Neutral Citation Number: {COI 46/2020) SLCOACOI 0002 (Civil Division)

Case No: 46/2020

IN THE COURT OF APPEAL FOR SIERRA LEONE.

ON APPEAL FROM THE COMMISSIONS OF INQUIRY MARCH 2020

THE HON JUSTICE SIR BIOBELE GEORGEWILL

Law Court Building
Siaka Stevens Street
Freetown

Date: 26 April 2021

Before:

THE HONOURABLE MR JUSTICE A I SESAY JA (PRESIDING)
THE HONOURABLE MR JUSTICE ALHAJI MOMOH-JAH STEVENS JA

and

THE HONOURABLE MR JUSTICE A FISHER J

.....

Between:

MANI KOROMA Appellant

-and-

THE STATE Respondent

.....

.....

Ady Macauley, of Counsel for the Appellant

RB Kowa, TJ Freeman, P Williams State Counsel for the Respondent

Hearing dates: 20 January, 24 February, 1 March 2021

.....

APPROVED JUDGEMENT

We direct that copies of this version as handed down may be treated as authentic.

.....

The Honourable Mr Justice Alhaji Momoh-Jah Stevens JA: (Giving the Judgement of the Court)

1. This is the judgement of the court, to which all members have contributed, on an appeal that is concerned with matters that were the subject of the Commissions of Inquiry, set up by His Excellency, The President, Rtd Brigadier Julius Maada Bio, upon his assumption to office in 2018 and approved by Parliament in the form of several constitutional instruments, 64, 65 and 67 of 2018.

Background facts

2. The Commission of Inquiry, pursuant Constitutional Instrument No 64, reported its findings in March 2020, in a number of volumes. Following the submission of the report, the Government published a white paper into the findings of the Biobele Commission of Inquiry in September 2020, where it accepted and rejected some of the findings. Following the publication of the white paper, the appellant being dissatisfied with the findings contained in the Commission of Inquiry report and the white paper has now appealed to this court against those findings. in so far as they relate to him and upon the grounds set out below.

The Grounds of Appeal

3. The Appellant has appealed to this court against the decision of the Commission of Inquiry, upon the following grounds, which we summarise below:

    1. *That the sole commissioner erred in law and acted ultra vires his mandate when he exercised jurisdiction over the appellant by proceeding to investigate and make adverse findings and recommendations against him when the appellant does not fall within the scope of the subject matter mandate, nor was he made and/or invited as a person of interest to be investigated as provided for in the instrument*

    2. *That the receipt of evidence by the sole commissioner during the investigation into the activities of the Ministry of Education, Science and Technology and the making of adverse findings, and recommendations against the Appellant without giving him an opportunity to*

be heard was a violation of the appellant's rights to a fair trial as protected under section 23(2) of the Constitution, Act No 6 of 1991 and that a full, faithful and impartial inquiry had not been conducted as required by the provisions of section 149 (1)(a) of the Constitution. He stressed that the principle audi alteram partem was a cardinal rule of natural justice which requires that every side to an action or dispute must be given an opportunity be heard.

3. *That the adverse findings and recommendations relating to the appellant are against the weight of the evidence presented at the proceedings.*

4. Having set out the grounds of appeal put forward by the appellant, we consider it expedient at this point to also summarily set out the Respondent's case in response to the appeal.

The Respondent's case

5. The Respondent in reply, set out the following propositions:

1. That the respondent concedes that the appellant does not fall within the scope of section 4 (a) of the constitutional instrument no 64 but contends that the appellant does fall within the terms of reference of the instrument by virtue of section 4 (d)(iii) of the said instrument.

2. That there is no breach of the provisions of section 23(2) of the 1991 Constitution.

3. That there is no adverse finding against the appellant that provides him with a legal basis to appeal pursuant to section 149(4) of the 1991 Constitution. The appellant was not investigated and no adverse finding was made against him and he therefore does not fall within section 149(4). That further to the above, it was the president's order as stated in the white paper that called for the appellant to jointly and severally refund to the state and any remedy the appellant has against those orders cannot form part of the section 149(4) appellate provisions and consequently the remedy should be refused.

4. That there was sufficient evidence before the sole commissioner that enabled him to ascertain that the appellant was a collaborator and consequently the findings of the sole commissioner were not against the weight of the evidence.

6. Having set out the grounds of appeal and the responses thereto, we consider it necessary to set out the legal basis upon which the parties appear before this court by way of an appeal against the decision of the chairman and sole commissioner.

The Constitution of Sierra Leone, Act No 6 of 1991.

7. The Constitution makes provisions for the legal basis upon which an appeal from the findings of the commissions of inquiry can be legally pursued. One such provision is section 149, subsection (4) of the said Constitution, which provides:

(4) Where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of Inquiry shall, for the purposes of this Constitution, be deemed to be a judgement of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal.

8. Where such an appeal is filed in the Court of Appeal, the Court of Appeal Rules 1985, determine the manner in which such appeals are heard and determined. As this appeal is for all intents and purposes a civil appeal, the rules governing how civil appeals are heard becomes relevant. To that extent Part III of those rules become relevant. Rule 9 (1) of the Court of Appeal Rules 1985, provides:

"9 (1) All appeals shall be by way of rehearing....."

9. The jurisdiction of the Court of Appeal to hear and determine appeals is set out in Section 129 (3) of the Constitution. It is noteworthy to mention that save for the provisions of section 149(4) of the Constitution, there are no other legal provisions dealing with appeals from Commissions of Inquiries. However, appeals from Commissions of Inquiries are deemed to be judgements of the High Court by virtue of the provisions of subsection 4 of Section 149 of the Constitution. We are therefore

satisfied that the proper modes of such appeals are clearly set out in the provisions citied above.

The Grounds of Appeal

10. In order to do justice to this appeal, we have decided to deal with the grounds of appeal individually in order to ensure there is clarity in this judgement as to the findings of the court and the legal issues raised in the grounds of appeal. However, before we turn to the grounds of appeal specifically, we should make two preliminary *points, which are well known to lawyers but which not all readers of this judgement* might otherwise understand. First, the provisions of section 149 (4) of the Constitution, confer an automatic right of appeal on persons who have had an adverse finding made against them in the Commissions of Inquiry, to appeal to the Court of Appeal as of right against any adverse such findings. Secondly, in view of the fact that the powers of the Court of Appeal as set out in Rule 9 (1) of the Court of Appeal include the powers to rehear a case, this power does not mean that this court will hear the evidence all over again, thus putting it in the same position as the court of first instance. In rehearing an appeal, this court will review the findings of the court below on both law and facts, in a bid to determine whether the findings of the court (in this case the Commissions of Inquiry) are sustainable on the evidence before it and secondly whether the law has been interpreted correctly.

11. In view of the fact that this court will not hear the evidence all over again, where the decision of the court (Commission of Inquiry) is based upon the judge's findings about disputed questions of facts, (such was predominantly the case in a fact finding Commission of Inquiry), it is nevertheless not easy to overturn those findings of fact on appeal, unless it can be shown that those findings are fact are plainly wrong or otherwise perverse. That is not only because the trial judge has had the advantage of seeing the witnesses giving their evidence and examined exhibits before it. As Lewison LJ put it at para. 114 of his judgment in FAGE UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5:

"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of

primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. ... The reasons for this approach are many. They include

(1) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.

(2) The trial is not a dress rehearsal. It is the first and last night of the show.

(3) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.

(4) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

(5) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

(6) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

12. The submissions made on behalf of the appellant do not seem to recognise the difficulty which, for those reasons, he faces in challenging the findings of Hon Justice Biobele Georgewill but it is argued that there are fundamental flaws in his approach to the fact finding exercise, and consequently those findings are against the weight of the evidence. Those flaws are expressed in general terms in the grounds of appeal as against the weight of the evidence (although there is a considerable degree of overlap with legal matters). This is more particularly set out in the general grounds that the findings are against the weight of the evidence. We now turn our attention to the grounds of appeal proper, starting with ground 1.

Ground 1.

13. Ady Macauley Esq sought leave to make some amendments to the synopsis which were granted. These are contained in the record of proceedings. The primary complaint of Mr Macauley in this ground is that the sole commissioner exceeded his

authority when he proceeded to investigate and make adverse findings and recommendations against him, when the appellant was not the subject matter of the investigations, as provided for in sections 4 (a) to (c) of constitutional instrument no 64 of 2018. Consequently, the decision of the sole commissioner is ultra vires of the said constitutional instrument. This court is required to consider the meaning of the doctrine of ultra vires in public law.

