IN THE HIGH COURTOF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

Vs

1. CAROLINE DANIEL (aka DAVIES)
2. PAUL EDOBOR

COUNSEL:
G J SOYEI ESQ, and later, MS UMU SUMARAY, for the State
The accused persons were unrepresented by Counsel at the trial, save for the initial appearance, when they were represented by G EDWIN ESQ.

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
JUDGMENT DELIVERED THE 26 DAY OF FEBRUARY, 2016

THE CHARGES

1. The accused persons are charged in a 5 Count Indictment with the offences of Conspiracy to Defraud and, Obtaining Money by False Pretences respectively. Counts by Section 321(1) of the Larceny Act, 1916
2. In Count 1, both accused persons are charged with offence of Conspiracy to Defraud. The Particulars allege that both of them, on divers dates between 1st December,2008 and 30th April,2009 at Freetown, they conspired together and with other persons unknown to defraud Fatmata Bangura, in order to get her to part with the sum of Le25m with the inducement and false representation that both of them would facilitate the entry of her son, Mohamed Lamin Bangura into Jackson University in the United States of America (USA).
3. In Count 2, the charge is Conspiracy to Defraud. The particulars allege that both accused on divers dates between 1st December,2008 and 30th April,2009 at Freetown, conspired together and with other persons unknown to defraud Fatmata Bangura of the sum of Le5,150,000 with the inducement and false representation that they would facilitate the entry of her son, Mohamed Lamin Bangura, into Jackson University in the USA.
4. In both Counts, the prosecution made an error in naming the victim's son Mohamed Lamin Bangura. When he gave evidence before me, he gave his name as Mohamed Lamin Kargbo, the name used in the next two Counts. I

do not think the error makes the charge bad for uncertainty or, for any other cause as there has been no dispute that the person referred to as both Mohamed Lamin Bangura and Mohamed Lamin Kargbo, is one and the same person, he being the son of Fatmata ~~Kargbo~~ Bangura.

5. In Count 3, the charge is Obtaining Money by False Pretences contrary to Section 32(1) of the Larceny Act,1916. The particulars allege that on 15th December,2008 at Freetown, both accused persons, with intent to defraud, obtained from Fatmata Bangura the sum of Le25m by falsely pretending that both of them could facilitate the entry of Mohamed Lamin Kargbo, son of Fatmata Bangura into Jackson University in the USA.
6. In Count 4, the charge is again Obtaining Money by False Pretences, contrary to Section 32((1) of the Larceny Act,1916. The particulars allege that on 7th April,2009 at Freetown, the accused persons, with intent to defraud, obtained from Fatmata Bangura the sum of Le5,150,000 by falsely pretending that they would facilitate the entry of Mohamed Lamin Kargbo, Fatamta Bangura into the same University. The University is, I believe, actually known as Jackson State University, but the reference to it as just Jackson University does not really matter and has caused no prejudice to the accused persons.

THE LAW

CONSPIRACY TO DEFRAUD

7. I shall now proceed to explain the law relating to the charges. I shall rely on what I said in my Judgement in THE STATE v WINSTON WILLIAMS & OTHERS, Judgment delivered 26th May,2008. There, I said, when dealing with the Law relating to Conspiracy to Defraud:
"*As to the propriety of the charge in its form, I am of the view that though not elegantly drafted, it satisfies the minimum requirements of the law. It alleges that the unlawful activity was carried on over several days: this is permissible in a continuous offence such as Conspiracy; it would have been duplicitous had the charge been, for instance Obtaining Money by False Pretences contrary to Section 32(1) of the Larceny Act,1916, it being a non-continuous offence.....*" The charges in Counts 1 and 2 are of a continuous nature, and it was perfectly proper for the prosecution to allege that they were committed on several days between two dates.

8. As to the nature of the Conspiracy, and the role played by each conspirator, I said: " *This has been the Law since at least R v GRIFFITHS [1965] 2 All ER 448 per PAULL, J in the Court of Criminal Appeal at page 453 para I: "... for in law all must join in the one agreement, each with the others, in order to constitute one conspiracy. They may join in at various times, each attaching himself to that agreement; any one of them may not know all the other parties but only that there are other parties; any one of them may not know the full extent of the scheme to which he attaches himself. What each must know, however, is that there is coming into existence, or is in existence, a scheme which goes beyond the illegal act which he agrees to do." Later, at page 455 para A the Learned Judge says: "It is right and proper to say that the Learned Judge correctly pointed out the principle, saying that the Crown had to prove that the conspirators put their heads together to defraud the ministry.....As is indicated in WRIGHT ON CONSPIRACIES p.69 it must be shown that the alleged conspirators were acting in pursuance of a criminal purpose held in common between them."*
9. As to the propriety of charging a conspiracy together with a substantive count in the same Indictment, this is what I had to say: " *Though adverse comments were made by the respective Courts in both cases, (i.e. in R v GRIFFITHS [1965] 2 All ER 448; and in R v GREENFIELD & OTHERS [1973] 3 All ER 1050, CA Crim Div and later on in GRAY [1995], discussed below about the efficacy and propriety of joining a conspiracy count with counts for substantive offence in one Indictment, the practicability of such a course taken by the prosecution was acknowledged; that there might be cases of fraud where it would be well nigh impossible to charge a suspect with a substantive offence, even though there might be abundant evidence of that suspect's participation in the fraud which has been perpetrated. In such a case, it is perfectly proper for the prosecution to charge conspiracy in addition to charges for substantive offences. It is my view, arrived at after examining the authorities, that on the facts of this case, it was proper to charge conspiracy as well as substantive offences. I seek strong support from the Judgment of LORD BRIDGE in the House of Lords in R v COOKE [1986] 2 All ER 985 at page 989 paras b-e: after dilating on the distinction between cases where a conspiracy charge would be appropriate in an Indictment including substantive offences, and where it would not, he said: ".....The difficulty arises in the many cases, to which I regret I did not apply my mind in R v*

