

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE

VS.

ANSUMANA JUMA KPANGE

BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.
DATED THE 6TH DAY OF NOVEMBER 2017

Counsel:

Frankly Campbell Esq for the State

L.P. Mami Esq for the Accused

Judgment:

1. The accused stands charged on a 26 Counts Indictment dated the 24th day of November 2015 for the offences of larceny contrary to Section 17(1)(a) of the Larceny Act, 1916 and Section 15(2)(b) of the Anti-Money Laundering and Combatting of Financing of Terrorism Act, 2012, Act No. 2 of 2012 as follows:

Count 1

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 20th day of February 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Eleven Million Nine Hundred and Thirty Seven Thousand Leones (Le. 11,937,000.00).

Count II

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 20th day of February 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Eleven Million Nine Hundred and Thirty Seven Thousand Leones (Le. 11,937,000.00) knowing same to have been derived from an unlawful activity.

Count III

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Five Million Five Hundred and Twenty-Five thousand, Five Hundred Leones (Le. 5,525,500.00).

Count IV

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Five Million Five Hundred and Twenty-Five thousand, Five Hundred Leones (Le. 5,525,500.00).

Count V

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Four Million Nine Hundred and Fifty-Six thousand Leones and Thirty Eight Cents (Le. 4,956,000.38).

Count VI

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Ten Million Nine Hundred and Thirty-Four thousand, Eight Hundred and Seventy-Six Leones Fifty Nine Cents (Le. 10,934,876.59).

Count VII

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum of Six Million Two Hundred and Seventy-Nine Thousand, Six Hundred and Three Leones Sixty-Seven Cents (Le. 6,279,603.67).

Count VIII

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Eleven Million Nine Hundred and Thirty Seven Thousand Leones (Le. 11,937,000.00).

Count IX

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Seven Million Leones (Le. 7,000,000.00).

Count X

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Ten Million One Hundred and Twenty-One Thousand Five Hundred and Thirty Six Leones (Le. 10,121,536.46).

Count XI

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Five Million Five Hundred and Twenty and Twenty-Five Thousand Five Hundred and Sixty Nine Leones Seventy Eight Cents (Le. 5,525,569.78) knowing same to have been derived from an unlawful activity.

Count XII

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Four Million Nine Hundred and Fifty-Six Thousand Leones Thirty-Eight Cents (Le. 4,956,000.38) knowing same to have been derived from an unlawful activity.

Count XIII

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 20th day of February 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Ten Million Nine Hundred and Thirty-Four Thousand Eight Hundred and Seventy-Six Leones Fifty-Nine Cents (Le. 10,934,876.59) knowing same to have been derived from an unlawful activity.

Count XIV

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Six Million Two Hundred and Seventy-Nine Thousand Six Hundred and Three Leones Sixty-Seven Cents (Le. 6,279,603.67) knowing same to have been derived from an unlawful activity.

Count XV

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Eleven Million Nine Hundred and Thirty-Seven Thousand Leones (Le. 11,937,000.00) knowing same to have been derived from an unlawful activity.

Count XVI

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Seven Million Leones (Le. 7,000,000.00) knowing same to have been derived from an unlawful activity.

Count XVII

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 18th day of March 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Ten Million One Hundred and Twenty-One Thousand Five Hundred and Thirty-Six Leones Forty-Six Cents (Le. 10,121,536.46) knowing same to have been derived from an unlawful activity.

Count XVIII

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 17th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Six Million Two Hundred and Seventy-Nine Thousand Six Hundred and Three Leones Sixty-Seven Cents (Le. 6,279,603.67).

Count XIX

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 17th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Four Million Nine Hundred and Fifty-Six Thousand Leones Thirty-Eight Cents (Le. 4,956,000.38).

Count XX

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 17th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Two Million Nine Hundred and Ninety-Seven Thousand, Five Hundred and Sixty-Eight Leones Eight Cents (Le. 2,997,568.08).

Count XXI

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 17th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone did possess the sum of Four Million Nine Hundred and Fifty-Six Thousand Leones Thirty-Eight Cents (Le. 4,956,000.38) knowing same to have been derived from an unlawful activity.

Count XXII

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 17th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone did possess the sum of Six Million Two Hundred and Seventy-Nine Thousand Six Hundred and Three Leones Sixty-Seven Cents (Le. 6,279,603.67) knowing same to have been derived from an unlawful activity.

Count XXIII

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 16th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Seven Million Seven Hundred and Fifty-Nine Thousand and Fifty Leones (Le. 7,750,050.00).

Count XXIV

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 16th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone did possess the sum of Seven Million Seven Hundred and Fifty-Nine Thousand and Fifty Leones (Le. 7,759,050.00) knowing same to have been derived from an unlawful activity.

Count XXV

Statement of Offence:

Larceny contrary to Section 17(1)(a) of the Larceny Act, 1916

Particulars of Offence:

Ansumana Juma Kpange on the 16th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone being an employee of the United Bank for Africa (UBA) Limited, stole from the said bank the sum Four Million Nine Hundred and Fifty-Six Thousand Leones and Thirty Eight Cents (Le. 4,956,000.38).

Count XXVI

Statement of Offence:

Money Laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combating of Financing Terrorism Act 2012, Act No. 2 of 2012.