The doctrine of Ultra Vires

14. *In Council of civil service Unions v Minister for the civil service 1985 AC 374*, Lord Diplock identified illegality as one of the grounds for a successful challenge in public law. The Learned law lord had this to say: "*a decision maker must understand correctly the law that regulates his decision-making power and must give effect to it*". Where a decision maker acts in excess of the powers conferred on him, the decision is said to be ultra vires and where it is shown to be so, the decision is liable to be quashed, even in a situation where there is residual power conferred on the decision maker. The classic example of this is *Attorney General v Fulham Corporation* (1921) where Fulham council had the power to set up wash-houses for those without the facilities. They decided to charge people to use it. The court held they went beyond their power by trying to benefit commercially from something that was supposed to be for everyone.

15. Another example of this is the case of *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte World Development Movement Ltd*. Section 1 of the Overseas Development and Co-operation Act 1980 (UK) empowered the Foreign Secretary to assign funds for development aid of economically sound projects. The Secretary of State assigned the funds for a project to construct a power station on the Pergau River in Malaysia (see Pergau Dam) which was considered uneconomic and not sound. The House of Lords held that this was not the purpose envisaged by the enabling statute and the minister therefore exceeded his powers. A similar principle exists in many continental legal systems and is known by the French name of *détournement de pouvoir* .

16. Upon the substance of Mr Macauley's submissions as we understood them, he calls into question the determination of the Commission on basis that the sole commissioner excluded his authority. We then have to consider the question as to how the appellant can justify the calling into question by him of the determination of

the commission. The answer is that they boldly say that what looks like a determination was in fact no determination but was a mere nullity, on account of it being ultra vires. That which, they say, should be disregarded as being null and void, is a determination explained in a carefully reasoned voluminous document of hundreds of pages in length which is signed by the chairman and sole commissioner of the commission. There is no question here of a sham or spurious or merely purported determination. Why, then, is it said to be null and void? The answer given is that it contains errors in law which have caused the commissioner to exceed his jurisdiction. When carefully analysed this really means that it is contended that when the sole commissioner proceeded to investigate and made adverse findings against the appellant, he wrongly interpreted his powers as giving him jurisdiction to investigate with the consequence that he had no jurisdiction to make such findings and adverse comments and recommendations against the appellant.

17. It is not suggested that the sole commissioner was not acting within their jurisdiction when he conducted the commissions of inquiry nor when he heard argument and submissions for months in regard to it. The moment when it is said that he strayed outside his allotted jurisdiction must, therefore, have been at the moment when he gave the findings and recommendations. The control which is exercised by this court over inferior courts and tribunals (a categorising but not a derogatory description) is of an appellate nature. It enables this court to correct errors of law if they are revealed on the face of the record.

18. In this case, the court needs to consider and ascertain what was the question submitted for the determination of the commission. What were its terms of reference? What was its remit? What were the questions left to it or sent to it for its decision? What were the limits of its duties and powers? Were there any conditions precedent which had to be satisfied before its functions began? If there were, was it or was it not left to the commission itself to decide whether or not the conditions precedent was satisfied? If Parliament has enacted that provided a certain situation exists then the commission may have certain powers, it is clear that the commission will not have those powers unless the situation exists.

19. In a passage in his speech in *Reg. v. Governor of Brixton Prison. Ex parte Armah [1968] A.C. 192, 234*, Lord Reid, thus stated the matter:

"If a magistrate or any other tribunal has jurisdiction to enter on the inquiry and to decide a particular issue, and there is no irregularity in the procedure, he does not destroy his jurisdiction by reaching a wrong decision. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction."

20. To the same effect were words spoken by Denning L.J. (as he then was) in Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw [1952] 1 KB 338, 346:

"No one has ever doubted that the Court of King's Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which Parliament has conferred on it: but it is quite another thing to say that the King's Bench can intervene when a tribunal makes a mistake of law. A tribunal may often decide a point of law wrongly whilst keeping well within its jurisdiction."

21. In speaking of the supervisory jurisdiction of the superior court Lord Sumner in his speech in *Rex v. Nat Bell Liquors Ltd. [1922] 2 AC 128, 156 said:*

"Its jurisdiction is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would itself, in turn, transgress the limits within which its own jurisdiction of supervision, not of review, is confined.

22. If, therefore, it is the case that the commission while within the area of its jurisdiction committed some error of law and if such error was made apparent in the determination itself (or, as it is often expressed, on the face of the record) then the superior court could correct that error unless it was forbidden to do so by some other law. So the question that is raised is whether in the present case the commission went out of its set bounds. Did it wander outside its designated area? Did it outstep the confines of the territory of its inquiry? Did it digress away from its allotted task? Was there some preliminary inquiry upon the correct determination of which its later jurisdiction was dependent?

23. Having reviewed these principles, the court in considering these questions, must consider the instrument itself, in a bid to determine the jurisdiction of the Commission and the ultimate question of whether the sole commissioner acted in excess of jurisdiction.

The instrument - The Commission of Inquiry (Examination, Inquiry and investigation) Notice (1) 2018, Constitutional instrument No 64 of 2018.

24. The above notice was made by his Excellency the President on the 1st day of August 2018, in accordance with the provisions of section 147(1) of the Constitution of Sierra Leone, Act No 6 of 1991. Parliament passed the said notice and published it in the gazette as required by law in vol CXLIX, No 65. The said notice then became Constitutional Instrument No 64 of 2018. The terms of reference were relevant to the arguments raised by Mr Macauley are reproduced and set out below:

Terms of reference.

4. The purposes for which the Commission is appointed are

to–

(a) examine the assets and other related matters in respect of –

(i) persons who were President, Vice President, Ministers, Ministers of State and Deputy Ministers; and

(ii) Heads and Chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.

(b) inquire into and investigate whether assets were acquired lawfully or unlawfully;

(c) inquire into–

(i) persons who were President, Vice Presidents, Ministers, Ministers of State and Deputy Ministers; and

(ii) Heads and Chairman of Boards of Parastatals, Departments and Agencies;

(d) ascertain as to whether the persons referred to in paragraphs (a) to (c) –

(i) maintained a standard of life above that which was commensurate to their official emoluments;

(ii) owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there is evidence of corruption, dishonesty or

abuse of office for private benefit by them;

(iii) collaborated with any person in respect of such corruption, dishonesty or abuse of office;

(iv) acted wilfully or complacently in such a manner so as to cause financial loss or damage to the government, local authority or parastatal including a public corporation;

(v) acquired directly or indirectly financial or material gains fraudulently,

improperly or wilfully to the detriment of the government, local authority or a parastatal including a public corporation, statutory Commission, body or any university in Sierra Leone

(e) to inquire into and investigate any persons or matters as may from time to time referred to the Commission by his Excellency the President.

25. It is necessary to define the terms of reference in simple terms. The terms of reference are set out in two broad parts. They describe the purpose in simple terms.

1. To examine the assets of certain persons set out in section 4(a), inquiring n and investigating the lawful acquisition or otherwise of such assets of such persons referred to in 4 (a), inquire into such persons; and to
2. Ascertain, whether the persons referred to (D1)maintained a standard of life above their official emoluments, (ii)owned or were in control of resources disproportionate to their official emoluments, (iii) collaborated with any person in respect of such corruption, dishonesty or abuse of office, (iv)acted wilfully or complacently in such a manner so as to cause financial loss or, damage to the government, local authority or parastatal including a public corporation, (v) acquired directly or indirectly financial, or material gains fraudulently, improperly or wilfully to the detriment of the government, local authority or a parastatal including a public corporation, statutory Commission, body or any university in Sierra Leone, (4)(e) to inquire into and investigate any persons or matters as may from time to time referred to the Commission by his Excellency the President.

26. At para 2.012 of the synopsis, Mr Macauley's central argument was on the basis that the appellant was not a person of interest and to subsume a collaborator as a person of interest was ultra vires the instrument. The only way, he argued that the appellant could be converted into a person of interest was by using the powers in section 4 (e), which we have set out in paragraph 27 (2). The correctness of those submissions need to be considered. The primary question for consideration is who is a person of interest?

Persons of interest

27. The words "persons of interest" are not provided for in the instrument. It appears to be a loose term coined by the sole commissioner and lawyers to label and identify those who they consider are the subject of the terms of reference of the commissioner. The labelling of those persons in identified in sections 4 (a)-(c) as the sole "persons of interest" is erroneous and misleading. Firstly, the instrument does not define who a person of interest is. We are satisfied that the words "persons of interest" must be give their plain and ordinary meaning. In Webster's law dictionary, the words "person of interest" has been interpreted to mean "a person who is believed to be possibly involved in a crime but has not been charged or arrested".