Ayres, where a course of conduct is agreed to be pursued which involves the commission of one or more specific criminal offences, but over and above such specific criminal conduct the agreement, if carried out, will involve a substantial element of fraudulent conduct of a kind which, on the part of an individual, would not be criminal at all. In this situation.....the sensible conclusion (is that) it is perfectly proper for the prosecution to charge one or other or both of two conspiracies: (a) statutory conspiracy.....(b) a common law conspiracy in respect of that part of the course of conduct agreed on which is fraudulent but would not be criminal on the part of the criminal working alone.....if, in addition to any specific offences which conspirators have agreed to commit, they have agreed to pursue a further course of conduct which defrauds a victim in a manner which does not amount to or involve the commission of any specific offence, I can see no reason why that should not also be charged and proved as a separate conspiracy." The Crown in this case won an appeal on these points from the decision of the Court of Appeal that the Crown could not charge Conspiracy to Defraud where the facts alleged, proved a conspiracy to commit a substantive offence under the Criminal Law Act,1977. Our own Second Schedule to the Courts Act,1965 in paragraph 7 thereof (as amended in 1981) recognises the existence of statutory conspiracies as well: that is, conspiracies to commit summary offences).....I therefore hold that over and above the specific offences charged in the Indictment, it was perfectly proper for the prosecution to include a charge of conspiracy in the Indictment..... The evidence which has been submitted to the Court encompasses much more than evidence relating to the commission of the substantive offences under S.32(1). Besides, the Court merely said it was undesirable, but not irregular or unlawful. I find considerable comfort and succour for the stance I have taken on this issue in the words of LORD BRIDGE quoted above."

THE INTENT TO DEFRAUD IN CONSPIRAY TO DEFRAUD - DISHONESTY

10. As to the nature of the evidence needed to support a conspiracy charge, this is what I had to say: " *The charge also fulfils another element of the offence: it alleges that there was an agreement between the Accused persons. The Learned Editors of BLACKSTONE'S CRIMINAL PRACTICE 2002 Edition (hereafter BLACKSTONE'S) opine at para. A6.14 page 89*

under the rubric "Agreement" that "Agreement is the essence of conspiracy. There is no conspiracy if negotiations fail to result in firm agreement between the parties....."

11. As regards the requirement of a mens rea on the part of the Accused persons, .I said: "*.....BLACKSTONE's tells us at para A6.21 page 93 under the rubric "mens rea as to circumstances" that "At Common Law, a person could be guilty of conspiracy only if he and at least one other conspirator knew of any relevant circumstances necessary for the commission of the offence. More specifically, the offence of Conspiracy to Defraud has been described by VISCOUNT DILHORNE in SCOTT v METROPOLITAN POLICE COMMISSIONER [1975] AC 819 as "....an agreement by two or more persons by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled [or] an agreement by two or more by dishonesty to injure some proprietary right of his suffices to constitute the offence."* The Privy Council in the leading case of WAI YU-TSANG v THE QUEEN [1991] 4 All ER 664 describes Conspiracy as a '*dishonest agreement by two or more persons to 'defraud' another by deceiving him to act contrary to his duty.' There, LORD GOFF extensively discussed the previous authorities starting with the dicta of LORD DENNING and LORD RADCLIFFE in WELHAM v DPP [1960] 1All ER 805 HL unto SCOTT's case and beyond.* At page 669 paras. a-b, LORD GOFF in the WAI YU-TSANG case, states that*: "This authority (i.e. WELHAM'S case) establishes that the expression 'intent to defraud' is not to be given a narrow meaning, involving an intention to cause economic loss to another. In broad terms , it means simply an intention to practise a fraud on another, or an intention to act to the prejudice of another man's right." He cited with approval, the Judgment of the Court of Appeal, Criminal Division in R v ALLSOP (1976) 64 Cr App R 29 at page 31 where SHAW,LJ drew a distinction between intent and motive in conspiracy to defraud: " Generally, the primary objective of fraudsmen is to advantage themselves. The detriment that results to their victims is secondary to that purpose and incidental.* Later, at page 671 paras b-c, LORD GOFF says*: In the context of conspiracy to defraud, it is necessary to bear in mind that such a conspiracy is an agreement to practise a fraud on somebody." He concludes by saying at page 672 para a: "..it is enough that.....the conspirators have dishonestly agreed to bring about a state of affairs which they realise will or may deceive the*

victim into so acting, or failing to act, that he will suffer economic loss or his economic interests will be put at risk."

