome is that the payment to PW5 and/or to his business, 78 Enterprises, was perfectly lawful. And if it was lawful, Counts 4 and 5 should fail as well. Those Counts charge the offence of Misappropriation of donor funds. But the evidence led through PW5, and through the bank accounts of the Appellants, DrsGborie and Magbity, respectively, was that they were supposed to be kick-backs. Yet, still, the Counts dealing with these supposed kick-backs were dismissed. And there was no finding by the Learned Trial Judge that the monies paid to PW5 were misappropriated by him, or, that payments to him amounted to misappropriation.

COUNT 3

84. As regards Count 3, the evidence led through the prosecution witnesses was that this amount of money, Le242m, was paid to Rolaan Enterprises of which the Appellant, Roberts was proprietor. As Roberts was a co-accused to the other Appellants, his out-of-court statement was not evidence against his co-accused. The Learned Trial Judge apparently forgot this principle of law as appears in his Judgment at pages 335 – 342. We only need to refer to the Supreme Court judgment in Sup Ct Criminal Appeal 2/81 THE STATE v A S DIAN TURAY, unreported, Judgment delivered on 13 July, 1982by LIVESEY LUKE, CJ, to show that His Lordship erred gravely in Law in using Roberts' statement against his co-accused. We are of the view that the Learned Trial Judge did not quite appreciate the elements of the offence in section 37(1). In that statutory provision, the person accused should have appropriated the money involved himself, not through another person. The evidence led

was that the amount was paid to the Appellant, Roberts. The proper charge therefore, particularly with the inclusion of Roberts, as he was not a public officer, in the Count, should have been brought under section 36 ACA,2008. There, the burden on the prosecution is much less. The requirement there, is that there should have been a loss to the public body, and that the accused person should have caused the loss himself, or, by or through another person. A Conspiracy charge brought under the ACA,2008 may have been appropriate also. But this was not done. At page 342, the Learned Trial Judge concluded that: "*.....It is proper to infer from the conduct of the 1st accused in the circumstances of this case, that the money given by the 3rd accused to Dr Amara out of the donor fund of Le242m routed through the 3rd accused's enterprise, was shared with 1st accused. He was a beneficiary. I hold that the routing of the money through the Enterprise owned by the 3rd accused is strong evidence of dishonesty on the part of the 1st accused.....*" Maybe: such conduct may ground a charge brought under section 28 ACA,2008, but not section 37(1). The Conspiracy charge which was brought, was brought under the Common Law, and its wrongful inclusion was admitted by the prosecution, as recorded by the Learned Trial Judge at page 378. The Appellants were therefore discharged on that Count. In the circumstances, Count 3 ought to have failed as well as regards the 2nd and 3rd Appellants

85. It is our view, based on a thorough scrutiny of the Learned Trial Judge's judgment, that he fell into error because of the position he had taken that as regards section 37(1), the defence had to say something, once the prosecution had proved that the GAVI account had been debited. But to found convictions on the several debits, the charges must be correct in law, and due regard must be given to the law of evidence and procedure. The defence cannot, to use the Learned Trial Judge's terminology, shut itself out, by failing to give evidence on oath. The defence of the Appellants was contained in their respective statements. It was the Learned Trial Judge's duty to analyse these statements, and to attach whatever weight he believed they merited. They constituted their respective answers to the charges in the Indictment. There was nothing 'incomplete' about the failure of the Appellants to give evidence on oath. UK modern legislation requires an accused person to explain away certain allegations made against him by giving

evidence on oath, lest adverse inferences be drawn from his failure to do so. The Criminal Justice and Public Order Act, 1994, is one such piece of legislation. Practice Direction (Criminal Proceedings: Consolidation) para IV.44 [2002] 1 WLR 2870 is another instrument to the same effect. Such legislation or instrument do not apply in this jurisdiction. Further, cases decided on the basis of the application of this statute, are no longer good authority for the course a trial judge should take in this jurisdiction.

