

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
THE STATE
VS
ALLIE BADARA MANSARAY
AND
RICHARD TURAY

BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.A
DATED THE 8TH DAY OF APRIL 2020

Counsel:

V.T Biandoma Esq for the State

A. Koroma Esq, D.E. Taylor Esq and W. Serry-Kamal (Ms) for the Accused

Judgment:

1. On file is a fifteen (15) Counts indictment dated 20th day of May 2019 against the Accused on allegations of misappropriation of public funds and conspiracy contrary to Sections 36(1) and 128 (1) respectively of the Anti-Corruption Act No. 12 of 2008 to wit:

Count 1

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 24th June 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 6,063.64 (Six Thousand and Sixty Three United States Dollars, Sixty Four Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 2

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 24th June 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 12,283.00 (Twelve Thousand Two Hundred and Eighty



Three United States Dollars) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 3

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 22nd August 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 5, 887.55 (Five Thousand Eight Hundred and Eighty Seven United States Dollars and Fifty Five Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 4

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 21st October 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$11,753.00 (Eleven Thousand Seven Hundred and Fifty Three United States Dollars) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 5

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 21st October 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 8,060.90 (Eight Thousand and Sixty United States Dollars and Ninety Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 6

Statement of Offence



Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 23rd November 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 11,053.00 (Eleven Thousand and Fifty Three United States Dollars) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 7

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 23rd November 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 10,236.90 (Ten Thousand Two Hundred and Thirty United States Dollars, Ninety Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 8

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 16th December 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 11,053.00 (Eleven Thousand and Fifty Three United States Dollars) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 9

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence



Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 16th December 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of US\$ 12,445.90 (Twelve Thousand and Four Hundred and Forty Five United States Dollars and Ninety Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 10

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 16th December 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of Le. 7,958,750.00 (Seven Million Nine Hundred and Fifty-Eight Thousand Seven Hundred and Fifty Leones) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 11

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 16th December 2016 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of Le. 5,228,997.22 (Five Million Two Hundred and Twenty-Eight Thousand Nine Hundred and Ninety-Seven Leones Twenty-Two Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).


Count 12

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 27th January 2017 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of Le. 24,704,958.234 (Twenty-Four Million Seven Hundred



and Four Thousand Nine Hundred and Fifty-Eight Leones Two Hundred and Thirty-Four Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 13

Statement of Offence

Misappropriation of Public Funds contrary to Section 36(1) of the Anti-Corruption Act, No. 12 of 2008

Particulars of Offence

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on or about the 27th January 2017 in Freetown in the Western Area of Sierra Leone, misappropriated the sum of Le. 46,882,425.75 (Forty-Six Million Eight Hundred and Eighty-Two Thousand Four Hundred and Twenty-Five Leones Seventy-Five Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 14

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

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on diverse dates between the months of June 2016 and December 2016, in Freetown in the Western Area of the Republic of Sierra Leone conspired together and with other persons unknown to misappropriate the sum of \$88,836.81 (Eighty Eight Thousand Eight Hundred and Thirty Six United States Dollars and Thirty One Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

Count 15

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

Alie Badara Mansaray of 7 K Lumley Road in Freetown in the Western Area of the Republic of Sierra Leone being former Commissioner of NaCSA and Richard Turay of 20C Fifth Road, Right Juba Hill, Freetown in the Western Area of the Republic of Sierra Leone being former Finance Director of NaCSA on diverse dates between the months of June 2016 and December 2016, in Freetown in the Western Area of the Republic of Sierra Leone conspired together and with other persons unknown to misappropriate the sum of Le. 84,775,131.21 (Eighty-Four Million Seven Hundred and Seventy-Five Thousand One Hundred and Thirty-One Leones and Twenty-

One Cents) being Provident Fund deductions of salaries of the National Commission for Social Action (NaCSA).

1. The allegation

It is the Prosecution's case that the Accused being the Commissioner of the NaCSA during the period covered by the indictment, a semi-autonomous government agency, agreed with other staff members to operate a scheme by which deductions were made from staff salaries held in the NaCSA public funds account at the Sierra Leone Commercial Bank (SLCB) with the understanding that the said deductions will be transferred into a United States Dollars account and a Sierra Leone, Leones Provident Fund account held at the said SLCB; that moneys deducted from staff salaries for the months of June 2016, August 2016, November 2016, December 2016 and January 2017 from staff salaries from the NaCSA account with the approval of the Accused in his capacity as Commissioner of NaCSA and the Finance Director were never transferred into the said Provident Fund account. According to the Prosecutors, moneys deducted from staff salaries, were on the instructions of the Accused paid to the Accused and his Deputy as allowances while some of the said deducted moneys were also, on the instructions of the Accused used to pay staff salaries of project funded staff members. The deducted moneys, according to the Prosecutor were never paid into the Provident Fund account. The State now allege that the Accused conspired with one Richard Turay together with other persons unknown to misappropriate \$88,836.81 and Le. 84,775,131.21 respectively and that the accused did misappropriate these funds which it is the Prosecutor's case, are public funds in the manner indicated in the indictment hereinbefore referred to.

2. Burden of Proof

This Court sits both as a tribunal of fact and as a tribunal of law. I must therefore keep in my mind and in my view at all times, that in all criminal cases it is the duty of the prosecution to prove its case beyond a reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence with which the accused person is charged.

If there is any doubt on my mind, as to the guilt or otherwise of the Accused person, in respect of the charge on the Indictment, I have a duty to acquit and discharge the Accused person of that charge. I must be satisfied in my mind so that I am sure that the Accused person has not only committed the unlawful act charged on the Indictment, but that he did so with the requisite *mens rea*, that is that the act was done wilfully.

I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the Prosecution has not proved its case beyond a reasonable doubt. No particular form of words is 'sacrosanct or absolutely necessary' as was pointed out by Sir Samuel Bankole Jones, P, in the Court of Appeal in *Koroma V R* (1964-66) ALR SL 542 at 548 LL4-5. What is of importance is that the Prosecution establishes the guilt of the Accused beyond a reasonable doubt.

The Court refers to the case of *Sahr Mbambay V The State* App. 31/74 CA (unreported)-the cyclostyled judgment of Livesey Luke, JSC at pages 11-13. At Page 12, where Luke JSC referring to *Woolmington V R* said, that '*if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the Prosecution or the prisoner ... the Prosecution has not made out the case and the prisoner is entitled to an acquittal*'.



3. The Law-Misappropriation

Counts 1-13- Misappropriation of public funds

Section 36(1) of the Anti-Corruption Act 2008 reads:

A person who misappropriates public revenue, public funds or property commits an offence.

Section 36(2) shows the manner in which public funds could be misappropriated. It states:

A person misappropriates public revenue, public funds or property if he wilfully commits an act whether by himself, with or through another person, by which a public body is deprived of any revenue, funds or other financial interest or property belonging to or due to that public body.

Therefore, to secure a conviction on a Section 36(1) charge, the prosecution must prove the following elements:

- a. That the funds misappropriated must belong to that public body;
- b. That what was misappropriated was public funds;
- c. There must be an act of unlawful appropriation.
- d. That the act of misappropriation was willful.
- e. That a public body was deprived of funds

Public Body

I have asked myself the question whether or not NaCSA was a public body as defined by the Act. I have read Exhibit A1-27, the statement of the 1st Accused where he said in answer to question 5 that 'I oversee the management of the Commission and manage a portfolio of projects of both donor and government funds'. I refer to Exhibit O1&2 tendered by the Accused which is a Memo from the Senior Director, Support Services Division and the Accused person's appointment letter as Commissioner of NaCSA dated 10th December 2014. Exhibit O2 stipulates the terms and conditions of the Accused's appointment upon his being approved by Parliament on the 2nd day of December 2014. I hold that the Accused had to be approved by Parliament before his assumption of office because NaCSA is considered a 'public body' as defined by paragraph 'a' of the definition section of the Anti-Corruption Act of 2008.

Public Body deprived of Public Funds

It is the evidence before this Court that moneys were paid as staff salaries from the consolidated fund and other donor funds into the NaCSA salaries accounts at the SLCB No. 003001013032090192 and 003001116152090125. Public funds are defined by the Act as 'moneys paid from funds appropriated by Parliament from the consolidated funds; any funds under sub section 2 of Section 111 of the 1991 Constitution of Sierra Leone and any moneys ... for the benefit of the people of Sierra Leone or a section thereof'. It is the evidence before this Court that moneys paid into the NaCSA staff salary accounts at the SLCB as referred to were paid from the consolidated revenue. Also, donor funds were paid into this said NaCSA salaries account at the SLCB. I have held that NaCSA was during the period covered by the indictment a public body. It is my holding that moneys in the NaCSA account were public



funds. It follows therefore that if, as it is alleged, moneys were misappropriated as in the case of Counts 1-13, charging an offence under Section 36(1) of the Act of 2008, such moneys must be public funds belonging to NaCSA, a public body.

Willful Misappropriation

I have stated that to succeed on a Section 36(1) charge in the manner defined by Section 36(2), the Prosecution must prove that the act of misappropriation was willful. Applying the *Ghosh* test and in addition to other elements, the word 'willfully' as appears in Section 36(2) connotes objective/subjective dishonesty which said test have been applied in corruption cases within our jurisdiction, including the case of *The State V Ibrahim Smart Kamara* SLHC 18 and *The State V Francis Gabbidon* (2009) 1 SLHC 32 where Sey J. said that "Though dishonesty is not specifically stated to be an element of the offence under Section 12(1), I am of the considered opinion that it will be inconceivable to convict the accused of this offence in the absence of proof of dishonesty".

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-part 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.

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.

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.

Counts 1-13

I did say in the ruling on the no case submission in respect of this matter that the testimonies of PW5 and PW6 are crucial to the case against the Accused. PW5 was Finance Director between 2004 and 2009 and Senior Director Support Services between 2009 and 2016 at NaCSA and was also a member of the Provident Fund Scheme. PW5 referred to Exhibit N1 for \$12,283 of 24th June 2016, Exhibit N2 for \$6,063.64 of 24th June 2016, Exhibit N4 for 11,753 of 21st October 2016, Exhibit N5 for \$8,060.90 of 21st October 2016, and Exhibit N6 for \$11,053 of 23rd November 2016 and told the Court that together with the 1st Accused he signed off on each of these Exhibits for transfer of funds therein referred, to the staff

Provident Fund Accounts No. 003001014309030184 and 0030019549192601 at the SLCB but that these transfers were never made by the Bank.

PW5 referred to Exhibit N7 for \$10,236.91 of 23rd November 2016, Exhibit N8 for \$11,053 of 16th December 2016, Exhibit N9 for \$12,445.82 of 16th December 2016 and told the Court that these documents were authorized by the 1st Accused and one Richard Turay, the then Finance Director for the period covered by the Indictment but that these moneys were not transferred as authorized into the staff Provident Fund Account. He referred to Exhibit N10 for Le. 7,958,750/00 of 16th December 2016 which he told the Court was authorized by the Accused and Richard Turay but which said amount was not transferred into the Provident Fund account. PW5 referred to Exhibit N11 for Le. 5,228,997.22 of 16th December 2016, Exhibit N12 for Le. 24,704,958.34 of 27th January 2017 and Exhibit N13 for Le. 46,882,425.75 of 27th January 2017, all three authorizations, which he said were made by the 1st Accused and Richard Turay. He however told the Court that he cannot tell whether these last three transfers were made into the staff Provident Fund Account because he was no longer working at NaCSA, having left in December 2016.

PW5 referred to Exhibits N1, 2, 4, and 5 and told the Court that deductions made from staff salaries in respect of those months were rather paid as allowances to the 1st Accused as Commissioner of NaCSA as well as to his then Deputy Commissioner, Haja Isatu Kamara. These deductions, he told the Court, were also used to pay the salaries of other staff members whose salaries were paid by the Group for Peace Consolidation SL project, (GPC), a donor project. I must note that PW5 told the Court that use of the moneys deducted from staff salaries in the staff salaries account, which I have held were public funds, and which were meant for transfer into the Provident Fund account, but used in the manner it is alleged, was authorized by the 1st Accused. In other words, the 1st Accused it was who directed the Finance Department to rather use moneys deducted from staff salaries as allowances for himself and his deputy and for salaries of staff of the GPC SL project instead of paying these moneys into the Provident Fund Account. According to PW5, the allowances of both the 1st Accused and his deputy ought to have come from the GPC SL project; he, PW5, also received salaries from the GPC SL project.

PW5 told the Court that all moneys authorized in Exhibits N1, 2, 4 and 5 which were sent to the SLCB were all sent back to NaCSA because there was no money in the NaCSA Staff Salary Account. It is worthy of note that the Finance Department managed the financial operations of the Commission.

PW5 said Exhibit N6 was not sent to the SLCB. He said Exhibits N7-11 are duplicate copies and that he was not in a position to say whether or not they were sent to the SLCB. He said Exhibits N12 and 13 do not have SLCB receipt stamps so he could not tell if in fact they were sent to the SLCB.

The Court notes that after the Prosecution's case, upon being put to his election as required by Section 194 of the Criminal Procedure Act No. 32 of 1965, the Accused person chose to testify on oath which he did in his defence. I must state that an Accused person needs not give evidence on his own behalf but when he does, the Court takes it into consideration and

accords to it such weight as it thinks appropriate in the circumstance. The Accused does not bear the burden of disproving the case of the Prosecution, nor of proving his own innocence.

It is the 1st Accused persons' case that the Finance Department was responsible for the overall financial management of the Commission including dealing with the SLCB where the Commission's Staff Salaries Accounts and the Provident Fund Accounts were maintained and that PW5 served the Finance Department in respect of Exhibits N1-2 and N4-5. The 1st Accused denied giving PW5 instructions to make payments made from deductions from staff salaries as allowances to himself and that of his deputy and salaries of GPC staff members. He said he relied on semi audit reports and did not keep track of moneys withdrawn or paid into the Staff Salaries Account.

PW6 was Alieu Jalloh a Banker at the SLCB and particularly, a Relationship Officer for all Government Accounts. He told the Court that he dealt with the NaCSA Staff Salary Accounts and the Provident Fund Accounts. He told the Court that between June 2016 and January 2017, the SLCB received authorizations as in Exhibit N1-5 from NaCSA in respect of various transfers including transfers into the Provident Fund Accounts from the NaCSA Salaries Account. He said during the periods covered by the Indictment, NaCSA had no funds in its Salaries Accounts from which payments could have been made into the Provident Fund Accounts. At a meeting, where the Finance Director, Richard Turay was present, the SLCB made known their concerns about NaCSA issuing authorizations for transfers into the Provident Fund Accounts when in fact there was no money in the NaCSA Salaries Accounts. He told the Court that upon receipt of Exhibits N1-5, no action was taken by the SLCB in respect of transfers into the Provident Fund Accounts because there was no money in the NaCSA Salaries Accounts from which the funds ought to have been transferred. PW6 told the Court that the SLCB received no instructions in respect of Exhibits N6-13, none of which he said carry the SLCB stamp.

PW5 as Director of Finance during the period covered by the Indictment had access to the Commission's Bank Statements. According to him, he prepared Exhibits N1-2 and N4-5 but it is my considered opinion that he must have known when he signed off on Exhibits N1-2 and N4-5 that there was no money in the staff Salaries Accounts. According to the 1st Accused, he did not know that the SLCB returned Exhibits N1-5 neither did he know that the staff of SLCB and the then Finance Director, Kevin Dickson had a meeting in respect of lack of funds in the Staff Salaries Accounts. PW5 did not also tell the Court that he informed the 1st Accused about the return of Exhibits N1-5 and none transfer of moneys therein referred.

As said Section 36(2) describes the manner by which the offence of misappropriation can be committed. 'A person misappropriates ... public funds ... if he wilfully commits an act ... by which a public body is deprived of ... funds' The act referred to in this section which must be wilfully committed is the act of unlawful appropriation by which misappropriation is committed if the public body is deprived of such funds appropriated. For there to be misappropriation, there must be appropriation from the public funds accounts hereinbefore referred to. Of all the exhibits tendered to the Court by the Prosecution, the Prosecutor did not find it necessary to tender the Bank Statement of the Account(s) from which deductions were made or to show how if at all these deductions were made. I would have expected proof

of deductions from staff salaries for each of the months referred to in Counts 1-13 and how such deductions were made.

I said in my ruling on the no case submission that it is clear that deductions were made from salaries of NaCSA staff but how these deductions were made as I said, were not proven to the Court. It is alleged that deductions made from the Staff Salaries Accounts not transferred into the staff Provident Fund Accounts. Exhibit M1-7 says nothing about how these deductions were made. There is nothing before the Court to show how:

- a. Payment of staff salaries from the Consolidated revenue into the staff salary account(s) for the period under review by proof as in the said Public Funds Accounts hereinbefore referred to;
- b. How payments of these staff salaries were made to individual staff accounts after deductions for contributions into the Provident Fund account;
- c. How monthly deductions by the Commission were made from the contributors' salaries and transferred into the provident fund account at the SLCB.
- d. No Bank Statement of the NaCSA salaries account was presented to the Court which could have advised the Court on movements of moneys; on whose authorization; payees/recipients of such moneys.

The Court notes from the testimonies of Prosecution Witnesses, especially, PW2, PW3, PW4 and PW5 that deductions were made from staff salaries for the months of June to December 2016 and January 2017. According to PW5, the GPC project staff salaries for June through December 2016 and January 2017 were delayed.

There is no proof that salaries were in fact paid into the salaries pools account at the SLCB and there is no proof that deductions were made from salaries of Provident Fund members. One of the elements which needs proof to succeed on a Section 36(1) charge is proof of unlawful appropriation. I have said that there must be an appropriation for there to be misappropriation. The Prosecution has not shown any appropriation from the Staff Salaries Accounts. There is, simply put, no bank statement of such accounts, apart from words spoken. This being a Court of law and fact I make bold to say that the investigation is incomplete. If I accept, in the absence of proof of how the alleged deductions referenced in Exhibits N1-13 were made, then I am bound to believe they were so made by the Finance Department which was responsible for the management of the Commission's finance. The question therefore will remain, 'what happened to the moneys deducted?'

I again refer to the testimonies of the Prosecution Witnesses, particularly, PW5. PW5 told the Court that it was the instructions of the 1st Accused that moneys deducted from staff salaries and meant for transfer into the Provident Funds account be rather used for allowances for himself and his then deputy and for payment of salaries for staff of the GPC SL project. I have asked myself the question, 'how then were the payments of allowances for the period June to December 2016 and January 2017 to the 1st Accused and his deputy and staff salaries of other staff members made? Were these payments made by cheque? If so, could waste cheques have been tendered to the Court? Were they made by bank transfers? If so, could bank statements of at least the Accused and/or his deputy have been tendered to show proof that even though their allowances from donors were delayed for the months specified, they still received payments of those allowances from the Staff Salaries Accounts?' The 1st Accused

has denied the allegation that he gave such instructions to PW5. It is clear to the Court that by Exhibit O1 dated 18th December 2014, titled 'Commissioner's Responsibility Allowance', the 1st Accused was entitled to a monthly allowance of \$3,505 and his deputy was entitled to a monthly allowance of \$2,633.

I note the Commissioner's powers under Section 57(2) of the Anti-Commission Act, 2008 where the Commissioner could require any financial institution or officer of a financial institution to produce copies of any bank account etc. One would have expected that the Prosecutor could have produced and tendered the bank statement of the 1st Accused which no doubt the Commission could have requested of the 1st Accused' Bankers. Such Bank Statement would have shown that allowances for the months under consideration, which according to the Prosecution's case were deducted from staff salaries, were in fact paid into the Accused person's account instead of it being paid into the Provident Fund Accounts provided also that the Prosecutor would have exhibited the Bank Statement for the public funds account and shown the Court that payments of the 1st Accused' and his deputy's allowances and other staff salaries by the GPC was in fact never made into the said Staff Salaries Account.

The first paragraph of Exhibit O1 reads: *"The responsibility allowance for the Commissioners is an allowance paid monthly in addition to their remuneration received from Government for the fiduciary roles played in the administration of donor funds. The cost is charged to all donors pro rata"*. The Prosecution ought to have first proven that in fact, the allowances for the period under review to which the 1st Accused was entitled under Exhibit O1 were never paid by donors. Then the question the investigator ought to have asked himself, upon receipt of the Accused bank statement would have been "How then was the Accused paid? From which funds was he paid?" There is nothing to show that moneys which ought not to have been paid were paid to the 1st Accused. The Prosecutor also never asked the 1st Accused when he came to his defence whether or not he in fact received his allowances for the period June to December 2016 and for January 2017.

I had reminded myself that If there is any doubt on my mind, as to the guilt or otherwise of the 1st Accused in respect of the charge on the Indictment, I have a duty to acquit and discharge the 1st Accused of that charge. I must be satisfied in my mind so that I am sure that the 1st Accused person has not only committed the unlawful act charged on the Indictment, but that he did so with the requisite *mens rea*, that is that the act was done wilfully. I have not seen the act of dishonesty or wilful act done by the 1st Accused. I had also said that even if I do not believe the version of events put forward by the 1st Accused, I must give it the benefit of the doubt if the Prosecution has not proved its case beyond a reasonable doubt.

In the absence of proof that moneys deducted from staff salaries were paid as allowances to the 1st Accused, his deputy and some staff members upon the instructions of the 1st Accused, I am by law left with no option but to give the 1st Accused the benefit of the doubt and to acquit and discharge the 1st Accused.

I cannot wrap up on the proceedings in respect of the Section 36(1) charge without commenting on the Indictment as it relates to Counts 1-13. I have stated the elements to be proven for a successful prosecution of Section 36(1), one of which is that the moneys

misappropriated must be public funds. I had stated in the no case submission in respect of this matter that what I considered in writing that ruling and indeed what I considered in writing this judgment is the moneys in the NaCSA Staff Salaries Accounts at the SLCB. I have above stated my reasons why those said moneys are public funds as defined by the interpretation section of the Anti-Corruption Act, 2008. Suffice it to say that the drafters reference in Counts 1-13 of the Indictment to 'provident funds' as moneys misappropriated cannot be correct. If the moneys removed from the NaCSA Salaries Accounts are paid into the Provident Fund Accounts, which is like any other personal/private account, it ceases to be public funds simply because by its unlawful appropriation, one will not be depriving a public body of such funds; a body of private persons of the scheme will be said to be deprived not a public body.

Counts 14 & 15

Section 128(1) of the Anti-Corruption Act No. 12 of 2008 provides that:

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.

The required ingredients for *prima facie* proof of the offence of conspiracy are:

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

I must note that the corruption offence referred to under the said Section is as referred to in Counts 1-13 of the indictment hereinbefore referred to. I shall now deal with Counts 14 and 15 as relate to the charge of conspiracy contrary to Section 128(1) of the Anti-Corruption Act, 2008.

Counsel for the 1st Accused states that the Prosecution did not adduce any evidence of an agreement of minds to do an unlawful act by an unlawful means nor did the Prosecution adduce any evidence, beyond reasonable doubt, that the 1st Accused connived with anyone to carry out any unlawful conduct.

I draw Counsel's attention to the wording of the particulars of offence in Counts 14 and 15 to wit: Alie Badara Mansaray ... and Richard Turay ... conspired together with other persons unknown to misappropriate the sum of \$88,836.81; Alie Badara Mansaray ... and Richard Turay ... conspired together with other persons unknown to misappropriate the sum of Le. 84, 775, 131.31.

An agreement to commit a crime does constitute the crime. The agreement is the essence of conspiracy. See Blackstone's Criminal Practice, 2012 Edn, page 94 para. A5.37. When two or more persons agree to carry their criminal scheme into effect, the very plot is the criminal act itself. See *Mulcahy Vs. R* (1868) L.R 3 H.L 306 at 317.

It is however important to note that with the offence of conspiracy, the agreement may be proved in the usual way or by proving circumstances from which the jury may presume it. See

R Vs Parsons (1763) 1 W.BI. 392; *R Vs Murphy* (1837) 8 C. & P. 297. Proof of the existence of a conspiracy is generally a 'matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. See *R Vs. Brisac* (1803) 4 East 164 at 171, cited with approval in *Mulcahy Vs. R* (1868) L.R 3 H.L 306 at 317 as referred in Archbold Criminal Pleading, Evidence and Practice, 2011 Edn. Page 2876 para. 33-14 under the rubric "Proving the agreement".

The 1st Accused denied that he conspired with anyone to commit the offences alleged in Counts 1-13 of the Indictment. There is nothing before the Court to show that moneys to which the 1st Accused and his deputy were entitled to as per Exhibit O1 and salaries of staff members under the GPR project were not paid by the GPR; there is nothing in writing to prove that the 1st Accused instructed PW5 to pay deducted salaries to him and his deputy as allowances and to some staff members as salaries. I have held that the Prosecution has failed to prove that moneys deducted on the authorisations as in Exhibit N1-5 were paid to the 1st Accused, his deputy or as salary to any staff member. I have found no evidence by which I can infer that the Accused conspired with any other person to misappropriate public funds as referred to in Counts 1-13 of the Indictment.

In light of the above I return the following verdict:

Count 1	-	Not Guilty
Count 2	-	Not Guilty
Count 3	-	Not Guilty
Count 4	-	Not Guilty
Count 8	-	Not Guilty
Count 10	-	Not Guilty
Count 11	-	Not Guilty
Count 12	-	Not Guilty
Count 13	-	Not Guilty
Count 14	-	Not Guilty
Count 15	-	Not Guilty

counts 5 - 7, ^{not} Guilty.
counts 9 - not guilty
JMK



Hon. Jst. Miatta Maria Samba, J.A