IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

V

PHILIP LUKULEY

COUNS EL:

R S FYNN ESQ., for the State

E E C SHEARS-MOSES ESQ and S. J AMIRU ESQ for the accused

EFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL
JUDGMENT DELIVERED THE 11 DAY OF JULY,2011.

INTRODUCTION

1. The accused person stcnds.char ged. on a 194 Count Indictment for various offences under the Anti-Corruption Act ,20 08 (ACA,2008). The Indictment *is* at tached to this J Ldg ment , and forms part of the same. I shall n9t therefore repeat the charges verbatim. For 'reas ons of clarity, I shall ad opt, wit h certain modif icat ions, the class ifi cat ion used by Mr fyM in his closing written address. The charges all relate to the manner in which the accused dis c ha r ge d his duties as Executive Director of the Sierra Leone Maritime Ad minist ra t ion, (SLMA) an Ad minist ra t io n or Authority establis h ed by the Sierra Leone Maritime Adm inist r a t ion Act ,20G0. The accused has been it s only Executive Director since its establishment.

THE INDICTMENT

2. Counts 1 and 2 are the 'Tide la nd Charges'. Count 1 charges the accused with the offence of Misa ppropr iat ion of Public Funds contrary to Sect ion 36(1) of the ACA,20 0 8. It alleges that on or about 14 May,2010 the accused wilfully misappropriated the sum of Le69,954,960 being public funds by making wilf uP payment of the so.me to the Sierra Leone Shipping Agency, by *v:ay* of demurrage charges. Count 2 charges the accused with the offence of Abuse of Office contrary to Section 43 of t he ACA ,20 08. It alleges that the accused knowingly abused his position as Executive Director of the SLMA in

that he made an excessive payment in the sum of Le69,594,960 to the Sierra Leone Shipping Agency by way of payment of demurrage charges.

3. Counts 3-16 o_re the Rent and Leave Allowances Charges . The charges are in respect of the offence of Fraudulent Acquisition of Public Funds contrary to Section 48(1)(0) of the ACA,20 08 . In Count 3, it is alleged that between 1 January and 31 December,2009, the accused fraudulently acquired the sum of. Le16,320,00O by a fraudulent calculation of his leave allowance contrary to his terms and condit ions of service, thereby causing loss of revenue to the SLMA. In Count 4, the particulars are in respect of the same amount of Le16,3 20,000 as rent allowance for the year 2010. Counts 5 and 6 allege tHat the accused fraudulently acquired the sum of Le56,640,000 in 2009 and 2010 as rent allowance for each year. Counts 7 and 8 charge the offence of Wilfully Failing to Comply with Applicable procedures and Guidelines relat ing to Management of Funds, contrary to Section 48(2)(6) of the ACA,2008. In Count 7, the allegation is that the accused wilfully failed_t o comply with procedures and guidelines i.n respect of his rent allowance for 2009 in the sum of Le56,640,000 which he ·fr·a udule nt ly acquired. In Count 8 he failed to do the same with respect to his leave allowance for 2010.
4. Counts 9-12 charge the offence of Misa ppro pr iat ion of Public Funds cont rary to Section 36(1) of the Act . They allege that the accused wilfully misappropriated the respective sums of Le16,320,000 and Le56,640,00O being monies paid to him in 2009 and 2010 as rent and leave allowances. Counts13-16 relate to the same rent and leave allowances. Counts 13 and 14, charge him with the offence of Abuse of Office contrary to Section 42(1) of the Act, in that in 2009 and 2010 respect ively, he abused his office by improperly conferring an advantage on himself in the respective sums of Le16,320,000 and Le56,640,000 as payments in those years in respect of those allowances. Counts 15 and 16 charge him with the same offence, with this difference: that in 2009 he conferred an advantage on himse lf by fraudulently collecting the amount of Le80,640,000 as rent allowance a sum in excess of Le56,640,000 contrary to his terms and conditions of service; and that in 2010 he did the same t hing.
5. Counts 17-27 are tbe 'Per Diem' charges. Counts 17-19 charge the accused with the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. Count 17 alleges t hat ·in 2009 the accused wilfully misappropriated the sum of 'fUSD2,995 by wilfully calculating his per diem

allowance at USD4,000 for 4 days overseas travel (31March-3 April,2009) to Accra, Ghana. Count 18 alle ges that he wilfully misappropriated the sum of USD2,744 by wilfully calculating his per diem allowance at US D4 ,0 0 0 for 5 days overseas travel to Accra Ghana between 4-8 May,2009. Both sums of money are said to be in excess of Government approved rates. Count 19 alleges that hewilfully misappropriated the sum of USD2,144 by wilfully calculating his per diem allowance at USD4,000 for 4 days overseas travel to Accra, Ghana. Count 20, appears to be a bonus Count: it charges the accused with the offence of Conspiracy to Commit a Corruption offence contrary to Section 128(1) of the Act. It alleges that between 31 March and 29 May ,2010 the accused conspired together with other persons unknown to commit a corrL•ption offence, to wit: to wilfully calculate per diem allowance in excess of Government a,pproved rates. I say this is a bonus Count, because it merely attempts to encapsulate under one head the charges in Counts 17-19 and 21-27.

6. In Counts 21-23 the offence charged is Wilfully FaiJ,ing to Comply with Applicable Procedures and Guidelines relating to Management of Funds contrary to Section 48(2)(6) of the Act. In these charges, the prosecution alleges that the accused failed to comply with applica ble guidelines relating to the management of funds, in relation to the payment of the per diem allowances charged under Counts 17-19. They allege that hewilfully calculated his per diem allowances in respect of each miss ion abroad, over and above the Government approved calculated rate.

7. In Counts 24, 26 and 27 the accused is charged with abusing his office, by improperly conferring an advantage on himself, by wilfully calculating the allowances ref erred to above, over and above the Government approved rate. Thecharge in Count 25 is Abuse of Office contrary to Section 42(1) but the particulars do not only duplicate to so e extent, the particulars in Count 27, but allege matters not covered by Section 42(1) but by Section 48(2). It alleges, inter alia, that the accused *".....wilfully failed to comply with procedures and guidelines..., .....to wit, improperly conferred an advantage on himself.....*"Th duplication appears to be the resutt of unchecked cutting and pasting. Count 25 in its particulars, therefore charges two separate offences in one Count, and cannot therefore stand. The accused is therefore discharged on this Count.

8. Counts 28 - 169 are the Board Payments Charges. Counts 28 - 160 are all l?rought unde r Section 48(2) of the Act. In sum, each of them alleges that theaccused wilfully failed to comply ith proced ures ar.d guidelines relating to the management of funds of the SLMA, in that in each case, he caused to be paid to each of the Directors on the SLMA Board, a certain sum of money as remuneration for the months beginning Oc t obe r,2008 and ending in December,2010. The number of months differ in some cases, as some Directors took up appointments at different points in time, or, for some other reasons, did not receive remuneration for a particular month.
9. Counts 161-169 re brought under Section 35(2) of the Act. They allege, that in each case, the accused offered a monetary advantage to a Director of the SLMA Board in a certain sum of money which was not authorised by Parliament. They complement in certain respects, the 'failing to comply with guidelines' Counts. The prosecution is alleging that having failed to comply with the procedures and guidelines relating to the management of the funds of the SLMA, the accused offered the composite sums stated in each Count, as a monetary advantage to each Director. The period covered in each Courtt, surprisingly appears to be much short.er than that covered in Counts 28-160. For instance, the period covered in Count 161 is January -December,2010 though it relates to the Chairman of the Board, payments to whom are also charged under Counts 28-54 for the period (?ctober,2008 to December,201Q_. _I n view of the period covered by the subsequent Counts, _this may have been an error on the part of the draughtsman of the Indictment, but it remained uncorrected during the trial. In Counts 162-169 the period covered in each case is January,2009 - December,2010. These Counts relate to monies paid to the Chairman, and 8 other Directors.
. Whatever may be the case, the fact remains that each of them charges the offering of a composite amount of money; and in **view** of Counts 28-160 which itemise these transactions, and show clearly that there was not just one transaction, but several transactions, these Counts clearly cannot stand as they are bad for duplicity. The accused is therefore discharged on Counts 161-169.
10. Counts 170-173 are the Dokka! charges. These charges relate to repairs carried out by Dokka! Enterprises to what the prosecution alleges are the private vehicles of the accused. In Counts 170 and 171, the charge is Misappropriation of Public Funds contrary to Section 36(1) of the Act. In

. Count 170, the vehicles concerned are ACM 112 and ADD 178 . It is alleged that the accused wilfully misappropriated the sum of Lel,238,800 by wilfully making payment of that sum to Dokka! by means of payment voucher No.44458 dated 20 May,2008 and SLMA cheque 0422841. In Count 171 the vehicle concerned is AAW 071. It alleges that the accused wilfully made payment to Dokka! in the sum of Le2,204,000 by means of payment voucher No.4867 dated 31 December,2008, and SLMA cheque No. 05764 9. In Count 172, the charge is brought under Sectlon 48(2) of the Act. It alleges that the accused wilfully failed to comply with guide lines and procedures relating to the payment of the sum of Le2,204,000 to Dokka!. The charge is cot11plementary to C unt 171. Count 173 charges t he offence of Abuse of Office contrary to Section 42(1) of the Act . It alleges that the accused improperly conferred an advantage on himself by using the sum of Le2,204,000 which belonged to the SLMA to pay for repairs to his private Vehicle, AAW 071. In Counts 171-173 one t ransact ion has generated 3 charges.

11. As the prosecution led no evidence inr es pect of Counts 175-176, which fact is admitted by Mr Fynn in paragraph 8 of his written closing address, the accused is acquitted and discharged on both Counts, notwithstanding the caveat inserted in that paragraph by Mr Fynn that hewit hdraws both Counts. Charges cannot really be withdrawn after the prosecution has closed its case. Once evidence has been led, i_f the prosecution fails to prove the charges laid in the.Indictment, the result is an acquittal, and not a mere discharge. The position is different if evidence has not yet been led.

12. Counts 177-184 are the fuel Counts. They relate to the supply of fuel to vehicles owned by, or used by the accused; and to a generator owned by the accused. Counts 177 - 182 charge the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. Count 183 charges the offence of Abuse of Office contrary to Section 42(1) of the Act; and Count184 a Public Officer us ing his office for advantage contrary to Section 44(1). Count 177 alleges that the accused misa ppropr iat ec:ilhe sum of Le296,000 by wilfu lly causing NP to supply 20 gallons of petrol by means of chit No. 107598 to his pr ivate vehicle ACM113. In Count 178 the chit used was No. 107599; through use of that chit, the accused wilfully caused NP to supply 20 gallons of petrol at a total cost of Le296,000 to the accused's private vehicle ABB 052. In Count 179 the sum involved is Le444,000. The chit used

was No.118416. 20 gallons of petrol were supplied by NP to accused's pr ivat e vehicle ACM113. In Count 180 the 35 gallons of petrol varued Le518,000 were supplied to accused's private vehicle ACM113 by means of chit No 128001. In Count 181, the sum involved is Le638,000; the chit used is No. 26111; 44 gallons of diesel were supplied for the use of the accused's generator at Potoru. In Count 182 the sum involved is Le740,000 in respect of the supply of 50 ga-ll:,ns of diesel for the purpose of accompanying the accused's wife to Koinadugu District, and to Farana in the Re public of Guinea . It is not stated how this fuel was used: that is, if for inst ance , it was supplied to a vehicle, or was put in a receptacle for use later.

13. Count 183 charges the offence of Abuse of Office contrary to Section 42(1) of the Act. It alleges that the accuse_d improperly conferred an advantage on his wife by using the sum of Le740 ,000 belong ing to the SLMA to purchase 50 gallons of fuel for the procurement of cows from Koinadugu District and Farana in the Republic of Guinea. In Count 184 , the charge isa Public Officer using his position for advantage; contrary to Section 44(1) of the Act. It alleges that theaccused abused his position as Executive Director by improperly conferring an advantage on his wife by using the SLMA funds in the sum of Le740,000 for the procurement of the same cows refe rre d to in Counts 182 and 183. The single transaction relat ing to the . purchase of cows, has thus give bir t h to 3 Counts.

14. Counts 185 - 194 charge the offence of Misappr opr ia t ion of Public Funds contrary to Section 36(1) of the Act. They relate to alleged payments made as Honoraria to Parliamentary Sub-Committees, urgent nat ional mat t e rs , Chiefdom Authorities, Village elders and wharf harbour Masters, and for a visit by a delegation to Gbangbatoke and Kitchom.

15. To sum up, on the Counts in the Indict,:nent, they charge offences under the Act of Offering an Advantage to a Public Officer contrary to Section 35(2); Misappropriation of Public Funds contrary to Section 36(1); Abuse of Office contrary to 42(1); Abuse of Position contrary to 43; Public Officer using his position for advantage contrary to 44(1); Fraudulent Acqu isit ion of Public Funds contrary to 48(1)(a); Wilfully Failing to Comply with Applicable Procedures and Guidelines contrary to Section 48(2)(6); Conspiracy to commit a corruption offence in Count 20, to Wit, conspiracy toget her with other pers ons unknown to wilfully calculate per die m allowance in excess of •Government approved rates, which is rea lly a c onglome ra t ion of all the

Counts re la t ing to the per diem allowances paid to the accused, and was probably inserted as a safety net and cat ch-all; Conspiracy to Commit Misappropriation.of Public Funds contrary to Section 128(1) in Counts 175 & 176 - abandoned; and Failure to comply with a requirement under the ACC Act 2008 contrary to Section 130(1) respect ive ly.

16. Before explaining the Law relating to ,each of these offences, other than that charged in both Counts 175 and 176 which were abandoned by the prosecution, I think I should set out what I may describe as the background or the fundamentals of the case, whic h fundamentals apply to all the charges.

OVERLOADING AN INDICTMENT

17. firstly, the prosecution must avoid at all cost, overloading the Indictment. There is a danger, when an Indictment contains too many Counts, charging different off ences , that vital elements of offences may be overlooked both by the prosec ut io-n, by the defence, and maybe by the J udge. I have had to go through the charges in this I nd ict ment over and over again, to make sure I have not overlooked any. I think I s all deal with all of them below, but if I do leave out any, it would be as a result of t he sheer we ight of the Indictment. My perception is st rengt hened by the wordsof BRIDGE,LJ (as he then was) in NOVAC (1976) 65 Cr App R 107 at page 188:" *Wecannot conclude this judgement without pointing out that most of the difficulties which have bedevi/fed this trial, which have led to the quashing of all conv/ctions except on the conspiracy and related counts, arose directly out of the overloading of the Indictment..... the wider and more important question has to be asked whether in such a case the interests of justice were likely to be better served by one very long trial , or by one moderately long and four short separate trials....._ we answer unhesitatingly that whatever advantages were expected t.o accrue from one long tr ial,.....they were heavilyoutweighed by the;,.. t antages. A trial of such dimensions putsan immense burden _onboth nd Jury...."* Here, I am sitting alone as both the tribunal of Law and of fact. Thet ria l has not been long, but the multiplicity of Counts have not, I believe, helped the prosecut ion either. As the Learned Editors of BLACKS TO NE'S CRIMINAL PRACTICE , 2007 Edit ion opined at paragraph D10.60 page 60: " *A further aspect of not overloading Indictments ,s that when, as not infrequently happens, the criminal conduct alleged against anaccused may be said in law to amount to a*

*, nu mber of distinct offences but the gist of what he did can convenient ly be brought under one charge, then the prosecution should have just one count for the obviously appropriate offence - nothing is gained and much is lost in terms of simplicity of presentation to the jury if the indictment contains colJJ1t S fer all the offences of which the accused might possibly be guilt y. Thisis ,1lithout prejudice to cases where the prosecution evidence is such that the drafter is genuinely unsure about which of a number of possible alternative of fences the jury might choose to convict on. In that situationit is proper to put all the alternatives in the indictment."* This is a trial by Judge alone, and the prosecution do not find themselves dealing with a jury untutored in the la w.

DUPLICITY

18. Secondly, the prosecution must comply with the rule against Dup lic it y. All Counts in the Indictment must charge one offence only. If they charge more t han one offence, they are bad for Duplicit y, and deprive the Court of jur isd ict ion to try them. Duplicity is a matter of form, and not of evide nce. In 'this respect, the Law requires that the accused person be dis c harged for those offences. If also, on its face, a Count appears not to have charged t wo s e parat e offences, in the sense that it does not allege the commiss ion of an off ence on more than one day; or, that it does not charge the. commiss ion of two separate offences on the same day, and therefore notduplicit ous; but the e vid e nce discloses that in fact that particular Count has in effect chcrged two separate offences, that Count will also be bad for Quasi-Duplic it y , in that the evidence discloses that more than two off ences have been charged in that Count. In this respect , the law is now more tolerant tho!'\ it was before. The cases show, that what the Court is concerned with is that no injustice is caused to the accused pers on, in the sense that he might be put in a position where he would not know to which particularallegation he must apply his defence. Where the charge is so framed, that it would not be evident whether the alle gat ion is that the accused commit t ed one of several act s on a. particular day, or on several days, it is best that each criminal act be charged in a separate count . As stated in ARCHBOLD 2003 Edit ion at para.graph_ 1-133: *It is not an essential characteristic of a single criminal o f fence that the prohibited act or omission took place once and for all ona singi'e day, since it can takep/C!ce continuously or intermittently over a period of time and still remain a single o f fence ."* The case of CHILTERN D C v

HODGETTS [1983] 1 All ER 1053 HL is cited in support of this propos it ion. "*...Upholding the conviction for failure to comply with an enforcement notice, the House said the offence should be alleged to have been committed between the date when compliance with the notice was first required and the date when the information was laid or the notice complied with, whichever was the earlier.*" In that case, LORD OqKI LL, in delivering the leading judgment for the house, in which all the ordsoncurred, said at page 1060 paragraph h: "*It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all ona single day. It may take place continuously or intermittently,over a period of time. The initial offence created by sub-s(J)(of the Town and Country Planning Act,1971) in the case of non-compliance wlth a 'do notice' is complete once and for all when the period of compliance with the notice expires; but it is plainly contempiated that the further offence of non-compliance with a 'do notice ' created by sub-s (4), though it too is a single offence, may take place over a period of time, since the penalty for it is made dependen on the number of dayson which it takes place..,.,.. if it were otherwise, it would have the bizarre consequence that on a summary conviction a fine of £4 could be imposed for each such separate offence committed by the offender received before his first conviction.....*" What I can glea from what LORD ROSKILL had to say in that case, is that, for instance, in a case where the charge is failing to comply with applicable procedures, the prohibited act or acts may take place over a period of days: one day, it might be that a voucher was prepared or not prepared, the other day it would be that a cheque was prepared for the amount stated in the voucher, and so on. If the prosecution were to charge an accused separately for each of these acts which collectively constitute the failure to comply with applicable guidelines, the accused would be faced with a multiplicity of charges, emanating from the prohibited acts, whic h toget her really const it ut e just oneoffence.

19. The sit uat ion is otherwise, where, for inst nce, the charge is misappropriation of public funds. The act of misa ppropr iat ion is a single act. At the moment the amount of money leaves the coffers of the public body, there hasbeen an appropriation. What makes it a misa ppropr ia t ion, is the wilfulness of the act, and the dishonest intention to deprive the public body

of f u_nds or revenue. This is what, in my respectful view, LORD BROWNE-WILKINSON was trying to explain in the case of **GOMEZ (1993] 1 All ER,** 1 at page 39 paragraphs f and g. As I have stated repea t ed ly in the past cases I have adjudged, I will not convict an accused person of the offence of Misapppropriation of public funds, if the pros ecut io n has not led evidence from which it could be inf erred that the accused was dishonest, no_t wit hst a nd ing the absence of the word dishonest from the definition of Misappropri tiori ir1 Section 36(2) of the AC Act,2008. What makes an appropriation a misappropriation, is the dishonest intention to appr opriat e ,

20. St ill, c,n the issue of dupl icit y, at paragraph 1-139 of ARCHBOLD 2003 Edit ion it is stated that: *In AMOS v DPP [1988] R TR 198, DC, it was said at page 203 that uncertainty in the mind of the defendant is the vice at which the rule against duplicity is aimed and that the rule is a salutary one, designed to counter a true risk that there may be confusion in the presenting and the meeting of charges which are mixed up and uncertain."*

PRE 2008 ACTS AND OMISSIONS.

21. Third ly, some of the char.ges in the Indictment relate to acts and omissi on which occurred in early 2008, before the pass ing of the 2008 Act, particularly .Counts 170, 181,185,186,187,188,189. These Counts charge the offe nce of Misappropriation of Public funds contrary to Section 36(1) of the 2008 Act. This provision is in the same terms as those in Section 8(1) of the repealed 2000 Act, and is therefore nota new offence. The accused is not therefore facing trial on charges which are based on acts committed when those acts were not offences.

THE SIERRA LEONE MARTITIME ADMINISTRATION

22. Fourt hly, all the charges relate to the accused in his position as Execut ive Director of the SLMA, the nature .and operations of the SLMA, including the operations and functions of the SLMA's Board of Dire ct or s , and the role of Parlian-,ent, and Parliamentary Committees, or Sub-Committees. It would be necessory therefore, to discuss what !he Law says about the SLMA and the ro le of Parliament in its functions.

23. The Sierra Leone Maritime Administration was established by Sectio,:i 3(1) of the Sierra Leone Maritime Administration Act,2000 - SLMA Act,2000. Sub-section .3(2) provided that "*The Administration shall be a body corporate having perpetual succession and capable of acquiring, holding and*

*disposing of any property, whether moveable or immoveable, and of suing and being sued in its corporate name and, subject, to this Act, of performing all such actsasbodies corporate may by law perform.*"This provision makes it clear that the rules and regulations governing those employed by, or holding executive and Board positions in a company or corporate body, a pply to the SLMA. So, therefore, the rules relating to the fiduciary obligations of Directors, the duty not to make a secret profit; the duty to not act, against the interest of the corporate body, the obligation not to exceed t he mandate and powers given -,, to the corporate body by its Articles of Association, :md _in stat ut or y corporate bodies such as the SLMA, the Statute establishing the body, apply to the accused.

24. Subsection 3(3) provides that *"The Administration shall have a common seal, the use of which shall be authenticated by the signature of the Executive Director and other members of the Board designated in that behalf by the Board."*

25. The Board is established by Section 4(1) of the SLMA Act,2000. It provides • that *"The governing bodyof the Administration shall be a Board which shall, subject to this Act, have the control and supervision of the Administration." This means that, generally the Officers and employees of the Administration will be subject to the authority of the Board. Subsection 4(2) provides that "Without prejudice to subsection {1}, the Board shall be responsible for:- (a) securing the implementation of the functions of the Administration; (b) the approval of policies for the proper management of the Administration,· and (c) the sound and proper financial management of the Administration." Subsection (4) provides that "The Board shall consist of a Chairman and 8 other members.* By Subsection (5)(c), the Executive Director appointed under Section 13 of the Act, is also a metf'\ber.

26. Most importantly, for the purpose of deciding the efficacy of Counts 29 - 160, Section 6 of the Act provides that: "*The Chairman and the other members shall be paid such remuneration or allowances as Parliament shall determine and shall be reimbursed by the Administration, with the approval of the Minister, for expenses incurred in connection with the discharge of their functions."* Section 2 provides that the "Minister" is" *the Minister responsible for Transporf'.*

27. Section 7 deals with the proceedings of the Board. The quorum for meetings is 6. Each member has one vote, but in the case of a tie, the Chairman has a

casting vote." *All acts, matters or thh',gs authorized or required to be done by the Board shall be decided at a meeting where a quorom ls present and the decision is supported by the votes of at least two-thirds of the members.''* Further, *"Any proposal circulated among all members and agreed to in writing by a two-fhirds majority of all members shall be of the same force or effect asa decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next meeting of the Board."* It has a proviso which is not necessary for the purposes of this J udgme nt .

28 .The reason why I have cited these provisions is to illustrate that the ultimate de ision t_naking body at the SLMA, is the Board. Once the Board has taken a decision, the executive or management of the Ad minis t rat ion are duty bound to carry it out. From the evidence led, i-t is clear that the annual budget for the SLMA is put together by the var ious. heads of de art me nts , and decided on by Manage ment . Management then subm it s it to the Board for approval. Upon approval by the Board, it is sent to the Ministry of Finance for its own endorsement, and for presentation in Parliament. The budget is implemented once it has received Parliamentary approval. It follows therefore that if Parliament has approved the budget as present ed, and if management keeps its expendit ur e within that approved budget , man ent cannot then be said, to have wrongfully utilised funds which . hav udgeted for.

29 Section 14 of the SLMA Act provides for the appointment of an Execut ive Director (EID). It states that: (1)" *The Administration shall have an ExeclJtive Director who shall be appointed by the President on the advice of the /./i1nister, subject to the approval of Parliament ."* The prosecution has not tendered the accused 's letter of appointme nt , but it has t e nde r ed as e x hibit 43 A&B, a copy of a let t e r dated 20 April,2001 written by the then Chairman of the Board, Capt Abraham Macauley. Therein, the accused's appointment by H E The President is acknowledged in these words: *"...ln compliance with paragraph 2 of the Secretary to the President's letter dated 27h August,2000 appointing you to that post."*

30 .Se ct ion 14(2) provides for the terms and condit ions of service of the E/D. It states that :" *The appointment of the Executive Director shall be upon such terms as the Board may, with the approval of the Min is t ,er de ter mine."* It is not for the E/D to fix t he terms and condit ions of his e mployment .

That is a matter for the Board. In exhibit 43A&B the Board, in 2000 fixed the terms and condit ions of service of the accused1he conditions included payment of a basic annual salary then fixed at USD24,000; annua l rent allowance of USD 6,000 i.e. 25% of the annual basic salary; leave/travelling allowanceof 15% annual ba ic salary; a furnished house; 2 official vehic les a 4x4 four wheel drive and a salon car, preferably a Mercedes Benz car; responsibility allowance; and an entertainment allowance.

31. His duties are set out in Section 15, and they are, inter alia: ..... (he) *shallbe responsible for the efficient organization and management of the Administration; and....it shall be {his) function as the Chief Executive Officer of the Administrationbut subject to any directions from the Board, to-(a) formulate and implement the operational policies, programmesand plans relating to the functions of the Administration as may be approved by the Board .....( e ) to provide overall leadership in the concf uct and management of the day to daybusiness or activities of the Administration."* What these provisions tell us, is that, the E/D should seek the approval of the Board in respect of any matter of importance; and that ult imat e responsibility for the day to day running of the affairs of the Administration lies with him.

32. I t follows therefore, that hecannot, for instance, dictate to the Board, the level or quantum of its remuneration package; the quantum or level is fixed by Parliament - Section 6. His business would be to pre pare, in conjunction with his management, a budget which would be ultimately presented to Parliament for approval. Section 20(3) provides that *"anannual plan of acti vities prepared and finalized by the Executive Director shallbe submitted not later than three monthsbefore the beginning of the financiql year o f the Administration for.the approval of the Board':* This is what I belie ve are the *" Projection s for the years ending 2008 and 20 09 '* respectively or budgets, tendered as exhibits 54 and 55. Exhibit 55 page 8 shows that the budget was most probably prepared at the end of October,2008 or in November ,2008 as it gives the actual expendit ure upto October,2008. In exhibit 54, it is not so clearly stat ed, but a perusal of page 8, particularly the columns headed 'actual 2007 Le' and 'variance' shows that the budget for 2008 was prepared probably before the end of 2007.