JUDGE'S TREATMENT OF ACCUSED PERSONS' FAILURE TO GIVE EVIDENCE

86. The conclusion that the Learned Trial Judge had reached that the accused persons were obliged to complete, as it were, the prosecution story, led him also to conclude that without more, the Appellant Roberts' failure to testify on oath, left him with no other conclusion than that the said Appellant was guilty as charged. This was of course, an erroneous conclusion. The duty the prosecution had to prove the guilt of the Appellant Roberts, beyond all reasonable doubt, remained. At pages 323 to 324, the Learned Trial Judge had this to say about the Appellant, Roberts: "*...An honest person who is engaged in the business of vehicle rentals, who owns no vehicles but depends on individuals to source his vehicles cannot choose to forget the names of such individuals when he is required to name them. He would not be evasive in his answers, neither would he, in the circumstances of this case be uncooperative with investigators who were very civil to hm. He did so've because, in my view, he had something to hide. As Judge of law and fact, I must say that honest people do not knowingly take other* people's property *or seek to reap where they did not sow and to try to deceive.*" Here, the Learned Trial Judge waxed Biblical. Without going on any further, the Learned Trial Judge came to the conclusion that the prosecution had proved its case beyond all reasonable doubt in respect of Count 2 in which Mr Roberts was charged.

ELEMENTS OF THE OFFENCE IN SECTION 37(1) ACA,2008

87.It seems to us that before rushing to conclusion, the Learned Trial Judge should have tried to get to grips with the elements of the offence with which the 1st Appellant, Roberts was charged. He was charged under section

37(1). Now, this Appellant was a private businessman running a private business called Rolaan Enterprises. Rolaan Enterprises, being a private enterprise is not a public body within the meaning of section 1 ACA,2008. Section 37(1) states as follows: "*A person who being a member or an officer or otherwise in the management of any organization whether a public body or otherwise, dishonestly appropriates anything whether property or otherwise, which has been donated to such body in the name, or, for the benefit of the people of Sierra Leone, or, a section thereof, commits an offence.*"

88. Rolaan Enterprises being a private concern, the only way it, or its proprietor, the Appellant Roberts, could be brought within the ambit of section 37(1) would be to prove that Rolaan Enterprises received money which had been donated to it for the benefit of the people of Sierra Leone. Even if one were to accept that the Appellant, Roberts fell within the definition of "otherwise" in line 3 of section 37(1), the difficulty will still remain of leading evidence probative of the fact that money meant for the people of Sierra Leone, had been donated to him, or to his business concern. As there was no such evidence, the only way the Appellant Roberts could have possibly been convicted was if he had been charged under section 36(1 & (2). That section may be flexible enough to cover a person in the said Appellant's position. Section 36(2) states: "*A person misappropriates public revenue, public funds or property, if he willfully commits an act, whether by himself, with or through another, by which a public body is deprived of any revenue, funds or other financial interest or property belonging or due to the public body.*" There is no limitation in liability in section 36(1) to a person being a member of a public body or otherwise. Even if one were to accept that "*otherwise*" in section 37(1) could be stretched to its limits, it is certain it could not be stretched to include private businesses. The ejusdem generis rule of interpretation would make such an attempt futile. That is the raison d'etre for section 36. It follows that the ~~conviction~~ 1st Appellant's conviction in Count 2 was wrong in Law. It follows also, that the 1st Appellant's conviction in Count 3, was also bad in law.

89. Before leaving this issue of the propriety of charging a non-public officer under section 37(1) ACA, 2008, I should add, that in the case of THE STATE v HAMZA ALUSINE SESAY& ANOR, cited above, the 1st accused Sesay, was not a public officer. He was not also a member of a public body.

He was therefore charged undersection 36(1) ACA, 2008 together with Sarah Bendu who was a public officer at the time, she being the Executive Director of the then SLRTA, now SLRSA.

COUNTS 6 - 14

90. Subject to what will come hereafter, for present purposes, we agree with the Learned Trial Judge, that since Misappropriation of donor funds was already an offence under the ACA,2000, the Appellants could properly be charged under the ACA,2008 with offences based on activities and transactions carried on, or, done prior to 2008. I came to the same conclusion in the case of THE STATE v HAMZA SESAY & ANOR cited above.

91. As regards the substance of the charges, and the evidence tendered in proof of them, we have reached the same conclusion as in Counts 2,3,4 and 5. All of these charges which the 2nd Appellant faced, were based on separate withdrawals of various sums of money he made from his account at UTB (SL) Ltd. The Learned Trial Judge dealt with these charges in pages 360 - 368. The fundamental flaw in his reasoning is the same as in respect of the other Counts dealt with above. We shall give an illustration. At page 364, His Lordship says the following: "An examination of the nine cheques for the amounts drawn in favour of the 2nd accused and withdrawn by him would reveal that the cheques were signed by Doctors Clifford W Kamara (now recently deceased), and DuramaniConteh. Since the 2nd accused was neither of the signatories but a beneficiary, it would have been expected that he would proffer some credible explanation as his withdrawals of the huge sums clearly call for an explanation. His silence in a situation such as this, and his determination not to state his version in Court, of the circumstances justifying such withdrawals, is, in my view, deafening and compelling....."

