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CRN 76/08

*1* THE HIGH COURT OF SIERRA LEONE

HOLDEN. AT FREETOWN

THE STATE

## vs



. ',.' The Accused Francis A. Gabbidon stands charged

* + with 1.68 counts of Misappropriation of Public Funds contrary to Section i2(1) of the Anti­ Cor rup t ion Act 2000 (as amended). The charges

ar·e laid under Section 12(1) of the Anti­

Cor rup tion Act 2000 which provides that "any person who misappropriates public revenue, public funds or proper ty is guilty of an offence. " Secti on 12(2) states that: "A person misappropriates pwblic revenue, public funds or property If he wilfully commits an act, whether by himself, with or through another person, by which the Government, a. public corporation or a local 6uthorit y is deprived of any . revenue, funds or other financial interest, or propert;y belonging or due to the Govern m·ent , the publlc corporation or local aut horit y".

The substance of the charges is that the Accused · as the former Om budsm an · of Sierra Leone misappro'priated public funds to the tune of

sevent y million, two ·hundred and twenty six

thousand, six hundred and· forty two Leones

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(l e7,0, 226, 642.00). It is alleged, on each of the said· 168 \_c ounts that the Accused, on a date

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*\_ :* · u nkn ov:vn between a t wo·month period, being the Om budsm an, misappropriated a particular sum which had been entrusted to him for payment to

eit her Christopher Peacock or Melron Nicol Wilson as monthly salary having falsely represented that they were both employed by the Office of the Ombudsman.

· The charges were put to the Accused and the plea taken on the 15th day of July 2008. Thereaf ter,, this .Court made an Order as of cour se for trial· by Judge alone instead of by Ju dge and Jury pursuant to \_an application in writing - made by th Attorney-General and Mini$ter of Justice under Section 144(2) of the Criminal Procedure Act NO. 32 of 1965, as

\_ repealed and replaced by Section 3 of the Crim inal Procedure Amendment Act N0.11 of · 1981. In the circumstances, therefore, throughout the trial, this Court proceeded both as a Tribunal of Fact and as a Tribunal of Law.

Howeve r, before the trial itself commenced, cert ain preliminary matters had to be dealt with as can be seen from the following sequence of

proceedings. On the 18th day of July 2008, Ms

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Glenna Thompson made an opening statement

.for the Prosecution outlining the method of execu tion ·of the Prosecution case. Then Couns el Mr. J. s.·Jenkins Johnston, who led the defence

team, applied for an adjournment on the basis

* that t he· defence team had not had enough time to study all the papers served on them only within the past forty eight hours. The application was gr ant ed and, taking into consideration the long vacation of the Court, the case was

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adjourned to the 18th .of September 2008. On that day. aforesaid, Dr.Jabbl, · who now led the

\_def·ence team, raised a preliminary jurisdictional

objectior1 prernised on the ground that the entire

.ac tion covering all the 168" counts is entirely and abso lut ely time barred in terms of Section 2 subsections (1) and (2) of the Public Officers Protection Act, Cap. 172 of the Laws of Sierra Leone. • .: Submissions were mad·e by both Dr. Jabbi and Ms Glenna Thompson and the mat t er

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.wa s re$erved for Ruling. Oh the 9th day of Oct ober· 2008, this C9urt delivered a Ruling dismissing the pr elimin ry jurisdict iona l objection on th·.e ground, Inter alia, that the Accused can not take umbrage under the statutory

protection given. to public officers under Sect ion

2 subsections (1) and (2) of the Public Offi cer s Prot ectior\_i Act, Cap. 172 of 1960 as amended by the Limit atio n Act, No. 51 of 1961. Thereafter, Dr. Ja\_q bl announced their intention to appeal aga in st the Ruling and craved the Court's discretion to grant a stay of proceedings as to the trial pending the hearing and determinat io n of the appeal. Needless to say, the State vehemently opposed the said applicat ion on the ground tbat the High Court does not have an

inherent . jurisdiction to grant a stay of proceedings in criminal matters. ·o the 16 th ·da y of October, 2008 I deHvered a Ruling refusing

the - defence application for stay of trial proceedings and I ordered that the case against the Accused Francis A. Gabbidon on charges of misappropriat ion of public funds cont\_rary to Section 12(1) of the Anti-Corruption Act , 2000 as am ended, shall proceed forthwith. Therealter, the ·Pr osecut ion began leading evidence on the

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. said 16 day of Octobet, 2008.

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I is the State which bri ng\_s

this case and it bears

* the burd n of proving beyond a reasonable cfoubt

ever ·y e\_lement of the off ence with whi h the

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Accused. is charged and it is for tfie St at e to s?tisfy t he· Court so that it is sure of the Accused person's guilt. This burden of proving the guilt of the Accused rests with the State and continues throughout.

The leading authority is the case of Woolmington v, DPP [ 935] A.C. 462, HL wherein it was stat'ed that " throughout the web of the Englis h criminal law one golde·n t hread Is always to be seen, that It Is the duty of the prosecution to prove the prisoner's guilt (subject to

\_the qualification Involving the defence of insanity and to

\_ any statutory exception). If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or th e· prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acqult tal. No matter what the

\_charge or where the trlal, the ·principle that the prosecution· must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained." (per Viscount ankey LC. at pp. 481--t:182).

On the st a n d ar d of p ro o f, Denning J. in Miller v.

Ministe\_r of Pensions [ 1947 ] 2 All E.R. 3'72 at pp.

373-374 st9ted that: "I t need no. t reach cert ainty, .but

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it must carry a·high degree of probabili ty. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt.· The law will fail to protect the comm unity if it admitted fanciful possibilities to deflect the cours€ of justice. If the evidence is so strong against a man as·t o leave only a remote possibility In his favour which can be dismissed with the sentence 'of course it is

·' p.ossible bu.t not the least probable', the case is proved

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. beyon d r eason able doubt, but nothing short of that will

: suffice".

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To ·pr ove its case the State has relied on the

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evi dence of 9 witrJesses as foll ows: .

. PW1 - Sheku Kamara PW2 - Issa Dauda Kanu· P\/1/3 - James Kamara . .

PW4 - Haroun Al·r asch id Sherfff

PWS - Alieu Badara Gibril PW6 - Marie Elaine Dumbuya PW7 - M. eIr on Nicol Wilson

PW8 - Christopher James Peacock

* + p\_w g - Victoria Aminata Mansaray

The State also tendered in evidence various docu rn en t s such as Exhibits . Al-A161:The

* r-ecord ed · in terview given by the Accused;

Exhibit\_s B1-B 12: Status Report on the office of

the Ombudsman of Sierra Leone; Exhibit C:

Letter ·of: Appoint m en t as Om budsm an·; Exhibit



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Dl -D3·: · urriculum Vitae of Christopher J. Peacock ; . : Exhibit E: Accoun.tant General Vote Serv(ce Ledger; Ex hibit .F: Letter addressed- to

. Mr. M Nicol Wilson Re: Appointment as an I ovestiga or ; Exhibits G1-G62:Salaries of Staff - The Office of the Ombudsman; Exhibits H1-H3:

.Acc,ountant General 's Department - Payment to t t1-e . Office of the Om budsm an; Exhibit s J1 -J18 : Acco unt nt · Ge ner al 's Department - salaries

. verfficati on and approval Form; Exhibit P: Letter

wr•itten· by Christopher J. Pe a co ck· to the Editor

\_Pe e p · N ws Magazine; Exhibit Q: Letter from

Francis A. Gabbidon to the Spectator Newspap\_er ; Exhib i.t R: Peep· Magazi ne dated Friday November 9, 2007;·Exhibit -S: Letter from C.J, Peaco ck Esq. to Frari¢f.s..A . Gabbidon Re: Demand for a wri tten 'd fscl aim er< in a - local tabla.id having wide

rrculat i on and readership .- Reply to Le t t e r dated

7th

\_ - December 2007; Exhibit· T· : Letter from

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Francis A. Gabbidon to CJ.Peacock; Exhibit U:The $pectator News . Paper dated 21-11-07; Exhl b.i t V: Awoko Newspaper dated Friday November 16, 2007; Exhibit W: Peep newspaper dated Friday D cember 14, 2007; Exhibit X: Recom mendation made by Francis A. Gabbidon on behalf of C.J. Peacock and Exhibit DD which js a Letter from NASSIT to the Ombudsman dated l 9thAugust 2005 Re: Non Registration of E:m ploy ees for Social Security.

The facts of this case as presented by the Pr osecut ion can be seen through the evidence of

\_ PW4, PW5, PW6, PW7 and PW8 together with

t: xhibits Ai -58, B, E, F, G1-62, H and J. Briefly f.) Ut, it is the prosecution's ca\_se that Exhibits G1- 621 which are the paid-up salary vo.uchers, were sign ed month after month from 2001 to 2007 with t he names of Messrs Christopher Peacock and Melron Nicol Wilson who were said to have been ernployees at the Office of the Ombudsman

* and with ifn insc'ri pti on to acknowledge receipt of

the said salaries; that at the end of each month, the Accused will claim to have paid - 9 .f*p*

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F e aco k · and Mr. Nicol Wilson who tte had

. presented to Government were employees of the Office of the Ombudsman; that the Accused would· sign· the paid up salary vouchers,· t her eb y att esting to that fact and by so doing triggering

-the release of quarterly funds to his Offic;::e. Both Messrs· Christopher Peacock and Melron Nicol

Wilson denied ever havi ng seen the vouch e\_rs let



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ato n e sig ni\_n g t hem . I n s6 far as it was put o the Accuse d· that the signatures were put there by hin1, the Accused denied• it, but went on to state . th t he believ ed they were the signatu res of Messrs Nicol Wilson and Peacock.

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PW4 Haroun Alraschid Sheriff testified that he is a civil servant ·attached to the Accountant­ General's pffice and he confirmed that since the inception of the Office of the Ombudsman sometir:ne around 2001, it received quart erly

\_ a llo cations from the Goy er·nm ent of Sierra Leone tnrough his department. He produced in evidence the salary verification and approval forms (Exhibi ts Jl-18) and the -records of payment to

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:•·· the Office : of the Ombudsman (Exhibits Hl-3). He

·stat ed · further that payments were paid into Sierra L o'ne Comm ercial Bank account number 10092·92 which is the account of the Office of the Om·budsman. He said these payments were made on quarterly basis but sometimes when there is a cash prob'lem in the country they pay on a monthly basis. He further testified that in 2006 all four quarters totaling Le129; 000,0.00.00+ were paid and in 2007 for the· first three quarters, the sum of Le108, 139,308.00 was paid as .salary grant to the Office of the Om bud sm an. He gave evidence of other similar payments ma e since 200-1. This evidence shows cat egoricall y that the money used for salaries

was from the Government of Sierra Leone. Further i'n· his evidence he w.as able to explain to

the Court. the process involved in getting the

salary alloc;ation from government. He also

referred o Exhibit J6 and- he stated as foll ows:·



. " Ther e are names o\_n t hat document.

* + Under Accountant the first name is Mr. Chr istop her Peacock a d a basic salary of Le1, 650,000 is stated. Deductions were m·ade and the net payment is for Lel, 574,313. The name Immediately

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below

-retired civil servant is Mr. M.

* + - Nicol . Wilson and his basic salary is

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Le1, 099,998 and . deductions were rrrnde and the net was Le1,188,062. Below Mr. Peacock's name the d·esignation is "Lawyer" and below Mr. Nicol ·\_: Wilson the designation is

\'I n·v estigator " and below there is a st am p . and signature of the Ombudsman".

It is pertinent to note that PW4's evidence was not challenged by the Defence at all as he w s not Cr o ss examine d.

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PWS was 'Alieu Badara Gibril the Accountant in the Off ice of the Ombudsman. He was able to

.9ive ari overview of how the accounting system worked in the office. He stated that the office was. ru0 by the Accused who was the vote controller and under whose instructions he operat:eq. He said his responsibility was to sign cheques, prepare- payment vouchers, prepare cornmitment forms and write up payment

·vouchers· for other charges to be taken to he Acco unt ant. General's department. He said he signe\_d the cheques together with the Accused

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and that at times the Accused instructed him to just sign blank cheques. He stated that salaries were p\_aid to the· staff by the Accused and they were asked to sign on the paid up vo.uchers and

that the names on the vouchers were never rej ect ecj by the Accountant General's depart ment beca use. the procedure was followed· and they did

t h\_\ co r r ect presentation to the Account ant Gener al 's of fice. He referred to Exhibit Gl as the

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paymen·t voucher for the month of March 2003. He said he recognized his name and that he hc;td signed against it. He then stated as follows:

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* Tl)e .n-ame after that ls Mr. Peacock with a basic salary of LeS00,000 and a net pay of Le408,333.

\_There is a signature against Mr. Peacock 's salary

and it · implies that he has already received his salary . Number 4 is Mr. M. Nicol Wilson with a basic- salary of Le333, 333. His net pay is Le283, 333· and there is a signature there. ·on the next page the computation for March 2003 amounts to Les, 687,500. I prepared it and it was approved . by the Ombudsman Mr. Francis

.Gabbidon "

Testifying further, PWS said . there were 12

names on the v ouchers . every month and thos·e vouc\_h ers included the names of Christopher

Peacock and M. Nico l Wilson. He said he did not

know·these two as staff members in the Office of the Om bu dsm an. He said he had never seen Mr.

Nicol w· ilson or Mr. Peacock· in the Office of the

Om buds m an al th oug\_h he knew who they- w· er e.

He stated that neither Mr. Peacock nor Mr. Nicol Wilson operat ed from their·office nor did either of them have any relationship with the office. In fact,· unde r cr o.ss examination he stated that he knew . their names from the salary paid up vouchers. ·He denied ever taking salary to Mr. Nicol Wilson or ever telling the accused that Mr. Nicol ·Wil son had declined his salary and had

.- instead asked for it to be paid to charities. When the Accused put it to ·hi m that every month during. the pe,riod in qu\_est \_ion he had given him

, *r* monies.to give to Mr. Nicol Wilson as salaries,

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PWS em phatica ll y yelled out the words " No, not

. in my life". He went on to state that he prepared

* + vouchers with their names on it but that it was

the Accused who made al·l the payments and

whenever the Accused paid salaries, he would

. cl\_a in, · t h at he was going to pay the other staff c,1t

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thefr· various places of work . He referred to

* ·Exhibit ·G58 and after pointing out the names of Mr Christopher Peacock an.d Mr. M. Nicol Wilson and their salaries he read out the following

. words:

"and I hereby certify that each

of the above positions exist during the period stated and the employ­ ment was duly authorised by the · Ombudsman".

:pws explained that this was the endorsement before the words "approved by Francis Gabbidon". He-.t hen refer r ed · to Exhibit G59 and he said the name·s on . number 2 and number 4

are Mr. Chr1stopher Peacock and Mr. M Nicol

. Wil.son · respectivfi:ly. Their sign·atu res are

attached and these. wor d·s appear:

"Also we [ler by certify t\_hat each of the above named persons have been emp/oyed in the capacity and during the period stated and that

the emplqyment was duly authorised.

. We will personally be held liable\_if a

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Name in the voucher is not a genuine Staff".

PWS said the endorsement was signed by himself and M·r. Francis Gabbidon. He said he signed first and later it was approved by the Accused. He emph·asi zed that the procedure· for approval is that· o·ne \_c annot t aki these \_vouc'hers down to the

·. · Accountant General's department without both of the:m si'gning and the .Accused· approving ·after ensuring ·that each member of staff h s signed for his/her salary. HE. confirmed that this was the pattern followed·since 2001 to date. .

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, , Under cross examination, by the Accused in person, PWS m·aint ained that Mr. Peacock had no relations ip with the office. He said he only kno ws that Mr. Peacock's name and that of Mr. Nicol Wil on's were on the vouchers and that that .

. ad been the case for. th·e past eigh. t years. He

categ oricall y denied the. suggestion by the Accused that every month he had given him monies to give to Mr. Nicol Wilson and that Mr. Nicol Wilson had always said he would rather give the alaries to charities.

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Let us pause at this stage and take a brief -look

at Exhi\_bits Gl - 6 2 . and .the endorsement at the back · .of each voucher. The following words appear. :

" TOTAL AMOUNTING TO THE SUM OF ..............

AND. I HEREBY CERTIFY THAT EACH OF THE ABOVE .POSITIONS EXISTED DURING THE PERI OD STATED AND THAT THE EMPLOYMENT

* + WAS DULY AUTHORISED BY THE OMBUDSMAN".

Below t hese words appear two signat ures: " Pr epar d by A. Gibril" (PWS) and "Approved by

. . F. Gab.bidon" (the a<=:cused).

T h i·s the prosecution submitted shows clearly that

it . was done on the i nst ructi.on s of. the Orn bu ds m·an whose approval not only appeared but·was the most import nt signature \_t her e . PWS wor ked under the direction of the Ombudsman· and therefore the vouchers were prepared under his directives.

Pw6 was Ms Marie Dumbuya . She was the

Con Ad ent ial Secretary, first to the Accused

. qu ri ng his legal practice and she was later

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su b su rTied: into the Office of the Om buds·man.

s·he. said she started wor king for the Accused in

1980 ·and in April 2000 the Accused switched

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over· her appointment to the Office of the Om budsman. She testified that she was never given. a letter of appointment by the Office of the Om bud\_.s.m an even though· the Accused had given

.her letters of appointments, including hers, to type. She -st at ed further that salary vouchers for

ty'ping we-re given to her by Mr. Gibrll to whom

they ·had been passed by the Accuse·d. As fa·r as

she could recollect, since the Office started in

April

·2 00 0 she could remember the staff as

follows: Mr. Francis Gabbidon was the head of

the Offi c.e and the Vote Controller, Mr. Gibril was

the Accountant, she was the Confidential Secretary, ·Mr. Saidu Bangura the messenger and one Mr. Isdand Baimba whom she said left between 2003 -2004. She said when Mr. Baimba

·.left there we·re only three members of staff until May 2008. PW6 went on to state that she is aware o'f the close personal relationship the Accu sed. has with both Mr. Nicol Wilson and Mr. Peacock, but she· m aintained that they were not

employee·s of the Off ice of the Ombudsrnan. She

said· she was not aware that monies were sent to Mr. Nic:0·1 Wilso n and Mr.' Peacock on a monthly basis .from April 2000 to December 2007. PW6

,, identified Exhib it G3 and then went on to state

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inter alia :

\I see Exhi bit G3. My name is there-.

No 2 is Peacock and No 4 is Nicol Wilson; Of the 12 nam es I recogni ze Mr. Gibr il the Accountant, Saidu Bangura the Messenger, Isdand Baimba the other Messenger and my name as Confident ial

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Secretary. These are the people I

.recognize as being staff members of the

. . ·Office of the Om budsman. I see

sl·gnatur es against their names 6ut

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these two, i.e. Peacock and Nicol

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·. WJl son, to my knowledge, were not

* + members"

.staf f

She was rand\_omly showed different other

.Exl)ibit s .such as G30, G59, Gl , G60, G2 and G3 and she sa.id these were the sort of vouchers that

. they signed month after month on the receipt of salaries. She further testified that in each case· , eyery month she would see 12 names on the list.

* + - She said that she typed the salary vouchers and sl,e 9ot he information through Mr. Gibril who in turn •had got the information from the Accused.

Under cr0$S examination the witness confirmed tl at ·t he- office was very tight' and she recalled

that :lette\_ rs had been written ·asking for space..

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She said she could recognize Mr. Nicol Wilson and Mr: Peacock; that Mr. Nicol Wilson normafly wen t to the office during· the period the Accused was Om b. udsm an; that as far as she could recollect Mr. Peacock only came to the office

twice; 'that she could not recollect the Accused seri'ding people to Mr. Peacock dl,.Jring his period as Ombudsman although he drd so when he was *a·:* lawyer. When pressed further by the Accused PW 6 retorted that the Accused had sent mat t e.r s that were riot within their jurisdiction to Mr. Peacock . On being questioned about the

J relation. ship between the Accused an·d Mr. Nicol

Wilson she said "being the Director of LAWCLA

·anct ' y.ou · being the Ombudsman I believe that was • the relationship you had· wi h Mr. Nicol

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·• w i !"son. · I don't recall your r la ionship wit h Mr. Peacock .11

* On-\_ t h"is point, in her closing Address, Ms Glenna

Thon1pson for the Pr osecu t i on submitted that even if Messrs· Nicol- Wilson and Peacock were

employed by the Office of the Ombudsman, but due· to short age of space had to work elsewhere, both\_ Mr. Gibril and Ms Dumbuya wo.uld have.

. nown about it. In eight years they must have

t ome across it, di\_scusse.d it or at the very least

heard about it. Counsel further submitted that it

is no·t a criminal offence to have such an

arr angem ent and if it did exist there would have been. no reason for any of the witnesses to

.conceal . /t or deny its existence. She submitted

that this arrangement imply did not exist . and

ha·s be n put forward as an explanation by the

\_ Accu$ed to explain away his crim in alit y .

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PW7 Melron Nicol Wilson is one of the persons the· Prose cut ion says was falsely inserted as an n1ployee by the Accused and by so doing misappropriated funds belonging to the Gove rn m en t of Sierra Leone. PW7 categorically

·denied any suggestion that he ever worked for the Office of t he Om budsman. He had never seen any *9f* Exh ib i ts Gl-62 nor signed any of them. He denied that the signature which appeared against

his na·me was h is . He said he did not receive any

. payrnents from the Office of the Ombudsman and that he did not have a relationship with Mr. Gibril or :any\_ ot h e r person- wor king· in· that office. I ndeed; even in cross examination by the Accu·se d, he stated that he was never specifically asked to investigate any ma tt e r by hi m. The Accused has strenuously sought to explain the inclusio'n of Mr. Nicol Wilson as a staff member

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* by sayin g that he used to send him cases whict) fell outside the mandate of the Office of the Ornbudsman. PW7' s response was that In such a case .the modus operandi was normally by a referral- letter written by the Ombudsman to LAWCLA, the organization of which he is Director,

and rio·t to him specifically He said that the letter

*:* would state that a particular complaint had been

* + made ·and the said complaint did not fall within

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the mandate of the Ombudsn1an and for the Centre to assist. PW7 further testified that such con,plaints related to landlord/tenant issues and

. mqintenance and custody matters. He explained further that because the Accused as Ombud?man was Cha.ir man of LAWCLA, the Centre treated

such matters with high priority and on a ·pro

* + bona basis and so the question of payment never
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arose.

. The Accused has tendered in evidence the Annual Report 9'f LAWCLA 2()03 (Exhibit N) in· which the Otfice of the Ombudsman is listed amongst the

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." funders of LAWCLA." This . Mr. Nicol Wilson

* + .explained was a prin ti n\_g error

\_and should read

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"those LAWCLA cooperated with".

The accused asked for the statement of this

* witne·ss to be tendered and it was tendered as
* Exhibit .k. I have perused the· said statement and

I ffnd that there is no l.nconsistency between the

stat em ent and the evidence given in court, nor

, .. wa-s that put to the witness. Mr. Nicol Wilson

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both in his statement and. his vidence before the Court described. the relationship he had with the Accused as a "professional relationship for many years" and not' that of an employee/employer

. r·etationship.

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\_Under. cross exan1ination\_ by the Accused PW7. 9enied the suggestion that monthly payments were made to him through Mr. Gibril for the ervice rendered. He said "monthly payments

wer e not made to me by any official working in

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the Office of the Ombudsman for services

rendered. to that Off ice. " He also denied the sug·gestfo n by the Accused that whenever monies were paid to him he would · decline to accept them but rather make them as donations to

.char i ties . He said he did not recall having such discussions with the official who· has been referred to as- Mr. Gibril and working as Accou ntant in the Office of the Om budsm an. He concluded by stating that the Accused has been

very supportive of LAWCLA but tha.t there has

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neve·r been any fi nancial transaction between the two institutions.

Next to take the stand was PW8 Mr. Christopher Peaco c . He gave.evid.ence and, like Mr. Nicol

. Wilson, he denied ever being an employee of the Office of the Ombudsman. By way of backgr ou nd, the Prosecution tendered various

newspaper articles and exchange of letters between the Accused and Mr. Peacock. These are

·Exhi bi t s P to X. The .accused has sought to main t ain that payment was made because he sent cases to Mr. Peac.ock . Mr. Peacock denied ever r·ecei ving cases from the. Accused and went on *tt>* say" that he was consulted and his services paid for by the clients. He gave a narrative of his

. .rea ction and what transpi red alter he becarne wa\_r e \_v ia a newspaper article that his name had been used as an employee of the Office of th·e Om bu dsm an . This culmi\_ n at ed in the letter of

disclaim e·r written by the accused. This letter was

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* ad1Tlit t ed in evidence as Exhibit P. The Accused in

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his tj f nce explained that Mr. Peacock was annoyed because he had broken a promise he.

\_ .m\_ ade at· the time of employing .hi m that he will

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:no reveal that he, Peacoc.k, . worked for the

* + Office of the Ombudsman. The Prosecution subm!tted that even allowing for the possibility
	+ that this statement might be true, how practical was it if the accused sent "many cases" to Mr. Peac\_oc k in secret. Surely, those people who were

:referred to. him would have known that Peacock

wa·s working for him. Secondly, it is not a crime

to wor k, so why would Mr. Peacock ask for the

-· gr eement to be kept confidential. The "Prosecution further submitted that the Accused would have included that in Exhibit P because wit hout it, it gave the impression that there was som e· dishonest wrong doing on the part of the Accused. Counsel further submitted that the

Accu sed. would not have lef·t himself open to a



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crif0inal charge to honour- a confidentiality agr eem.ent he made with Mr. Peacock. Like PW7; PW8 also denied ever seeing Exhibits Gl-62 or ever ·signing any of the vouchers. He did not recognize the signature appended against his name. · PW8 was very emphatic in his denial and he had this to say:

'.'I have never in my.life received any form of emolurnents from that office

in the form of salary, wages, honorarium,

.consultancy fees, retainer ship fees or aJlowances or end of service benefits.

* + - 1· have never signed any form

of documents as a recipient of any form of moneys relating to that *office.*

·.I have never part icipat ed·in any form·

.of activities organized by the Off ice· of . the Ombudsman."

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In his- submissions to the Court the Accused has

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as k \_ed the Court to believe that Mr. Christ opher Peacock was an employee of the Office of the Ombudsman. He said that this arose by an agreement betwe-en him and Peacock. He

submitted further that as the Office of.. the

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Ombudsman generally operates on the principle

* of confidentiality and in order for Peacock's

cHent s generally not to know, and also for tax

*:* avoidance reasons, it' was agreed for it not to be

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in writing or formal. He said that·this might be

improp r but it was not •i ll egal or cri m in al.

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It i · pertinent to note that the Accused himself

condu cted the cross examination of PWS Alieu Badara Gibril, PW6 M rie Elaine Dumbuya, PW7 Melron Nicol Wilson and PW8 Christopher James Peacock. In my considered **view** nothing in the cross examination by the Accused could dent thes witnesses' evidence. They all came across as credible and reliable witnesses and the Court accept s -their evide nce. In any event, it se ms to me, and my view is buttressed by the questions put to these witnesses by the Accused, that the

\_. cross examinat ion w.as reduced to ·get t ing the

witnesses to confirm the good relationship they had enjoyed with the Accused and the fact that

·. h e· had always been ·good to them and had help d them to further their careers.

* The last witness for the Prosecution was PW9 Vi.cto-r-ia Am inat a Mansaray, a NASSIT Of fi cial who gave evidence on the.15t hJanuary 2009. She conffrmed that the Office of the Ombudsman did not register its employees for NASSIT payment.

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She pr'oduced and tendered Exhibit DD which she said was a let ter· written formally to the Office of the Onib d rnan after several oral reque$ts to

hem to register their employees and to regist er

their \nstitution. Under cross examination the · Accused put it to the witness that they never

: i ec eived Exhibit DD. She answered that they did

and to this letter was attached the registrat io n form for the employees. .

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At tt,e close of the Prosecut ion 's case, the • Accused ( who by then was un represent ed) on the . 29th· day of January 2009 made a no case subm is ion premised on the following grounds:

* + - . The Court has no jurisdiction to try the case. The proper forum for this matter should be a Tribunal appointed by the President to investi gat e allegations of

\_misconduct s, to wit, acts of a-ll eg e q

corrupt ion and misappropriation by him

* + - * as the fon11er Ombudsman.

**11o** As a matter . of public policy, the Ombudsman, like a Judge, when performing his functions should not be sued or prosecuted In the Courts of Law.

* + - No consent or fiat has been proved in Court as part of the p\_roceedings.

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In t he Prosecution's response, ·Counsel Glen na

Thori)pson pointed out that the issues which form the basis of the submissions of the Defence are a repeat of the issues.contained in th submission·s 111ade by Counsel for the Accused at the beginni·ng of this trial in their preliminary jurisdi.ctio ·nal objection, the subj ect of whi.ch is th e basis of an appeal before the Court of Appeal and an application for a stay of proceeding s· befor e the Supr eme· Court. Counsel further

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s·ubm itt ed that in no case submissions the g idelines laid down In the case of R v. Galbraith

(73 c\_. Ap p. R. 124, CA) sho-uld be used and

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since those guidelines have not been the subject o\_f t h i s n.o case submission, it should be taken that . the Defence does not' challenge the facts of this case as being capable to be put before the

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Ju'dge to det er m in e guilt or innocence.

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Suffice it *to* say that after careful consideration of II the submissions made by the Accused. as "Defence Reply to close· of Prosecution's case" I delivered a Ruling on the 9th day of February 2009 in which I held· that the Accused has a case

to answer.

On .th e .11t h day of February, 2009 the Ace.used was put to his election in accordance with the provisions of Section 194 of the Criminal Procedu r e. Act, 1965. He was also informed of his

call

: r i gh t t o witnesses on his behalf, irrespective of wh ich ever opt ion he chose in presenting his case: The Accused elected to give evidence on oath and to call witnesses. On that day th

/.\ccused . was represented QY Counsel Leon

Jenk ins Johnston.

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The Accused testified that he is a Barrister and Solici tQr with 37 yea s post call experience having been called to the Bar at Gray's Inn on

h.e 2n d day of July 1972. He gave a brief

* + overview of the v·ar iou s positions he has held; name-ly, that he is a member of the· Sierra ·Leone Bar: Associ at io n of which he was President twice; a member of Commonwealth Lawy ers Associat ion; the first ·Si•er r a Leonean to be a

rnern ber of the International Bar Asso ci t ion of which he was an executive member; also a

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1. em ber of the West African Bar Association; a Notary Public; a Commissioner of oaths; the Chairm an of the Committee of Lawyers that

draf t\_ed tt)e Legal Pr act it i on er 's Act; that he was

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also te·aching at the Sierra Leone Law School and

* + he al·so taught Media Law Et.hies and Law of Intetnational .Property at Fourah Bay College for four: ano a half years w•thout· salary b t that he was asked to stay away until after this case ends.- He stated that being a Notary Pu blic ent ai ls n ota ri zing documents and affidavits especialIv those used outside the country; that in the case of being a Com missioner of Oaths when l1e appends his signature and notarizes these

docum nts it means everything has been properly and regularly done and that it is a mark

- *qf* honour for anybody to perform that role in

terms of trust and confidence.

The Accused further testified ·t hat he was

ppoi nt ed as Ombudsman in April 2000. Prior to

\_ that he said he had been informed by the then

Government of Sierra Leone that they wou\_ld like

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to· promote him to the Bench or make hi.m the flrst Ombudsman of Sierra Leone. He. said he opte8: b be the first Ombudsman because he felt it was a challenging job. He identified Exhibit C

. as his appointment tetter and he stated that even though· it. was dated 21s t De cem b er 2000 he act uall y\_ start ed work on 1st April 2000: He referred to the 2nd paragra ph of Exhibi t C where there is reference to office accom m odatio n an d

he said there was no office all ocat ed to hin1 and

so he had to resort to using his own priv ate office at No. 84 Dundas Street, Freetown. He said this was unlike the Human Rights

Commissio. n, the ACC and the IMC which were all

provide.d with offices. He said he complained

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. about ,this··on severally occasion$ yerbally and in writing but. they sHd n ot h i n g virtually. He

* pr o duced ·and tender·ed a' l etter dated 10/5/1001

. wri'tten· by one Mr. Wellington who was ? Ct i ng as

Permanent .Secreta ry · at the time he was

complainl ng about · accom modation .and office

\_ spac . the said letter was a9mitt d as Exhi bit

. EE. .The • Accused also tendered as Ex hib it ' FF a le t te r· dated 1/10/02 which he had written to the then Minister of Housin g. · He said it was a

*:* not orious fact that his office was the only one

that was not given the· seriousness that it

·.deserved.

Various oth r issues which the Accused brough t

. up in his d fence can be summarized as follow s:

* + That the Office of the Ombudsman was
		- not provided with space by the Government of Sierra Leone;
	+ That the Office was not provided

with staff by the governn1ent of Sier ra

. - Leon e ;

. • That the office was inadequat ely

funded by the government of · Sierra Leone;

* That neither . PWS nor PW6 ever

complained or put any disclaim er on

any financial matter;

* That he used to help both PWS and

##### PW6;

* That the office was never que; stion ed

by Parliament or by the Acco'un t ant

- General's Offi ce;·

* ·That there was no Perm anent

·· Secr et ar y ;

* That there was no Vote Controll er ;
* That PW6 left his employment In 2008

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* + That he was not sworn in as Ombudsman after the first term can1e to an end in 2004 and that since there was a violation of the Om budsm an ' s Act and the Parliamentary Procedure and Approval, all acts and things done by him after that period was

. unconstitutional, void and of no effect.

It is· my v iew, however, that none of these issues raise d . address the fundam ent al. questi,on of whet her the accused is guilty of the offences ·

charged . Moreover, the Court has take·n judicial

notice that, notwfthstanding the fact that he had not b en sworn In, the Accused at all material

time·s acted as Ombudsman (including signing

cheques and letters from the Office). Unc.ler cross exan"li n ation the accwsed accepted that he was

* + - o· m bu dsm an for the entire period. He continued

to perform the functions of On1budsm an, to refer to himself as such and to answer to the title. He annot how, out' of convenience, claim not to have been Ombudsman at the mat eria l time. J

. find that ·he was at all times the Om budsm an of the Rep blic of Sier ra Leone and I so·Hold.

* , ' The Accused also tendered a number of

documents namely:

Exhibit K: The recorded interview given by

* + Melron Nicol Wilson

Exhibit L: Letter from Francis Gabbidon to Melron Nicol -Wilson

Exhibit M·:

Eighteen Month Report - Lawyers Centre for Legal Assistance

Exhibit N:· Annual Report 2003-The Lawy ers Centre for Legal Assist ance.

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Exhibit O:· Donation to Cent re· from Peter

Harrison

.. Exhibit Y:

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Peep Maga.zi ne dated Wednesday November 21, 2007

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Exhibit Z: Handwritten Pro'file of CJ .Peacock .

Exhibit AA: Writ *pf* Summons attached to lett er from C.J. Peacock to Mr. Gabbido n

Exhibit 8B1- 8B2: Letters from C. F. Peacock

* dated 24lh J a nua ry , 20 02 to the

Attorney General..

Exhibit CC1-CC2: Let ters. from C.F. Peacock

dated 27thAugust 2001 Re : Sale of Blue Mercedes Benz 230

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Exhibit Ff:

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Exhibi t GG:

Ex hi it HH:

* Exhibi t JJ:

to Mr. Lansana R\_ogers

Letter from the Ministry of Presidential Aff airs to Francis Gabbidon dated 10/ 5/ 01 Letter from th·e Om budsm an · to the Mi.nist er of Hous.ing and Environment dated 1/ 10/ 02

Letter from the Ag. Permanent

Secretary to t h e Secretar y to the

President dated 11/ 2/ 02 Letter to Mr. Fran cis Gabb idon

From Ms Marie Dumbuya dat ed 20/5/08

Letter from the Secretar y to

Ombudsmar\ to the Financial

Secretary .dated 4/ 6/ 01

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Exhib it .KK1 - KK2 : Om budsm an Annual Rep ort s

Dated 1/1/02 and1/ 1/ 03

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E.xhibit LL :·

Letter from Mathias Tumwesigye Director Education & Prev ent ion of Cor ru pt io n, Ins pe cto rat e of

of Gov er nment , Kam pala,

#### Uganda



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I · hav e perused all of t em and wish to st ate that, for an i nt ent and purposes, the majority of these

docu.m ents were intend·ed to show the constraints

wnd ·'r which the Off ice of ·the Ombudsman worked.

The Accused has put a lot of emphasis on Exhibit LL

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' . which is a letter dated 26

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June, 2002 from a

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Co0sult ant sent by the Commonwealth Secr etariat

to assess the office of the Om bu dsn, an. *his*

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. clo ing .argu m en t s, the Accused . s ated that he

. Report of Mathias Tumweslgve clearly • stated that there were· t wo Lawyers in the staff of the Office of the Ombudsman in Sierra Leone. He further submitted that the- two Lawyers referred to are

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Chri st opher' Peacock and Melron Nicol Wilson and

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t h at they h.ad to work elsewhere. In any event,

none of this was put to either Mr. Nicol Wilson or Mr. f: e acock. Counsel for the Pro sec ut ion ·has urged t11e Cour t to conclude that the contents therein of E\_xhibit LL could only have come from the .Accused

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hirn self and. is further evidence of the elaborate and expansive web he weaved in order to deprive the

$tate and now deceive the Court. ·

* The Accused has denied all 168 counts against him and -h e said he did not r:nisappropriate public funds because he had no reason to do so. He said·he paid

both Mr. Nicol Wilso·n and Mr. Peacock for work they

did for

the Office of the Om bu dsm an. He testified

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that the Office of the Ombudsman started off with abotJt 5 - 6 ·st aff and then increased to about 12. He sai.d: h e spol e to Mr. Nicol Wilson and Mr. Peacock abou t the possibility of working t oget her with then1. He also said that he enjoyed a good and excellent

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re;lationship· wit h both Mr. Nicol Wilso n and M.r P.eacock and: that they did work and co-operate toget her . T he. Accused explained that he· was the Chai rm an of LAWCLA and if th er e were complaints

* .n' o t within the mandate of the Offi.ce of til e Ombuds a.n they sent them to LAWCLA.· He said there was no money involved in some matt er s b ut they paid Mr. Nicol W.ilson for other matters but Mr. Nicol Wilso n never took any cent from them and t ia t I, h ad to ld them he was doing it pro bono· and that l) e always said the n1oney was to be given to cl1ari ies. The Accused further testified that he k ows that Mr. Nicol Wilson never took the money

,b t i t was Mr. Gibril, the Accountant, who handled

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t,he issu e o the payment to charit ies such as the Amputees and the Blind. ie said the staff was paid by ca sh. an\_d· that there were no payments by

.'Ch e q ues • except for his own \_s alary . He stated that

* + when all the staff had been paid Mr. Gibril would p: , ep are·a return form for the next salary pay n1en t and he would enter everybody's nam e and then

e:i.tll er Mr. G.

ibril or himself would tak e it for the

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staff to append their signatures to show they had been paid previous salari es. He said if this is not done then the next salaries would not be paid.

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It is not e worthy that the accused has atterr,pted to lay the bla!Tle at the door step of Mr. Gibri!. The at:cused ih his e v iden ce s t ated that all the vouchers were prepa·red by Mr. Gibril and that Mr. Gibril set the· salary and. the reviews of each salary . I find this

u·,i true and.I so hold. For a start, the accused by his

\_. o wn admission stated in cross examination that Mr.

* Gibri l work ed ·under his direction and that he, the

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·ac used, · was the l,ead of the office. This negates

. ,any notion put forward· by the accused that offences· complained of were the fault *bf* Mr.Gibril. Indeed it

:- m ake·s nonsense of the claim by the accused that

... ..

·Mr. Gibril was responsible for setting the salary

* + .levels .of Messrs Nicol Wilson and Peacock.

.In the case of Mr. Peaco k, the Accused said he

* + knew Mr. Peacock for tt1e first time in 1998 when

;'he was his student at the Law School where he

·. lectured hi.m on the Law of Evidence . He stated tl,at

-'when he became Ombudsman he told Mr. Peacock there was provision for a Law yer/ Legal / Adviser in

t h·e Off ic e· of the Ombudsman and he asked hirr1

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whet her he would be interested. He said Mr.

·Peacock said "yes" but then told him there were difficulties because he would not like it to be made public and that the relationship should be confidential because he would not like his clients or

.tax p eo ple tb be made aware of this. The Accused

* + said Mr. Pe·acock did accept the work and that he

received salaries monthly which started off wit h LeL00,000 - Le250,000 and then increased to ·

. abo: u t Le350,000. He was shown Exhi bi ts Gl-62

.and he identified them as payment vouchers . He

·$aid he ·had nothing to do with those vouchers; that

:·he did not sign besides Mr. Peacock 's name and

that he was not the Vote Controller. Under cross

:e\_x·am inat i\_on· the Accused was shown Exhibit G39 which • bears the figure Le524,771 agai nst .Mr . Peacock's r,ame and he was asked whether he stood by. the amount of Le350,000 he had talked

.a, bou t earlier. He replied that he did not stand by

that amount but he maint ained that "Christopher

:,-P acock and Melron Nicol-Wilson wer e *'bona fide'*

.em:ployees of the Office of the Om budsm an and

* + - t hey · were. regularly paid their salar ie·s of

LeSOO, 000 . 00 and Le333 , 333.00 respective ly". The

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ac,cused accepts that the name of Mr. Nicol Wilson arid Peacock were inserted as employees. He insist s

that the·y w re employees and that he recruited

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,tl em. It is ·ihconceivable that either or both of these two g:en lemen could have .been employees of th · o ff ice of .t he Ombudsman from 2001 to 2007,

ye·t no one, except the accu ed himself, knew that

they were employees. The prosecution .has submitted.. that this assertion by the accused ' is complet ely untrue. I am inclined to believe so and my examination of th following pieces of evidence confir m.s this:

a.

The evidence of PWS, 6, 7 and 8

1. The inconsistencies contain ed in *t he*

Interview (Exhibit Al-58)

1. Status Report (Exhibit B1-12)

1 h.e. accus\_ed called a Mr. Abdu.l Babatu nde Gill en to gl 1e evide\_nc :On his behalf . Mr. Gillen's evidence is t ha t ·h e is a Civil Society acti vist and was part of t ile

B 1d get .Ove 1ght Committee. The role of the

.Comm\_ itt e was to monit\_or various government

pr.ojects and the government budget at the time of alfocation; · when Minis.tries, Departments and

, Agencies would have to justify their budgets in

. ' order to receive their allocation. The Ombudsman would attend .such meetings annually and woul d

have to j ust if.y the activities that he had stated. He

would be · accompanied by . Mr·. Gibr il, the

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Accotrnt ant. The Importance·of Mr. Gillen 's evidence i·s- that he stated that there was no investigat ion of w·h at was told to them. He said they depended on the documents given to them and if they were di\_ssat isfi ed \_ th!=Y would ask for m or e documents.

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The'y did not seek to look beyo \_d

that which was

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Under cross examination he stated that they did spot checks during the year, but only to check that acti vit ies were being carried out as planned. If) the

cas\_e of the Ombudsman they visited his office to

obtai n mo.re copies of his annuar report and decided to E;:h eck his book. He saw· his staff list which co'nt ain ed a lot of names but could only recall Mr.

Gib r:-il and Ms Dumbuya, and he only saw a total of

*-*· *1* staff in t e office. They did no investi gation as to

bow t he. money allocated was being spent. To n1y

m. in.ct, t hi s ev id en ce. shows that ·the accused has

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been\_ present ing his i11flated .st af f ,li st .for government allocation year after year and had been using t his• as a cover to perpetuate the fac;ade that l, e ran an office which included Mr. Nicol Wil son and Mr. Peacock, This inflated list was a m eans to being allo·cat ed· m or e money than the office needed in order · that he could m isappropriat e and spend at hts whim.

*t-o t* an Accused to be convict ed of an offence under

section 12(1) of the An ti - Corrupti on Act 2000 as

. amended, the prosecution must prove beyond

* .reasonable· doubt that the funds were public funds, public re·venL,Je or property; that the Accused must have acted, wilfully, whether by' himself with or througl') another person and that by his act ions. he has deprived the Governm ent of such funds, rev nue or financial interest.

I shall now turn to examine all the elements of the offence whtch the Prosecution must prove.

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Were the funds public funds·?·-Th ere is no doubt

that they were. In the first· 1 ce the Office of the

* ·. Ombudsman Is a public **om e** as can be seen

frorn section 2 (2) of the Offi budsm an Act 1997

* + .. which states as follows: \_ The Office of the
		- Orn budsman shall be a pubii t office but shall not form .part ·of the public seJVice". Further that
		- s·ame Ac·t rn section 20 stipul tes .how the offi.ce

is to be funded, which is· by ,government f4nds.

The administrat iv e expenses of the Offi\_ce of the

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Ombudsman · including salaries, allowances, gratuities and pensions, if any, of the Ombuds1T1an and his staff, sfi'all be a charge on

the Consoli.dat ion Fund." Aisd section 1 of • tile Anti Cor ru· pt ion · Act 2000 as amended (the interpretation section) deffnss public funds as

" any monies paid fro.m the .fUhti s appropriated by

*:* Parliament from the Conso't,ldated Fund or any fund und r subsectiop (2) of - se ction 111 of the

. · Constitution." The e?idence given by P\N4 - Haroun Alrashid Sheriff - from the Accountant Genera'l's Qepartmer:t also ma es it clear that the Offi ce. of the Ombudsman is and has always

bee\_n fully funded by the. Governm en t of Sierra

Leone. This·has been proved by the State.

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Therefore, it logically follows that money misappr opriat ed .is always a loss to the Government of Sierra Leone. The definition of " misappropriation" i ; to be read in accordance with the case of R v. Gom ez (1993) 1 All ER 1.

\_ This case involved the delivery by the owner of eiectrical goods to 21 third party; paid for by stolen cheques, to the .knowledge of and

\_. niachir:1ations of Go,m ez. It was held that

·. · " app ropriat ion" in the circ·umst ances of that case involves· the assumption of the rights of the

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. owner by the Accused. It follows therefore that

;· the wjlful commission of any act which results in

.· the .o wner· 1osing funds belonging .t o it, amounts

to misappropriation. The consent of the owne·r is

* + irrelevant as was pointed out by the House of

Lords· · in Lawrence v. Metropolitan Police

Comniissioner (1971) 2 All ER 1253.

. Wa·s the· act complained of wilful? Generally, it

. has.. been · held that the act which causes

deprivatlo·n of funds must be wilful . In the

lea.di ng case of R.v.Sheppard (Jam es Martin)

*·:* [ 1981] A.C. 394 HL, the majority held that a

* man \\wilfully" fails to provide adequate medical

. *·:* attention for a child if he either (a) deliberately

·-' does so, kriowing that there is som·e risk that the

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child's heal h may suffer unless he receives sue!,

. a.tt ention; or (b) does so because he does not care whether the child may be in need of medical

. treatment or not. The majority equated " wilfully "

with common law recklessness. Lord Keith wl10 was in the majority had this to say:

''w- ilfully is a word which ordinarily carries a pejorative sense. It is used here . to

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describe the mental element which, in . addition to the fact of neglect must be proved....The primary meaning of 'wilful' is

\deliberate'."

In the 2002 Edition of Blackst one's Criminal

/ Pr ctice, . the Learned Editors have at paragraph

. A-2. 8 described 'wilful' as "a composite word to

* cove.r bot h ·intention and a type of recklessness".

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Jt fol lows therefore that there must be proof th·at

* the act wa·s deliberate. The State has submitted

that there is ample proof that the acts " .complained of were not a mistake but systematic

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acts deliberately" planned and executed to deprive ·th Governm ent of Sierra Leone. I agree entirely wlth this submission and it appears to me that the evidence of P\/1 3 James Ka\_mara ancl th.e Exhibits he tendered fully illustrate the

deliberat-e acts being alleged by the Prosec ut i on.

1. Fir stly there is\_ the Vote Serv ic e Ledger { Exhibit E) : PWS, Alieu Badara Gibril was able to shed some light on this book. It contains the amounts given by the Accountant General's Departn1ent with the signature of the accused appearing on various pages. The accused himself in his cross examination admitted the signatures to be his.
2. Secondly, is Exhibit F which is

the appointment letter purportedly given to Mr. Nicol Wilson. Mr. Nicol Wilson denied

ever bein\_g given this letter.

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Also PW6 Ms Dumbuya had testified that she was never given a letter of appointment by the Office of the Ombudsman even though the Accused had gi ven her letters of appointments, includin9 hers, to type. The accused himself confirmed that both Mr. Nicol Wilson and Mr. Peacock were never given letters· of appointment. This he stated in his interview (Exhibit Al - 58 ) and in c r os s e x am i nat i on . The Court can only conclude

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therefore, that Exhibit F was drafted and kept by the accused to give a semblance of legitimacy should he ever be investigated.

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Was the act done by himself or through

others? From t\_h e t ot91it y of the e v i d n c e adduced I am satisfied that the Pros cu t i on has proved beyond, r eason able doubt that the act was · done by the accused and through others, i.e. Alieu Gib\_ri l and Marie Dumbuya,

·· who were used as instruments to further the grand plan. In Exhibit Al-58 (the interview of the acc ed at question 42) the accused said

. "We ..utilized the services of Mr. Chri stopher

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Peaco\_ck who was employed by me on .behalf

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of the O'ffice of the Ombudsman whereby he gave legal advice or second opinion if and yVhen- necessar y." I answer to question 47," t h e accused stated that "Mr . Melron Nicol Wi.lson also helped with investigati ons

* especially in complaints and because I worked with· him as Chairman of the Board ·of Directors of LAWCLA we he!p each. other if and

. v1hen necessary......" Under cross examination

of PWS, It was put to him that he, PWS, t oo k

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salary every month to Messrs Peacock ·a nd

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Nicol W-i l son and.·that Nicol Wilson oonated it

* to chariti s. This PWS denied in its entiret y. At

·the ·end- of each payment voucher is an official endorsement of the Office of the Ombu dsm a-n which was shown to- the accused In his i·nt erv iew at question 83. Here aga in the

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accused confirmed that it was the official sta\_mp and .h is signature and · that it signified "that I m satisfied with· the d ocu m ent s as pr esent ed to me by Mr. Gibril." Furtller the

.·accused in cross examinat ion accepted that he

signed exhibits Gl-62 and that it signified that he approved of the information contained therein.- That signature at the back of each salary· p ayment voucher goes ar beyond mere appro va l., Without it, the Accountant General's depar tm ent would not release the next trancll of the money due to the depart ment. The evidence of PWS also supports the prosecution 's ca$e that the accused acted by

. himself • and through others. PWS .stat ecJ that the names on exhibit Gl-62 were supplied .to l1in1 by the accused. That evidence went nchalien.9ed . These pieces of ev iden ce show

* + th at the. accused acted by himself and by

instructing ot hers to do so. This requirement of the Act is therefore satisfied.

* I nterest ingly, the Accused himself submitted in

his dosi11g arguments that Ms Dumbuya and

Mr. :Gibril assisted him in the work at the office and t hey · all worked voluntarily as a team wit hou t any dissents or disapp ro v al; that they

both were aware of what was going on in the Office; that Ms Dumbuya agreed to type their

. names -on the Pay Sheet for nearly 8 years

witho.ut qny objection, waiver or disclaim r;

that Mr. : Gibril, the Accountant prepared the Pay Sheet with all the names, signed the document and other documents r elat ed to it

and regular ly took them .to the Accountant-

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. General's office of the Ministry of Finance

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verifyin-g that these doc ments were . all in

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order, to : r eceive or be paid their respect iv e

.s lari es by the Accountant -General. The

Accu\_sed further submitted that they both had

an· qbligation to report any wrong doing, if

t.here wa\_s one, but that they failed or refused

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* to· do\_ o and abetted him in the said wrong doing· and that they should have been .charged

joi\_nt ly with hi'm as conspirators. Is this an

admission of guilt? I must .say that I find it difficult to. decipher what defence the accused

has put forward. To my mind, the fact that neither. PWS nor PW6 ever com pl a·ined does not mean the accused is not guilty as charged

··nor does that absolve the accused of his responsibilities as Ombudsman of Sierra Leone. fact they Were less likely to complain he · was their Boss and he was given the due

as In

* res pect as. Head of Office.

Thot;tgh dishonesty is no specifically stated to

be an element of the 9ffence under Section

t 2(1)-, .I am of the considered o.pinion· t hat it

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would be inconceivable to convict the Accused of . th'is offence .in the absence of proof of

. dishonesty. The authority here is the decision

of the \_ Engl ish Court of Appeal ( Cr i m- i nal Div ision ) . in the case of R.v. Ghosh ( 1982)' 2 ALL ER 689. It was held that the test wc1s first

··whether according to the o· rd ina ry standard of reasona.b le and honest people what was done was·.dishonest. "If it was not dishonest *by*

thos\_e standard s .then that is the end of the

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. matter :·and t h.e prosecution fails. If it was

dishonest. by those standa\_rds, t hen the tribunal ·must consider whether the defendant him:self. must have realized that· what he was

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doing was by those standards dishonest. In

·most· cases where the actions are obviously

dishonest by ordinary standards, there will be

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no doubt about· it. It is dishonest to act in a way which he knows ordinary people consider to be pishonest, even if he asserts· or genuinely believ es that he is morally j ustifi ed i\_n acting as he did."

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* f " .

Judging from the facts of this case the accused acted in a dishonest manner. He knew that what he :was doing was wrong and indeed in

* his cross examination of Messr s Peacock and Nicol Wil?on he was more co·ncerned for them to ccept that they wer allfriends and he had

at on\_e point done them favours and that n ow

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heir evidence was a sign of ingratit ud e. He never once sought to challenge that the signatures on the paid up vouchers we\_re those of the two witnesses as opposed to t he forgery which t he· prosecution say it is.

On the issue of whether or not the Accused was a public officer the Prosecution submit ted that it is·n ot necessary under sectio n 12 of the Ant i Corrupt ion Act 2000 as amended for the accused .to have been a public off icer at the

. time *of* the commission of the offence. Be that

as it may, the prosecution C0 8tends that the acciised· was a public officer at the tim e of the commission of the offence,· a fact that he himself has admitted to in the submissions made ·at the start of the trial on the basis that as a public officer he enj oyed immunity from prosecution by virtue of Cap.172 of the Laws

of Sierra Leone 1960. If we were to look \_at the

interpretation Act 1971 section 4, public office has the meanings given to it by the

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Cbnstltutlon. Section 171 of the Constitution says that public office ineludes an *off ice* the emoluments attaching to which are paid directly ,from the Consolidated Fund or directly

- u t of the moneys provided by Parliament.

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Th\_is

is supported by section 20 of the

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Omqudsman Act aforesaid. Also . evidence led

in this trial by Haroun Sheriff (PW4) an d t·he

* + cross examination of Alieu Badara Gibril (PWS) prove 'that the entire budget of the office comes from the Consolidated Fund. Further a

. public qfficer is· a holder of a pu blic office, same as that contained in the Anti Cor rup tion Act 2000: The Ombudsman is therefore a

public officer as he holds a public• office.

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The State has submitted that the accused has told a number of untruths in this case and these should not be reduced to merely an ad verse · reflection of his credibilit y, but that

these sho ld be seen as evidence of his guilt .

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the Court ought to be reminded that

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people may Ile to bolster up a just cause, out of shame, or out of . a wish to conceal disgraceful behaviour, as per the directions in the case of R v. Lucas (1981) QB 720, 73 Cr. App. R. 159 CA these lies were deliberat e and were not told for an innocent reason, but ratl,er to evade justice. The accus(;d co·ntinually lied in the face of overwhelming evidence ·to the contrary that Messrs Peacock and Nicol Wilson were· members of his staff.

He had · forged documents to bolster that

falsehood and sought to bully wit nesses into

accepting. his falsehoods by reminding them of

 all th.e good turns he had once done for them

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ahd the fr endship they had on<:e enjoyed. Also his explanations for their inclusion In his staff

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list were very fluid and shifted from

- employ m en t, engagement and in his words

°'' qu asi-employee" . No questions were put in cross examination to any prosecution witness to. suggest that the signatures were those of Messrs Nicol Wilson and Peacock. Further there has been no evidence put before this Court to support the assertion by the accused that they were employees who were paid the monies stated in the paid-up vouchers. Judg.ing from the totality of the evidence adduc p: before this Court I· am of the considered view that the signatures are

for geries -for which the accused is responsible

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an·d that they were devised to give an appearance of legality and· proper record keeping for an' illegal act. Indeed in exhibit Al- 58, in ·answer to question 83, wherein the paid up vouchers were put to him, the accused stat ed that the nc,1mes of all those listed on the said payment vouchers were employees employed· by the office of the Ombudsn1an- at the time He further stated that "the- rnonies against the names were the salaries and/ allowances they were entitled to receive during the period listed in t·he payment voucher. All amount listed against their names were paid to them".

The entir'e account given by· the accused is untr.ue. .It is beyond belief that; the accused would be so alt ruistic· that he would put himself through the humiliation and expense of a· serious criminal trial because he wanted to honour some agreement with a lawyer much Junior to· him and to whom he owes nothing. for a start the agreement was not illegal, so· why was so much secrecy needed to

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the poi nt of subjecting oneself to the ordeal of

##### . . ..\_a criminal trial with a-ll

its attendant· r isks.

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Slm llar ly, the idea of donating one 's wages to

e.h arities\_ s ch as Amputees and the Blind should· n·ot have posed any problem s if .i n deed

* + · ha t was. what transpired. I nstead what the

-Accus d .w an ts this Court to believe is that Mr . Nicql Wil son donat ed ·his wa·ges to wort hy Causes but has now decided to deny his. Mr. Nicol Wilso n of cqur se in evidence stated that

* + - he never received. salarie s nor did he donate th.em to any charities and furt her does not kno w Mr. Gibril who It was sai9 delivered his salary monthly. Mr. Gibril him.self denied ever

taki ng.·money to deliver neither to Mr. Nicol Wil son nor .of deliver ing money to' any char i ty .

I t is worth noting that the accused had said th at he· would send Mr. G.ibri l to Mr. ·Nicol­ Wilson each month whilst he stat ed in the **witness.- box** tha\ M!. Gibril took it there himself. This line .of. defence sim ply does not

ma e sense. The 1 accused himself could not proquce ·any record to show t h at the monies

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were paid to charit ies· and/ or to whom.. He

could not ev en get the li st of t h e ch arities

stra ig ht . H is accou n t was vague, lack ing in .

detail and devoid of all credibili ty. The accused woul d li ke the cour t to accept that all the wit nesses of fact have all decided to come- to c qurt to · lie. It is as i f there is a grand conspl acy by all the wit nesses to come to

.court and commit perjury. It is the subm ission the State' that n,'.)ne of t h ese people had any reason to lie. The v all admitted having ha.d a good relati onship with him and in some cases to have benefited from his generosity. This

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* + was som thing which the a.ccused himself

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(. · managed to get out of every single witness of

facf. It ·\_. is t ·herefore simR!r hot true that they

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would ·come to court to Ile. They had no

reason to.

What I find ov·erwhelm(ng in this case is the

fact that the Office o.f Hie Om bu dsm an had

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giyen the Accused a chance to serve the societ y but he squandered it by allowing himself to be swayed **by** greed. If prot ector becomes. perpetrator, tH f1 who will save the syste ? '

The Prosecution has ad8l1ted no evidence in

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* + - support of the allegations tontained in counts

165-168.. I have thererore discountenanced

these four counts an.d dtitit only with counts

1-164. From the totalit bf all t·he evidence

adduced before thl Cou'rf¥J am satisfied that

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the case against Franci·s

A. Gabbidon has been

proved beyond . reasonable doubt. In the r esult, . I hold that the Pr osecu tion has proved its case against Francis A. Gabbidon beyond .all rea$On ab le doubt in respect of the 164 counts as charged in the Indictment. I therefore find the Accused guilty on each count from count 1 to count :164 and I convict .him accordingly.

Just ice Sey

q/6/09 .

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