28. Upon a proper interpretation of the words "persons of interest", parliament in passing Constitutional Instrument No 64 could not have intended that only those persons identified in section 4 (a)-(c) should be considered as "persons of interest". Whilst these proceedings are inherently civil in nature, there are aspects of the criminal law, that are of relevance to the terms of reference of the Commission and the commissioners in the conduct of the inquiry. Such persons that are determined to be accessories or secondary parties would undoubtedly attract criminal accessorial liability.

29. It is significant to note that the instrument was every specific in identifying the persons who were president, vice president and others. The terms of reference also required the commissioner to ascertain whether these persons referred to in section 4 (a), collaborated with any person in respect of such corruption, dishonesty or abuse of office in section 4 (d)(i). The clear purpose of the commission was to inquire into these matters and in order to ascertain these matters, it is obvious that in the course

of the investigations of persons identified in section 4 (a)-(c), the investigation must be widened, in order to ascertain whether the so called persons of interest collaborated with any other person, notwithstanding the fact that such other person or persons may not have been of the categories identified in section 4 (a)-(c).

30. To that extent, those persons who may have collaborated with the persons identified in section 4 (a)-(c), are equally persons of interest to the sole commissioner, if only for the purpose of ascertaining whether a person of interest did collaborate with them. It cannot be argued that the sole commissioner had no business investigating the appellant simply because he is not listed amongst the persons listed in section 4 (a)-(c). The sole commissioner has the power to ascertain that fact and to make adverse findings and recommendations, if he is of the view that a so called person of interest collaborated with a third party. Such ascertainment is clearly within the jurisdiction of the sole commissioner and is entirely consistent with the correct interpretation of the provisions of section 4 (a) – (d).

31. We agree with Mr Kowa for the State, that the appellant was not investigated but was identified and ascertained as a collaborator during the investigations into the so called persons of interest. The fact that he was so ascertained albeit not investigated does not exclude him from having adverse findings and recommendations made against him. We have concluded that the sole commissioner did not act in excess of his jurisdiction as so called persons of interest do not only include the persons listed in section 4(a)-(c), but also include those collaborators who can properly be described as secondary parties or collaborators in sub paragraph (d). They are equally of interest to the sole commissioner and are clearly included in the terms of reference. This ground of appeal must fail and is dismissed in its entirety. We will now deal with the second ground of appeal.

Ground 2

32. Having regard to our findings on ground 1, it is clear from those findings that the appellant was not investigated and did not fall for investigation, within the meaning of section 4 (a)-(c) as a so called person of interest. There was no reason to summon him to the Commission to answer questions or present a defence. There is a crucial distinction to be made. Mr Macauley had argued that the Audi alteram partem rule requires that a party to judicial proceedings should not be condemned unheard. The

question Mr Macauley failed to apply his mind to was whether the appellant was a party to the proceedings at the COI. He is not a person listed in Section 4 (a)-(c) and was not the subject of the investigations. He was only identified and ascertained as a collaborator through the investigations carried out on the so called persons of interest. There was therefore no compulsion for him to be given an opportunity to be heard.

33. Secondly, he served as a senior official in the Ministry. He could not have been unaware that the COI investigations covered the Ministry where he worked for a period of time and there were a significant number of public notices calling upon persons with information to contact the secretariat of the Commission. It is one thing to complain that one was not given an opportunity to be heard but it is entirely a different issue if one fails to avail himself of an opportunity to contact the Commission secretariat with relevant information The appellant failed to do so and he cannot now complain that he was not given an opportunity to be heard when he failed to avail himself of the opportunity. This ground of appeal, we have concluded , has no merit and it is dismissed. We will now deal with ground 3.

Ground 3

34. The main ground of challenge under this heading was on the basis that the findings of the sole commissioner are against the weight of the evidence. These findings are primarily contained at paragraphs 13.2 at pages 90-95 of volume 1. This ground essentially questions the findings of fact made by the sole commissioner. This court therefore needs to have regard to the passages referenced in the judge's findings in a bid to discover if those findings are justifiable or otherwise perverse. In determining whether a decision or finding of fact is perverse, regard must be had to the legal test as set out in *British Telecommunications Plc. v Sheridan [1990] ILR 27* which held that an appeal based on perversity grounds ought only to succeed where an overwhelming case is made out that the tribunal of fact reached a decision which no reasonable tribunal on a proper appreciation of the evidence and law, would have reached.

The evaluation of the evidence received by the commission and findings

35. Our review of the evidence starts from page 90 which details the evidence that was before the sole commissioner. The evidence covered the period from November 2007

to April 2018. The sole commissioner did make findings during the period of time the appellant worked at the Ministry of Education. The appellant himself in an affidavit sworn to on 10th March 2021 indicated that he worked as permanent secretary at the said ministry between 11th June 2013 and 9th December 2014. It is therefore necessary to consider the evidence and findings of fact of the commission between the relevant period.

36. It is necessary to identify the infractions that occurred between the years 2013 and 2014, not just simply between June 2013 and December 2014. The effects of decisions taken in 2013 does have effects in 2014. It is for this reason the joint and several culpability of the appellants, referred to by the sole commissioner may be relevant to the overall findings. We have identified these actions below:

    1. The 2014 financial statement on international development bank projects amounting to USD 10,510,990.00, was not available for audit. Various sums were withdrawn from this account amounting to Le3,519,199,967.00, without supporting documents.

    2. There were 30 bank accounts operated by the ministry in respect of which statements of accounts were not submitted for inspection for audit purposes.

    3. There were several withdrawals from the Impress, ENISS and school material accounts amounting to the sum of Le9, 301,348,764.00 without supporting documents. Subsequently supporting documents were provided leaving a balance of Le2,605,205,450.000 unverified.

    4. In 2014, the sum of Le467,100,000.00, was paid as WASC fees for 3460 students in 51 private schools, who should pay their own WASC fees.

    5. On 7th June 2013 there was withdrawal from the school censors and planning unit accounts amounting to Le17,098,000.00 and paid to one Adama J Momoh.

    6. There was an overpayment of Le2, 632,139,660.00 to Limkokwing University by Government and the continuous overpayments in billions.

    7. There was a further withdrawal of Le3,190,815,029.00 from impress account without supporting documents. A total of Le1,537,072,929.00

8. The payment of Le1,068,990,342.00 withdrawn and spent in 2013/2014 on payment of students grants without supporting documents and swift transfer had remained unverified.

37. The above represents a summary of events that were subject of the investigation at the material times the appellant was in office as permanent secretary. We have also examined the live evidence given in the commission and examined exhibits in a bid to discover whether the findings of the sole commissioner were vitiated by errors. We have looked at the following:

1. The evidence of CW2 and the exhibits attached which are set out at page 217--229 of vol 1 of the records, and at pages 214 -218.

2. The evidence of CW2 and the exhibits attached which are set out at page 347-358 of vol 3 of the records.

3. The audit reports of 2013 and 2014 at pages 1102 – 1113 and that for 2015 at page 1122 of volume 4.

38. It is significant to note the findings and recommendations emanate from the evidence which we have referred to above. In that regard the evidence of CW2 is of vital importance. In summary he testified that:

1. That procurement procedures were not followed and in exhibit P156 for 2014(at a time the appellant was in office) Le1,237,747,666.00 with an evaluation without technical expertise. LPO totalling Le315,783,000.00 were not approved by the appellant, permanent secretary. There were incomplete contracts valued at Le70,474,180.00 with no approved procurement plan in place.

2. That there were withdrawals from various bank accounts without supporting documents totalling Le112,921,538.00 for 2014, with receipts produced for only Le4,040,000.00 leaving a balance of Le91,449,038.00 outstanding and unresolved for 2014.

3. That there were anomalies and irregularities with respect to grant in aid payments. No claim sheet for Northern Polytechnic for 2013/2014 was provided.

4. No financial statement for 2014 was provided and most significantly, supporting documents for the embassy in Moscow was provided for Le175,230,000.00 leaving a balance of Le1,068,990,342.00, without supporting documents.

5. The international development bank project totalling USD 10,510,990.00, was not made available for audit.

6. A previous audit raising an issue about unlawful payments of WASC fees with respect to 51 private schools which recorded 3460 candidates for 2014, which amounted to Le467,100,000.00 had not been resolved notwithstanding repeated requests from the auditors. These students should have paid their fees and Government had no reason to pay these fees for private students.

39. We have referred to the summary of the evidence led before the sole commissioner, which was relevant evidence in the light of the tenure of the appellant as permanent secretary. The appellant was the Permanent Secretary for periods that fall within the relevant period of review. He therefore has legal responsibility for those funds by law, by virtue of the provisions of sections 12 and 13 of Public Financial Management Act 2016, which provides:

12. (1) Every budgetary agency shall have a vote controller.

(2) The vote controller of a budgetary agency shall be –

(a) the Permanent Secretary, if the budgetary agency is a Government Ministry; and (b) the head, if the budgetary agency is a statutory body.

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

13. (1) The vote controller of a budgetary agency shall be responsible for prudent, effective, efficient and transparent use of the resources of the budgetary agency.

40. Subsection 2 of section 13 imposes legal duties on the appellant in the performance of his duties as Permanent Secretary. It appears from the evidence before the sole commissioner, the appellant does not appear to be in compliance with those duties.

41. Having heard the evidence and carried out a full review of the evidence in a bid to determine the appellant's culpability. The audit reports which are set out at page 217--229 of vol 1 of the records, and in particular at pages 214 -218. details the findings of the audit report show the relevant infractions during the relevant period in 2013/2014.

42. Before we deal with the issue of recommendations, we have decided to deal with a legal issue raised by Mr Kowa, in relation to adverse findings. Mr Kowa in his synopsis and submissions argued that there are no adverse findings made against the appellant such that would entitle him to avail himself of the provisions of section 149(4) of the Constitution, Act no 6 of 1991. We now deal with the issue.

Adverse findings

43. The issue of adverse findings in relation to the findings of commissions of Inquiries have been dealt with both in statute and interpreted by two key decisions of this court. We refer firstly to the statutory provisions in section 149(4) of the Constitution of Sierra Leone, Act No 6 of 1991.

"149 (4) Where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of Inquiry shall, for the purposes of this Constitution, be deemed to be a judgement of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal.

44. It is clear from the above, that upon its true interpretation the provisions on a literal interpretation are effortlessly clear. The words *"makes an adverse finding..... which may result in a penalty forfeiture or loss of status"* means exactly that. Conversely, a finding by a commission of inquiry, that is capable of resulting in a penalty, forfeiture or loss of status to a person arguably amounts to an adverse finding against that person. Having regard to the findings against the appellant which requires him to make restitution to the State of a significant amount of money, it cannot be argued that there are no adverse findings against the appellant, where the recommendations of the sole commissioner is clearly for the appellant and others to make restitution to the State.

45. If we were wrong about that, there is clear authority by this court on the issue. In *Attorney General and another v Continental Commodities and services Company Limited (Civ. app 7/2004 (2006) SLCA 2 (17 March 2006)*, Muria JA had this to say:

"An 'adverse finding' entails a decision or a determination or a pronouncement which is unfavourable to a person by a tribunal or a body charged with the task of making a decision on a matter".

46. It is inherently clear that the findings of the sole commissioner against the appellant are not just mere comments but reasoned findings, based on the evidence adduced before him. There can be no argument that the findings of the sole commissioner which are properly referenced with the evidence contained in the transcript of proceedings are adverse findings against the appellant which will result in loss of penalty, forfeiture or loss of status.

Recommendations

47. It is necessary to consider at this time the recommendations of the sole commissioner. Section 149 (1) of the Constitution, Act No 6 1991, provides that the commission shall report in writing the result of the inquiry; and furnish in the repost the reasons leading to the conclusions arrived at or reported. The findings of the sole commissioner are set out paragraph 34-36 of page 106 of volume 1 of the records. The sole commissioner was clear on his findings that the sum of **Le44,764,428,798.00 and USD 67,951,222.00** were misappropriated and or unverified and had remained unaccounted for.

48. The recommendations of the sole commissioner are set out at paragraph 36 on page 106, and paragraph 13.6, in particular subparagraphs 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,21,22,23,24,25,26,27,28,29, 31,32, directly refer to the appellant.

49. Counsel for the appellant has alleged that the findings of the sole commissioner are against the weight of the evidence and should therefore be overturned by this court. As we have observed, there must be errors of facts in the analysis of the sole commissioner, if this court is to intervene. The issue for this court to consider is whether there are errors of facts identified in the findings of the commissioner and if