92. Neither doctor was called to give evidence. But as far as the Learned Trial Judge was concerned, it was the duty of the Appellant DrMagbity to explain why such cheques were credited to his account. Based on the wording of section 37(1), the Appellant, DrMagbity, could not have dishonestly appropriated the various sums of money stated in those charges. What he possibly did, we put it no higher than that, was that he may have deprived a public body of the various sums of money charged in those Counts by his

willful act, the willful act being, if the evidence so warranted, willfully debiting his account with those amounts of money and utilizing the same for purposes other than those for which those monies had been credited to his account by the two doctors named above. The proper charge should therefore be one brought under section 36 ACA,2008 if the evidence so warrants.

93. At page 367 The Learned Trial Judge continues in like vein: "....*I hold that the 2nd accused acted in the manner in which he did because he was dishonest. I say so given what he knew, his experience and intelligence. His evasiveness and farcical unwillingness to reveal anything concerning the sums he received further buttresses his dishonesty. As noted earlier, there is no question that the 2nd accused was within his rights in law to say not even a word in answer to the allegations against him. There is however, no question that the prosecution and the Court were entitled to question him had he given evidence. He could also have proferred some credible explanation regarding the eye-popping withdrawals were he to make a statement from the well of the Court which might create a reasonable doubt. His silence is emphasized by his consequent conduct. This Court cannot be deterred by the incompleteness of (the) tale from drawing the inferences that properly flow from the evidence before it, nor can it be dissuaded from reaching a firm conclusion by* speculating upon what the 2nd accused might have said if he had testified....." He then proceeded to find the Appellant, DrMagbity guilty on those Counts.

94. We have no doubt that the Learned Trial Judge was zealous in his belief that he had been called upon to stamp out corruption in our jurisdiction. This belief permeates through the choice of words in his judgment. They speak to a messianic task embarked upon by a crusader for justice. But we also hold the view that zeal for the task at hand may have overcome zeal to uphold the well-known precepts of the law. The palpable errors we have highlighted in this Judgment, were errors which could have been avoided, we believe, if only the Learned Trial Judge had kept an open mind, and had not been side-tracked into taking swipes at Counsel for the defence at the trial. Had His Lordship not so pre-occupied himself with the various strategies properly utilised by defence counsel in defending their respective clients, he may have been able to draw the distinctions between the types of charges which

could properly be brought under the ACA,2008. Counsel for the Appellants have contended vigorously in their respective written submissions that the Learned Trial Judge was biased in the way he conducted the trial, and in his judgment. We do not believe, having gone through His Lordship's Judgment that he may have been biased against any of the Appellants. If anything, the bias seems to have been directed towards Counsel for the defence, particularly MrMargai. Hence, the need to use up the first few pages of his Judgment in denouncing MrMargai. We are of the view that this constituted an improper use of judicial privilege, in that no action could be taken by MrMargai against His Lordship. We believe that this was not in accordance with practice in our jurisdiction, and we would adjure Our Brethren trying cases at first instance not to follow this precedent. There are several polite ways of letting Counsel at the Bar know that he is wasting the Court's time.

COUNT 17

95. This Count spans the period 1st April, 2012 to 31st December, 2012. Consequent on the acquittal of the Appellants, DrsGborie and Magbity on Counts 18 & 19 by the Learned Trial Judge, and our conclusion that they also ought to have been acquitted on Counts 4 & 5, we hold that the conviction in respect of Count 17 cannot stand by itself.

96. Apart from the merits of the case itself, we are of the view that it may be bad for quasi-duplicity. It charges on its face, in one Count, but the evidence led at the trial discloses the commission of several acts during the period 1st April, 2012 and 31st December, 2012. On balance, we are of the view that on the facts of this case, this charge should have failed for this reason as well. We say so notwithstanding what I said in my judgment in THE STATE v PHILIP LUKULEY, judgment delivered 11th July, 2011.

97. There, I said, inter alia, *"Secondly, the prosecution must comply with the rule against Duplicity. All Counts in the Indictment must charge one offence only. If they charge more than one offence, they are bad for Duplicity, and deprive the Court of jurisdiction to try them. Duplicity is a matter of form, and not of evidence. In this respect, the Law requires that the accused person be discharged for those offences. If also, on its face, a Count appears not to have charged two separate offences, in the sense that it does not allege the commission of an offence on more than one day; or, that*

it does not charge the commission of two separate offences on the same day, and therefore not duplicitous; but the evidence discloses that in fact that particular Count has in effect charged two separate offences, that Count will also be bad for Quasi-Duplicity, in that the evidence discloses that more than two offences have been charged in that Count. In this respect, the law is now more tolerant than it was before. The cases show, that what the Court is concerned with is that no injustice is caused to the accused person, in the sense that he might be put in a position where he would not know to which particular allegation he must apply his defence. Where the charge is so framed, that it would not be evident whether the allegation is that the accused committed one of several acts on a particular day, or on several days, it is best that each criminal act be charged in a separate count. As stated in ARCHBOLD 2003 Edition at paragraph 1-133: It is not an essential characteristic of a single criminal offence that the prohibited act or omission took place once and for all on a single day, since it can take place continuously or intermittently over a period of time and still remain a single offence." The case of CHILTERN D C v HODGETTS [1983] 1 All ER 1053 HL is cited in support of this proposition. "...Upholding the conviction for failure to comply with an enforcement notice, the House said the offence should be alleged to have been committed between the date when compliance with the notice was first required and the date when the information was laid or the notice complied with, whichever was the earlier." In that case, LORD ROSKILL, in delivering the leading judgment for the house, in which all the ~~Law~~ Lords concurred, said at page 1060 paragraph b: "It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all on a single day. It may take place continuously or intermittently, over a period of time. The initial offence created by sub-s (1) (of the Town and Country Planning Act,1971) in the case of non-compliance with a 'do notice' is complete once and for all when the period of compliance with the notice expires; but it is plainly contemplated that the further offence of non-compliance with a 'do notice' created by sub-s (4), though it too is a single offence, may take place over a period of time, since the penalty for it is made dependent on the number of days on which it takes place..... if it were otherwise, it would have the bizarre consequence that on

a summary conviction a fine of £400 per diem could be ~~imposes~~ imposed for each such separate offence committed by the before the offender received before his first conviction....." What I can glean from what LORD ROSKILL had to say in that case, is that, for instance, in a case where the charge is failing to comply with applicable procedures, the prohibited act or acts may take place over a period of days: one day, it might be that a voucher was prepared or not prepared, the other day it would be that a cheque was prepared for the amount stated in the voucher, and so on. If the prosecution were to charge an accused separately for each of these acts which collectively constitute the failure to comply with applicable guidelines, the accused would be faced with a multiplicity of charges, emanating from the prohibited acts, which together really constitute just one offence.

THE PUBLIC OFFICERS PROTECTION ACT,CAP 172

98.Lastly, we come to this little known statutory provision. It was not cited in the Court below, nor was it referred to by the Learned Trial Judge in his Judgment. It is The Public Officers ProtectionActCap 172 of the Laws of Sierra Leone, 1960. This Act is still un-repealed. It states in section 2 thereof:

"2(1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of an Act, or, of any public duty or authority, or, in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the provisions of the following subsections shall have effect. (2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage. Within six months next after the ceasing thereof: Provided that if the action or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within six months after the discharge of such person from prison. (5) This section shall not affect any proceedings by any department of the Government (including the Attorney-General) against a Municipal Council ~~against a Municipal Council~~ or other Local Authority."

99. This provision is important because it has never been repealed. The ACA,2000 only repealed The Prevention of Corruption Act, Chapter 33 of the Laws of Sierra Leone, 1960. The ACA,2008 only repealed the ACA,2000. Counts 1 - 16 deal with offences which were said to have been committed between 2008 and May, 2012, more than 6 months before the filing of the Indictment on 7th March, 2013. It appears, that this Act renders those Counts a nullity. Only Count 17 falls within the 6 month period. But that charge, too, as we have pointed out earlier, has its own problems. The Supreme Court may have to decide whether this law has not been impliedly repealed, and is still enforceable in our Courts.

CONCLUSION

100. In our exposition of the Law above, we have given several reasons why these appeals should succeed. We have held that the Order for trial by Judge alone was rendered otiose by the amendment to the Indictment by the addition of two Counts, 18 and 19, irrespective of the fact that the 2nd and 3rd Appellants were eventually acquitted on these Counts. The Application for trial by Judge alone, was in respect of a 17 Count Indictment. Second, the Indictment was not amended as required by section 148(2) CPA, 1965. The Learned Trial Judge eventually gave judgment on the basis of a draft Indictment, and not the Indictment in respect of which he had ordered a trial by Judge alone. This was a clear contravention of the provisions of the CPA, 1965 as explained above. And to quote the words of TAMBIAH, JA in the LANSANA appeal, at page 262, LL30 -34: "*It is not possible even to order a new trial in this case since the fiat was insufficient and the Magistrate's Court and the Supreme (now, High) Court, had no jurisdiction to hear the matter. There is noCourt to which we can send this case for retrial.*" As such, we cannot exercise the right conferred this Court by section 58(2) as amended by Act No. 3 of 1976, and order a retrial.

101. We also lament, as the Learned Justice, TAMBIAH, JA did at page 201 - 202 of his judgment: "*It is a great tragedy that as a result of careless handling of the case..... the proceedings started on an insufficient fiat which deprived the magistrate's court and the (High) Court of jurisdiction..... The Learned Judge.....is one of the most eminent and experienced judges of Sierra Leone and.....has taken infinite pains in marshaling the evidence in*

this case after going through a protracted and lengthy trial....." In the instant case, we do not hold Counsel responsible for the short-comings we have highlighted. Most, if not all of them, could have been dealt with adequately by the Learned trial Judge himself, had His Lordship maintained his role as an umpire, and not taken position as an antagonist in the duel of legal arms

102. We have also held that the 1st Appellant, Roberts was deprived wrongfully of his rights under sections 192 & 193 CPA, 1965. To a limited extent, the 2nd and 3rd Appellants were also deprived of their respective rights under section 194 CPA,1965. But most importantly, we hold that the evidence led at the trial, did not support the charges in the Indictment. In other words, the wrong charges were brought. We have stated our view of what the likely charges should have been.

SENTENCES

103. All three Appellants have appealed against their respective sentences. Our view is that though, perhaps, a bit harsh, the Learned Trial Judge was within his rights in imposing both fines and custodial sentences on all three Appellants. The prison sentences were not really inordinate. The Learned trial Judge was however wrong to order that each of the Appellants should remain in prion until the fines were paid. There is a procedure in our laws as to how to proceed in cases where a fine has been imposed, and has not been paid. If the sentence is in the alternative, the convict serves his time until he pays his fine; and if he doesn't pay it, he serves his time in full. The procedure for recovering fines not paid immediately upon conviction in the High Court, is laid out in sections 233, 234, 235, 237, 238, 239 & 240 CPA, 1965. The sum effect of these sections taken together is that, if the convict has served his time in full, but has not yet paid his fine in full, action should be taken by the Court, not necessarily by the Judge who imposed the sentence. Such action is provided for in section 240 CPA, 1965. In any event, the issue was dealt with at the hearing for bail in this Court, during which bail was granted to all 3 Appellants

104. In the result, the appeals of Lansana Roberts, DrGborie and DrMagbity are allowed, and their respective convictions and sentences are

quashed. They are therefore acquitted and discharged on all Counts in respect of which they were convicted on 2nd July, 2014.

ORDERS OF THE COURT:

105. The Orders of this Court are as follows:

(1) This Honourable Court sets aside the conviction and sentence of the Appellant Lansana Roberts in Counts 2 and 3 of the Indictment. He was discharged in the High Court on Count 1. This Honourable Court enters a verdict of acquittal and discharge on the said Count 1. All fines paid by the said Lansana Roberts shall be refunded to him forthwith. All recognisances entered into by him, and/or by any other person on his behalf, are hereby discharged, and the surety or sureties are forthwith released from their respective obligations. All documents of title and/or passports or other travelling documents shall be returned to their respective owners forthwith.

(2) This Honourable Court sets aside the conviction and sentence of the Appellant DrGborie in Counts 3, 4 and 17. He was acquitted on Count 18 of the Indictment. He was discharged in the High Court on Count 1. This Honourable Court enters a verdict of acquittal and discharge on the said Counts 1, 3, 4 and 17. All fines paid by the said DrGborie shall be refunded to him forthwith. All recognisances entered into by him, and/or by any other person on his behalf, are hereby discharged, and the surety or sureties are forthwith released from their respective obligations. All documents of title and/or passports or other travelling documents shall be returned to their respective owners forthwith.

(3) This Honourable Court sets aside the conviction and sentence of the Appellant DrMagbity in Counts 3,5,6,7,8,9,10,11,12,13,14, and 17. He was acquitted on Count 19 of the Indictment. He was discharged in the High Court on Count 1. This Honourable Court enters a verdict of acquittal and discharge on the said Counts 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 17. All fines paid by the said DrMagbity shall be refunded to

him forthwith. All recognisances entered into by him, and/or by any other person on his behalf, are hereby discharged, and the surety or sureties are forthwith released from their respective obligations. All documents of title or passports or other travelling documents shall be returned to their respective owners forthwith.

THE HON MR JUSTICE N C BROWNE-MARKE, JSC

THE HON MR JUSTICE A SESAY, JSC