12. Here, the prosecution is alleging that the Accused persons should have realised that their dishonest or fraudulent activities would cause economic loss to Fatamata Bangura, and an advantage to themselves, in that they would jointly be Le30million the richer. The stress is on the overt act or acts of the accused from which the inference could be drawn that he or she was dishonest, or, knew he or she was being dishonest in his or her dealings with Fatmata Bangura.
13. The importance of the prosecution proving that the accused persons were dishonest in their dealings with the (the victim), is also stressed by LAWTON,LJ in the Court of Appeal, Criminal Division in R v LANDY [1981] 1 All ER 1172 at page 1181 para e: " *What the Crown had to prove was a conspiracy to defraud which is an agreement dishonestly to do something which will or may cause loss or prejudice to another. The offence is one of dishonesty...there is always a danger that a jury may think that proof of an irregularity followed by loss is proof of dishonesty*". In GHOSH [1982] 2 QB 1053; [1982] 2 All ER 689, the Court of Appeal held that *dishonesty* should be determined in two stages*: i) the tribunal of fact should decide whether, according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that should be the end of the matter and the prosecution fails; ii) if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must have realised that what he was doing was by [by the standards of reasonable and honest people] dishonest.* The Court said further, that "*it is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did."*

THE ACTS AND DELCLARATIONS (OR STATEMENTS) OF THE CONSPIRATORS

14. I said further: "*.....Icannot conclude this discourse on the elements of conspiracy to defraud, without adverting to the well known principle applicable in cases of conspiracy, and of offences of common design, that the acts and declarations of each conspirator could be given in evidence against the other conspirator or conspirators, provided the conspiracy has been established. I propose to start with the case of DPP v DOOT*

[1973] 1 All ER 940 HL where LORD WILBERFORCE said at page 947 para d: " A conspiracy is usually proved by proving acts on the part of the accused which lead to the inference that they were acting in concert in pursuance of an agreement to do an unlawful act." And at para f: "But a conspiracy does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry out the design.....In R v MURPHY (1837) 8 C & P 297, at 311 COLERIDGE, J said.....'it is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed, and a person joins it afterwards, he is equally guilty.(this to the jury) - You are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concert in this matter." There is also the case of GRAY & OTHERS [1995] 2 Cr App Rep 100 CA; PER GLIDEWELL, LJ at page 124 para G to page 125 para A: "There is no doubt that, where a defendant is charged with being party to a conspiracy, evidence of the acts done or statements made by a co-conspirator in furtherance of the conspiracy may be admissible in evidence against him, even though he was not present at the time, provided that it is proved that there was a conspiracy to which he was a party.". And at page 129 paras C-D the Learned Lord Justice cites with approval the dicta of ISAACS,J in the Australian case of A-G OF THE COMMONWEALTH v ASSOCIATED NORTHERN COLLIERIES (1911) 14 CLR 387 that: "It must be remembered that the basic reason for admitting the evidence of the acts or words of one against the other is that the combination or preconcert to commit the crime is considered as implying an authority to each to act or speak in furtherance of the other."

SECTION 32(1) LARCENY ACT,1916

15. Coming to the charges brought under Section 32(1) of the Larceny Act,1916, this what I said in the case cited above: THE STATE v WILLIAMS & OTHERS: "*S.32(1) of the Larceny Act,1916*, provides that "*Every person who by any False Pretence (1) with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid ...to himself or to any other person for the use or benefit or on account of himself or any other person shall be guilty of a misdemeanour...*"

16. S.40(1) provides that "*On the trial of an Indictment for obtaining or attempting to obtain any .....money,.....it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with intent to defraud.*" *Sub-Section (2) provides that "an allegation in an Indictment that money or banknotes had been embezzled or obtained by False Pretences can, so far as regards the description of the property, be sustained by proof that the offender embezzled or obtained any piece of coin or any banknote or any portion of the value thereof, although such piece of coin or banknote may have been delivered to him in order that some part of the value thereof should be returned to any person and such part has been returned accordingly.* There are several offences contemplated by S.32: the common planks in all of them are: the false pretence, the intent to defraud, any other person, for his or the other person's benefit. The offences are: obtaining money etc; causing money etc to be paid; causing property to be delivered; procuring money to be paid and procuring property to be delivered. ARCHBOLD 35TH Edition at para 1935 tells us that the False Pretence should be set out with sufficient certainty in the Indictment."

17. In this case, the false pretence alleged is that the accused persons were in a position to facilitate the entry of Mohamed Lamin Kargbo into Jackson University in the USA. Citing further the case of WILLIAMS, there, I said:

"*ARCHBOLD says further at para 1936, that all persons who have concurred and assisted in the fraud may be indicted and convicted as principals, though not present at the time of making the pretence and obtaining the money. Rule 9 of the Criminal Procedure Rules in the First Schedule to the CPA,1965 provides that "it shall not be necessary in stating any intent to defraud deceive or injure any particular person, where the enactment creating the offence does not make it an intent to defraud, deceive or injure a particular person an essential ingredient of the offence." Section 32 punishes the obtaining or the causing of money to be paid to oneself or another by false pretences, with intent to defraud. It does not stipulate that this must be done with intent to defraud a particular person. Thus, ARCHBOLD states further down para 1936 that it is not necessary to allege that the money obtained was the property of the person whom it was intended to defraud, nor to allege that the pretence was made with intent to obtain the money; it is*

sufficient to show that the pretence was made, that the money was obtained or paid thereby, with intent to defraud, and that the pretence was false to the knowledge of the accused person.....It is essential also as ARCHBOLD reminds us that " the prosecutor must prove the making of the pretence as stated in the Indictment." However the Learned Editors of that Edition state further in para 1944 that " it is sufficient if the actual substantial pretence, which was the main inducement to part with the money is alleged in the Indictment and proved, although it may be shown by the evidence that other matters not laid in the Indictment in some measure operated as an inducement upon the prosecutor's mind.....The pretence must be as to an existing fact. " Whenever a person fraudulently represents as an existing fact that which is not an existing fact, and so gets money, that is an offence within the Act" - para 1945. But it is not necessary that it should be by words; the conduct and acts of the party will be sufficient, without any verbal or written representation - para 1956.....The prosecution must prove that the alleged false pretences operated on the mind of....." (in this case, Fatmata Bangura). I went on further to say: "*Notwithstanding what I have stated above, S.32 does not require the prosecution to prove that the monies paid out..... were monies belonging to the person or persons who did the paying out. The monies obtained do not need to be the monies of the person induced by the False Pretences to make payment to the Accused persons..... LORD GODDARD, LCJ in the Court of Criminal Appeal in FRED BALL [1952] Cr App Rep 24 sets out the true position clearly at page 27: "The Section does not say "obtains from the owner"; but "obtains from any other person". There is no doubt that "obtains" means obtaining the property and not merely possession, and the obtaining must not be in such circumstances as amount to Larceny for this purpose....."* See also CHARLES LURIE [1952] Cr App Rep 113 at page 117 per LORD GODDARD, LCJ: *"obtained" means obtained the property and not merely the possession;" R v HARDEN [1962] 1 All ER 286 at 290 para I, per LORD PARKER, LCJ: "To support the charge, the obtaining relied on must be an obtaining of the property in the thing charged, and not merely possession or control of it.....The prosecution must also prove beyond a reasonable doubt, the falsity of the pretences. " The pretence must be false at the time it is made to the knowledge of the defendant" - per LORD ALVERSTONE, LCJ in AMAR NATH DUTT [1913] Cr App Rep 51 at page 57; and at pages 58-59: "....in indictments for*

obtaining money by false pretences the important thing is the knowledge of the person making the pretence....." See also McDONNELL Ag. CJ in R v EDWIN [1920-36] ALR SL 90 at page 93 LL30-35; HC.

18. The prosecution must also prove beyond a reasonable doubt that the victim in this case, Fatmata Bangura, was induced by the false pretence made, to part with the two sums of money charged in the Indictment. Still referring to the WILIAMS case, there, I said:
"ARCHBOLD stated it, at para 1961 to be "an essential ingredient of the offence, though in many cases, it may be inferred from the facts of the case. Where money is obtained by pretences that are, prima facie false, there is an intent to defraud.....And use of false statements or documents to obtain the money, though the money might have been obtained without them, is evidence from which there may be inferred an intent to defraud. The Judgment of MR JUSTICE AVORY in the Court of Criminal Appeal in FERGUSSON [1914] Cr App Rep 113 at 114-115 is cited in support of this proposition. In R v FISHER [1963] 1 All ER 744, WINN,J said in the Court of Criminal Appeal at page 747 paras D-E: " The concept of obtaining credit manifestly comprises two elements, first an act or process of "obtaining", second, a thing obtained. Each element requires some definition. "Obtaining" a thing means that one person A has secured from another B normally by some active process, what A did not already possess.....For present purposes, it suffices to note that the word is not synonymous with accepting or receiving; for this reason , none of the various criminal offences of obtaining by fraud would be established by mere proof of payment of money or transfer of goods to a fraudulent person in the absence of further proof that that such payment or transfer was induced by, and so obtained by a fraudulent pretence or other fraud." This was a case of Obtaining Credit by Fraud, but the principle enunciated by WINN,J applies equally to an offence under S.32(1).

THE TRIAL

19. Having in some measure settled the parameters of the law relating to Conspiracy to Defraud and the S. 32 offence, I shall turn to the evidence in order to find out whether it measures up to the requirements of the law, or falls short. But first, I shall set out briefly the initial proceedings before me. The Counts in the Indictment were put to the accused persons individually, and each accused pleaded not guilty to the offences charged

in each Count. The Attorney-General and Minister of Justice had signed and filed an Application for trial by Judge alone dated 2 October,2013. Mr Soyei applied for the Order to be made, and the same was made as of course on 11 October,2013. The accused persons were granted bail.

PW1 - MARIE SESAY

20. The prosecution began leading evidence in support of the Indictment on 18 October,2013. PW1 was Marie Sesay she explained how she came to know and to meet with the accused persons. It was through her late sister Haja Oya Sesay at 5 Oldfield Lane. On 15 December,2008 she met both accused persons in the house of her late sister. She had been told by her sister that the accused persons had a "*programme*" to take people to the USA. She said that Fatmata Bangura, now deceased, would be interested in such a programme, and she invited her to come to Haja Sesay's house. She went there and she agreed with the programme. It was about sending her son, Mohamed Lamin Kargbo to the USA. The accused told them the programme would cost USD10,000 or Le30m at the time. Fatmata (or Fatu as she was also known) paid over the first instalment of Le25m. The money was handed over to PW1, and she handed the same over to both accused persons. Oya Sesay died in January,2009. She, PW1, kept in touch with the accused persons. On 7 April,2009 the accused persons requested the balance outstanding. She, PW1, paid over to them the sum of Le5,150,000 and another receipt was issued which was later tendered in evidence by PW2. Later that same year, 2009, when nothing seemed to be happening, Fatu demanded her money back. PW1 got in touch with the accused persons, and they came to her house and showed her some papers; as she was illiterate, she could not read them. Fatu was present. 2nd accused tried to run out of the house, but he was prevented from doing so. The Police were then called in. Under cross-examination by 1st accused, PW1 said that 1st accused issued a receipt dated 15 December,2008. She identified the receipt. It was later tendered in evidence. And when cross-examined by 2nd accused, she said she had not known him before the incident. The receipt was later tendered by PW2 as exhibit A. It is reads:

"ITCA - "COMMUNITY CONCEPTS - EDUCATIONAL PROGRAM PROCESSING - 2008.

OFFICIAL RECEIPT

Received from: MOHAMED LAMIN KARGBO the amount of Twenty-five million only

For Educational Program processing fees

a. Tuition (one year)
b. Room & board
c. Testing & evaluation (WES)
d. Communication
e. Shipping
f. Misc

Amount: Le25,000,000.00

Balance: Le 5,150,000.00

Authorised signature: C Daniel

Date: 15/12/2008.

At the bottom right hand corner appear the initials: "MLK". At the centre, the number "3" appears in print. It could have been the number of a page. PW1 was asked by 1st accused during cross-examination whether she could see this number, and she identified it.

ASSESSMENT OF PW1'S EVIDENCE

21. The sum total of PW1's evidence is that the sum of Le25million was indeed paid over to 1st accused on 15 December,2008 but not by Fatmata Bangura, as alleged in the Indictment, but by Mohamed Lamin Kargbo. The purpose, according to the receipt issued, was for the payment of Educational processing fees. The Indictment states that the pretence was made to Fatamta Kargbo, and not to Mohamed Lamin Kargbo; and also that the money was paid by Fatmata Kargbo to both 1st and 2nd accused by the same Fatmata Kargbo, and not by Mohamed Lamin Kargbo. The pretence laid down in the charge must be strictly proved, as I have pointed out in paragraph 18 supra. PW1's evidence is that the money was actually paid over by the late Fatmata. That the receipt was actually issued in the name of Mohamed Lamin Kargbo does not necessarily mean that the same was not paid over by Fatmata, (who unfortunately died before the case got to this Court, and could not therefore shed any light on the issue). As was later shown in evidence, translation had to be done

for and on behalf of Fatmata and this could be one reason why the receipt was issued in Mohamed Lamin Kargbo's name.

PRETENCE AS TO EXISTING OR PAST FACT

22. Whether or not the money was paid over to the accused persons by one or the other person, the Law, as I have pointed out in paragraph 18 above, requires that the pretence which induces the victim to part with his money, must be a pretence about an existing or past fact, and not about something to be done in the future. PROFESSOR KENNY in his KENNY'S OUTLINES OF THE CRIMINAL LAW, 19th edition, states the requirements of the Law in this respect at para 346 at pages 358 & 359 under the rubric: "*The statement must refer to the past or present*" - *The pretence must relate to some fact that is either past or present. A statement purely affecting the future will not suffice. For all future events are obviously matters of conjecture, upon which every person should exercise his own judgment. If the buyer says 'send me the meat and I will pay tomorrow', it is for the butcher to determine whether he will part with the meat on the strength of this promise. If therefore the customer fails to fulfil his promise, the butcher cannot prosecute him for obtaining the meat by false pretences, but can only sue him in a civil action to recover the price of it.....A statement of intention about future conduct, whether or not it is a statement of existing fact, is not such a statement as would amount to a false pretence at criminal law. A promise as to future conduct not intended to be kept is not by itself a false pretence for the present purposes.*"

23. Clearly, the receipt issued by 1st accused indicates that the money she received was in respect of something she had to do in the future; and that it was not received as payment for something she had done in the past, or, for something she was about to do at the time of payment. But that receipt does not necessarily encapsulate the whole of the transaction between the 1st accused on the one part, and PW2 and his mother on the other. The oral evidence also shows that 1st accused also pretended that at the time both sums of money were paid to her that she was in the position at both points in time, to render the assistance she had promised to render: that is to assist PW2 to go to the USA. So if it turns out that at the two points in time when monies were paid over to her, she was in no such position, she would have committed the offence charged.

PW2 - MOHAMED LAMIN KARGBO

24. PW2 was Mohamed Lamin Kargbo. He narrated his own version of events about what transpired at the Oldfield Street house on 15 December,2008. He said he asked the accused persons: "*How can I go to the US.?*" 1st accused answered that he should go on a programme to study at Jackson State University in the US. Then he asked further how he could go to University when he did not have the entry requirements. She answered and said, do not worry; you should take the TOEFL exam. Once you've passed the test, you will be processed for the visa. The 2nd accused was present during the transaction. Immediately, the true purpose of the transaction becomes known: the 1st accused was to assist Kargbo to obtain a visa to enter the USA. PW2 said further that that same day, the sum of Le25m was paid over by PW1 to the 1st accused, who passed it over to 2nd accused for checking. He tendered the receipt issued by 1st accused as exhibit "A". I have set out its contents, supra. He tendered also in evidence, as exhibit "B1&2" copies of what appear to be a Banker's payment for the sum of USD300 dated 18 December,2008 made to the order of himself, in favour of TOEFL Registration office; and a RCB credit transfer voucher also dated 18 December,2008 in respect of the same transaction. These two documents came after the alleged pretence and do not therefore affect the issue of whether it was made or not. Exhibit "C" also tendered by him, is a way bill issued the same day, 18 December,2008.

25. More importantly, is exhibit "F", a copy of the printed agreement signed by Mr kargbo. As it is an exhibit, I do not find it necessary to set it out in full. Its purport is to show that Mr Kargbo had agreed that the 1st accused's organization would assist him to pursue his educational studies abroad. It was also agreed that if Mr Kargbo failed to complete the programme set out by the organization, he would be entitled to a refund, less expenses and a sum equivalent to 35% of the total amount paid by him or, on his behalf. PW2 also tendered in evidence, the receipt dated 7 April,2009 for the sum of Le5,150,000; and a copy of a way-bill dated 16 October,2009, 10 months after the alleged pretence was made. At page 4 of exhibit "F" is a set of calculations, indicating what amounts were deductible by the 1st accused from the total amount received from Fatu in the event the transaction failed. The amount to be refunded was Le16,178,000.

26. PW2 ended by saying that inspite of doing all that 1st accused asked him to do, he had still not succeeded in going to the USA. He was cross-examined by both 1st and 2nd accused as recorded in pages 9 - 12 of my minutes. Most of the cross-examination focussed on the series of transactions and interaction between PW2 on the one part, and the accused persons on the other, after the initial amount of Le25m had been paid. The answers given therefore have no direct relevance to the charges as laid in the Indictment. They purport to show that 1st accused more or less continued to "*string*" PW2 along, asking him to sit to another WASSCE exam, for example. PW2 also said that there was talk of a settlement while the case was still in the Court below, but that it came to nothing.

PW3 - DPC 99 SESAY

27. PW3 was DPC 99 Sesay attached to CID, Central Police Station. He obtained statements from both accused persons. He tendered the following:
Exhibit G pages 1 -34, voluntary cautioned statement of 1st accused
Exhibit H pages 1-4, charge statement of 1st accused
Exhibit J pages 1-8, voluntary cautioned statement of 2nd accused
Exhibit K pages 1 -2, charge statement of 2nd accused.
He was cross-examined by both accused persons as appear at pages 16-17 of my minutes.

VOLUNTARY CAUTIONED STATEMENT OF 1ST ACCUSED - EXHIBIT G

28. In her statement, 1st accused narrated the transaction she had with PW1 and PW2 and PW2's mother. She did not state what credentials she had to support her claim that she could assist PW2 to get to the USA. She said her company or her business were in the diamond business, and also in the produce business. There was no tangible evidence of this. But I have borne in mind that she does not bear the burden of proving that she was really doing any business or businesses of the kind described by her. She also explained the role played by Paul Kargbo, whom she says had introduced Fatu to her. She gave instances of what in my view only amounted to "*sweet-talking*" Marie Sesay or Fatu into believing she really had the clout or capacity or ability to enable PW2 to go to the USA. At page 18 of exhibit "G", it seems, both Marie Sesay and Fatu were strung along by the accused until they came to their senses in 2012 when the

matter was reported to the Police. So, for over 3 years, 1st accused had led them to believe that she could really assist PW2. When she had completed her narrative at page 20 of exhibit "G", she stated at the bottom: " *The allegation made against me is true*" The allegation put to her and recorded on page 1 of exhibit "G" was that one Marie Sesay had made a report of obtaining money by false pretences against her. On pages 21 - 34, 1st accused gave answers to specific questions put to her by PW3. Essentially, they show that she had no accreditation from Jackson State University, nor from any other University in the United States of America. In exhibit "H", she said she had nothing further to say.

VOLUNTARY CAUTIONED STATEMENT OF 2ND ACCUSED - EXHIBIT J.

29. In exhibit "J", 2nd accused explained how he came into the matter. Apparently he was working for the organization which 1st accused said she had. He was asked by both her and Paul Kargbo to accompany them to Paul Kargbo's aunt living in the east end of Freetown. At the aunt's house, Paul Kargbo did the translation from Temne to English for the benefit of 1st accused, and from English to Temne for the benefit of the aunt, and of PW2. The agreement exhibited as "F" was signed in his presence. He confirmed that money was paid to 1st accused. In exhibit "K" he confirmed what he had said in exhibit "J".

ASSESSMENT OF THE STATEMENTS OF BOTH ACCUSED PERSONS

30. My assessment of what both accused said in their respective statements, is as follows: 1st accused was well aware she had no authority from Jackson State University to act on their behalf on any basis whatsoever. She readily admitted that the organizations she was running had got into deep financial problems. It seems to me that the scam she pulled on PW2 and his mother was to enable her perhaps, to restore the fortunes of these organizations, or, to somehow benefit herself. I accept what 2nd accused says in exhibit "J". I believe he had no part in the scheme to obtain money from Fatu, or, from PW2. He merely accompanied 1st accused to PW1's house. And based upon what he said, the transaction was conducted in Temne and in English, with Paul Kargbo doing the translation.

PROSECUTION RESTS

31. At the end of PW3's testimony, the prosecution tendered in evidence the respective Committal Warrants of 1st and 2nd accused as exhibits "L" and "M", respectively. The prosecution rested thereafter.

BURDEN AND STANDARD OF PROOF

32. I shall now go on to state the Law relating to the Burden and Standard of proof in all criminal cases. 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: i.e. the acts were done ~~wilfully~~ intentionally as explained earlier in this Judgment. 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; SAHR M'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 an acquittal.*" KARGBO v R[1968-69] ALR SL 354 C.A. per TAMBIAH, JA at 358 LL3-5: "*The onus is never on the accused to establish this defence any more 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 and SIAFA v R [1967-68] ALR SL 323 at 328 LL20-23 and at 329 LL12-18; and SAMUEL BENSON THORPE v COMMISSIONER OF POLICE [1960] 1 SLLR 19 at 20-21 per BANKOLE JONES, J as he then was. The point was again hammered home by AWOONOR-RENNER,JSC in FRANKLIN KENNY v THE STATE Supreme Court Cr App 2/82 (unreported) at pages 6-7 of her cyclostyled judgment.

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

ACCUSED PUT TO THEIR ELECTION - SECTION 194 CPA,1965

34. I proceeded to put both accused persons to their election in accordance with the provisions of Section 194 of the Criminal Procedure Act,1965. I explained to each of them that each of them had a right to give evidence on oath, or to make unsworn statements from the dock, in which case, neither of them would be subjected to cross-examination. Or, each of them could elect to rely on the statements each of them had made to the Police. I informed them also that irrespective of the option chosen, each of them had a right to call witnesses.

1ST ACCUSED ELECTS TO GIVE EVIDENCE ON OATH

35. 1st accused, DW1, elected to give evidence on oath, and said she had one witness, Paul Kargbo. She gave evidence as is recorded in pages 18 - 24 of my minutes. She said she was a business administrator, and that Paul Kargbo was her partner. She explained how she was introduced to Marie Sesay and to PW2 and PW1, and how the transaction the subject matter of the Indictment, was conducted by her with PW2 and his mother and PW1 and Marie Sesay. As I have said above, notwithstanding her explanation, she really had no credentials from Jackson State University. As of the respective dates on which she received the respective amounts

of Le25m and Le5,150,000 from either PW2 or from Fatu Karbgo, she could not assist PW2 to go to the USA in any way whatsoever. She was cross-examined by Mr Soyei as appears on pages 23 - 24 of my minutes. At the end of his cross-examination, I posed questions to 1st accused as appears on page 24 of my minutes.

Q- Is your company in the business of arranging for persons to go to America?

A - No, my Lord

Q- Was this the first transaction your company entered into for persons to go to America?

A - Yes, My Lord.

Q - Have you, in your personal capacity arranged for anyone to go to America?

A - No, My Lord.

Q - Have you been to a University in America?

A - Jackson State University.

Q - Have you worked for Jackson State University?

A - No, My Lord.

Q - Have you acted as their agent before?

A - No, I have not.

NO WITNESS FOR 1ST ACCUSED

36. At the end of the questioning, in accordance with practice, I asked 1st accused whether 1st accused whether she had anything to say anything arising out of the questions I had posed, and she said no. I posed the same question to Mr Soyei, and he also said he had no questions to ask of the witness. 1st accused also said that her witness, Paul Kargbo was not available. I granted adjournments for over a two month period to enable 1st accused to bring her witness to Court, but she could not. She finally said that she no longer wished to call him anymore as appears on page 27 of my minutes. She closed her case at this stage.

2ND ACCUSED ELECTS TO GIVE EVIDENCE - DW2

37. 2nd accused was again put to his election. He elected to give evidence on oath as appears on pages 27 and 28 of my minutes. He also said he had one witness. In his testimony, he said that he merely accompanied 1st accused to Marie Sesay's house. She had asked him to do some translation on her behalf with the people she was going to meet. At the

house, Paul Kargbo was present, and he did the translation. A document was signed in his presence. He did not know what transpired thereafter. Under cross-examination by Ms Sumaray, 2nd accused said that he was present when money was paid, that the transaction was not a scam; and that they had sent people to America to attend school. This last is in contrast to the answer given by 1st accused to one of the questions posed to her by the Court.

DW3 - THOMAS MACAULEY

38. 2nd accused's witness was Thomas Macauley. He put up bail for the 2nd accused at the East End Police Station. He knew nothing about the facts of the case. Thereafter, 2nd accused closed his case.

ACCUSED PERSONS INVITED TO ADDRESS THE COURT

39. I invited each accused to address the Court if each of them so desired. Both of them said they had nothing more to say. Prosecuting Counsel had no right to deliver a closing address in accordance with the provisions of Section 194 of the Criminal Procedure Act, 1965 as the accused persons were undefended.

FINDINGS

40. I have reviewed the evidence above, and I have set out the requirements of the Law. Clearly, the requirements of the Law of Conspiracy as set out above, have not been met as far as the 2nd accused is concerned; nor have they been met in respect of the Section 32 offence. It is clear that the prosecution has failed to prove the case against him beyond all reasonable doubt. He is therefore acquitted and discharged on all Counts in the Indictment.

CASE AGAINST 1ST ACCUSED

41. I now turn to the case against the 1st accused. In Counts 1 and 2, she has been charged with the offence of Conspiracy to Defraud together with 2nd accused, and with other persons unknown. I have already acquitted 2nd accused of all charges. But the acquittal of 2nd accused of the charges in Counts 1 and 2 does not affect the case against 1st accused as she could have conspired alone with other persons unknown, for example, with a person such as Paul Kargbo. Persons unknown in the Law of Conspiracy does not necessarily mean persons who are for all purposes unknown, but

also persons who are not charged before he Court. It is quite proper therefore that one accused person could be convicted of the offence of Conspiracy so long as it is alleged in the Particulars that he or she did so with persons unknown. This is what the prosecution has alleged in both Counts 1 and 2. I accept and hold that the prosecution has proved beyond all reasonable doubt the charge of Conspiracy to Defraud as alleged in both Counts 1 and 2 of the Indictment against the 1st accused. The Conspiracy existed between the two dates stated in the Indictment: 1st December,2008 and 30 April,2009, the period within which the total sum of Le30million was paid over to 1st accused. It was also the period within which the 1st accused conspired together with other persons unknown to induce Fatmata Bangura to part with the total sum of Le30m on the pretext that she was able to assist PW2 to proceed to, and to be admitted into the Jackson State University in the USA.

42. As to the charges in Counts 3 and 4 in the Indictment, I have stated that the pretence has to be about an existing fact as laid in the Counts in the Indictment: that she could facilitate PW2's admittance into Jackson State University at the point in time when she received both amounts of money. I find that that pretence operated on the mind of Fatmata Bangura at both points in time (though she did not testify before me as she was deceased), based on the evidence of both PW1 and PW2. I hold that the prosecution has proved its case against the 1st accused in all 4 Counts, beyond all reasonable doubt. I therefore find the 1st accused guilty of the offence charged in both Counts 3 and 4 of the Indictment.

VERDICTS:

COUNT 1

1ST ACCUSED - GUILTY

2ND ACCUSED - NOT GUILTY

COUNT 2

1ST ACCUSED - GUILTY

2ND ACCUSED - NOT GUILTY

COUNT 3

1ST ACCUSED - GUILTY

2ND ACCUSED - NOT GUILTY

COUNT 4

1ST ACCUSED - GUILTY

2ND ACCUSED - NOT GUILTY

2nd accused acquitted & discharged.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

ALLOCUTUS

1ST ACCUSED – I am Confused. I did not—do anything wrong.

~~2ND ACCUSED~~

CONSEQUENTIAL ORDER:

Section 54 of the Criminal Procedure Act,1965 as amended:

Sentence:

Count-1- Le10m or 5yrs

2- Le10m or 5yrs..

3

Count-1 – Confused & discharged

2 - Confused & discharged

3 - Le10m or 5yrs

4- Le10m or 5yrs..

Sentences to run concurrently. Fines total ae Cumulative i.e- Le20m total.

S54 CPA,1965.

1st. and shall refund the total sum of Le30m to mohamed kamara Lugbo as the said sum has paid to 1st accused by his mother who is now deceased.

The said Sum of Le30m shall be paid in full not later than 30th April 2016

26/07/2016