Statement of Offence:

Ansumana Juma Kpange on the 16th day of April 2014 at Freetown in the Western Area of the Republic of Sierra Leone did conceal the sum of Four Million Nine Hundred and Fifty-Six Thousand Leones and Thirty Eight Cents (Le. 4,956,000.38) knowing same to have been derived from an unlawful activity.

1.1. Pursuant to an application dated the 12th day of January 2016, which was granted, the accused was tried by Judge alone.

1.3. I am mindful of the fact that an accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his guilt. I have cautioned myself that all doubts must be resolved in favour of the accused person. I shall now proceed to evaluate the law and the evidence before me.

2. The law:

Section 17(1)(a) of the Larceny Act, 1916 provides:

Every person who, being a clerk or servant or person employed or in the capacity of a clerk or servant, steals any chattel, money or valuable security belonging to or in the possession or power of his master or employer shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years

Section 15(2)(b) of the Anti-Money Laundering and Combatting of Financing of Terrorism Act, 2012, Act No. 2 of 2012 provides that:

A person engages in money laundering if he receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Sierra Leone any property that is the proceeds of a crime, knowing or having reasonable grounds to believe that the property is the proceeds of a crime.

3. On the 26th day of January 2016, the accused, represented by Counsel pleaded 'not guilty' to all 26 Counts charge read out to him in open Court. Pursuant to an authority granted him by the learned Director of Public Prosecutions, Franklyn Campbell Esq of the Financial Intelligent Unit, led the prosecution of the charges against the accused person.

3.1. I thank the Prosecutor, for prosecuting this matter and submitting an address in favour of the State and to Counsel for the accused for defending the accused with all zest and vigour and for tendering a final address on behalf of the accused, albeit rather late.

Burden and standard of proof

4. That the principle enshrined in the case of Woolmington Vs. DPP applies to all criminal cases, is without doubt. The principle that the burden of proof in all criminal cases rests with the prosecution is applied much more strongly when the Judge is both Judge of law and fact. Numerous Sierra Leone cases confirm this principle but I shall only cite those which have been reported and these include *Hall Vs. R* (1964-66) ALR SL 189; *Labor-Jones Vs. R* (1964-66) ALR SL 471; *Koroma Vs. R* (1964-66) ALR SL 542; *Bob-Jones Vs R* (1967-68) ALR SL 267; *Amara Vs. R* (1968-69) ALR SL 220; *Kargbo Vs. R* (1968-69) ALR SL 354. All of these cases confirm that the legal burden of proof in a criminal case always rests on the prosecution and that the burden rests on the prosecution to prove every element of the offence with which an accused person has been charged beyond reasonable doubt.

Testimonial evidence

5. PW1 was Detective Police Constable 4013 Jusu Mohamed attached to the CID Head Quarters, Freetown. He recalls the 16th day of June 2015 when whilst on duty, Hasanatu Kallon, a personnel of the United Bank of Africa (UBA) and Detective Sergeant 8426 Tholley II, arrested and took in the accused for the offence of larceny by a servant and or other related offences.

5.1. Jusu tendered to the Court the statements of Kunly Oyewole and Laurel Yeama Ballay both marked as Exhibits A1-5 and B1-20 respectively. He told the Court that on the 16th, 24th and 27th day of June 2016 respectively, together with Detective Inspector M. Sillah he cautioned the accused in Krio and took his statements in Krio and recorded same in English at the conclusion of which the accused read the statements himself and admitted same to be true and correct by signing same in his own hand writing. Jusu told the Court that he signed each of the statements as the Recorder and that Detective Inspector M. Sillah signed as a witness. The accused looked at each page of his statements referred and accepted them to be his statements. They were tendered as Exhibit C1-32.

5.2. PW1 referred to a search warrant for a search conducted at No. 9 Charlotte Street, No. 24 Old Railway Line and No. 315 Bai Bureh Road, Rukuprr, all in Freetown and informed the Court that these searches were conducted on the 17th and 18th of June 2015 respectively and that himself, Inspector A. Conteh, Detective Sergeant 8426 and Detective Sergeant 10213 were involved in the said search. He said all the police personnel involved endorsed the search warrant and so did the accused. The accused perused the said search warrant and identified his signature on same. It was tendered as Exhibit D.

5.3. The witness produced another search warrant for search conducted at No. 24 old Railway Line where the accused is ordinarily resident, by himself, A. Conteh, M. Sillah and M. Kamara together with Detective Sergeant 8426, Tholley II. He told the Court that the said search warrant was endorsed by the police personnel present as well as the accused himself; same was tendered as Exhibit E, the accused having identified his signature.

5.4. PW1 produced to the Court, for purposes of identification, photos of items found at the three locations searched. They were marked as Exhibit Z1-8. The witness produced what he referred to as a comprehensive list prepared by the Exhibit Clerk, Detective Sergeant 1516 Conteh A, of the items discovered during the investigation. He also produced an endorsed search warrant for search conducted at the accused person's shop on the 17th day of June 2015, at No. 81 City road, Wellington in the presence of the accused. He said the accused endorsed the search warrant and so did the police personnel involved in the said search. The accused identified his signature on the said search warrant after which same was tendered as Exhibit G1-3.

5.5. Exhibit H, an endorsed search warrant which was identified by the accused was also tendered in evidence for search conducted at No. 24 Old Railway Line, Freetown conducted on 17th June 2015. The accused person's statement as in Exhibit C1-32 was read out in open Court. The witness tendered Exhibits J1-6 which are the accused person's identity card, UBA ATM cards for Laurel Yeama

Ballay, Henrietta E. Kamara, Abdulai G.O Kpange, Kpange Ansumana Juma and for Ansumana Juma-Kpange.

5.6. The witness referred to the charge statement obtained from the accused on the 6th day of July 2015 when together with Detective Sergeant 10213 Kamara A.S he obtained having cautioned and questioned the accused in Krio; his responses were recorded in English which was signed by the accused in his own hand writing. He said he signed the Charge Statement as the Recorder and that Detective Sergeant 10213 witnessed same. He said the accused person signed each page of the Charge Statement in his own hand writing. The Charge Statement was accepted into evidence as Exhibit K1-3.

5.7. In answer to questions put to him in cross examination, PW1 referred to Exhibit C1-32, the Voluntary Caution statement of the accused and told the Court the accused was arrested by Detective Sergeant 8426 Tholley II in the evening hours between 5-7pm on the 15th day of June 2015. He said the accused was not drunk when he was brought to the police station and that the accused was given his right to legal representation.

5.8. He said the accused was charged for a specific amount and that the amount stated in Exhibit C1-32 is different from the amount the accused was charged with; the amount stated in Exhibit C1-32 is the same amount stated on the charge statement. He said he knows the accused has a personal bank account at the Plaintiff bank and that his investigation revealed that the accused holds other bank accounts at other banks aside the Plaintiff bank. He said the accused was paid by way of bank transfers into his account and that he was able to separate what the accused earned and other monies found in his account. He tendered Exhibit L1-9 dated 2nd July 2015.

6. The witness told the Court that other accounts were in the names of other family members of the accused though he agrees there is no policy stopping any staff to open accounts for other relatives. He says there were no genuine savings in any of those said accounts for relatives. He said he spoke to some of the supposed holders of the relatives account who told them they, the relatives never deposited monies in those accounts even though they made withdrawals therefrom.

6.1. He referred to **Exhibit L1-9**, an internal memo, at the last page number 4 thereof which suggests Le. 47,000,000/00 was recovered under a Magistrate Court's order of 6th July 2015. He said the accused has a Supervisor named Mr. Conley who vetted his work. He said he investigated about 6 of the accused' account. He said the bank had an automated banking system and that there were no report during investigations of mistakes or defects in the system.

7. PW2 was Hasanatu Kallon, an Internal Auditor at the Plaintiff bank where she has worked for 5 years as at the date of her testimony. She identified the accused as an ex staff at the Plaintiff bank. She tendered a mail from her boss Ebu Olusey addressed to her dated 15th June 2015 as Exhibit M, which said mail gave her instructions to look at certain accounts at the Plaintiff bank. She said upon

receipt of Exhibit M, she checked the bank's software, FINACLE to know the owners of the accounts she was asked to search.

7.1. She referred to the accounts' opening documents as follows:

- a. Account No. 540120680043234 owned by Laurel Yeama Ballay, with the accused being next of kin.
- b. Account No. 540120520031043 owned by Abdulai G.O Kpange, the father of the accused and to which the accused is co-signatory.
- c. Account No. 540120680037312 owned by Henrietta Kamara with the accused being next of kin.
- d. Account No. 540120560000888 owned by a minor, Emmanuel Kpange with the accused being next of kin and a signatory to the account.
- e. Account No. 540120520029783 owned by the accused

7.2. The said bank opening account documents in their original forms were shown to the accused who look at them and confirmed that the copies were the same as the originals; they were tendered as Exhibit N1-21. The witness referred to the bank statements of the 5 accounts herein before referred and tendered them as Exhibit O1-31.

7.3. The witness told the Court that upon further investigations, she observed the monies into these said accounts were coming from the Plaintiff bank's internal accounts in the form of deposits into these accounts. The witness explained what she meant by 'the bank's internal account'; she said for example, where money is meant for depreciation of vehicles, instead of such monies going into the banks profit and loss account, the monies were instead credited into the accounts of people referred in Exhibit N1-21.

7.4. PW2 told the Court that the Finance Department is in charge of preparing a schedule on monthly basis for the depreciation of bank assets; that the accused was responsible for preparing these schedule on a monthly basis and send same to his boss, the Chief Finance Officer of the bank for approval. After approval, the accused was supposed to send the approved document to the Branch Operations Manager for uploading to one of the Plaintiff's portal. Upon uploading, it will generate a transaction identification upon which the transaction is verified and posted by the Plaintiff bank's Group Serving Center in Nigeria. The witness tendered as Exhibit P1-2 a schedule of deposits into all 5 accounts referred in Exhibit N1-21.

7.5. The witness told the Court that

- Laurel Ballay's account was credited with a total of Le. 31,101,837/04 from the Plaintiff bank's internal account from 17th April 2014 – 15th May 2015. She said those monies were transferred by the accused as he was the only person preparing the schedule.
- Abdulai G. Kpange's account was credited with Le. 35,431,088/93 from the banks internal account on diverse dates; that the accused did the said transfers as he was the only person who prepared these schedules.

- Henretta E. Kamara's account was credited with a total of Le. 40,995,536/46 from the bank's internal account on diverse dates by the accused.
- Ansumana J. Kpange's account was credited with Le. 88,031,295/54 from the bank's internal account on diverse dates by the accused.
- Emmanuel Kpange's account was credited with Le. 130,537,118/81 from the bank's internal account by the accused.

7.6. PW2 told the Court that after her investigations, she prepared a written report which she tendered as Exhibit L1-9. She tendered her statement to the police as Exhibit Q1-5.

7.7. In answer to questions put to her in cross examination, PW2 reaffirmed her testimony that the bank's internal account was debited and the customers' accounts credited. He said there is nothing illegal about debiting the bank's account for as long as there is approval to do so by an authorized signatory. She said the accused person's job stopped at preparing the schedule which he send to his supervisor which the supervisor can approve or reject before sending same to other employees. She said the schedule is in an excel form and can be altered by any other person before it is uploaded but that once it is uploaded, it is impossible to have it altered.

7.8. PW2 told the Court that restrictions can only be put on accounts pursuant to Court Orders or if the transactions on such accounts are suspicious. She said the customer accounts as in Exhibit N1-21 were not restricted because no one knew there were such suspicious transaction on those accounts. She said it is not to her knowledge that after postings, the Chief Finance Officer can review and approve postings. She said she knows the accused had a supervisor and that no work leaves the desk of the accused without an endorsement by his supervisor.

7.9. PW2 identified Exhibit L1-9, as her Report in respect of the matter herein which she said was prepared after the accused had been charged to Court, based on the last paragraph. She said the amount in question is Le. 326,096,000/00. The witness said the accused accumulated legitimate amounts in his personal account and that he received a salary from the bank at the end of each month. She said the sum total of Le. 326,096,000/00 represent monies the accused moved and transferred from the bank's profit and loss account into various accounts. She said she considered the accused' savings account, the kids account which was operated by the accused, a joint account operated by the accused and his father as well as other accounts.

8. She referred to Exhibit L which says that certain items were recovered and sold on the orders of the Magistrate Court and not the Plaintiff; that the Plaintiff did not sell any item. She said it is not to her knowledge that the accused work was at anytime rejected because his supervisor did not approve it and that it is not to her knowledge that any responsibility for the accused conduct was passed on to his supervisor in so far as her investigation was to do with transfer of monies from the banks profit and loss account into the accused person's personal account. She said she did take into account the accused's person's

supervisor's role and reaffirmed that the role of the accused was to prepare a schedule of the depreciation of assets on a monthly basis.

8.1. PW2 told the Court that the bank is audited annually and that before this matter, nothing illegal on the part of the accused was discovered by the external auditors. She said no auditing was done in 2014 because of the Ebola epidemic and that in 2015, an off site auditing of the Plaintiff bank was done in Nigeria which was the time that this fraud, according to her, was unearthed. She said there were other staff members in the Department where the accused worked and that when ever he is on leave, there will be someone performing his duties. She said the accused was the only person who manned his computer and its password and even when he was on leave, his password was never given to any other person.

9. PW3 was Adekunle Oyewule, Chief Finance Officer of the Plaintiff bank. He outlined his duties to include being in charge of book keeping. He referred to Exhibit P1-2, an extract of office entries that were posted into individual accounts. He identified the accused as his direct subordinate in the Financial Control Department of the Plaintiff bank. He said the entries referred were inserted into office entries by the accused; that the accused is charged on a monthly basis with the responsibility of raising entries for the office account that will determine the true profitability of the bank for any particular month. He said during the period March 2014 and June 2015, the accused inserted entries that will enable him put monies into various individual accounts for subsequent withdrawals by himself. He said the accused did all of these entries and withdrawals without his knowledge. He said the accused raised the entries, sent them to him for verification as the accused is supposed to do and which he, the witness verified. He told the Court that it was at the time of sending the entries to the Operations Department that the accused inserts entries that will enable him put money into individual accounts to which he had access. He said his role as a supervisor for the accused ends upon his review and verification by him and that he has no business in subsequent postings done by the accused.

9.1. PW3 tendered Exhibits U1-46 and V1-26, being documents sent him as an attachment to an email and documents prepared by the accused which the accused normally would send to him for verification.

9.2. In answer to questions put to him in cross examination, the witness said Exhibit U1-46 is undated and unsigned because it was electronically sent to him. He said the name of the Plaintiff bank is not on Exhibit U. He said there is no name on Exhibit V1-26 to show where it emanated from nor is the name of the Plaintiff bank on Exhibit V and that it is unsigned because he printed both Exhibits U and V electronically. He agreed he was the accused person's supervisor; that he was suspect in this matter. He said it is not correct that he tampered with Exhibits U and V at the Magistrate Court before he tendered it as evidence. He said he approved Exhibit V but not Exhibit U because he was satisfied with Exhibit V. It can be recalled that PW2 told the Court that in some instances, the accused person's supervisor would reject his entries.

9.3. PW3 told the Court that there were three persons, himself, the accused and another person in the Financial Control Department of the Plaintiff bank and that all they did as a staff was done electronically; that they did not have any access to the process of preparing each others documents as their individual computers had pass words. The witness told the Court he had no hands in the conduct of the accused. He did not agree with Counsel that when the records are handed over, they could be tampered with; that every body bears his name on the system. He said he had no malice against the accused.

10. On the 15th day of August 2016, the Prosecution made an application to dispense with Prosecution Witness Detective Sergeant 1516 Conteh A. whose name was at the back of the indictment on the basis that Detective Sergeant 1413 Jusu M, Conteh's co-investigator had tendered the search warrants in respect of the matter herein. The Prosecutor's application was granted. The Prosecutor closed the case for the State on the 15th day of August 2016. The Committal Warrants marked Exhibit W 1-2 were tendered with the Court's leave.

11. Pursuant to Section 194 of the Criminal Procedure Act, No. 32 of 1965, the accused was, in the presence of his Counsel put to his election to wit:

- a. Make an unsworn statement from the dock and not be cross examined by the Prosecutor nor call any witness;
- b. Make a sworn statement and be subjected to cross examination and could call witness(es);
- c. Rely on voluntary caution statement to the police.

11.1. The accused chose to make an unsworn statement from the dock, asked for an adjournment and opened his case on the 3rd day of November 2016.

11.2. The accused told the Court that he use to work as Financial Controller at the Plaintiff bank. He said on the 16th day of June 2015 while he was on vacation, he was summoned to his office by his supervisor, PW3, in respect of the matter herein having to do with the period March – April 2014. Upon his arrival, he was taken to the CID HQ by Detective Officer Thorlie. He said he cannot recall what happened at the CID as he had had a number of bottles of alcohol before he was called and summoned to his office.

11.3. In respect of the charges against him, the accused told the Court that there were three staff members at his department, all supervised by PW3; that PW3 is responsible for approving work done by his staff. He said he use to prepare the bank depreciation, harmonization prepayment and other related expenses of the bank which he said he prepares on an excel software and sends same to his supervisor, PW3, for approval. He told the Court that where there are issues in respect of his documents set to his supervisor, himself and his supervisor discuss and he corrects same before sending such documents to the officer in charge who posts them into the system.

11.4. The accused told the Court that though they each had passwords to their computers, before any of the three of them proceed on leave, they hand over

their jobs to which ever officer remains on duty to continue their job from where they would have stopped. He said his work was checked by his supervisor before he proceeded on leave and there was no complaint about his work. I recall that the period under investigation is March – April 2014. The only leave period for the accused on evidence is June 2015.

11.5. The accused denied the allegation that he stole money from the Plaintiff bank and caused same to be transferred into different accounts. He said he does not have a posting right so it is impossible for him to transfer money from one account into another; that all he does is prepare schedules which he sends to his supervisor for approval and same is sent to the officer responsible at the Domestic Operation Department for posting. I recall that the accounts in Exhibit N1-21 show monies transferred from the Plaintiff's internal account into those said accounts in Exhibit N1-21. I also recall that the evidence is such that there is a connection between the holders of the accounts in Exhibit N1-21; the accused himself admits he knows the account holders, in Exhibit N1-21, some of whom are his relatives. He denies withdrawing monies personally from these said accounts.

11.6. The accused told the Court he cannot recall making Exhibit C1-32 as he was drunk when he made that statement. He said the statement is not his. It is in evidence that the accused was shown Exhibit C1-32, he looked at it and identified his signature before same was admitted as an exhibit before this Court. the same Voluntary Caution Statement was read out in open Court to the hearing of the accused who said nothing about his being drunk when the statement was taken. Had he raised his drunkenness as an issue and denied his statement in Court when he was sober, the Court would have conducted a *voir dire* as that is the legal procedure which would have followed in such circumstance. I consider the accused person's averments as an afterthought.

11.7. The accused told the Court he has nothing to do with exhibits taken from the homes of his relatives. He said he was given no opportunity to comment on Exhibits V1-21 and U1-46 to know whether he prepared them. The evidence before this Court is that PW3 printed out Exhibits V and U aforementioned which are documents prepared by the accused and that he approved of Exhibit V but not Exhibit U because he was not satisfied with Exhibit U. These are documents he said he tendered at the Magistrate Court.

11.8. The accused closed his case on the 10th day of November 2016. The Prosecution was to file a final address on the 21th day of November 2016 and the Defence was to file a final address on the 1st day of December 2016. The Prosecution submitted a final address on behalf of the State on the 26th day of January 2017. The case was mentioned on the 15th day of March 2015 but yet still no address had been filed by Counsel for the accused. A Production Order was issued for the accused person to appear before the Court and on the 5th day of April 2017, the accused was informed on his appearance that no address had been filed on his behalf. On the 28th day of June 2017, in Court, a Production Order was again issued and when the accused appeared in Court on the 19th day of July 2017, he was again informed that no address had been filed on his behalf.

It was not until the 11th day of October 2017 that the Court received a final address on behalf of the accused. Meanwhile, the accused stayed incarcerated in prison because he could not fulfill his bail conditions.

12. I have read the evidence before this Court and final address filed by both Counsel for the State and the Accused respectively. I have read the authorities submitted by Counsel for the Accused. The first concern raised by Defence Counsel is that Counsel had no authority to prosecute this matter because a Fiat was not tendered to the Court. Counsel submits that the Court was deprived of knowing the contents of the Fiat, which ought to have shown the offences for which the Accused stands charged. He referred and relied on the case of *Lansana & Eleven Others Vs. Reg* (1971) Cr. App. No.14/70 P.186 in which the whole trial was nullified on the grounds that the Fiat was signed by the Solicitor General as the Attorney General was then incarcerated; that the Acting Attorney General who approved the Fiat could not have constitutionally performed the functions of the Attorney General; that even if the Acting Attorney General did validly give his consent, he did so after the prosecution has been instituted; that the Fiat did not specify the offences charged.

12.1. The *Lansana* case is distinct and different from the instant case in the sense that the *Lansana* case was charged pursuant to the Treason and State Offences Act of 1963 unlike the instant case which is charged under the Larceny Act of 1916 and the Anti-Money Laundering and Combating of Financing of Terrorism Act. Section 1(2) of the Treason and State Offence Act 1963 provides:

A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney General.

12.2. Consent, as referred under the Treason and State Offences Act institutes the proceedings itself and such institution as per the Act can only be done by the Attorney General or by his consent which he may give to any other person. The argument in the *Lansana* case is that the institution of the proceedings was not in conformity with the Treason and State Offences Act, 1963. The position is therefore that if proceedings under the Treason Act 1963 are instituted without a Fiat signed by the Attorney General or without his consent, the whole proceedings would be rendered void and that is exactly what happened in the *Lansana* case.

12.3. I have given a ruling in respect of the tendering of the Fiat at the close of the case for the Accused albeit before judgment. I have said that there is nothing in the CPA of 1965 or indeed in law which says the Fiat must be filed at any one particular time. It is my opinion, the Counsel having referred to his authority to prosecute at the very beginning of this matter when in fact on that fateful day, the 26th day of January 2016 as the records show, he made an application for trial by Judge alone, his not filing the Fiat could only have been inadvertence as he said, for which he apologized to the Court and Counsel. The Fiat is therefore accepted as part of the evidence before this Court.

13. Now to Counsel's second concern having to do with the form of the indictment. Counsel has argued that the Counts on the indictment are duplicitous. Counsel's position is that save for the quantum of money, Counts 3,4,5,6,7,8,9 and 10 are the same both in contents and form as Counts 11,12,13,14,15,16 and 17; that Counts 18, 19 and 20 are the same as well as Counts 21 and 22 of the Indictment and are therefore duplicitous. Rule 3(1) of the Indictment Rule 3(1) which are to be found in the 1st Schedule to the CPA, 1965 under the General Provisions tells us that "... where more than one offence is so charged ... each offence shall be set out in the information or indictment in a separate paragraph called a count."

13.1. The law in respect of duplicity of Counts is clear and that is that the law does not allow one to charge two offences in the same Count. If that is done, that Count is said to be duplicitous and bad in law. See *R Vs. Molloy* 1921 2 KB 364. See also *R Vs. Ballysingh* (1953) 37 CAR 28. Counsel's submission in respect of the law against duplicity does not tally with the law itself. It should be clear to Counsel that the fact that the quantum of moneys in each of the Counts (of larceny in particular differ), each must be representing one single offence of appropriation. Lord Widgery in the case of *Jemmison Vs. Priddle* (1979) 69 Cr. App Rep 83 at pp 86-87 held that "... what it means is this, that it is legitimate to charge in a single information one activity even though the activity may involve more than one act." I have not linked the evidence at this stage but if Counsel were to peruse the bank statements of the Plaintiff and those of the so called suspicious accounts, Counsel will have a clear vision that each appropriation which makes for an offence of larceny, was done separately albeit on the same day. I have looked at the Indictment in line with Counsel's submission and it is my considered view that aside the State Counsel's charge of the same offences under both the Larceny Act and the Anti Money Laundering and Combatting of Financing of Terrorism Act, 2012, which I see rather as a surplus and not duplicitous, the offences as charged are good in law.

13.2. I have already said that the statement of the accused person is treated as his and as evidence before this Court for reasons hereinbefore stated.

14. Counts 1, 3, 4, 5, 6, 7, 8, 9, 10, 18, 19, 20, 23 and 25 relate to larceny contrary to Section 17 (1)(a) of the Larceny Act, 1916. The provisions of the said Act have been stipulated in paragraph xx above. To succeed on a Section 17(1)(a) charge therefore, the Prosecution must show beyond reasonable doubt that:

- a. There existed a clerk or servant or employment relationship between the accused and the Plaintiff herein;
- b. That the accused stole money belonging to or in the possession or power of the Plaintiff herein.

14.1. I refer to the Accused person's offer of employment letter and acceptance dated 1st August 2011, his deployment letter dated 10th day of August 2011, his staff ID with ID No. SL0155 and his answer on page 2 of his Voluntary Caution Statement where he identifies himself as the Financial Control Officer of the UBA, Charlotte Street, Freetown and say that I have no doubt on my mind that there

exists an employment relationship between the Accused and the complainant, United Bank of Africa (SL).

14.2. According to the definition section, Sec. 1(1) of the Larceny Act 1916, a person steals if without the consent of the owner, he fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof.

14.3. The *actus reus* of stealing consists in the taking and carrying away of property belonging to the owner. Taking and carrying away in the context of the Larceny Act 1916 relates to some dealing in the property, which shows that the accused must have assumed the rights of the owner. Section 1(2)(ii) of the Larceny Act 1916 defines 'carrying away' to include any removal of anything from the place which it occupies ... it is my view that the term 'carrying' as appears in Section 1(1) of the Larceny Act 1916, requires active conduct on the part of the accused. Taking clearly amounts to appropriation and the act of taking amounts to an assumption of the rights of the owner, in this instance, the right of the complainant, the United Bank of Africa. See *Rogers Vs. Arnott (1960) 2QB 244; (1960) 2AER 417*. The evidence before this Court is that on diverse dates, the accused unlawfully caused to be transferred property in the form of money belonging to the Complainant into separate accounts operated by the accused. The act of transferring money from the Complainant's internal account where they occupied into the said accounts operated by the accused without the consent of the Complainant who is owner is sufficient 'taking' for the offence of stealing under both Sections 17(1)(a) of the Larceny Act 1916.

14.4. The property stolen must have been taken without the consent of the owner. In other words, it must be property belonging to another. Ordinarily, property is stolen from one who both owns and possess it by one who has no interest in the property whatsoever. Section 1(2)(iii) of the Larceny Act 1916 defines who the 'owner' of property could be as 'any part owner or person having possession or control of, or a special property in, anything capable of being stolen'. Property is regarded as belonging to any person having possession or control of it or having in it any proprietary right or interest. Viscount Dilhorne in *Lawrence Vs Metropolitan Police Commissioner (1972) AC. 626, 111*, said that the words 'belonging to another' simply means that at the time of appropriation, the property appropriated belonged to another person. It is my considered opinion that the basis of larceny is founded on 'possession in fact' that is, interference of another's property. I have said that the evidence as per the indictment and so far led before this court is that the moneys stolen were moneys which belonged to the Complainant, UBA.

14.5. Stealing requires an intention permanently to deprive the owner of his property. The mental elements required for a conviction of the offence of stealing includes:

- a. fraudulently;
- b. without a claim of right made in good faith;

- c. with intent at the time of such taking, permanently to deprive the owner thereof.

14.6. Doubts were cast in *R Vs. Williams (1953) 1 QB 660* with regards to the necessity for the use of the word 'fraudulent' as a requirement for *mens rea* for the offence of larceny. The question was asked in the said case whether the word 'fraudulently' adds any meaning to the *mens rea* requirement where it is also a requirement that a no claim of right made in good faith must be proven for a conviction on a charge of larceny. It was suggested that fraudulently amounts to dishonesty in much the same way as 'no claim of right made in good faith' will amount to dishonesty. It may be correct to say therefore that the word 'fraudulently' is superfluous.

14.7. The claim of right must be a claim of legal right not of moral right. See *Rose Vs. Matt (1951) 1 KB 810; (1951) 1 AER 361*. The taking away or appropriation of another's property will amount to stealing if it is done without a claim of right made in good faith, that is to say, the property was taken dishonestly and with an intention of permanently depriving the owner. Dishonesty suggests that the accused must have acted without a claim of right made in good faith.

14.8. There need not, of course, be any permanent deprivation in fact. There have been cases in which it has been held that temporary or limited deprivation of the owner can amount to larceny where the person who took and carried away really meant to treat the property as his own. See *R Vs. Manning (1852) Dearly 21*. The evidence in the instant case is that the accused unlawfully transferred monies from the Complainant's internal account into accounts to which he had links. The monies transferred deprived the owner, the Complainant herein of its money. The crucial fact remains that at the time of such transfers, the intention of the accused was to deprive the Complainant of its money.

15. Counts 2, 11, 12, 13, 14, 15, 16, 17, 21, 22, 24 and 26 relate to money laundering contrary to Section 15(2)(b) of the Anti-Money Laundering and Combatting of Financing of Terrorism Act, 2012. To succeed on the Section 15(2)(b) as charged therefore, the Prosecution must show beyond reasonable doubt that:

- a. The accused herein possessed, concealed, any property that is the proceeds of a crime
- b. The accused must know or must have reasonable grounds to believe that the property so possessed or concealed, is the proceeds of a crime.

15.1. The interpretation section of the Act describes proceeds of crime as '*any money or property that is derived, obtained or realized, directly or indirectly by any person by an unlawful activity*'.

15.2. The State's case as understood is that the Accused unlawfully transferred money which is the banks property into various accounts at the Plaintiff bank to which he is linked. The conduct of the Accused as alleged by the Prosecution is stealing; the unlawful taking of that which is not his without the consent of the

owner with the intention at the time of such taking permanently to deprive the owner thereof. I adopt my arguments above in respect of stealing. By Counts 2, 15, 16, 17, and 26, the State's case is that having unlawfully taken money which by the time of such taking will be the proceeds of a crime, the accused concealed the monies so unlawfully taken into separate accounts to wit: Accounts No. 540120680037312 in the name of Henrietta F. Kamara as in Exhibit N1 with the Accused directly linked as the next of kin with his telephone numbers as in Exhibit C1-32 inscribed thereon.

15.3. By Counts 11, 12, 13, 14, 21, 22, 24 and 26 of the Indictment the State's case is that having unlawfully taken money which by the time of such taking will be the proceeds of a crime, the accused possessed the monies so unlawfully taken by having them into separate accounts to wit: Accounts No. 540120520029783 in the name of Ansumana J. Kpange, the Accused herein as in Exhibit N13 with his telephone numbers as in Exhibit C1-32 inscribed thereon; Account No. 540420560000888 in the name of Emmanuel Kpange, a minor as in Exhibit N5 with the Accused directly linked as the next of kin with his telephone numbers as in Exhibit C1-32 inscribed thereon; Account No. 540120520031043 in the name of Abdulai G. O. Kpange as in Exhibit N18 with the Accused directly linked as he adds his name to the column titled 'Name (In Full)' showing he is a relative of the account holder. The address is the same as in Exhibit N13 and N5 and Account No. 540120680043234 in the name of Laurel Barlay as in Exhibit N14 with the Accused directly linked as the next of kin with his telephone numbers as in Exhibit C1-32 inscribed thereon. Possession in law, when it comes to offences of this nature would not necessarily mean physical possession; it could include legal possession.

15.4. If I were to accept the Prosecutor's case, it would mean that I accept that the Accused, having unlawfully taken money from the Plaintiff's inner account ensured he remained in possession of same by transferring the said moneys, which by this time, as said would be the proceeds of crime, into accounts to which he had links. What would be sufficient for proof of larceny would be the appropriation but with charges in the indictment under the Anti Money Laundering Act, the Prosecutor would need to show that the Accused possessed and/or concealed the moneys as referred above.

15.5. Having clarified the law as they relate to larceny and money laundering, I shall now look at the documentary evidence to determine that the money so allegedly stolen and/or laundered was indeed the property of the Complainant, UBA. Taking of these moneys will mean removal of the moneys from the internal account which they occupied and this will definitely amount to appropriation. If ownership and appropriation is proven, then I will still have to be convinced by way of documentary evidence that the Accused did possess or conceal the said moneys for proof of a Section 15(2)(b) offence and indeed for proof of a Section 17(1)(a) offence. For proof of these, I refer to Exhibit U1-46 in particular which according to PW3, he as Supervisor of the Accused did not approve and Exhibit P1-2. Exhibit U1-46 must show the source of the moneys. In other words, being an internal document, it must show that the moneys allegedly stolen and/or laundered by the Accused were in fact that of the United Bank of Africa and more

especially that the moneys were unlawfully taken from the internal accounts of the United Bank of Africa, as that is the evidence before this Court.

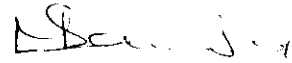
15.6. The months of the allegations as per the indictment are crucial for purposes of tracing in the instant case. as far as the Court is guided by Exhibit U1-46 there is nothing that has to do with February 2014 and March 2014 as charged in Counts 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Indictment. None of the monies in Counts 18, 19, 20,21 and 22 could be found in Exhibit U1-46.

15.7. I refer to Counts 23 and 24, which I note are charges for the same offence though in separate Counts. I refer to Exhibit U11, the 29th transaction from the bottom for the amount Le. 7,759,050.00 traced in Account No. 540420560000888 held by Emmanuel Kpange hereinbefore referred as in Exhibit P2. I refer to Counts 25 and 26 which I also note are charges for the same offence though in separate Counts. I refer to Exhibit U20, the 25th transaction from the bottom for the amount Le. 4,956,00.00 traced in Account No. 540120680043234 held by Laurel Barlay hereinbefore referred as in Exhibit P1. It could be recalled that PW3 told the Court in testimony that he never approved of Exhibit U1-46 but that he did approve Exhibit V1-21. Out of curiosity, I studied Exhibit V, the supposed internal bank account of the United Bank of Africa for the period April 2014 to April 2015 but saw no amount that could be linked to any of the suspicious accounts in Exhibit P1-2.

16. I have said that Counts 23 and 24 are of the same transaction and that Counts 25 and 26 are likewise of the same transaction. In light of the above, I therefore hold as follows:

- A. That the Accused, Ansumana Juma Kpange is guilty as charged in respect of Counts 24 and 26 in as much as they relate to money laundering and discharged on counts 23 and 25;
- B. The verdict on the rest of the Counts are as follows:
 - a. Counts 1-Not Guilty;
 - b. Counts 2-Not Guilty;
 - c. Counts 3-Not Guilty;
 - d. Counts 4-Not Guilty;
 - e. Counts 5-Not Guilty;
 - f. Counts 6-Not Guilty;
 - g. Counts 7-Not Guilty;
 - h. Counts 8-Not Guilty;
 - i. Counts 9-Not Guilty;
 - j. Counts 10-Not Guilty;
 - k. Counts 11-Not Guilty;
 - l. Counts 12-Not Guilty;
 - m. Counts 13-Not Guilty;
 - n. Counts 14-Not Guilty;
 - o. Counts 15-Not Guilty;
 - p. Counts 16-Not Guilty;
 - q. Counts 17-Not Guilty;
 - r. Counts 18-Not Guilty;

- s. Counts 19-Not Guilty;
- t. Counts 20-Not Guilty;
- u. Counts 21-Not Guilty;
- v. Counts 22-Not Guilty;



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Hon. Jst. Miatta M. Samba, J

Sentence: