

**IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN**

THE STATE

VS

MOHAMED OSMAN SESAY (Alias Assassin)

AND

DENNIS JONES

BEFORE THE HONOURABLE JUSTICE MLATTA MARIA SAMBA, J.
DATED THE 6TH DAY OF NOVEMBER 2017

Counsel:

Jilo M. Kainwo for the State

Emmanuel S. Abdulai Esq for the Accused

JUDGMENT

1. The Accused stands charged on an 8 Counts Indictment dated the 16th day of December 2015, for the following offences: of Conspiracy, contrary to Section 128(1) of the Anti-Corruption Act, No. 12 of 2008.

Count 1

Statement of Offence:

Conspiracy to commit a corruption offence, contrary to Section 128(1) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of No. 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone and DENNIS JONES a Media Practitioner of No. 3 Kolloh Lane, Portee, Freetown in the Western Area of Sierra Leone on diverse dates, between Monday the 4th day of May 2015 and Sunday the 31st day of May 2015, conspired together and with other persons unknown to deceive Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited into paying the amount of \$100,000 purportedly as fees for an international gateway license.

Count 2

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on Tuesday the 19th day of June 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a receipt for payment of USD108,000 purportedly signed by one Mohamed Bangura knowing the same to be false to the detriment of his principal.

Count 3

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on a dated unknown between Friday 11th day of July 2014 and Wednesday the 23rd day of July 2014, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a letter dated 11th July 2014 purportedly signed by Bakarr Tarawally, the Director of Communications of the Ministry of Information and Communications knowing the same to be false to the detriment of his principal.

Count 4

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on Thursday 23rd day of July 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a letter referenced "Letter of Invitation" purportedly signed by Alhaji Alpha Kanu, the Minister of Information and Communications, knowing the same to be false to the detriment of his principal.

Count 5

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on a dated unknown between

Friday 19th day of June 2015 and Tuesday the 23rd day of June 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving him a letter dated 19th June 2015 purportedly signed by Momoh Konteh, knowing the same to be false to the detriment of his principal.

Count 6

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on a dated unknown between Sunday the 25th day of January 2015 and Monday the 26th day of June 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a letter purportedly signed by Theo Nicol, the Deputy Minister of Information and Communications knowing the same to be false to the detriment of his principal.

Count 7

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on a dated unknown between Friday the 3rd day of July 2015 and Monday the 6th day of July 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a letter dated 3rd July 2015 referenced "Process for your invitation for international gateway" purportedly signed by Alhaji Alpha Kanu, the Minister of Information and Communications knowing the same to be false to the detriment of his principal.

Count 8

Statement of Offence

Deceiving a Principal, contrary to Section 40(3) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence:

MOHAMED OSMAN SESAY (Alias Assassin) of 83 Bass Street, Freetown in the Western Area of the Republic of Sierra Leone on a dated unknown between Monday the 26th day of January 2015 and Monday the 2nd day of March 2015, at Freetown in the Western Area of the Republic of Sierra Leone, being an agent deceived his principal Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited by giving the said Dominic Anselm Joseph Beary a letter

dated 2nd March 2015 referenced “ Public notice to all operational and non-operational companies” purportedly signed by Alhaji Alpha Kanu, the Minister of Information and Communications knowing the same to be false to the detriment of his principal.

2. On Wednesday, the 23rd day of September 2015, the Prosecutor made an application to the Court which was not objected to by Counsel for the Accused, that a separate trial be conducted for the 2nd Accused who according to the Prosecutor, could not be served with his Indictment as he could not be located by the Anti-Corruption Commission. He made his application pursuant to Section 148(3) of the CPA, 1965, Act No. 32 of 1965 that the Court proceeds with the trial of the 1st Accused in the circumstance. Counsel’s application was granted. All 8 Counts were put to the Accused on Wednesday, 23rd day of September 2015 to which he pleaded ‘not guilty’.

2.1. On file is a Fiat dated 16th September 2015 under the hands of the then Commissioner of the Anti-Corruption Commission, Joseph Fitzgerald Kamara authorizing Counsel stated thereon to prosecute this matter. on an application made pursuant to Section 144(2) of the Criminal Procedure Act of 1965 as amended by Section 3 of the Criminal Procedure Amendment Act, 1981, this matter was tried by Judge alone instead of by Judge and Jury.

2.2. A final address for the Prosecution was filed on the 23rd day of June 2017. Counsel for the Accused submitted an address on the 2nd day of November 2017. 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 an accused person. I shall now proceed to evaluate the evidence and the law before me.

Burden and Standard of Proof

3. 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; those which have been reported 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. Those not reported include *The State Vs. Francis Mohamed Fofanna Komeh and John Mans* (unreported); *The State Vs. Hamzza Alusine Sesay & Sarah Finda Bendu* (unreported); *The State Vs. Philip Conteh & Two Oths* (unreported) *The State Vs. Philip Lukulay* (unreported) and *The State Vs. Aliou Sesay & Four Oths* (unreported). 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.

Brief facts of the allegations against the Accused:

4. The Prosecution's case is that the Accused being an agent for one Dominic Beary, who the Prosecution says is the Accused' Principal, conspired with one Dennis Jones and other unknown persons to deceive the said Principal who, as a result of their deceit, spent moneys worth \$800,000 supposedly as fees for an International Gateway Licence for a company, Network Proximity (SL) Limited and other related expenses. The Prosecution also allege that the Accused sent several letters and other correspondence to the said Beary, which he, the Accused, knew were false; that believing the said correspondence to be true, Beary paid monies into the company account which were withdrawn by the Accused and used for purposes unconnected with the legitimate operations of the company, Network Proximity (SL) Limited.

4.1. The case for the Accused is that there is no Principal/Agent relationship between himself and Dominic Beary and that as far as he, the Accused is concerned, he is a co share holder in the company, Network Proximity (SL) Limited. The Accused person's position is that he did not conspire with Dennis Jones or anyone to deceive the said Beary; that in any event, himself, the Accused and the said Beary not being public officers and the company, Network Proximity (SL) Limited, not being a public office and there being no public funds involved, the Anti-Corruption Commission has no jurisdiction to try the Accused on the allegations as charged. I shall address Counsel's submissions as he has captioned them in his final address which I must state are basically what he raised in his no case submission before this Court for which a ruling dated the 8th day of July 2016 was delivered by this Court in which this Court held that the Prosecution proved a *prima facie* case in respect of Counts 1, 2, 3, 5 and 6 of the Indictment hereinbefore referred. This judgment will therefore be in respect of concerns raised by Counsel for the Accused and the said Counts 1, 2, 3, 5 and 6 of the Indictment.

Lack of Subject Matter Jurisdiction

5. Counsel for the Accused, argues that the Anti-Corruption Commission lacks the jurisdiction to charge the accused under Section 40(3) of the Anti-Corruption Act No. 12 of 2008 because according to Counsel, the Commission was created with an objective to address corruption, generally involving public officials and not transactions involving two private individuals.

5.1. I refer to paragraph 7 of Counsel for the Accused' Final Address where he points out that 'the Anti-Corruption Commission can only charge cases that fall within the powers conferred on it by the Anti-Corruption Act of 2008'. Counsel referred the Court to the definition of 'corruption' under the interpretation section of the Act but concludes that the matter before this Court has nothing to do with a public officer in so far as the parties referred to therein are private individuals and that the Commission therefore lacks the power to charge the Accused, him being a private individual, with a corruption offence. I refer to Section 7 of the Act which sets out the objects for which the Anti-Corruption Commission was created and state that Parliament did not shy away from setting out the objects for which the Commission was created. In the whole of that section, Parliament did not for once suggest that the Anti-Corruption

Commission should only combat corruption in public service. I refer to Section 7.2(r) and state that the definition of corruption includes acts of dishonesty under any enactment.

5.2. The Anti-Corruption Act No. 12 of 2008 is 'replete' with offences that are applicable to private individuals. Section 40(3) of the Act appears to me to be very much unambiguous as to an agent and a principal not necessarily being a public official. The Anti-Corruption Act is quite specific in its reference to people liable under its provisions. It is clear from the Act, read as a whole, that where the intention is to refer to public officers in certain sections, it says so specifically. See Sections 38(1), 42(1), 43, to name a few, which requires the Prosecution to prove that the accused is a public officer. When the Act refers to persons who may not necessarily be public officers or have any dealings with public officers, the Act also makes specific references to such persons as in Sections 40, 41(1) and 128(1) of the Act to name a few. When the Act requires proof of corruption offences by non-public official directed at monies meant for the public good, it is also clear in that respect. See Section 36(1) and (2) of the Act.

5.3. The Court agrees with Counsel for the Accused that the parties involved in the matter herein to wit, the Accused and PW 7 are not public officials. The Court also agrees that the company, Network Proximity (SL) Ltd is not a public body within the definition section of the Anti-Corruption Act No. 12 of 2008. It is also agreed that no public funds or public revenue as defined by the interpretation section of the Anti-Corruption Act No. 12 of 2008 was involved in the matter herein. Of importance however is the fact that the Anti-Corruption Act No. 12 of 2008 is a specific Act designed to curb corruption. It therefore provides for offences to be charged under its ambit, inclusive of Section 40(3) of the Act for which an agent, as described in Section 39(5) of the Act can be prosecuted by the Commission where he commits an offence as in Section 40(3) of the said Act. It is therefore the considered opinion of this Court that the Anti-Corruption Commission has powers to prosecute the Accused for alleged corruption offences as appear under Sections 40(3) and 128(1) of its Act of 2008.

Principal-Agent Relationship

6. The Act clearly defines who a Principal and an Agent is in respect of the offences under the Act. By Sections 39(5) and 40(3) (under which the Accused was charged), the words:

- a. "agent" means a person who in any capacity and whether in public or private sector, employed by or acts on behalf of another person;
- b. "principal" means a person, whether in the public or private sector who employs an agent or for whom or on whose behalf an agent acts.

6.1. The evidence before the Court is that the Accused, before this action was instituted, did errands as directed by PW7 and PW2. The Accused told the Court that PW7 approved of most of what he did and that the only thing he did not have to have an approval to do was withdrawal of funds from the company account. PW7 identified the Accused as someone introduced to him by John

Mason, PW2. He said in 2011, he approached PW2 in respect of opportunities of investments in telecommunications Licenses in Sierra Leone. PW2 was sent to Sierra Leone to check on this said opportunity. PW7 said he first spoke to the Accused in March 2014 and first met him in July 2014. He spoke to the Accused, he said on telephone numbers 08864544 to which and from which he made and received calls. He told the Court that the nature of his telephone conversation with the Accused was in respect of the Accused acting on behalf of the company in pursuit of telecommunications Licenses PW2 and PW7 wished to obtain.

6.2. PW2 told the Court that he got to know the Accused in 2013 when he was introduced to him by one Ibrahim Conteh in Sierra Leone. Having promised to assist in getting a Licence for an international gateway, the witness introduced the Accused to PW7 who lived in the United Kingdom on the phone. PW2, with the help of the Accused, registered the company, Network Proximity (SL) Limited on the advise of Abubakarr Tarawally, the Director of Communications at the Ministry of Communications.

6.3. PW7 told the Court that the Accused was asked to do a lot of ground work in preparation for the company's wish to purchase the International Voice Gateway Licence. He said during the months of March and July 2014, the Accused organized meetings for himself and PW2 with stake holders, assisted with setting up of a local company and finding out the processes involved for obtaining Licenses for which he said he paid the Accused, who he referred to as an agent, transport cost as well as other expenses. He said the Accused acted on his behalf representing the company they had formed. PW7 told the Court that the shares given to the Accused was part of his remuneration for helping with the operations of the company as he was not on any monthly salary. He said he did not consider the Accused being a Partner when he signed the company's Memorandum and Articles of Association.

6.4. The Accused told the Court that PW2 approached him and asked that he assists him with setting up a company in Sierra Leone. He said he got to know PW7 when PW2 introduced him to PW7 because PW2 wanted him, the Accused to be business partners with PW7. If that was the intention of PW, it would have been for him to say so to the Court and not the Accused. He told the Court that PW2 wanted him to use his influence and secure a Licence for a telecommunications business. His role, he told the Court, was to ensure the business was registered and to arrange meetings with government officials as requested especially when ever PW7 was in Sierra Leone, which he did.

6.5. The Accused further told the Court in re examination, that his reference to PW2 as his boss in cross, was based on the consideration of shares they each held in the company. The point the Accused tried to make is that he is Partners with PW2 and PW7. It is clear from the Accused person's testimony that aside withdrawing moneys from the company account as he deemed fit, all he did in respect of the company was as instructed.

6.6. The evidence is clear based on the definition of a "Principal" and an "Agent" in Section 39(5) of the Act, that the Accused was given a 5% share of the

business so that he can act on behalf of PW7, the financier of the company, to whom he, the Accused had been introduced by John Mason, the third share holder. In light of that understanding, the Accused was asked to help with the registration of the company in Sierra Leone, fixing of meetings for both John Mason and Dominic Beary with key stakeholders in respect of obtaining a licence for the company. Mason told the Court in testimony that Beary it was who financed the company. It is clear to the Court that though the Accused held a 5% shares in the Network Proximity (SL) Limited company, he acted on behalf of PW7, the Principal in the instant case. There is no doubt on my mind that the Accused herein was an Agent and PW7, the financier of the company, his Principal.

Element of Deception Unproven

7. Counsel for the accused submits that the Prosecution has not shown any element of deception in its case as required for an offence as that under Section 40(3) of the Anti-Corruption Act No. 12 of 2008. He claims the accused acted in good faith while serving the company and made only payments authorized by the company's Directors. He relied on the case of *R Vs. Ghosh* (1982) 75 CR App. R. 54.

7.1. The Court of Appeal in the *Ghosh* case established a dishonesty test that applies both to theft and to other offences of dishonesty. According to Ghosh, a two prone test must be applied. A jury must first be directed to 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 is the end of the matter and the prosecution fails.

7.2. If (but only if) the accused conduct was dishonest by those standards, the jury must consider the second question, which is:

... whether the Defendant himself must have realized that what he was doing was (by the standards of reasonable and honest people) dishonest.

7.3. The first part of the *Ghosh* test deals with the *actus reus* of the accused while the second limb deals with the *mens rea* of the accused. The Court of Appeal in the *Ghosh* case gave further explanation of the second question when it said:

In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the Defendant himself knew that he was acting dishonestly. 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.

7.4. The Prosecution's allegation is that the Accused was deceptive in his conduct with his Principal. The Prosecution's case is that based on the evidence led and documents sent to the Principal, which, according to the Prosecution, the Accused knew were wrong or misleading, the Principal PW 7 believing the said documents to be true, acted on same to his own detriment by transferring

monies into the company account at Guarantee Trust Bank which said monies were withdrawn and transferred by the Accused for his own benefit. The following among other documents were forwarded for the attention of PW7 came out in evidence:

7.5. The Accused sent Exhibit H1 attached to an email, Exhibit BBB1 to PW7 to convince PW7 that there was need to show Network Proximity (SL) limited was not insolvent. PW7 said receipt of Exhibit BBB1 and H1, gave him confidence that the request was valid so he released a total sum of \$110,000/00 into the company account, he said on 25th May 2015 as in Exhibit E15.

7.6. Exhibit EE1 attached to which was Exhibit N1-4, a draft Memorandum of Understanding on a GoSL letterhead, sent by the Accused to PW7, purportedly signed by Theo Nicol, the then Deputy Minister of Information and Communications who denies signing the said document. Exhibit M on a NATCOM letterhead dated 19th June 2015 titled 'Receipt of Payment/Renewal of NRA tax and Update of NASSIT', purportedly signed by Momoh Conteh. The only Momoh Konteh of NATCOM during the period under consideration is the present Chairman who denies the signature on Exhibit M. Exhibit CCC1, an email with Exhibit K1-2 dated 11th July 2014, on a GoSL letterhead, purportedly written by Bakarr Tarawally, Director of Communications at the Ministry of Information and Communications, attached and sent by the Accused to PW7. Tarawally denies the signature on Exhibit K1-2 and disclaimed authorizing anyone to prepare Exhibit K1-2 on his behalf. Exhibit J, on a NATCOM letterhead is a receipt of payment of \$108,000/00 dated 3rd March 2015, purportedly signed by Mohamed Bangura, the then Director General of NATCOM during the period concerned. Bangura denies his signature on Exhibit J. The evidence is that the Accused presented Exhibit J to PW2 who was assured the \$108,000/00 was paid to NATCOM on behalf of Network Proximity.

7.7. The Prosecution's case as is understood is that PW7 sent monies into the company account at the Guarantee Trust Bank in Sierra Leone the assurances he received directly and/or indirectly from the Accused supported by the exhibits herein referred forwarded for the attention of PW7. It is for the Court to determine whether the Accused was dishonest in his dealings with his Principal. Should it be the position as the Prosecution puts it, that the Accused person's intention was clearly to deceive PW7 into sending monies to the detriment of the PW7, then the element of deceit as required would have been proven by the Prosecution.

Charges

8. Section 128(1) of the Anti Corruption Act, Act No. 12 of 2008 reads:

Any ... conspiracy to commit a corruption offence ... shall be punishable as if the offence had been completed and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

8.1. As per E.E. Roberts, J.A, as he then was, now JSC, in the case of *The State Vs. Alphafor Y. Bah et al* (unreported), Paul, J in the case of *The State Vs. Solomon*

Hindolo Katta & Oths (unreported), in the case of *The State Vs. Mustapha Amara & Others* (unreported), Section 128(1) of the Anti-Corruption Act of 2008 (hereinafter referred to as the Act), creates the offence of conspiracy. The side notes of Section 128 of the Act names the offence of conspiracy and sets out the alternative ways in which it could be committed, including the punishment it would attract. Conspiracy is a common law offence made statutory by Section 128 of the Act. The term 'conspiracy' describes the offence of conspiracy to commit an offence contrary to Section 128(1) of the Act.

8.2. For the Prosecution to succeed on a charge of conspiracy, it must prove beyond reasonable doubt that there was:

- a. an agreement between two or more persons
- b. an agreement to commit a corruption offence.

8.3. Section 40(3) of the Anti-Corruption Act No. 12 of 2008 provides that:
An agent who, to the detriment of his principal, uses, or gives to his principal, a document that he knows contains anything that is false or misleading in any material respect commits an offence.

8.4. For the Prosecution to succeed on a Section 40(3) of the Anti-Corruption Act charge, it must prove beyond reasonable doubt that:

- a. there exists an agent/principal relationship.
- b. the agent must have used or given a false or misleading document to his principal
- c. the agent must know that the said document so given or used is false or misleading in a material respect.
- d. the principal must have acted on the said document so used or given him to his detriment.

Count 1

9. PW1 tendered Exhibits R1-6 and H attached to Exhibit BBB1, an excerpt of Exhibit R from the Salone Champion newspaper, to the Court. PW7 told the Court that the Accused asked him to pay \$100,000 as security to the GoSL to prove Network Proximity (SL) Limited was solvent. He said he had his doubts about payment of \$100,000 to prove solvency but that when he received Exhibit H1 with Exhibit H attached from the Accused, he believed the request for payment of \$100,000 was authentic. He asked PW2 to confirm Exhibit BBB1 was a publication in the Salone Champion's newspaper of 4th May 2015, which PW2 confirmed. Receipt of Exhibit BBB1 with Exhibit H1 attached, he said, gave him confidence that the request was valid so he transferred the \$100,000/00 as requested by the Accused into the company account, he said. He transferred a total sum of \$110,000 on 25th May 2015 as in Exhibit E15. The extra \$10,000/00 was for payment of late fees as he had been informed by the Accused and for extra expenses.

9.1. In his defence, the Accused told the Court that he sent Exhibit H1, the news paper article to PW7. He denied conspiring with Dennis Jones or anyone to

deceive PW7. He said he bought the news paper, took same to PW2 who asked him to send it to PW7. I have no reason to believe this piece of evidence in respect of Exhibit H1. PW2 started his testimony before the Court on the 30th day of September 2016 and concluded on the 23rd day of October 2016. He was cross examined by Counsel for the Accused. Even if it is accepted that the Accused was not questioned in respect of Exhibit H1 at the ACC as he says Exhibit H1 was already part of the evidence before the Court when PW2 and PW7 testified. Through out the cross examination conducted on behalf of the Accused, it was not suggested to PW2 that he, PW2 it was who instructed the Accused to email Exhibit H1 to PW7. He had the option of recalling PW2 for further cross examination and for him to suggest to PW2 that he in fact advised that he emails and send Exhibit H1 to PW7 but no such application was made before this Court. The Court considers this defence an after thought.

9.2. Counsel for the Accused person argues that the prosecution has failed to prove that there was any agreement between the Accused and any other person to commit a corruption offence as in Count 1 of the Indictment. It must be noted that with the offence of conspiracy, the evidence required need not include evidence of some tacit agreement on the part of the alleged conspirators to commit any crime. It is enough that it can be safely inferred that the role of each of the alleged conspirators show that they were part of a larger scheme which resulted in the Principal in the instant case loosing money. In other words, if the alleged conspirators agreement is carried out in accordance with their intention, it will amount to or involve the commission of any offence or offences by one or more of them. Such agreement can, as said be inferred; it need not be specifically proven. The evidence that must be adduced by the Prosecution is the role played by each of the alleged conspirators showing that they were in fact part of the enterprise which resulted in the commission of the corruption offence.

9.3. Proof of *mens rea* is important in proving the offence of conspiracy much as is in proof of any other crime. It was held in *R Vs. Griffiths* (1966) 14 B 589 that for an offence to be complete, the Defendant must adopt a criminal design as their common purpose. The Prosecution must prove that the Accused had in mind a common design or purpose and did certain criminal acts in pursuance of this purpose. With conspiracy, proof of *mens rea* is found in the Accused' willingness to perform his own part of the plot. The Accused may know full well that the entire enterprise would involve the commission of offence(s) by one or more of the conspirators. Lord Bridge in *R Vs. Anderson* (1986) AC. 27 H.L said: "*The necessary mens rea of the crime in my opinion is established if it is shown that the Accused when he entered into the agreement intended to play some part in the agreed course of conduct in pursuance of the criminal purpose which the agreed course of conduct was intended to achieve, nothing less will suffice, nothing more is required*". Archbold at para 4075 of its 36th Edition says, the Prosecution need not prove that a party to the conspiracy had knowledge of the illegality of the acts to be done. Where proof is available however, *R Vs. Siracusa* 90 Cr. App. R. 340, (cited favorably in Archbold 2001 Edn p 2641) says it is sufficient that the Accused knew that there was going to be the commission of some offence.

9.4. Aside Exhibit H1, a lot of other documents were allegedly sent to PW1 with one intention which the Prosecution says was for PW7 to transfer funds to the company account in Sierra Leone which said funds the Accused admits to have withdrawn solely. All such documents point to one direction, which was to get PW7 to believe in the legitimacy of the Accused paying for obtaining an International Gateway Licence which said Licence, the Court understands was monopolized by SIERRATEL, the State institution, at the period under consideration. The evidence before this Court is that upon receipt of Exhibit H1, and upon confirmation by PW2 that indeed, Exhibit H1 was published in the Salone Champions newspaper, PW7 transferred \$110 into the company account, some of which was withdrawn and some transferred by the Accused into the account of Mohamed Koroma, which said transfer I shall touch on subsequently, with no authentic receipt presented as to how these moneys were spent.

9.5. DW2 was Dennis Jones. Though he admitted he authored Exhibit H1, he denied conspiring with the Accused to deceive Dominic Beary; he had a telephone transaction with the Accused some time back, he told the Court but did not receive the information in Exhibit H1 from the Accused. The Accused was clear in his testimony to the Court that DW2, Dennis Jones did not conspire with him to deceive PW7 by publications of Exhibit H1. The evidence before this Court though, including the documentary evidence, taken in its entirety points in one direction, showing intent on the part of the Accused and agreement as inferred therefrom together with other person(s) to get funds off PW7 by agreement to publish and bring Exhibit H1 to the attention of PW7 who acted on same to his own detriment.

Count2

10. PW1, the ACC investigator tendered Exhibit J on a NATCOM letter head which he said was evidence given to him by PW7 during the course of his investigation, same dated 3rd day of March 2015 purportedly signed by the Director General of NATCOM for payment of \$108,000/00 supposedly paid by deposit in the Sierra Leone Commercial Bank on the 26th day of February 2015. PW2 told the Court that Exhibit J, letter dated 3rd day of March 2015, titled, 'Receipt of Payment', purportedly written by Mohamed Bangura, the Director General of NATCOM, was shown to him by the Accused who then told him that monies have been paid to NATCOM and that the Accused asked that he, PW2 forwards same to PW7.

10.1. PW6 was Mohamed Bangura who during the period under consideration was Director General of NATCOM. He referred to Exhibit J dated 3rd March 2015 on a NATCOM letterhead which the Commission, he said, stopped using in 2013, addressed to the Managing Director, Network Proximity (SL) Limited. He referred to the name Mohamed Bangura at the bottom of Exhibit J and denied the signature thereon and denied authoring Exhibit J. He told the Court that NATCOM is responsible for granting of Licenses and that up to the date he left NATCOM on 25th March 2015, SIERRATEL still had a monopoly over the International Gateway. He said as Director General then, he will know when applications are made for Licenses and because he was one of the signatories to Licenses, he will know when Licenses are granted. He said during his period at the Commission, between 2011 and 25th March 2015, NATCOM received no

application for International Gateway Licence from Network Proximity (SL) Limited nor did NATCOM grant Network Proximity (SL) Limited any Licence for International Gateway.

10.2. In answer to questions put to him in cross examination, PW6 told the Court that receipts issued as of 10th October 2014 was the responsibility of the Corporate Secretary. He reiterated that Network Proximity (SL) Limited never made an application for an International Gateway Licence. PW6 told the Court that an application fee must be paid to any of the banks, FIB, UTB, SLCB, RCB, before an application is made to NATCOM. He said as of May 2014, no fee had been established for International Gateway Licences. He said he cannot recall whether Network Proximity made payments for Internet Service Provider Licence nor could he recall the fees for Internet Service Provider Licences for the month of May 2015.

10.3. In respect of Exhibit J, the witness said there is nothing on Exhibit J to show that his Deputy who was authorized to sign documents on his behalf in his absence, signed Exhibit J on his behalf and that in any event, the letter used is one which was no longer in use since 2013; even the website used is an outdated one, he told the Court. He said when payments are made for Licences generally, he will as Director General be copied in the letter forwarding the receipts. He tendered Exhibit YY1-3, Exhibit YY1 being a cover letter dated 6th June 2014 signed by Mohamed Bangura, ie, the witness himself, Exhibit YY2, a receipt of payment of Le. 4,345,000/- equivalent to \$1,000 then, an application fee for an ISP Licence. He said Exhibit YY3 is a bank deposit slip which authenticity he cannot confirm. It is worthy of note that the payment referred was in respect of Internet Service Provider's Licence, not an International Gateway Licence.

10.4. PW7 was Dominic A. Beary. He referred to Exhibit J, a document purportedly from NATCOM confirming payment for International Gateway Licence fees of \$108,000/00 sent the witness by PW2. He said immediately he received Exhibit J from PW2, he received a follow up call from the Accused to ensure he received Exhibit J. He said he made payments as in Exhibit J by transfer of moneys into the company account at Guarantee Trust Bank. He referred to Exhibit E5, dated 21st January 2015 when he transferred \$30,000/00 into the company account at Guarantee Trust Bank. He referred to Exhibit E7 dated 4th February 2015 when he transferred \$56,970/00 into the company account at GTB. He referred to Exhibit E8 dated 15th February 2015 when he transferred \$61,075/00 into the company account at Guarantee Trust Bank.

10.5. In his defence, the Accused told the Court that it was PW2 who informed PW7 about the Licence fees after which, according to him, he went to the bank and withdrew \$108,000/00 in bits from the company account. The Accused never suggested this to PW2 or PW7 when they testified by way of cross examination. He said as he withdrew the monies, he gave same to PW2 as per the instructions of PW2 and PW7. He said PW2 was supposed to use the moneys he paid to him for purchase of Licence, on behalf of the company. He said he saw Exhibit J only when he was taken to the Anti-Corruption Commission and that he was not the person who gave Exhibit J to PW2. Even if the Accused was not

questioned about Exhibit J at the Anti-Corruption Commission Exhibit J was in evidence before PW2 testified and the Accused was in Court when PW2 testified as to Exhibit J. PW2 started his testimony before the Court on the 30th day of September 2016 and concluded on the 23rd day of October 2016. He was crossed examined by Counsel for the Accused. As said, Exhibit J was already part of the evidence before the Court. Through out the cross examination conducted on behalf of the Accused, it was not suggested to PW2 that he, the Accused paid monies he collected from the company account to PW2 nor did he suggest to PW7 when he testified that he in fact withdrew those moneys as per the instructions of PW7. The evidence rather before this Court by the Accused himself is that he, the Accused withdrew moneys from the company account as he deemed fit; he said he did not need authorization from PW7 or PW2 because as far as he was concerned, they were Partners. In fact, that was the main area where he told the Court he needed no authority to act. The Accused also had the opportunity to recall PW2 and PW7 for further cross examination where he could have made the said suggestion to them but no such application was made. The Court considers this defence an after thought.

Count 3

11. PW1 tendered Exhibit K1-2, a letter dated 11th day of July 2014 written on a government letterhead, supposedly written by Bakarr Tarawally, Director of Communications. PW4 was Bakarr Tarawally, who is the Director of Communications at the Ministry of Information and Communications during the period under consideration. He said in 2014, the Accused and one Mr. Mason visited his office and sought advice on becoming a Gateway Controller and an Internet Service Provider which said advice he said he gave them. Tarawally told them the International Gateway Control is monopolized by SIERRATEL and that they should liaise with NATCOM for a Licence for an Internet Service Provider.

11.1. PW4 was referred to Exhibit K1-2 dated 11th July 2014. He said that as at the date 11th July 2014, he was the Director of Communications at the Ministry of Information. He was referred to the bottom page of Exhibit K2 with his name Bakarr Tarawally and his status, Director of Communications with a signature, which he denies; he also denies authoring Exhibit K1-2; he said he gave no one instructions to prepare Exhibit K1-2 on his behalf.

11.2. PW7 tendered Exhibit CCC1, an email he received from the accused with Exhibit K1-2 attached and Exhibit DDD1 also attached to the same email.

12. In his defence, the Accused referred to Exhibit B10, answer to question 33 and told the Court that Exhibit K1-2 was the first document given to him by PW2 with instructions that he forwards same to PW7. Again, I have no reason to believe this piece of evidence re Exhibit K1-2. PW2 started his testimony before the Court on the 30th day of September 2016 and concluded on the 23rd day of October 2016. He was crossed examined by Counsel for the Accused. Exhibit K1-2 was already part of the evidence before the Court. Through out the cross examination conducted on behalf of the Accused, it was not suggested to PW2 that he, PW2 it was who instructed the Accused to email Exhibits K1-2 to PW7.

The Accused also had the opportunity to recall PW2 for further cross examination where he could have made the said suggestion to PW2 but no such application was made. The Court considers this defence an after thought.

Count 5

13. PW1 tendered Exhibit M, again given to him by Beary, a letter on NATCOM letter head, dated 19th day of June 2015 with the caption "Ref: Receipt of Payment, Renewal of NRA tax and update of NASSIT", purportedly signed by Momoh Konteh. PW2 referred to Exhibit M and told the Court that the Accused called him on his phone and told him to expect a courier of documents from NATCOM. He said upon receipt of Exhibit M, he called the Accused and acknowledged receipt. Upon instructions given him by the Accused, he forwarded Exhibit M to Mr. Dominic A. Beary.

13.1. The Chairman of NATCOM, PW8, told the Court that he does not know any company named Network Proximity (SL) Limited. He referred to the name Momoh Konteh at the bottom of Exhibit M and denied him being the author or signatory of Exhibit M. He referred to Exhibit H1 and told the Court that NATCOM is solely responsible for the granting of Licences. He said it is not to his knowledge since he assumed office as Chairman and Commissioner that Network Proximity (SL) Limited ever applied for Licence.

13.2. In answer to questions put to him in cross examination, the witness told the Court that he knows for a fact that Network Proximity (SL) has never applied for a Licence for International Gateway as he has never been notified of such nor has he ever seen the company's name in the Commission's data base. He was referred to Exhibit YY1-3 which he says he cannot comment on since he does not deal with receipts nor can he tell whether the logo on Exhibit YY1-3 is an authentic logo.

13.3. In re examination, he referred to the date of Exhibit YY1-3 as 6th June 2014. It is worthy of note that Exhibit YY1-3 is a purported receipt of payment for Tia 1 Internet Service Provider 2014 Licence and not an International Gateway Licence.

Count 6

14. PW1 tendered Exhibit N1-4, an undated Memorandum of Understanding purportedly signed by Theo Nicol as Deputy Minister of Information and Communications. PW2 referred to the said Exhibit N1-4, he told the Court was shown him by the Accused; he said he was pleased at seeing Exhibit N1-4. PW2 told the Court that Exhibit N1-4 was given to him by the Accused sometime in 2014 at his residence. He said Dominic Beary visited Sierra Leone in July 2014 and September 2015 and that the purpose of Beary's second visit was to sign an agreement for an International Gateway Licence. He said on Beary's second visit they did not go to NATCOM to sign the said agreement because that which they were led to believe was not happening.

14.1. PW5, Theo Nicol was referred to Exhibit N1-4 an undated document on a GoSL letterhead, titled, "Draft Memorandum of Understanding", from Network

Proximity (SL) Limited. He referred to a stamp and a name, "Theo Nicole, Deputy Minister of Information and Communications" and told the Court that his surname was 'Nicol' and not 'Nicole' as appear on Exhibit N1-4. He denied the signature on the document as his and said the stamp and letterhead are not ones used by the Ministry. He said the International Gateway was only liberalized in November 2015. He said he would, as Deputy Minister of information and Communications be aware if any International Gateway Licence is granted to any company and that no International Gateway Licence was granted to any company, not even Network Proximity (SL) Limited, before November 2015.

14.2. In answer to questions put to him in cross examination, PW5 told the Court it is the function of NATCOM to grant Licenses but that the Ministry will know when Licenses are issued by NATCOM because the Ministry will be copied. PW5 told the Court that he kept telling the Accused when he visited his office that liberalization of the International Gateway had not been effected. He said he does not know where Exhibit N1-4 came from and that at no point did he discuss documents having to do with a Memorandum of Understanding as in Exhibit N1-4 with the Accused and at no point did he receive thanks from Mr. Mason for Exhibit N1-4 as suggested by Counsel for the Accused.

14.3. PW7 tendered Exhibit EEE1 to which he said was attached Exhibit N1-4, which he told the Court he received from the Accused.

14.4. In his defence, the Accused told the Court that Exhibit N1-4 was given to him by PW2 to forward to PW7. Again, I have no reason to believe this piece of evidence re Exhibit N1-4. PW2 started his testimony before the Court on the 30th day of September 2016 and concluded on the 23rd day of October 2016. He was crossed examined by Counsel for the Accused. It is noted that Exhibit N1-4 was already part of the evidence before the Court at the very beginning of this trial. Through out the cross examination conducted on behalf of the Accused, it was not suggested to PW2 that he, PW2 it was who instructed the Accused to email Exhibits N1-4 to PW7. The Accused also had the opportunity to recall PW2 for further cross examination and for the Accused to suggest to PW2 that he it was who asked him to forward Exhibit N1-4 as an attachment to PW7 but no such application was made. The Court considers this defence an after thought.

14.5. It interests the Court that when it comes to the argument that the Accused is or is not an Agent, the Accused's position is that he did not take instructions from PW2 the majority shareholder of the company hereinbefore referred nor PW7, the main financier as per evidence before this Court but in his defence to forwarding of certain documents to PW7, the Accused tells the Court that he acted on the instructions of PW2, his boss, as he referred to him. The same is the position in respect of transfer of \$50,000/00 into the account of Mohamed Koroma. The Accused told the Court that he was instructed by PW7 to make the said transfer when in fact he had told the Court that he did not have to be authorized to deal with the company account at the Guarantee Trust Bank.

The Guarantee Trust Bank

15. The signatory page as in Exhibit F96-99 gives the Accused, PW2 or PW7 to withdraw funds from the company account. I take note of PW7's concern but the view of the Court is that indeed, all parties were present when the mandate card was signed by all parties especially in light of averments made by PW2 that this was the position because the parties considered the possibility of need of money in respect of the company's operations, in the absence of either PW2 or PW7 who have residency in the United Kingdom. The Accused has not denied withdrawing the monies from the company account at the Guarantee Trust Bank. There is therefore no need to go into witness' testimonies and bank documents to show appropriation of these moneys. As far as the Court understands it, the Accused' position is that he withdrew these moneys, not on the instructions of PW2 or PW7 but as he deemed fit supposedly for the operations of the company.

The International Gateway Licence

16. PW3 was Musa Nurr Kamara Esq, Director of Legal & Licensing Affairs at NATCOM where he has worked since 2009. He told that Court that the Legal and Licensing Sub-Committee of NATCOM is charged with the responsibility of looking into Licenses submitted to the Commission either by Operators or Internet Service Providers, among other functions.

16.1. He said the International Gateway Licence regime was created by NATCOM to grant Operators to own, install and operate international gateway facilities and services. He said the International Gateway Licence was effected in May 2015 and that before that date, no Operator was allowed to own, install or operate international gateway services which was by then vested in only SIERRATEL, the State owned Operator. Kamara told the Court that the monopoly was terminated by the Telecommunications Amendment Act 2015 and that the Commission began receiving applications just two weeks before his testimony to the Court, this testimony is supportive of the testimonies of PW5 and PW6 to the effect that the International Gateway Control was monopolized by SIERRATEL during the period under consideration.

16.2. PW3 told the Court that the Commission never received an application for an International Gateway Licence from Network Proximity (SL) Limited and that no Licence for the said service was granted to the said company or to any other company other than AFRICELL and IPTEL at the date of his testimony.

16.3. In answer to questions put to the witness in cross examination, he reiterated his role and responsibility at NATCOM and told the Court that he is a member of the sub committee which makes recommendations to the Board as to whether an applicant has met all the requirements for the granting of Licenses. He said he does not recall having a meeting with the Accused, PW2 and Dominic Beary in the Commission's conference room, as suggested by Counsel for the Accused. He said all meetings in respect of International Gateway Licenses are formal and recorded. He told the Court that there is a data base at NATCOM of all licensees and pending applications. He said he will provide a list of applications received in respect of the provision of International Gateway Service between May 2015 to his date of testimony.

16.4. PW3 tendered Exhibit XX1-11 for the period May 2015 to November 2015 and reiterated that, he is not aware of any application by Network Proximity (SL) Limited for an International Gateway Licence; he said he will know if Network Proximity made an application to the Commission for the said Licence. The witness told the Court that the Licence fees are paid to Commission's bankers including GTB, Sierra Leone Commercial Bank to name a few. He told the Court that when payments are made in the Commission's bank accounts, NATCOM issues receipts upon presentation of a bank payment slip. PW3 reiterated that for a major Licence like an International Gateway Licence, the moment an application is sent to NATCOM, that application will be forwarded to his department for his attention.

Further Withdrawal/Transfer by the Accused

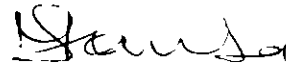
17. PW7 referred to Exhibit E16 dated 25th May 2015 showing an internal transfer to Mohamed Koroma of \$50,000/00 of which he said he had no knowledge. PW7 referred to Exhibit E18, which he referred to as a series of cash withdrawals by the Accused; he never knew the Accused was making these withdrawals.

17.1. In answer to questions put to him in cross examination, the witness told the Court that though he thought he had paid money for a Licence to the GoSL, he in fact now knows he has never paid any money to the GoSL. He said Network Proximity (SL) Limited is presently dormant. He reiterates he did not authorize the bank to bank transfer of \$50,000/00 to Mohamed Koroma.

17.2. In his defence as said hereinbefore, the Accused told the Court that he transferred \$50,000/00 into Mohamed Koroma's account on the instruction of PW7. If the internal transfers made to Mohamed Koroma was authorized by PW7 as the Accused has told the Court, in the absence of any further proof, that could have been suggested to PW7 in cross examination. The allegation was known to the Accused at least when PW7 testified to that effect before this Court but the Accused did not suggest to PW7 that he made the \$50,000/00 transfer into Mohamed Koroma's account on the instructions of PW7. He also had the opportunity of recalling PW7 where he could have put the said suggestion to him. It is the Court's position that these were afterthoughts of the Accused in a bid to justify this transfer from the company account which he has not denied making.

17.3. The Accused was referred to Exhibit B19 answer to question 58 in respect of \$100,000/00 withdrawn for one Mr. Kamara who he said was introduced to him by PW7 and the said payment he said he made upon telephone instructions he said he received from PW7. He said he went with PW2 to the said Mr. Kamara who they met, according to the Accused at the Main Motor Road, Brookfields bus station, where he paid the said \$100,000/00 that he withdrew from the company account. No receipt was given he said in respect of the said payment. Again, I will state that the Accused had PW2 and PW7 on the witness stand but none of those suggestions were made to them even though the company's bank statement already formed part of the evidence before the Court, same having been tendered by PW1. Again, I consider this piece of evidence an afterthought.

18. I hold that the Prosecution has proven, based on the evidence before this Court, that the Accused did conspire with other person(s) unknown to deceive Dominik Anselm Joseph Beary, into paying \$100,000 purportedly as fees for an International Gateway Licence; that the Accused did forward to the said Beary a receipt for payment of \$108,000 purportedly signed by Mohamed Bangura, a letter dated 11th day of July 2014 purportedly signed by Bakarr Tarawally, Director of Communications at the Ministry of Information and Communications, letter dated 19th day of June 2015 purportedly signed by Momoh Conteh and a letter purportedly signed by the then Deputy Minister of Information and Communications, Theo Nicole to which was attached a Memorandum of Understanding, knowing all of these documents were false and upon which PW7 acted to his detriment as in Counts 1, 2, 3, 5 and 6 of the Indictment dated 16th day of September 2015 for which I now find you Mohamed Osman Sesay, Guilty as charged.



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Hon. Jst. Miatta M. Samba, J