33. By Section 25 of the Act, a statement of account in r es pect of all fi nanc ial matters for any particular year must be audited by the Auditor.,General or

by an Auditor appointed by him. The statement of accounts and the audit report thereon are subm it t ed to the Board for approval and a copy is submitted to the Minister as part of the annual repor t to be laid by the Minister before Par lia ment under subsection 3 of Section 28. The reference to Section 26 in Section 25(3) of the Act is wr ong, and will have to be amended by Parliament, as there isno Subsection 26(3). Section 26 has no sub-sections.

34. The f inancial obligations of the Ad minis t ra t ion do not end t here. Section 28 provides that with(n 3 months after the endof each financial year, which Se ct ion 26 says is the same as that of the Government, i.e. Janua:ry-December, the Adminis t ra t ionshall submit for the approval of the Board an annual report of its activities, operations, unde rtakings property and funds for that year. That report shall contain, int er a lia , a copy of the audit ed accounts together with the Aud it or-Gene ra l's report thereon. A copy of the Report approved by the Board, is sent to the Minist e r. T his Report, referred to also above, when dealing with Section 25, is laid before Parliament by the Minister.

35. So, if Parl ia men t approves the budget submitted to it by the Minister, and the Administ ra t fon implements its provisions, it would not be true to say that the remuneration package, for instance, of the Board was fixed by the accused. As Mrs Yannie, PWl herself said in evidence on 28 March,2011, after the budget is prepared, it is taken to the Board for approval. But this is a mat t e r I shall return to shortly, when dealing with Counts 29 -160.

36. These prov is ions, in particular, Secttons 15 and 20(3) respectively, mean a ls o , that the EID takes responsibility for all t he acts of his subordinates, and cannot hide under the cloak of ignorance. For instance, if the E/D has made a request for the payment of a certain amount of money, he cannot be heard to say that it was the responsibility of his subordinate to see that it was 'properly applied . He is responsible to the Board for such expen d it ure .

37. At its inception in 2000 Section 11(5) of the SLMA Act , 2000 em owered the Ad minist ra1 ion to manage and to apply the funds derived from the charges imposed under Subsections (1) to (4) of Section 11, '...*to fincnce the activities and objectives of the Adminis tration*....nThis was a ll changed in 200 7. The Sierra Leone Maritime Administration (Amendment) Act,2007 - Act No. 14 of 2007 repealed and replaced Section 11(5) with the following new subsection: *"(5) the proceeds of any charge imposed under this Section*

*shall be paid into the consolidated fund "Section 21 was also repealed and replaced by a new provi.slon: "21. The activities of the Administration shall bey financed by a fund consisting of - (a) moneys appropri'atejflirliament for the purposes of the Administration: (b) any loans raised by the Administration with the approval of the Minister; (c) any investment revenue; and (d) gifts ordonations from any person or organization.*"These amendments made it clear beyond a reasonable doubt that the Administration is a public body wit hin the meani ng of Section 1 of the ACA, 2008. They also enabled the Administration, by it s e lf , without going through the Government, to obtain the Loans from the Ecowas Bank for Investment and Development for, firstly, to enter into the agreement with Tideland Signal Limited for the Supply and Installation of Navigational aids evidenced by exhibit 42 signed by both parties on 12 January,2009; and, secondly, to construct its present Headqua rt ers.

8 .But they also brought with them a setback, though not for long, as point ed out in the Budget for 2009: At page 2 of exhibit 55 it is pointed out that

*...During the first months of 2008, the overall budget performance of the Administration's activities showed a short fall as re venue was way below target due to payment of the freight levy which accounted for 90% of the Administration'sincome to the National Revenue Authority. This financial sit uation was however improved in September when the responsibility for freight levy collection was reins ta ted for SLMA. For the first time since the start of the Administration, a subvention from the Government of Sierra Leone amounting to Le960,192,100 was received This was utilized in payr,,ent of staff salaries and other expenses.* This is further proof that the Ad minist ra t ion is undoubtedly, a public body.

9 Being a public body means that the Government Budgeting and Accountability Ac t , 2005 and the Regulations made t her e unde r , namely, the Financial Management Regulations,2007, apply to the Adminis t rat ion. It also means that t heaccused is a public off ice r within the meaning of Section 1 of t he ACA Act,2008 and is bound by the provisions of this Act, and by its Regulations.

GOVERNMENT BUDGETING ACT,2005 AND 2007 REGULATIONS

0 In the 2005 Act, Section 2 provides that *"public money" means money held by, held in or paid out of the consolidated fund"* Section 11(3) provides that *•Every person who collects or receives any public moneys shall keep a record*

*of receipts and deposits thereof in such form and manner as the Accountant-Generalmay determine."* Also, Section 28(2) of that Act provides that *"When an appropriation for a budgetary agency has been approved, it shall be used only in accordance with the purpose described and within the limits set by the different classifications within the agency's estimates* The SLMA is a budgetary agency within the meaning of Section 2 of the 2005 Act, as it is *"....a public body to which a specified head or division or both of expenditure is allocated in the annual estimates."* This is because its budget is subsumed under that of the Ministry, before it is presented to Parliament for approva l. Moving unto the 2007 Regulations, Regulation 11(2) provides that *"The estimates shall be divided into headsof expenditure in accordance with the structure determined by the Financial Secretary acting on the advice of the Budget Bureau and conveyed to vote-controllers through the budget call circular.* Regulation 12 provides as follows: *"12(1) The purposes of expenditure and the services to be provided under each head shall be outlined in a preamble to the head to be called 'the ambit of the vote: (2) No expenditure shall be charged to the head unless it falls within the ambit of the vote."* These provisions are of importance when I shall turn my attention to the payments allegedly paid to, or for the benefit of Members of Parliament. The issue of whether these payments were already provided for in the budget under the headings. community relations, or facilitation and protocol, will be examined in full. Another issue which will require determination is whether all payments made by a public body should be supported by payment vouchers. Regulation 73(1) states that *"All disbursements of public money shall be properly supported by payment vouchers."* Regulation 73(3) states that such *".....vouchers..... shall contain, or have attached thereto, full particulars of the service for which payment is made including dates, numbers, distances and rates, so that they can be checked without reference to anyother document.*"This is also a matter which will be dealt with later, after consideration of the evidence.

THE LAW

41. I shall now proceed to examine the legal requirements of the several charges brought by the prosecut ion. In the Counts charging Misappropriation of public funds, the prosecution must prove beyond all reasonable doubt, that the funds appropriated were public funds: that the act of appropriation was done with a dishonest intention, which, as I have explained above, makes it a

misa ppropr iat ion ; further, the act which causes deprivation of funds, must be wilfu l. The Lea rned Editors of the 2007 Edit ion of BLACKS TO NE'S CRIMINAL PRACTICE, have at paragraph A2 . 8 s ugges t ed the r e le vant meaning of *'wilful.'* They submit that it is now a *"composite word to cover both intention and a type of recklessness."* They cit e the explanation given by LO RD DIPLOCK in SHEPPARD (1981] AC 394 , wher e, in a case of child neglect, he said that *'wilful'in* the context of the UK Child re n and Young Pers ons Act, 1933 involved the actus reus of faHing to provide the child with medical aid; and the mens rea of the parent , that of being aware of the risk to the child's hea lt h if not provided wit h me dica l aid, or that the pare nt' s unawareness of this fact was due to his not caring whe t her his child's health were at risk or not . The Editors submit further that , *'wilfulness'requires* basic mens rea in the sense of either inten t ion or recklessness, and that even in the absence of the word *'wilfully* this is the mens rea which will norma lly be implied by the courts for serious criminal offences in the absence of any ot her factor indicating a wider or narrower basis. The case of G [2003] 4 All ER765 HL has confirmed that wilfully means intentionally or recklessly, but it has departed from t he objective t est for reckless ness suggested by LORD DIPLOCK in SHEPPARD, and opted for t he subjective approach.

42. A major difference between the ACA;2008 and the Theft Act,1968 on which case of GOMEZ is based, a case I shall a ls o re fer to below, is that under the ACA,2008 the prosecution need not prove an inte nt ion to permanently depr ive the owner of his property. So that even if, the accused person misa ppr opriat es t he public body's propert y, bu.t cla ims t hat he intended to return the same as was the case in VELUMYL [1988] Crim LR 29 9 the accused would still be found guilty of the offence. I n t hat case t he Court of Appeal laid to rest the age-old defence of fraudulent accountants: that the money was borrowed in order to be returned later. There , the Court of Appeal rejected the Appellant's argument t hat he had bor rowe d money from his employer expecting to ret ur n an equivalent sum, and that he therefore had no intention to permanently depriYe his e mploye r of t hat amount of money, on the ground thaf he had no intention of returning the objects he had taxen.

THE CASE OF GOMEZ AND THE ISSUE OF COSENT OF THE OWNER

43. Further, the owner's consent is not a defence to a charge brought under this act, as LORD KEITH repeatedly stated in the case of GOMEZ (1993] 1 All ER 1 HL at page 9 para h, page 12j, page 13b,g,h, and LORD BROWNE-WILINSON at page 39c and page 40j. Taking the dicta together this what LORD KEITH had to say: "*While it is correct to say that appropriation for the purposes of s 3(1)includes the latter sort of act, it doesnot necessarily follo,w that noother act catr amount to an appropriation andin particular that noact expressly or hnpliedly authorised by the owner can in any circumstances do so. Indeed, Lawrence's case is a clear decision to the contrary since it laid down unequivocally that an act may be an appropriation notwithstanding that it is done with the consent of the owner. It does not appear to me to make any sensible distinction can be made in this context between consent and authorisation."* The latter sort of act he was referring to, was LORD ROSKILL's opinion of what appropriation meant in the case of ' MORRIS [1983] 3 All ER 28!3 HL at 292-293. LORD ROSKILL seemed to be using a restrictive int e r pre-t ::it ion of what was appropriation in the context of Section (1) of the Theft Act,1968. His opinion was that the concept of appropriation involved not an act expressly or impliedly authorised by the owner but an act by way of adverse inference with or usurpation of those rights

44. LORD KEITH said further ct page 12j: *"...In each case the owner of the goods was induced by fraud to part with them to the rogue Lawrence's case makes it clear that consent to orauthorisation by the owner of the taking by the rogue is irrelevant.....lawrence's case also makes it clear that it is no less irrelevant that what happened may also have constituted the offence of obtaining property by deception under s 15(1) of the 1968 Act."*Lastly, at page 13f the Law Lord *says:"...in my opinion a person thus procures the company's consent dishonestly and with the intention of permanently depriving the company of the money is guilty of theft.. "*

45.I have quoted extensively from this case because of the nature of the allega t ions made against the accused._It seems to me, that what I will have to decide at the end of the day is whether, Parliament having approved the .budget for the SLMA in 2008, 2009 and 2010, the accused either with the approva l of the Board, or independently, was at liberty to apply the monies approved ,to the pur pos es, for instance, of making payments to, and enterta1ning some of the Members of that very Parliament, under the

budgetary head of community relations or facilitation and protocol. Parliament or the Government through the Ministry of Finance, as the final arbiter of how much could be appropriated to the running and operations of the SLMA, could be said to the owher in this sense. Without Parliament's approval and the sanction of the Ministry of Finance, monies cannot be appropriated to the running and operations of the SLMA. Even if Parliament had consented to these monies being utilised by the SLMA, could it be said that it thereby consented to their use in the manner allegedly adopted by the accused, for instance, when fuel was allegedly pumped into his private vehicle? By approving the budget for administrative expenses, had Parliament thereby given carte blanche to the accused, provided that there were sufficient funds, to undertake such expenditure. Part of the accused's case seems to be, apart from the fact that heasserts that in some instances, his private vehicle was fuelled because it was being used for official purposes, that he *did* not exceed the budgeted amount allocated the SLMA; that the Auditor-General had given the SLMA a clean bill of health, so why should anybody complain. Further, if Parliament has approved a bulk amount which goes towards administrative expenses, could it be misappropriation on the part of the accused, if he were to submit to the Board of S LMA, for its approval, a certain amount of money as leave allowance or rent allowance or per diem allowance and that the various amounts submitted were approved by the Board, no deception on his part being alleged by the prosecution?

GHOSH AND THE ISSUE OF DISHONESTY

46. To turn to the issue of what dishonesty means in the ACA,2008, the leading authority is still the definition given in GHOSH. In GHOSH [1982] 2 All ER **689,** CA LORD LANE, LCJ presiding said at page 696g&h: "In determining whether the prosecution[J c;-s proved that the defendant was acting dishonestly, a jury musr of all decide *whether, according to the ordinary standards of reasonable and honest people what was done was dishonest. If it wasnot dishonest by those standards, that should be the end of the matter and the prosecution fails; Ji") if it was dishonest by those standards, then that tribunal should consider also whether the Defendant himself must haverealised that what he was doing was by by the standards of reasonable and honest people dishonest.....it is dishonest for a defendant to act in a*

*way which he knows ordinary people consider to be dishonest, even if he assertsorgenuinely believes that he is morally justified in acting as he did."*
FRAUDULENTLY

47. I shall now turn my attention to the offence of Fraudulent Acquisition of Public Funds, which is the offence charged in Counts 3-6 of the I nd ict ment .

- Fraudulently according to ARCHBOLD 2003 Edit ion at para 17-62 - 17-64 is *"dishonestly to prejudice or to take the risk of prejudicing another's right, knowing that you have no right to do so. It is not confined to a risk of possible injury resulting in economic loss; dishonestly to induce a person performing a public duty to act in a way which would be contrary to his duty if hehad known the true position is to risk injury to the right of the state, or the public authority as the case may be, to have that duty properly performed and amounts to an intent to defraud, deceit is not essential ingredient of fraud per se. The fact that the accused puts forward false evidence in order to substantiate agenuine claim doesnot negative an intent to defraud"* The Learned Editors of t his Edition cite the unre,ported case of R *v* de Courcy decided in the UK Court of Appeal on 10 July,1964 as authority for this proposition. There, the Court said, that uttering to a court. or to any person a fa ls e document with intent that it beacted on as if it were true is extreme ly strong evidence of intent to defraud; the fact that it is done with the pur pose of supporting a genuine claim is irrelevant."

48.I n t h is respect, in order for the prosecution to succeed on these counts, it must show that the Board, or Parliament, which approves the yearly budget submitted through the Board, was dishonestly induced by the accused to authorise the payment of the leave and rent allowances which he claimed in 2009 and 2010. That this was a formidable task for the prosecution, will be shown shortly when I come to deal with the evidence. Since the accused could not get much more than was budgeted for; and since Parliament could only a;:>prove what was presented to it in the budget, it is not difficult to see that this would be a mountain too high to c limb.

49. The property which the accused is alleged to have fraudulently acquired, are his leave and rent allowances for 2009 and 2010. Clearly, whatever was paid to him by way of rent or leave allowances, was public property in the sense in whic h 'public property' is defined in Section 1 of the AC Act ,20 08 . In this respect , the prosecution has proved that these allowances were public property. Their difficulty, as I see it, was to prove that these allowances

had been obtained fraudulently. If for instance, it had been alleged, and it had been proven in evidence, that Parliament had approved under the head for administrative expenses, an annual leave allowance of, say, Le20million, and the accused had got the Accountant PW1 to pay him Le 25 milli,on, clearly, the offence would have been proven, provided the accused had the r eq uis it e mens rea, i.e. he had acted fraudulently as described above. Also, If the Board had, for instance, fixed either allowance at this figure of Le 20 million, and the accused had got PW1 s ur re pt it iously t o incr eas e it to Le25million in the budget submitted to the Minister for inc lus ion in the budget sent to Parliament for approval, there might be a case for the accused to answer. But in the absence of such evidence, it would be hard to say the accused has fr audule nt ly acquired either his rent or leave allowances.

ABUSE OF OFFICE

As for the offence of Abuse of off ice contrary to Section 42(1) of the AC Act,2008 I have explained what it means, and what it entails in the cases of THE STATE v FOFANAH & **MANS** and the STATE v PHILIP CONTEH & ORS. *A Public Officer who uses hisoffice to improperly confer anadvantage on himself or on any other person commits an offence."* I adopt what I said in my Judgment on the No-Case Subm iss ion at para 7: *"Further, the essential element in establishing that an accused person has abused his office, is that whilst being a public officer, he has improperly conferred anadvantage on himself or someone else. Improperly conferring anadvantage could consist, as in this case, of the act of facilitating or causing money to be paid to a person to whom that money is not due.* To cite BLACKSTONE'S CRIMINAL PRACTICE 2007 Edition at para B5.98 when dealing with the then Fraud Bill, now Fraud Act which is in similar terms to Section 42: *"the clear intention of the provision is to cover the dishonest abuse of any position of financial trust or responsibih·ty, including that of a trustee, company director or executor,..... but it is not confined to fidcuciary relationships and would extend to frauds committed by employees including those that cannot be prosecuted as theft. The definition of "Advantage" in Section 1 of the Act is inclusive; and I hold that it applies to money; it constitutes "any payment" in Section J(c). He caused monies meant for the Food Security Project to be paid to himself. Likewise, the Z'd accused conferred an advantage on another person, the JS' ccused, by facilitating the payment of le43,855,000 to the f' accused The money misappropriated came from the*

*consolidated fund. .....So, in this case, if the prosecution proves beyond a reasonable doubt that the accused sd accused took for himself, the sum of Le2million, which formed part of the money he had taken from the account of the ABC for the purpose of paying rent for the property at lunsar, he would have conferred an advantage on himself, as that money falls within the definition of advantage."* And as I have not ed in the latter case that is the CONTEH case,*"the charges for Abuse of Office whether contrary to Sec tion 42(1) or 43 of the Act, are actually alternatives to the Coll!1ts charging Misappropriation of monies. They are different offences , but the complaint in all of them is essentially the same: the accused misappropriated a certain sum of money; he therefore abused his office by misappropriating the same sums of money. This view of the facts and of the Law w,l1be reflected in the sentences I shall impose".* The Abuse of Office Counts do not allege criminal acts ot her than the acts of appropriation. The situation here is unlike that, for instance, in the Law of Larce ny, where an account s clerk, say, makes a false entry in his account books in order to concea l his stealing of a certain sum of money. In such a sit uat ion, there will be two cr iminal acts: the making of the false entry, and the stealing of the money. Such acts would necessarily give rise to two separate offences. But in the cas e of the Abuse of Office offence, it relies and is parasitic on the Misappro pr iat ion charge. If there isno misappropriation, there would be no abuse of office. In the earlier example, you could falsify an entry without st ealing; or you could steal, without falsifying an entry.

FAILING TO COMPLY WITH APPLICABLE PROCEDURES

51. The next offence I wis h to deal with, is that of Failing to Comply with applicable procedures and guidelines relating to management of funds contrary to Sect io n 48(2)(b) of the ACA,20 08. CONTEH & ORS were also charged with t hat same offence, as was t he 2nd accused in THE STATE v SESAY & BENDU. In CONTEH, I said, int e r alia, when dea ling with this offence: Section 48(2)(b) provides that:*"A person whose funct ions concern the administration, custody, management, receipt or use of any part of the pubf.ic revenue or public property commits an offence if he- ..... {.b) wilfullyor negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement, a/location, sale or disposal or propert tendering of contracts, management of funds or incurring of ex penditures What are these procedures and guidelines?*

*..... They are those contained in the Financial Management Regulations,2007 made by the Minister of Finance pursuant to powers conferred on him in that behalf by the Government Budgeting and lfccountab11ity Act,2005..... Section 48(2) of the Anti-Corruption Act ,2008 {ACA,2008) deals with a person whose functions concern the administrat:on, custody, management, receipt or use of any part of the public revenue or public property. Public Property is defined in Section 48(4)of the ACA,2008 as meaning real or personal property, including public funds, and money of a public body, or under the control o f or consigned or due to a public body. Sect,on 1of the ACA,2008 defines public funds as:(c) any moneys, loan grant or donation for the benefit of the people of Sierra Leone or a section thereof. A Public Body is defined as including the (a) Cabinet, any Ministry, Department or Agency of Government.....(}) a bodyor organization established..... out of moneys provided by Per/lament or otherwise set up partly or wholly out of public funds."* As I have stated above, the SLMA is clearly a public body within the meaning of the ACA,2008. The guide lines , I have set out above, and do not wish to reiterate them here. Wilfully, bears the same meaning as it does in Section 36, and as I have explained above. The only dif fe rence between t his provision and Section 36, is that here, the accused must of necessity must be part of the administration or managem nt of_a body which receives or uses public revenue or property. Since there is no doubt about this, I shall not dwell on t his element of the off ence.

52. This offence has been charged in relation to different s it uat ions. In t he first sit uat ion, that is,in Counts 7&8, it is alleged that the accused failed to comply with the applicable procedures and guideline in the manner in which he calculated his rent allowance in 2009, and his leave allowance in 2010. As I have pointed out above, unless the prosecution succeeds in proving that the accused exceeded the allowances budgeted for and approved by Parliament; or proves, that these allowances had bee n fixed by the Board. and the accused gave instructions to, principally, PW1, that the limits impose d be exceeded, the prosecution would fail.

53. In the second s it uat icn e e mplifi ed by Counts 21-23, the per diem Counts, it is alleged% 1ed to comply by wilfully calculating his per diem allowance at USD5O0 in excess of Government approved rates for 2009 and

2010. Remarkably, the prosecution has not led any evidence to show what these rates were. They claim there was a cabinet conclusion about what it should be. I do not have, nor have I seen any such cabinet conclusion. In any event, there is no evidence that these payments were made without the authority of the Board. And since the prosecution called the Chairman of the Board as a witness, but asked no questions about this particular matter, I can safely assume they knew what the answer would be, and that it would unfavourable to their case. The only other alternative, I may ventLre to say, was to have charged the Board members themselves for dereliction of duty. It was also argued by the prosecution that though in one case the per diem allowance was for 'five days overseas travel', and in the other, for 'four days overseas travel', the accused wilfully calculated his per diem allowance, and was paid for 8 days of being away. The accused's answer to this was simply travelling time was included in the calculation. It was the prosecution's duty to prove that inclusive of travelling time, the accused was not entitled to the sum claimed in each Count; that travelling to Ghana, on say, Kenya Airways, only involved two and a half hours travelling of the same day. This they could have done by calling someone from the air lines; or by producing..counterfoils or air line office copies of the tickets used by the accused; or, in these days of electronic tickets, asking the air line used by the accused in each case, to reproduce the ticket issued to him, one and two years ago, respectively.

54. In the third situation, as stated in Counts 28-160 the allegation is that the accused wilfully caused to be paid to the Chairman and other members of the Board, remuneration without the authority of Parliament. The first thing I would wish to say about this allegation, is that in approving the budget for each year, Parliament approves expenditures detailed in these budgets. The budget proposals tendered by the prosecution show that Directors expenses increased on a more or less yearly basis. The Board could only receive what Parliament approved. The Board could only submit for Parliamentary approval, what it had itself approved. The accused could not command them to accept what they did not want. His management presented figures to the Board; the Board looked at the figures, and if it liked them, forwarded them to the Minister for presentation in Parliament. Payment of remuneration to Board members was indeed approved by the accused, as it should be. Since members of the Board were not executive Directors, they could not very well pay themselves. But what he approved was the physical act of paying, not the

amount to be paid; that would already have been done by the Board. I think the problem the prosec ut ion has encountered, is that it hasgiven a very restricted interpretation to the wor s *"remuneration or allowances'* in Sect ion 6 of the SLMA Act. If remuneration is paid in one fo r m, s itt ing fees for, instance, ought not to be paid. This is obviously not so, as will be shown by the evidence. It seems to me t hat all this section does, is to permit payments to be made to Directors, whatever description is given to the payment. It certainly does not mean that it only authorises one type of payment. I suppose becaus e the payments appear to be in the over-generous category, the suspicion of the ACC was aroused. The Chairman was her e. He could have shed light on the prosecution's interpretation of remuneration and or alfowances.

55. The next type of offence charged, is that under Section 35(2) of the ACA,2008. This is I believe, the first outing as it were, of this charge, before me. Section 35(2) of the ACA,2008 states that"" *Any person who offersanyadvantage to any public officer which that public officer is not authorised to receive by law commits an offence."* Advantage, as stated in Section 1(1) of the ACA,2008 includes money or money's wor t h. This provision is a euphemism for bribing a public officer. Public Officer is defined in Section 1(1)also , as an officer or member of a public body....." And as I have stated above, for the purposes of this Act, the SLMA is a Public Body, and the accused and members of the Board, are, for these purposes, Public Officers. Since, by the very fact that no member was charged, and that all of them were listed as witnesses, even though only the Chairman, in the end was called , they could therefore becategorised as innocent agents in the payments made to them, I am surprised the Chairman was not asked in evidence- in- chief , whether he queried the substantial payments made to him every month he had been Chairman; or whether he remons '!_'\9--(0 the accused that he was being paid too muc,h and that the accused1 of the money back. In my view, the Board members could either it treated as accomplices , if the prosecution were right in their view that the payments to the Board were unauthorised, or as innocent agents in the fraud practised on them to t heir individual benefit.

56. The Conspiracy charges in Counts 20 and 175&176, ought not to detain my attention. Count 20, as I have stated above is catch-all, and certainly will not

pass muster, if the substantive offences relating to the same transactions fail; and Counts 175&176 wer.e abandoned.

57. Anot her type of offence charged, and which I am dealing with for the first time, is that charged under Section 44(1) of the ACA,2008. It alleges that the accused in his capacity as E/D of the SLMA abused his position as E/D in that he improperly conferred an advantage on his wife, by using SLMA funds in t he sum of Le740,000 to purchase 50 gallons of diesel for the procure ment of cows from Koindaugu Ditsrict and Farana ih Guinea. Section 44(1) provides that *"Subject to subsection (3) a public officer who makes use of his office or position for an advantage for himself or another person commits an offence....."* Subsection 44(2) provides that *"..... a pub/le officer shall be presumed until the contrary is proved, to have made use of his office for an advantage where he has taken any decision or action in relation to any matter in which he, or.a relative or associate of his, has a direct or indirect interest."* Subsection (3) provides that: ... *"This Section shall not apply to a public officer who: ....(b) actsin that capacity"i'n the inte,...est of that body corporate.* Its specifics are the same as in Count 182 and 183: they concern the wife's alleged journey to Koinadugu and Guinea to purchase cows, using fuel paid for out of the funds of the SLMA. The position however, is that if the accused is found guilty on Count 183, he would of necessity be found not guilty in respect of Count 184 as, in my view, they are alternative offences.

58. These offences under Sections 42 and 44 were meant, and were intended to address the growing menace of misuse of the perquisites or perks attached to high office. The accused, say the prosecution, was entitled to fuel allocat ion; but he was not entitled to use his employer's resources for private visits made by his wife to the provinces. If his wife intended to do some private buying of cattle, heor she was supposed to make private ar range ment s for financing such a t rip. He could, for instance, if the prcse cut ion's story is true, that the wife did go to these pieces, have paid for the fuel out of hisown pocket. By utilising the funds of the SLMA, and by using his official driver, the prosecution is saying he had improper ly conferred an advantage in her. He had given her a benefit to which she was not entitled, and which he was not entitled to give.

59. Th.e last type of off ence charged, is that under Section 130(1) of the AC.A,2008. The allegation is that the accused wilfully failed to surrender his

Ecowas passport when requ ir ed to do so by Notice served on him under Section 63(1) of theACA,2008. The proof of this charge largely depends on the weight I should attcch to the evidence given by Mr Marah, and I shall come to that later. Section 130(1) provides that *"a person who fails to comply with any requirement under this Act for which no offence is spec/ally created, commits an offence.....n.* I have studied Section 63, and I am satisfied that it creates no offence, but that it imposes a duty on the person **to** whom a Notice is directed under that Section, to comply **with** the re quire me nts of that Notice. It is therefore permissible to bring a charge under Section 130(1)

60. I shall now go on to deal with the evidence led, and where necessary omment on it, and give my evaluation of it.

61. The prosecution ca lled \) witnesses, and asked to dispense with the calling of 4 whose names appeared at the back of the I ndic t ment , namely Capta in Abraham Macaulay (No.1), Kholifa Koroma (No5), Richard Alphc (No. 14) and Andrew Demby, (No 15). On Mr Fynn's App licat ion, I allowed the prosecution to dispense with the calling of these witnesses, as both Counsel for the accused persons, said they did not wish to have them called for cross-examination. One witness's name was added to the Indictment: Joseph Ncah on 18 March,2011. A summary of his evidence had been filed with the I ndict ment , and his name therefore ought to have appeared on the back of the Indictment as provided for in Section 89(4) of the ACA,200 8.

6.2. The most important witnesses in my view, were the Accountant Mrs Vannie, and the accused person who testified in whose own defence. The next most rmpor t ant set of witnesses, as respects proof of the 'fuel counts', were the drivers.

THE TRIAL

63. The trial commenced on 3 February,2011 wit h the reading of the 194 Counts o.f the I ndic t me nt , to each of which the accused pleaded Not Guilty. Mr Fynn presented to the Court the Fiat given to him and his colleagues in the ACC, by the Commissioner, to prosecute the case. Mr CF Edwards and Mr Ngevao, in it ially appeared for the accused and la t e r in the evening, Mr Jamiru joined them. Because of the length of the I ndict me nt , and since we hod started late, we were only able to finish at 8.05pm. Mr Fynn indicated he wished to proceed by trial by Judge alone, and would file the Application against the next date.The accused was released on Bail.

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64. On 28 f ebruar y,20 11 Mr Fynn applied for the Order for Trial by Judge alone to be made, as he had filed the written Appl ica t ion of the Attorney-General and Minister of Justice dated 22 Febraury,2011. I made the Order as of course, pursuant to Section 144(2) of the Criminal Procedure Act,1965. Mr Fynn proceeded to call h is f irst wit ness , with the sonorous name of Mrs Vania Vannie, Accountant at the SLM .

EVIDENCE Of PW1

65. She knew the accused. She had been working at the SLMA for about 4 years. She listed here dut ie f She checked invoices before they were approved; she was a co-signatory to cheques; she pre pa J salaries for senior staff and for the Board; she prepared financial st at e ments annually; reconciled bank account he superintended the preparation of the Assets Regis t e r; and ca r r ieefa ny other duty assigned to her. She said SLMA got 9'0% of its funds from tte imposit ion of the fr e ight levy. Other income is de r ived from registration of local boats, sales of life jackets, sales of seamen's discharge ,books and from scanning fees and registration of internation::d s hips. The SLMA owned 4 vehicles, ABU 357, ADK 561, AAH 260 and AEL 050 . She did not know much about the contract between SLMA and Tide la nd . But she knew there was a contract for the supply of navigational aids with Tid e la nd. The supply was being done through the Ecowas Bank project. The navigational aids came, and payment was made for :them.

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66. She was involved in the payment of leave allowances. Appointment letters for all employees state that leave allowance is 12% of basic salary and is to be paid at the end of the comple t e d year of service. For the E/D i.e. the accused, it was an amount equal to 21% of his annual basic sala r y. This percentage was a lr e a dy fixed when she joined the staff of SLMA. Rent allowance is 30% of an employee's annual basic salary is paid as part of the monthly package. for the EID his rent allowance which is 30 % of his annual basic satary is paid *at* the start of the financial year. This has been t he position of things since she started work at the S LMA. She had a role to play in the payment of these allowa nces . She had to calculate the amount to be paid in each case, and she would send the calculation to the EID for his approval; after hisapproval had been given a payment voucher and a cheque were prepared.

67. 2 vehicles were assigned to the E/D AEL 050 and AAH '260 . Another vehic le was ass igned to the Deputy EID, and there was a pool vehicle. At the start

of the week, the pool vehicle and the vehicles assigned to the Deputy EID are given 15 gallons fuel; and that of ,the EID provided with 25 gallons fuel. The Toyota Land·Cruiser, registration number AEL 050, was only purchased last year. The fuel allocation of 25 gallons given to the EID is given in respect of one of the vehicles assigned to him, and apparently, not both. for trips to the Provinces, fuel is supplied as requested. There is a fuel requisition form supplied by National Petroleum, NP. When fuel is needed that form is filled and authorised by any of the signatories for fuel purchase. She was one; the EID was another; and so also was the Senior Admin Of f_icer. The same procedure was followed for trips to the Provinces. The drivers fill-in the requisition chits before they are authorised by the signatories. The drivers also collect fuel from the station. At times, drivers are rotated; at other times, they are assigned to particular vehicles.

68. She was familiar with the SLMA's policy on payment of per diem allowances. There are rates approved by the Board of Directors. If a member of staff is . travelling, the E/D informs the Accounts Department, and requests the payment of a per diem allowance. A le.Her is written to the Bank instructing the Bank to make payment to the staff concerned. She gave the per diem ra t es. for the Board of Directors and the EID the entitlement was USD500 for each day spent out of the country. The Deputy EID was entitled to USD350 per diem; Senior Management staff were entitled to USD300; and other staff, to USD2 0. As it was the prosecution which led this evidence, here was proof that the amount claimed by the accused as per diem allowance, had the blessing of the Board. In other words, it was not a unilateral decision on his part. And since the Board have not been, individually or collectively accused of wrong-doing in this respect, the prosecution can hardly succeed in its allegations that there *VJas* a wilful failure to comply with the guidelines and procedures adumbrated in the Government Budgeting Act, 2005 and the Financial Management Regulations,2007.

69. She was involved in th.e payments made to Board members. She prepared their monthly remuneration. It was an·amount given to each member monthly for services rendered during the month as Directors. There was a basic amount, an amount payable as medical allowance, and others she could not recall. During the preparation of the annual budget by management, it is taken to the Board for approval. In addition to the allowances paid to

Directors, they are also paid sitting fees. These are also fixed when preparing the annual budget.

70. She was not involved in the routines to be followed for repairs to vehicles, but she was involved in making payments for such repairs. After the repairs had been done, invoices would be sent to the SLMA. After they had been approved by the E/D, they were sent to the Accounts Department for payment to be eff ecteo'.

71. On the next hearing date, 1 March,2011, she went into specifics. She began tendering all the relevant documents relating to payments made to the accused. These payments are evidenced in ex hibits 1-7 inclus ive. Because of the conclusion I have arrived at, I have not found it necessary to go t h each of them seriatim. They are set out clearly in my minutes on pag t seq. She said, among other things, that if.there was an increase in salary in any particular year, his basic salary would change. I do not think this is unusual. And if his basic salary changed, he could hardly be paid year in and year out, the amounts stated in Captain Macauley's letter of 20 Apr il,20 01, exhibit **43A&B;**

7 2. Now, exhibit 8 a-d relate to 3 payments made to Dokkal Ent er pr is es of !A Kingharman Road. Exhibit 8 is a payment voucher 4458 dated 20 May,2008 for the payment of Lel,238,800 for repairs to vehicles with registration numbers ACM112 and AAD 178. The payment was approved by the accused. Exhibit 86 is a receipt dated 22 May,2'008 issued by Dokkal Enterprises to the SLMA, for the amount received. xhibit Be is an invoice from Dokkal d_ated 17 May,2008 for repairs to ACM112 in the sum of Le490,000. There is no receipt attached, but the accused's signature appears boldly on the

- invoice and is datE:d 20 May,2008 signifying his approval of the invoice. There was no charge for workmanship. The proprietor boldly wrote out 'wor kmanship - free'. Exhibit 8d is another invoice from Dokka! 2600 dated l9 May,2008 in respect of vehicle ADD 178 for the total sum of Le814,000. Again, the accused's signature could be clearly seen on it , and is dated 20 May,2008 signifying his approval of the same. Not wit hst anding his explanation at page 66 of my minutes when being cross-examined by Mr Fynn, that hissignature on this document merely meant 'seen', and not please pay, I am satisfied beyond a reasonable doubt that hissignature here signified approval of the payment. Dur ing this cross-examination, the accused also acknowledged that ADD 178 was his personal vehicle.

7 3 .PWl said she honoured the voucher, exhibit Ba. This is the subject matter of Count 170 . The total amount paid in respect of both invoices was, as is stated on the face of exhibit 8a, Lel,304,000 but after the deduction of 5% withholding tax, it became Le l ,238,80 0 .

74 .Ex hibit 9a-c were documents in r es pect of a payment made to Dokkal again. Exhibit 9A is payment voucher No 4867 dated 31 December,2008 in respect of payment of the sum of Le2,204,000 to Dokka! for repairs to vehicle registration No. AAW071. Payment of this sum was approved by the accused, and it was made to Dokka ! which issued a receipt dated 2 January,2009 for that amount. Exhibit 9c is another invoice from Dokkal dated 30 Decem ber,2008 for the sum of Le2,320,000 in respect of repairs to the same vehicle AAW071. Details of repairs carried out, are set out en the face of the invoice. After withholding tax had been deducted, the net sum *of* LeZ,204,000 was paid to Dokkal. Th is payment is the subject matter of Counts 171,172 and 173.

PAYMENTS TO PARLIAMENTARY SUB-COMMmEES

75.We move on to some interesting payments. Exhibit 10 a is a payment voucher No. 4305 dated 21 February,2008. The payee is cash. The details of the payment are: payment of honorarium· to appropriation sub-committee on review of recur re nt and development estimates for financial year 2007. The payment voucher was prepared by r Ms Jalloh, checked by PW1 who was then Ms Thomas, and approved by the accused. Exhibit 10b is a copy of the memorandum dated 21 February,2008 addressed to PWl by the accused. The request was that PW1 pay cash in the sum of Le40million as payment of honorarium to the Appropriation Sub Committee on finance on the review of recurrent end development estimate:for financial year 2007. According to PW1, after the payment voucher was prepared, a cash cheque was also prepared, and the amount withdrawn from the Sierra Leone Commercial Bank Lim ited. She gave the amount to the accused. According to the accused when giving evidence here, in his defence on 15 April,2011 - see page 60 of my minutes, said that:*"she {meaning PvVl} did notgive me the le40million. She withdrew the money and kept it in her sa fe. PWJ and myself went to Parliament together. The Accountan( has to be present on financial matters. We entertained the sub-committee 3 times. We assisted with food. Provision was made for that in the budget. At first it was put under facilitation and protocol. Later, it was changed to community relations."* Under cross-

examination by Mr Fynn - page 69 of my minutes, the accused said: *"I did not receive Le40million in cash. I was present when the Accountant put the money in the safe. The money was not given to me. I used the money to entertain Parliamentarians. This was the Appropriations Committee. I do not agree they were no more than 10. We spent it on them. I entertained them a number of times . We went there several times. They were entertained in the canteen. This would be food and drinks This is the total sum. I confirmI spent the money on Parliamentarians."* Now, from saying the money was not given to him, the accused went on to say he spent the money on Parliamentarians. He said he spent the money on food and drinks. There is nothing to show for this expenditure - no invoice, no voucher, no receipts, just the mere say so of the accused. It was for this reason I had dwelt on the provisions of the Government Budgeting Act,2005 and the financial Management Regulations,2007. The obligations under Regulations 11,12 and 73 of the 2007 Regulations were clearly flouted by the accused. And the only reason he could have flouted these Regulations was because he needed to cloak the purpose of the expenditures with the clothing of benevolence to Parliamentarians. In fact, in doing this, the accused has left himself open to a more serious charge, offering inducements to Parliamentarians to get them to approve the budget requirements of the SLMA. I am certain, sitting here as booth Judge and jury, that the accused would not have said to any employee of his, .gotake Le40million of my money keep it with you, and spend it as you like. I cannot of. course, to ally discountenance the accused's explanation that heent e r t a ined members of Parliament. If what he says is true, in ef f ec t , he will be saying that Parliamentarians have to be fed and feted before they could do their work. What I certainly cannot countenance, is the absence of any evidence before me that the expenditure was accounted for. The accused was duty bound to account for all monies spent in the name of the SLMA. If the monies had come from him personally, no one would query his use of them. But when the monies come from the coffers of a public body, such as the SLMA, an account must be rendered for all that is spent. Again, if what the accused says is true, that such expenditure falls under the head of community relations, this means , that a public body such as the SLMA maintains a 'slush fund' for unaccounted payments. I doubt whether Parliament would really approve of this.

76 .I have also highlighted above, the accused person's responsibilities as E/D under the SLMA Act,2000: *"To provide overall leadership in the conduct and management of the day to daybusinessor activities of the Administration."* - Section 15(2). The cavalier use of the Administration's funds falls squarely within the a mbit of Section 36(1) of the ACA,2008. I have no doubt in my tnind that PW1's account of what t ranspir ed between herself and the accused was t r ue. Even under cross-examination by Mr Shears-Moses, she was unshaken. Not even when she was confronted with the accusation that shehad herself kept t he sum of Le 2 '11 illion in her safe whic h she had had to pay over to the ACC. She tendered in evidence her letter to the ACC dated 30 Janua ry,20 10 (I believe this should be 2011) as exhibit 38 in which she explained why she had that amount of money in her safe. Whether or not that explar,at, io n_is true, is notfor t is forum to decide. What I have to decide is whether it affects hercredibility. The answers given by the accused himself during his examination-in-chief, and under cross-examination confirms to a large degree t hat PW1 did give the sum of Le40million to the accused, and he, the accused cannot account for it. It was his duty to account for how money was spent by the SLMA. It follows that in my judgment the prosecution has proved the guilt of the accused person beyond all reasonable doubt in Count 185.

.77.Pr ior to the passing of the Companies Act,2009 the duties of Directors were not set out in statutory form. They had always been acce pt ed , and understood to be the common law duties owed by anyone who finds himself in a fiduciary position. Those duties have now been given statutory form in Sections 231 to 234 of the 2009 Act. As the Act was only passed in 2009, its provisions ccnnot be applied to the facts alleged in this particular Count as the acts compla ined of were committed in 2008. But that Directors of Companies owed fiduciary duties to the company, and to its members, has never beendoubted.

78 PW1 went on to tender exhibit 11, the subject matter of Count 186. Exhibit 11 is a payment voucher No. 4558 dated 4 July,2008 in the sum of Le6 ,million payable to cash. The details of the transaction are that it was a payment for fa cilitat ion and prc•t ocol for repeal of Merchant Shipping Act for Shipping Agencies. PW1 said t hat an instruction was given to her in writing by the accused, but that it was not provided for the ACC, because on request being made for these documents, the EID instructed he rs e lf, the Accounts'

Officer 1 and Accounts Officer IT to go through the f iles and remove all cash payment vouchers in respect of facilitation and protocol. No doubt, they wer e. incriminating documents. _That there was this clearance of documents going on in the *accused* 's off ice is also confirtned by his Secretary, Ms Faux. After the instructions had been given, she prepared a cash cheque withdrew the amount from the Bank, and g::ive the money to the accused.

79 The accus ed 's explanation of this transaction is at page60 of my minutes. He said that :*"when we presented the application for the Merchant Shipping Act, it was the law Officers' Department and Printing we provided entertainment for. There was provision for this in the budget approved by Parliament."* Under cross-examination by Mr Fynn, at page 69 of my minutes, the accused said:*"I see exhibit 11. It is for le6million. I spent ,r the money on Parliamentarians. I entertained them.....the Le6million cash was not given to me."* I do not believe the accused when he says this amount of money was r.ot given to him by PW1. He appeared to me, a man of great experience and Fresence. In giving his background when he began giving evide nce in chief, he named all the important offices in which he had worked, and *if* which he had acquit t e d him3!L..well, leaving without any stain on his cha ract er. According to him, he ha!p t' in charge of a whole District, Koinadugu District. He had been Chief *of* Protocol to the late President Dr Siaka Stevens. All of these were very important positions, which required a man of stature and of commanding presence. My conclusion is that hereceived this sum of money *as* well, and misappropriated it.

80 Now, ea r lie r in t his judgment, I have spoken about what Parliamentary approval of the budget amounts to, when it comes to payments made out of t hat budget. Could Parliament, bearing in mind the guidelines given by LORD KEITH in GOMEZ, really have, in approving the budget of the SLMA, implicit ly approved the unaccounted and undocumented expenditures undertaken by the accused, albeit expend it ur es allegedl-y undertaken for the benefit of its members. These expenditures are very different from those made in connection wit h the remuneration of Directors. In the case of the payment s to Directors, all such payments were docume nt ed , as will be seen, when I come to examine those exhibits. Beca use , what the accused is here saying, is what GOMEZ said in that case: he said the shop owner had con$ented to the removal of the goods. The House of Lords was there saying,

the s hop-owner would obvious ly not have consented to the removal of the goods if he had known the cheques issued by GOMEZ's accomplice, were dude cheques. For the accused to say that Parliament approved of the expenditure imp lied ly, is therefore not true, and is not acce ptable.

81. PW1 went on next to exhibit 12, the subject matter of Count 187. This is payment voucher 4469 dated 21 May,2008 in the sum of Le l0 ,50 0 ,0 0 0 . The payee is cash. The pur pose of the payment is stated to be'payment to the above i r o amendments to the Merchant Shipping Act. Since 'above' was cash, I had to listen to evidence as to whom the money was paid. The accused approved the payment. According to PW1, the request for payment was mac'e by the accused. The request was re moved. The cash cheque was prepared by the Accounts Officer. Theamount was withdrawn and she gave the money to the accused. I have not found in my minutes, the accused 's explanation of this transaction, but under cross-examination, at page 70 of my minutes, the accused had this to say:*"I see exhibit 12. Payment forl el 0,500,00 0. It was used for entertainment. Enter tainment in terms of food and drinks. In the canteen. In terms of serving them. We did not come with our own food. We bought the food and drinks in the canteen. The money was not spent at one go. The money was not given to me in cash. I spent the money on Parliamentarians. The total in exhibits 10,11 and 12 is Le56million."* So, here we have the total sum of Le56million of the SLMA's funds being disbursed without there being a shred of paper to support or to substantiate the expenditure. But one must bear in mind, that according to exhibit 54, the projections for the year ending 2008, the budgeted expenditure for community relations had risen from a paltry Le114,927,850 in 2007 to Le 240,000,000 in 2008. The budget was quite fat, and it was being milked for all it was worth.

82. Exhib it 13 tendered by PW1 was payment voucher No. 4489 dated 30 May,2008 for the sum of Le5million payable to cash. The voucher was raised in res pect of' payment to members of Parliamentary oversight committee on t rans por t for facilitation of amendment to Merchant Shipping Bill 2008.' The payment was approved by the accused. There is no supporting document, nor receipt to substantiate the expend it ur e. According to PWl, the payment was effected by way of a memo f ram the accused. The memo was removed from the file. The cash withdrawal was made from the Sierra Leone Commercial Bank Limited, and she gave the amount to the accused. Acc ord ing to the

accused at page 61 of my mittutes, "he did not pay Le5million to anyone. We ente rtained . I am aware of the payment . We had to appe a r befo re the oversight commit t ee . We provided them with food and drinks in the canteen. I did not give cash to anyone. Provision was made for such expend it ur e in the budget approved by the Board and by Par liame nt . It was in the budget unde r community re la t ions." If that isso,andat the rate the accused was going, by mid-yea r, 2008,-muc h would not be le f t in the budget for ot her 'relations'.

.83. Unde r cross-exa minat ion he said, "I see exhibit 13. PV 4489 for Le5 million. It was spent ent er taining Parliament. We went there twice. And each t ime , we entertained t he m. Each spree was not for Le 2.5 million. It depended on how many people were present. This amount was not given to me in ca s h. I do not handle cash. The total now spent on Pa r lia ment now adds up to Le71.5million.

84. Exhibit 14 was payment vouc her No.449 5 dat ed 5 J une ,2008 for Le10 million. It was made payable to ca s h, and was approved by the accused. It was in respect of 'pass ing of bill intc- law Multilateral agreement t: e t wee n the Governments of the Republic of Cote D-I voire , Ghana, Guinea, Libe r ia and Sierra Leone on co-ordination of maritime search and rescue s e rvices . According to PWl, a memo was sent by the acc used to her for release of that sum of money. The memo was not att ached to the voucher because it was removed from the file. The amount was wit hdra wn from the Bank after the necessary accounting documents had been prepared, and the amount withdrawn was given to the EI D by her. The accused 's e x planat ion of t his at page 61 is that hedid not make cash payments to anyone. He was aware the money was expended in the form of entertainment for the sub-committee. The IMO gave the SLMA US D5 0 ,00 0 for sa ve and rescue equipment as a result of that piece of le gis lat ion. I suppose, what he meant that it was money well s pent . He may have a point . But if there are no documents to suppor t the t r ansac t ion, and there is evidence t hat documents were destroyed or removed to conceal expend it ur es of this nature, it is impossible to acce pt the explanation given by the a ccus ed . The only conclusion I can come to, on the evidence, is that PWl gave t his amount of money to the accus ed , and he spent it as he would.

85. Exh ib it 15 was another payment voucher No.5094, (15A),t h is time, wit h a req ue s t attached (15B). To show how bad t hings had become at the S LMA, it was undated. The payment was being made to Facilitation and Protocol. The

details of the paytr,ent we re : "Be ing payment i r o nat ional matters." The amount was Le10millicn. Payment was approved by the accused. Exhibit 15B is a memo dated 8th April,2008 from the E/D to the Accountant, i.e. PW1. It reads: "Kindly prov ide the sum of Ten million Leones (10,000,000) in respect of urgent national matters." The request is in peremptory terms: these are national matters. don't ask; don't tell. It is signed by the accused. PVV1 says payment was effected by preparing the necessary accounting docume nts. The amount *was* withdrawn *and* the sum given to the accus ed. The accused's explanat ion isthat he was aware of this t ransact ion. He thinks it was in connection with storms in Kono District. Provision was made for this c.mder community relations in the budget. Under cross-examinat ion, he was emphatic that "...I spent the money on national matters....the time is long. we get these requests now and again. I spent it on national mat t e rs . The inter es t ing thing about his answers under cross-examination, is that he always starts of with I *do* not handle mone nd ends by telling us how he spent the money.There may have been storms in Kono, and no one would have queried the accused if he had contributed to a disaster relief fund out of his own hard earned sala ry which, by last year was US D? ,00 0 a mont h. But the fact that hecould not even bring his mind to bear on how such a ins ignif ica nt amount of money could have been spent, shows beyond a doubt that this so-called community relations budget was just a pig's trough from which he could draw when he felt the need arose.

86. \Ve now turn to exhibit 16. It is payment voucher No. 5047 dated 13 March,2009 for the sum of LelOmillion payable to cash. It *was* payment in respect of lunch and transport for Parliamentary appropriation sub-committee meeting with SLMA management for review of recurrent development estimates for financial year 2009. This voucher does not bear the signature of the accused. But though he did not sign it , I believe PW1 when she says that the request for payment was made by the accus ed . The memo was removed from t he file. After preparing the necessary documents, a cash withdrawal was made, and the money wit hdra wn, given to the ac cused . The accused's expla nat ion for this expenditure, is likewise, that they went to Parliament. "We entertained them on that *day.* After deliberations we entertained them. So, it would appear, that in order to get his budget cpproved, the accused had to spend som part of the previous yea r 's cpproved budget on those who were to give their approval to the new budget .

87. Exhibit 17 is payment voucher No.5770 dated ZOJ anuary,2010. It is for the sum of Le30m illion. It was being made in respect of honorarium to chiefdom authorities in 10 chiefdoms on the handing over of 10 sites for jetty construction. PWl says the request was made by the accused by way of a memo, which was removed from the file. She gave the sum of Le30million to the accused. For his part, the accused says at page 61 of my minutes, I ha.d dealings with chiefdom authorities. I see exhibit 17 . I am aware of the voucher and the expend it ure. I made the payment to the chiefdom authorities. In the Provinces, we pay 'shake hand' fees to the chiefs he money was in the Account ant's bag, and she produced it wherever we we nt. It is provided for in the budget under the head of community relations." Under cross-examination, he said "I see it..What appears there is not my signature. I remember the t ransact ion. I approved payment for visit to the jetty sites. I approved the payment by signing the cheque. The cheque was for Le30million. The money was given to 10 chiefdom authorities. We went with the Board of Directors." We have moved from the accused saying the signature on e xhib it 17 is not his, to him saying that hesigned a cheque for the amount stated on the very exhibit 17. If what he says is true, then he is guilty of *s* serious dereliction of duty for signing a cheque. without having seen a payment voucher in support of such payment. I think he wo.s probably confused, when cornered by Mr Fynn.

88. Exhibit 18 was another payment voucher No. 025 dated 11 Mar ch,2010 payable to cash. It was payment in respect of remuneration to village elders and wharf harbour mas t ers in jetty areas in the Province s. The amount involved is Le7million. PWl says that the transaction was init iat ed by way of memo from the accused. The memo was removed from the file. She gave cash in the sum of Le?million to the accused. The accused says, at page 62 of my minutes, that he visited Gbangbatoke and Kitchum. SLMA had to pay back for· mar kets which had been renovated. He says the Consultants, Realini Baader took the money to Gbangbatoke. This is the only explanation he could give for such a large expenditure. Ther receipts to support his story. If he knew there were receipts for such a payment, surely, he would have told the Court about them. He complained in the most self-righteous tones, that if only the ACC had invited him for an interview, all of these discre panc ies would have been cleared up. But his evidence in Court proves the opposit e :

that he was busy ensuring the ACC would have nothing to go on, by instructing his staff to remove incr imi nat ing documents from files.

89. When questioned by Mr Fynn, the accused sa id that heapproved the payment , but that the cash was not given to him. He said Mwe had to cook for t hem. r did not receive the money. It is not true that I received the money from the Accountant. She spent money she had with her on providing for the chiefdom aut hor it ies

90. We now move unto ex hibit 19. Exhibit 19-1 is a payment voucher numbered 02-8 and dated 17March,20 10. It is for the sum of Le9,500,000. It is to the order of cash. It is payment in respect of visit of delegation to Gbangbatoke and Kitchum jetty areas to meet with chiefdom authorities for the solving of jetty sites for construction including incentives. Exhibit 19-2 is a payment instruction from the accused to PWl dated 15 March,2010 to provide the sum of Le lOmillion for t rave lling allowances and incentives for chiefdom elders. There is no breakdown, there are no specifics. PW1 said the c a s h, in the sum of Le9,500,000, not Le10million, was withdrawn from the bank was given to the accused by her.

91. After she had gone through these exhibits, PW1 was asked by Mr Fynn, whether she had rece ived any returns in respect of exhibit s 10,11,12,13,14,15,lp,17,18 and 19. She said she did not receive any returns for any of the amounts of money disbursed through those documents. She sa id a ls o that the Accounts Officer keeps receipts in files. As exhibits 20 - 29 relate to payments to Board members, r shall not dwell on them because of the conclusion I have re.ached that there was no criminality involved in those payments, inclu t hose made to the accused himse lf. He wos a member of the Board, and he was entitled to receive payment in that capacity. The fact that these payments were all fully documented, with receipt s available, compares unfavourably with the other payments I have de.al7 with and which were authorised by the accused. Those transactions recorded in exhibits 10-19 were undocumented, and on the evidence, ram ce:rt ain beyond a reasonable doubt that the accused was responsible for the non-existence of these documents. He made a partially vain attempt-t o keep them secret by inst r uct ing his subordinates to remove them from files, but Jnluckily for him, and luc kily for the prosecution, some of the documents did survive the cull.

9 2.Mrs Vannie, PW1 was recalled on 7 March,2011 for further testimony in chief. during which she tendered some more documents re la t ing to payments

to Directors. These are exhibits 30-37. Thereafter, she was subjected to vigorous cross- exa minat ion by Mr Shears -Moses , Counsel for the accused. She confirmed what I have already held: t hat payments to the Board were approved by the Board, and by Parliament.

93. She went on to say that before a Deputy EID was appointed, vouchers were not prepared in the absence of the EID. But after one was appointed in February,2009 he was able to approve payments up to Le5 miltion. This piece of evidence provides further proof that those payments allegedly made in respect of ent er t ainment of Parliamentarians in 2008 must have been approved by the accused. She said the var ious amounts of money withdrawn by her were kept by the accused. When they travelled to the Provinces for the handing over of the jetty sites, the chiefdom authorities were there. They were given food and drinks. She paid for that with the cash she had with her. She went on two occasions for the handing over of jetty sites. On both occasions, the monies withdrawn were kept by her. The monies were not in the hands of the EID. She said that if the Accounts' Officer is out, she handles petty cash. She handles the .EBM Project money. She keeps such monies with her until the accused instructs her what to do with the such monies. She tendered her let t er to the ACC about the sum of Le20million which had been in her possession at the time of the investigation. She said the receipt she had complained about was withdrawn by the ACC. She also confirmed what I have already decided, that per diem allowances were paid as soon as one left our shores, until one's return to base.

94. On the important issue of what happened when Parliamentary committees had meetings with SLMA, she said that she normally went to Parliament for budget hearings. When budgets are pre pared , they are passed on to the Ministry of Finance for the Ministry's approval. The SLMA budget is part of the budget put before Parliament. She reiterated that she did not get returns for the expenditures catalogued in e xhibit s 10-19. On the other important issue of the removal of documents, she said that *"the documents we removed were left with the E/D. the lnstructlons to do so were given by the E/D verbally. He gave them to me alone and asked me to pass them on. Myself, Accounts Officers 1&2 and the E/D removed the vouchers. I told the ACC that we worked as a team upon instructions. A few of them were removed. Others were available."* She was frank enough to admit t hat "*... the flies I went through personally, I left some of them ln because I knew it was*

*not the right thing to do. I participated in it. I told the EID that the ACC were requesting some files , He said I should remove them. The next day, he called to ask whether I had done so. I said no. He said I should go to his office with Accounts officers 1and 2. I took the files to the ACC. When I was asked about the missing documents, I told the ACC I had removed them on the instructions of the EID. I did not volunteer the information. The Accounts Officers 1&2 were in the <?ffice. They were not present whenI gave that explanation to the ACC. I did not report to them."* I admire PW1's candour in this respect, and though she may be said to have been an accomplice in the removal of documents, the accused has hot been charged with any offence in this regard. As regards, the payments documented in exhibits 10-19, t her e is no evidence befor at she did an)' more than do her job, and obey the inst n:.C .Fle EID. In any event, I believe that the provisions of S ect ion 9 6,_would apply to her if that were t he case.

95. On the visits to Par liame nt , she said that she could not reccll how many times she went to Par liament. Then she also said, she went there twice. She usually stayed until ever ything was finished . She met wit h Member s of the Committee. She did not meet with the committee members after the meetings. The E/D did t hat . Sometimes she went with t he EID inthe same vehicle. She did not know whether refreshments were served. She was shown exhibit 10A aga in. She said they had a budget for marketing, facilitation and protoco l, now known as communit y re[at ions. She sa id it was a payment within the budget . That may be so; but surely, there must be some means of accounting for payments or expenditures incurred under this head? the budget for community relat ions was not a non-accountable, or 'other charges' budget.

96. She went on to say that she never quer ied items put forward by the E/ D. As long as they had been approved, her duty was to carry out t he transaction. She hod a safe in her office. She said she had not got the power to cha lle nge the EI D. She acknowledged prof ess iona l standards of an Acc ountant , which she Ii applied to her pos it ion, but that in the pecu liar situation in which she found herse lf , she c ould not apply them. She did not know whether the E/D used his private veh icle for official purposes. She agreed that on one of the visits of the Maritime Colle ge, use was made of the E/D's vehicle, and that it hod to be fu e lle d.

97. She said that the SLMA's accounts were audited. Previously, the auditing was done by a private firtn Bertin & Bertin; it was now being done by the Auditor-General. There was no Internal Auditor at the SLMA. She ended cross-examinat ion by tendering the audited accounts for 2008 as exhibit 39. She said they had not yet got those for 2009 and 2010. She s id they were quite happy when they got it because all the transactions recorded were wit hin the budgetary provisions. It is of course true that the Auditors could give a clean bill of healt h to an institution. But that does not tnean, there has been no fraud, or that fraud has not been concealed. The Audit or's caveat on the very page 4 shown to the witness is proof of this: " *The primary responsibility for the prevention and detection of fraud and error and other irregularitiesrests with the management of the Administration. An audit conducted in accordance with INTOSAI and International Auditing Standards is designed to provide reasonable assurance that the financial statements, taken as a whole, are free from material misstatements whether cause by error."* Such a caveat is sufficient proof that a general audit does not invariably expose fraud. What exposes fraud is a special audit. Many companies around the world, have been clean bills of health by reputable Firms of Accountants, just before they crash, the Maxwell Group of Companies being the mcst notable in these series.

8 Under re-examination, she clar ifie d _ gJ-thad appeared to be an inconsistency in her testimony about transpired at the handing-over of the jetty sites ceremonies. She plainly stated that the monies she spent did not for m part of the amount of Le30miliion recorded in exhibit 17. She also confirmed that it was in January,2011 that she requested the use of the E/ D' car for the visiting delegates from the Maritime Univers it y. The dele gates catne two days before the meeting, and left two days after. The accused, later when giving evidence, spoke of the occasion he had lent his car to the S LMA. It appears from the evidence of PWl that must have been this year, and not the time stipulated in the I ndict ment .

9 PW2 was Joseph Bockarie Noah, an Investigator with the ACC. He tendere:::l ex hibit 40, which is a Notice under Section 57(1) of the ACA,2008. It req uest ed the accused to surrender the listed documents. He said the accused complied, and did submit some documents. He submitted exhibits 41 and 42 the documents relat ing to the shipping of the goods ordered from Tideland. Exhibit 41Ais the payment voucher for payment of demurrage

because of the delay in clearing the goods. Exhibit 41B is the delivery notice issued by Sierra Leone Shipping Agency Lim it e d to the SLMA. Exhibit 42 is the Tide land contract. The accused also submitted his terms of conditions of employment which the witness tendered as exhibit 43 a&b. He said that during the course of the investigatio , attempts were made to have a formal interview with th.e accused. He complained about his health, and the Commission decided to show understanding. The accused canno t tberefore be heard to complain that the Commission did not invite him for an int er view. Besides, it is most improbable that after receiving the Notice, exhibit 40, the accused was not even curious to find out what the ACC really wanted to do with the documents t hey had requested under the Not ice . In my experience, it appears that some people believe they are above attending at the ACC's office when asked to do so. In another case I was doing recently, the suspect referred the ACC investigators to a Minist e r . That sort of arrogance actualry works to the detriment of the suspect. Instead of gaining knowledge of what the ACC is about, the suspect is usually taken rJnawares when he is charged to Court.

PW2 tendered exhibit 44 which is a Notice dated 29 November,2qo issue.to the accused requesting him to surrender his travelling documents. The accused surrendered his Sierra l,eonean passport, but held on to the Ecowas passport . A Notice, tendered as exhibit 45 was then addressed to the Chief Immigration Officer seeking information on Ecowas passport No. E0006808. The CI O replied by letter dated 20 January,2011, tendered as exhibit 46 page 1, stating that on 10 August,2010 an Ecowas passport was issued to the acc used . The passport Application f orms were tendered as exhibit 46 pages 2-8. The reason why the ACC requests the surrender of travelling documents of persons they are investigating, is of course to prevent such persons lea vingthe jurisdiction without t heir knowledge, thus hampering t heir investigations. But I believe the problem about this surrender *of* documents is that suspects, fear that such investigations might last months, and t hey will not be a ble to go about their lawful business . To my mind, the remedy seems to be shorter and more intensive invest igat ions, than the leisurely pace at which they are conducted prese nt ly. I have had the experience, most recently of dealing with an interview which stretched over 6 mont hs. Rather than charge someone to Court, why not request the C IO to demand the withdrawal of the passport. I have before now, expressed

my reluctance to allow these Courts to be used to enforce the ACC's methods of carrying out its investigations. If this were a Public prosecution, I doubt whether the Police would come to me and say, they have a suspect who has refused to hand over his passport. The reality staring in the face of such a suspect should be obvious. Reman d.

100.PW2 continued by saying that hecould not hold an interview with t he accused because of hea lt h issues.

PW3 was Carlton During, Accounts Officer II at the **SLMA.** He said that he participated int heremoval of vouchers from files in the accused's office, and that those present were himself, PW1, Mar(\lma Jalloh, and the accused. He says the vouchers were left in the accused's office. Under cross-examination by Mr Jamiru, PW3 said that he was called by his *boss,* PW1 to help in the process of removing documents. When he got to.the E/D's office, he met PW1, Ms Jalloh and the E/D alrea dy there. He said he removed documents whic h stated facilitation/protocol. He persona lly removed more than one document. His evidence confirms PW1's evidence, and strengthens the case for the prosecution that the only reason vouchers relating to payments for facilitation and protocol were being removed, was because they were incriminating.

103. We then moved into another section of the case: the use of vehicles and fuel. PW4 was -Philip Kamara, the accused's driver. He had been his driver for 1 year 6 months. He is ass igned to drive three vehicles: AEN 050, AEN 501 and AAH 260. He drives the accused's private vehicles at weekends. They are ACM 113 and ABB 050. He t end er ed exhibits 47 -50 which are petrol chits issued by NP. Exhibit 47 is a chit for the supp ly of 20 gallons petrol to ACM 113 on 5 October,2009. ACM 113 is accused's ate vehicle. Ex hibit 48 is dated 7 October,2009 and calls for 20 gallonsiuel for ABB 052. It is the accused's privat'1yehicle. Exhibit 49 is chit datJJ-24 November,2009. It calls for 30 gallons1 uef fo r ACM 113. It is acc used 's private vehicle. Exhibit 50 is chit dated 5 January,2010. It is for the supply of 35 gallons of fuel to ACM H3. He said that even after hehad been t o the ACC to be interviewed, he cont inued to take fuel for t he accused's private vehicles. PW5 also tendered chit dated 11 December,2009. It is for the supply of 45 gallons of fuel to AEB 501, a Project vehicle. He sa id that when he we nt to PW1 for fuel, she told him things had changed, and that if he wanted fuel for the accused's private vehicle, he should

take su h fuel under one of the official vehicles. In the end, the fuel was not ,supplied to the Project vehicle, but to the accused's two private vehicles, ACM 113 and ABB 052. The witness drove both vehicles, one at a time, to the NP .St at ion at Cotton Tree, where the fuel was pumped into each of them separately. 30 Gallons were pumped into ACN 113; and 15 gallons into ABB 052. He said he had continued with these new instructions until t he day the accused was indicted.

114. He was cross-examined by Mr Shears-Moses. He said that heused the private vehicles of the accused for official duties as well. His c r e dibilit y was put to the test by Counsel, who put to him questions relating to past wron gdoings at his previous places of wor k. I had to remind Counsel that if he pursued that line of questioning, his client stood the chance of 'losing his shieJd' under the provisions of Section 87(f)(ii) of the CPA,19 65 . He acknowledged tne war ning but pressed on with his cross-examination.

115. PW5 was Brima Sulleh. He was tendered by the pros ec ut ion. His cross-txaminat ion was very brief .

116 . PW6 was another driver, Thaimu Sesay. He said that he was ass igned to drive ACK 717 . He tendered chit No. 26111 dated 16 April,2008 as exhibit 52.. He collected 45 gallons diesel. The fuel was to be used for a trip to the Provinces . He drove to Potoru with the accused. Potoru is t he home town of the accused . They went there to campaign as a by-election was on-going. Under cross-examination, by Mr Shears-Moses, he s..,a,d that ACK 717 was a Project vehic le. He said he always signed acknowled gl1 hat he had collected fuel. He agreed with Counsel that hehad been suspended on t wo occasions . He repeated his cla im that hehad been to Potoru with the accused for a by-ele ction. I n re-examination he was asked by Mr Fynn whether there were jetty sites in Pujehun, and his answer was ,yes.

117. PW? was another driver, Mohamed Samura. In 2009, he was ass igned to drive Toyota Hilux ABU 357. He tendered chit No. 107592 dated 5 October,2009 as exhibit 53. It was for the supply of 50 gallons diese l. He said the supply was taken in order to drive the accused's wife to Ka bala. He said t hey drove to Kabala, and then to Farana in Guinea where t he accused 's wife went to buy catt le . He said there were other people in the vehicle. He said the others were SLMA off icials . As was expected, hewas subjected to vigoro:.is cross-

examination by Defence Counsel. He said they got about 20 cows. He said he had a laisser passez , and that he drove into Guinea. He said they went there to collect, not to buy, *cows*. He said the cows were taken by road to a place called Mongo. The cows were at a worreh in Banya. At the end, he denied t hat the accused had accused him of d shonesty. I have no reason at all to disbelieve his evidence, and I accept that histestimony is probative of the offence charged in Count170.

118 PWB Allieu Barrie, the proprietor f Dokkal Enterprises, was tendered by the prosecution.

119 PW 9 was Mariama Jalloh, *Accounts* Officer at the SLMA. She said that PW1 told her that the ACC had required all payment vouchers for 2007-2010. She said that she had to go to the store to remove the files and the vouchers. fW1 was with her. They were payment voucher files. PW1 instructed her to remove some payment vouchers from the files. She was herself , removing vouchers from the files. Most of them related to facilitation and protocol. She was doing this in the Accounts office. After they had removed them, PW1 called PW3 Mr During, to help. PW1 instructed her to take the files to the ED's office. There were three of them in the E/D's office. She handed over the vouchers she had removed to PW1. PW1 instructed her to finish removing vouchers in the E/D's office. Three of them, and the E/D were removing vouchers . She left them there as she had to go back to the store. She was cross-examined by Mr Shears-Moses. the pur port of the cross-examination was to exploit discrepancies in the story about the removal of document s. Notwithstanding such discrepancies between the versions given by the various pla yers , PVi/1, PW3, and now PW9, particularly as to who summoned who to the E/D's office, and who was the last person to leave the office, there is irrefutable evidence that vouchers relating to the fa cilit at ion payments were being removed in the accus d's office, and by all three accounts, the accused was present while all this was going on. This is circumstantial evidence that the discovery of the vouchers would have led inexorably to the discovery of criminal activity on the part of the accused. This was a clear case of an attempt to pervert the course of justice, and I am surprised a charge has not been brought for this offence

120 PW10 was the accused 's confidential secretary, Ms Enid Faux. She wc.s very calm and collected in the witness box, but in reality, her evidence did not add

much to the prosecution's case. She expla ined what t ra nspire d between her and PW1. Ess ent ia lly , her evidence relates to the collection of documents frotn the accused's office by PWl and the Accounts Officers. What I can glean frotn her evidence, is that documents were being removed from files in the accused's office, and we re being taken from his office as well. I ronica lly, it was under cross-exam inat ion by Mr Shears-Moses, she disclosed that the accused was present while PWl and the Accounts Officers were busy re moving documents. She said, she t ook in some letters for him. She saw them extracting documents ,from the files. She did not count them. The extractions were being done randomly. She insisted, when pressed by Mr Shears-M9ses, that shesaw tnem ext ract ing docume nt s., not re-ar_ranging them. She was the 4th witness to give a vivid account of the document- re moving exercise conducted in the accused's off ice, after the ACC had requested that certain documents be surrendered to the Commission.

121. PW11, wrongly described as PW10 in my minutes was Alhaji Wurroh J alloh. He was tendered by the prosecution. Later, he was reca lled to the witness stand to be cross-examined by Mr S hears-Moses. He is the Deputy E/D at the SLMA. He spoke about his generators, and that the accused had told him on occasions that his generator broke down.

122 .The very last but one witness for the prosecution was PW12 , the Chairman of the Board, Mr Ballah Kamara. He said as a Board member, he and other members of the Board were entitled to monthly re muner at ion, and they were also paid sitting fees. Healso testified about the jetties' project . He was cross-examined by Mr Shears-Moses, but as I have already reached a decision on that aspect of his testimony, rela t ing to the authority for payments made to the Board, I shall say no more.

122. The last witness, PW13Mr Foday Sannah MarC!lh. an I mmigrat ion Officer, t est if ied about the delivery of the Ecowas passport to the accusd . As I have stated above, I do not think one ought to spend valuable time delibe ra t ing on a matter which the ACC could easily have settled by simply reques t ing the C I 0 to sequester the accused's passport.

123. Before closing his cas e, Mr Fynn recalled PW1 Mrs Vannie to tender in evidence the budgets for 2008 and 2009 respectively as exhibits 54 and 55. She was briefly cross-examined by Mr Jamiru. She said both exhibits were

approved by the Board. At the end of her short testimony, Mr Fynn closed the case for the prosecution.

124 I put the accused to his election in accordance with the *provisions* of ,Section 194 of the CPA,1965. He elected to give evidence on cath, and sa id he had no witnesses. His evidence both in chief, and under cross -examinat io n, are recorded on pages 54 -73 of my minutes. At the end of his testimony, Mr Shears -Mos es, closed his case, and I adjourned for addresses. I have already quoted extensively from the evidence given by the accused, when dealing wit h the evidence of PW1, his main ant agonist .

125 Before I go on to deal with his evidence I must remind myself of my duty as Judge *and* jury in this case. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement t hat in all cr iminal cas es , it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged..If there is any doubt in my mind, as to the guilt or otherwise of the Accused person, in respect of any, or all of the charges in t he Indictment, I have a duty to acquit and discharge the Accused person of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused person has not only committed the unlawful acts charged in the Indictment, but that he did so with the requisite Mens Rea : i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved it s case beyond all reasonable doubt. No part ic ular form of words are "sacrosanct or absolutely necessary" as was pointed out by **SIR SAMUEL BANKOLE JONES,P** in the Court of Appeal in **KOROMA v R [1964-66] ALR SL 542 at 548 LL4- 5.** What is requir ed is that it is made clear by or to the tribunal of fa ct , as the case may be, that it is for the prosecution to es ta blish the guilt of the accused beyond a reasonable doubt. A wrong direction on t his most important issue will result in a conviction being quashed. The onus is nev er on the accused to establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insan it y.ff

125. The accused began by giving a brief background of himself which I have already referred to. He tendered as exhibit 56 pages 1-3, the correspondence from the Ecowas Bank for Investment and Development dated 26 April,2010 relating to the payment of demurrage for the navigational aids which had been lying at the quay uncollected. I do not believe, on the evidence, that the accused was to be blamed for the late collection of these items, thus leading to the imposition of demurrage charges. Mr Fynn has taken literally the clause in the Tideland contract which says that the items should have been delivered at Government Wharf, and not the QEII Quay. In my respectfully view, delivery at Government Wharf, does not necessarily mean delivery by sea at Government Wharf. As far as I know, all ships berth at the QEII Quay, and not at the Government Wharf. I am not aware that the Government Wharf has berthing facilities for cargo carrying vessels; nor did the prosecution lead evidence to this effect. Thereason why the goods were not collected in time, thus attracting demurrage, has not been satisfactorily explained by the prosecution. Whatever might be the case; the payment of demurrage could not be categorised as Misappropriation, for the simple reason that, even if it is successfully contended that the SLMA lost money, a finding to that effect would not necessarily lead to the conclusion that the person responsible for the late collection was wilful and dishonest in the senses explained in both GHOSH and GOMEZ, respectively. There may have been carelessness, and maybe even negligence, but certainly not wilful behaviour or dishonest conduct.

126. He went on to challenge the prosecution's case that he had misappropriated various sums of money, failed to comply with applicable procedures and guidelines, and abused his office, in authorizing the payments made to him in respect of leave and rent allowances, and as per diem for his various journeys abroad. I accept his explanation that payments to the Board are sanctioned by parliament in approving the SLMA's budget, and that no wrong-doing is involved here.

127. As regards the repairs to vehicle carried out by Dokkal, he tendered exhibit 57 pages 1-3 which are the life card and two other documents showing that as of 26 January,2009 Toyota Hilux van registration number AAW 071 had changed hands. It had been sold by the SLMA to one Morray Tucker. I do not quite appreciate the significance of this part of his testimony, because the complaint in Counts 171-173 relate to matters which happened in

December,2008 before the vehicle was so ld . In any event, these exhibits, i.e. 57 pages 1-3, show that the vehicle was in the name of the SLMA. There is no other evidence dealing with the ownership of the vehicle. As I point ed out at the start of my J udgme nt , the sheer weight of the Indictment could have resulted in this loophole being overlooked by the prosecution. Regrettably, the charges relating to payment for repairs of thi vehicle must also fail.

127. The accused gave an account of the vehicles he owns and why they had to be fuelled by the SLMA. He claims they had to be used to transport visiting dignitaries because his official vehicle was off the road. I do not believe his evidence. I acknowledge, as confirmed by PW1 that there was a time when visitors from abroad came, and as there was no suitable official vehicle available, the accused's private vehicle had to be used, and fuel had to be -supplied to the same. The difficulty about the accused's explana t ion, although he is not bound to give one, is that between October and November,2009 visitors from abroad had to be taken about in his private car, but as he himself ad mit s, they were only here for just four days. The exhibits show that on 5 October,2009 20 gallons petrol were supplied to his private vehic le ACM 113; on 7 October,2009 20 gallons of petrol were also supplied to another of his vehicles; on .24 November,2009 30 gallons of petrol were supplied again to ACM 113; 5 Jcnuary,2010 when he claims there was another international vis it , 35 gallons of petrol were supplied to ACM113; on 11 December,2009 45 gell0 ns of diesel were purportedly supplied to his Project vehicle AEB501. In reality, as explained by PW4, the fuel was pumped into two of the accused's private vehicles, ACN 113 and ABB 052. If as the accused claims, fuei was supplied to his private vehicles when they were being used for official purposes, why the subterfuge?. According to PW7 Mohamed Samura, the vehicle conveyed accused's wife to Kabala, and thence to Farana, for the purpose of collecting cows. Though he did admit that there were SLMA personnel aboard the vehicle, it was clearly a private trip.

128. The difficulty about the Counts dealing with the fuel supplies, i.e. Counts 177 to 182, is that they are all bad for duplicity. They charge the accused wit h committing a non-continuous offence_such as Misappropriation, between two stated dates. The prosecution well know that where the exact date of the commission of a non-continuous offence is not known, the prosecution should allege the commission of the offence on a day unknown between two dat es, or as

being commit.ted cm.or about a certain date as was done by them in Counts 183-194. I am a stickler for the common law rules of pleading in an Indictment, and I cannot countenance blatant duplicity in counts in *an* Indictment. Regrettably, those Counts must fail

129. As regards, the Counts dealing with how monies were disbursed under the banner of community relations or facilitation and protocol, I have dealt with the accused's explanation in great detail above, and I need not repeat here what r have already said. There is evid ence beyond a reasonable doubt that the various sums of monies charged in Count s 185 -194 were misappropriated by the accused.

130 At the close of the case for the Defence, both Counsel s ubmit t ed their written addresses, which ere in the file. Both of t he_m a r d their respective cases with great skill and erudition, and I thank them for\.manner in which they have conducted their respect .ive cases, and themselves whilst in Court

130. The great lesson to be learned here, is that the prosecution must chose its charges carefully, and lead evidence which is probative of those charges. If you lay too many charges relating to different transactions, you may very well end up not being able to prove the vast majority of them. The prosecution has a solid *case* as respects the unlawful payments to the various Parliamentary Committees; but it really had no case when it came to payments made to Directors. Without proof that Parliament had not approved those payments, the case in respect of those transactions was bound to fail. I suspect that the prosecution was confounded by the use of the words remuneration or allowances in 5ection 6 of the SLMA Act int o thinking that if a Board decides to award itself both, and describes both types of payment as remuneration, in addition to sitting fees, there must be something illegal about it. It may have been, if Parliament had not approved the budget. But the total amount payable to Directors is clearly stated in the budget tendered in evidence by the prosecution. Where then is the criminality involved? Where the argument that Parliament approved all payments by way of honoraria or entertainment as being part o'f community relations fails, is that such disbursements were not so spelled out in the budget; and there was no evidence of how the money was used. The accused does not bear the burden of proving his innocence, but when the Court is presented with evidence which proves beyond a reasonable doubt that

certain sums of money were. handed to the accused by PW!, and he cannot account for them save for saying that, for instance, he bought food and d r inks for Parliamentarians, the Court e than enough reason to pronounce guilty verdicts against the accused. C'

131.In the result, the accused is acquitted on Counts 1-24; as Count 25 is bad for duplicity, he is discharged on that Count. He is also acquitted on Counts 26 and 27. He is acquitted on all the Counts relating to payments to Directors, *i.e.* Counts 28 -160; Counts 161 -169 are all bad for Duplicity, and the accused is therefore discharged in respect of these charges; In Count 170 he is guilty of misappropriation of public funds in that he charged re pairs to his private vehicles to the SLMA's account. He is acquitted in respec;t of Counts 171-173 as there is no proof before me that the vehicle in ques t ion, AAW 071 belonged to the accused. The life card tendered by him shows that the car was the property of the SLMA bef re it was sold to Morray Tucker in January,200 9. He is clearly guilty of the offence charged in Count 174 as the evidence of Mr Marah and the passport off ice records tendered show conclu ively that he was already in possession of an Ecowas passport as far back as Augus t ,2010. Suspects or persons who are requested by the ACC to produce documents should endea vour in future to comply wit h those demands..In Counts 175 and 176, the accused is acquitted and discharged, as the prosecution offered no further evidence agciinst him in the closir.g add ress of Mr Fynn. Count s 177 182 are bad for duplicity and must therefore fail. The accused is accordingly discharged in res pect of these charges. I have said above that I accept the evidence of the driver that hedid travel to Kabala and to Guinea with a vehicle fuelled at the expense of the SLMA, on a privat e errand commissi-oned by the accused.. The accused is therefore guilt y of the offence charged in Count 183. In view of this finding, he is acquitted of the alternative offence in Count 184. I have no doubt in mind that the accused is guilty as charged *of* the *off* ences charged in Counts 185 to 194. I find him guilty on these charges.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE