IN THE HIGH COURT OF SIERRA LEONE
ANTI CORRUPTION DIVISION

THE STATE

Vs.

ISHA JOHANNSEN	-	**1st DEFENDANT**
CHRISTOPHER ABDUL KAMARA	-	**2nd DEFENDANT**

C Mantsebo with him S Harleston and Sow for the State
A.Sorie Sesay, Brima Koroma and S. Mans-Conteh for the Defendants

JUDGEMENT DELIVERED ON Monday 27th MAY 2019

Reginald Sydney Fynn JA

1. The defendants were charged on an eleven count indictment dated 8th September 2017. The indictment was originally six counts but on an application for amendment made and granted on 30th October 2017 when the trial commenced the number of counts were increased after which the charges were put to the defendants. The defendants pleaded not guilty to all the counts.
2. Relying on an instrument dated 26th October 2017 and signed by the Attorney General Joseph F Kamara, the prosecution applied for trial by Judge alone pursuant to S144(2) of the Criminal Procedure Act 1965. This application was granted. The defendants were then admitted to bail.
3. On Wednesday 1st November 2017 the prosecution successfully applied for the amendment of count 5 of the indictment so as to be able to replace the amount "$1240" with the amount "$1640".
4. The indictment relates to four primary allegations. Firstly that relating to an amount of $50,000 received by SLFA from CAF. This is the subject of Counts 1 & 2. Secondly that relating to a cheque in the name of Arnie Johansen issued for Le 24,750,000.00. This is the subject of count 3. Thirdly that relating to Mohamed Ola Marah travelling in an SLFA delegation as well as the expenses related to that travel. This allegation is dealt with in Counts 4, 5, 6, 7, 8, 9 & 10. The fourth and final allegation relates to a sum of Le 5,500,000 paid to the 2nd defendant. Count 11 is dedicated to this.
5. The indictment charges the defendants with the following offences Misappropriation of Donor funds (count 1), Conspiracy to commit a corruption offence (Count 2), Misappropriation of Public Funds (Counts 3 & 11), and Abuse of Office (Counts 4, 5, 6, 7, 8, 9 &10).

6. The Extracts of Findings on which the indictment is anchored in brief states that the ACC in its investigations has established that while the defendants were the President and Secretary General of the Sierra Leone Football Association (SLFA), the association received the sum of $50,000 from the Confederation of African Football (CAF). CAF had donated the money to SLAF for the specific purpose of covering costs related to the National Under 17 team taking MRI tests in Niger. The team did not travel to Niger for the MRI tests meanwhile the SLFA Bank account at ECOBANK into which the $50,000 was paid and to which the defendants are the principal signatories is showing a $92.00 balance as at 14th October 2015. (My study of the bank statements shows this to be an inaccurate statement)
7. The Extract states further that an amount of Le 24,750,000 was paid to the spouse of the first defendants from SLFA funds held in an account to which the defendants are signatories. It alleges also that the second defendant received without authority the sum of Le 5,500,000 from public funds purportedly as compensation for the use of his personal laptop in carrying out SLFA work.
8. Finally the Extract further states that one Mohamed Ola Marah the Personal Assistant of the 1st Defendant who is not an employee of SLFA and not entitled to payment or allowances from SLFA received a total of $6,507 on the authorization of the two defendants.

The Testimony of PW1

9. PW1 is Mr Kinny-Ali Brima-Walker he was led in Chief by Ady Macauley Esq. Commissioner of the ACC. Mr Walker on being sworn told the court that he is an employee of the ACC. An Investigations Officer. He sends out ACC Notices, he receives and analyses the responses to the notices, he interviews people and he writes investigation reports. He told the court that he knows both defendants. He came to know them during the investigations leading to this case. Two sets of statements were taken from the defendants. His colleague Lucy Kabba and he took the statement of the 1st defendant. When he was unavailable another colleague acted in his stead. He says the 1st Defendant was interviewed in the presence of her lawyer one Drucil Taylor Esq. The 1st defendant signed her 97 page statement on every page acknowledging it be her statement. This was tendered and marked "A 1-97".
10. PW1 Mr Walker told the court that he was part of an ACC team that searched SLFA premises at Kingtom. The search was conducted with SLFA employees being present at every point. Among the SLFA employees present were one Bowen Freeman and one P D Greene. During the search documents and computers were identified as useful to the investigation. These were inventoried in search logs and taken away by the ACC team. PD Greene countersigned the search logs as a SLFA employee present. The search warrant and search logs were tendered into evidence as Exhibits "C" to "J 1-9". *(Full list of prosecution Exhibits is in Annexure 1 of this judgement).*
11. Mr. Walker also tendered as Exhibit "K1-4"; SLFA payment voucher (PV) No.339 "being payment towards loan from Mr. Arnie Johansen". It is made out in the sum of Le 24,750,000. He tendered also PV No. 234 dated 17th July 2015 this was admitted as "L 1-3". "M1-4" also tendered, are a set of four correspondences between SLFA and CAF.

12. Mr. Walker tendered various documents retrieved during the search of SLAF premises as well as several which were notices under the ACC act and the responses there to. *(All these are listed in Annexure 1 and reference will be made to them as may be deemed necessary)* The Exhibits tendered continue from Exhibit "N1-3" through " Exhibit "Z 1-4" unto Exhibit "AD"
13. PW1 was cross examined by Africanus Sorie Sesay Esq. PW1 confirmed his employment history and that he did not do the whole investigation himself. A team of investigators did it. He told the court that FIFA, CAF and LEOCEM are among SLAF's sponsors. Sometimes sponsorship is by direct payment for SLAF activities and not cash. Before CAF sponsorship the SLAF account stood at $93. MRI tests were not done. Exhibit "AB 1-2" are a letter from Dr.Prince Sadoke Amuzu of ECOMED. It mentions screening tests. PW1 said 1st defendant told him that they went to ECOMED to do an MRI to establish the age of the players. Several letters from CAF emphasized the MRI. Any player in the U17 tournament needs to satisfy the age requirement. Failure to do so may lead to disqualification. PW1 was not satisfied with the age testing done. He did not contact CAF as he had enough evidence. He did not find out whether age assessment can be done by any other means, He does not know whether the tests results from ECOMED were sent to CAF.
14. PW1 stated that decisions at SLAF are taken by the Executive committee. He said that the second defendant had a computer. The witness does not know whether computers had been distributed to SLAF employees before 2nd defendant joined SLFA. 2nd defendant used his personal computer to do SLFA work. The investigation does not show that that the laptop was part of SLAF assets. PW1 does not know that SLAF executive approved the payment to 2nd defendant. He admits he saw N1 and N2 which are endorsed *"Payment in respect of refund for computer use from personal to office property"*. He does not know how much the 2nd defendant had paid for his laptop computer.
15. PW1 said SLAF had sub committees. He could not name them. He agreed that they include a Finance Committee, Technical Committee, Women's Football Committee, Players Status and Transfer Committee, Youth Football Committee, Ethics and Fair Play committee, Media, Marketing & Television, Discipline, Referees and Security. Each committee has at least four members. PW1 did not see any document with the name Ola Marrah as a member of a committee. He was informed that Ola Marrah is not a SLAF employee. The investigation did not cover membership of sub committees. Committee membership is not limited to SLFA members. He did not see any approval for Ola Marrah to travel with SLAF and cannot agree that non-members of SLFA can join SLAF travel. Other members of SLFA were spoken to including the Vice President Brima Mazola Kamara, Harold Nat Johnson and Badara Tarrawalie they did not speak of any approval in this regard. PW1 saw an approval of $21,000 in respect of a match in Cameroon.
16. PW1 agreed that the issue of LEOCEM sponsorship arose during the investigations. He denied discovering a $90,000 sponsorship from LEOCEM in respect of a trip to Sudan. He denied knowing that $25,000 of that LEOCEM sponsorship was used as allowances for the players or that LEOCEM bought the tickets or provided an imprest for the Sudan trip. He testified that during the search documents were found showing that LEOCEM gave SLAF sponsorship of Le

24,750,000 towards the Sudan trip. The witness agreed that Exhibit "AD" is a receipt showing that one Arnie Johansen gave $5,000 to the SLFA. He knows that this person is the 1st defendant's husband. He did not question Mr. Johansen. He did not find any approval of a loan. PW1 is unaware that the 1st defendant does not take allowances from SLAF. He agrees that according to "AD" both Arnie Johansen and Chris Kamara knew LEOCEM was about to provide sponsorship to SLAF. The witness did not know that "AD" was transacted on the day the team was to travel. He agrees that "K1-4" is payment in respect of a loan.

17. Looking at Exhibit "U2" PW1 agreed that the CAF remittance was done on 7th July 2014 which is a date after the tests at ECOMED had been carried out. He said ECOMED officers were interviewed by the ACC. He was unaware as to whether the test results were sent abroad to India.
18. PW1 received information that a laptop computer had been converted into SLAF property but he did not ask for an auditor's report or for SLAF's list of assets. He said that the Executive Committee was part of the SLAF governing committee and there meetings had recorded minutes. He did not know that emergency meetings outcomes should be implemented immediately. He saw the voucher relating to payment to Arnie Johansen but he did not see the approval of the same. He did not ask for such an approval nor was it produced by anybody.
19. Continuing in cross examination PW1 testified that he did not see any document resolving that the MRI tests be conducted at ECOMED. He agreed that the 1st defendant had told him that she and one Yvonne Avery went to ECOMED. He did not question Yvonne Avery as they had not gone to ECOMED to do MRI tests. He said he did not put the specific amounts mentioned in Counts 4 to 10 (ie the Ola Marrah counts) to the 1st defendant.
20. Concluding his testimony in cross PW1 said he knows that SLAF received $50,000 from CAF for the purpose of conducting MRI tests in Niger for 30 players and 5 Officials, including accommodation. He said he has looked at the bank statement into which the money was deposited and that in about a month $38,000 had been withdrawn therefrom. He did not question the 1st Defendants on how the amount was used but knows she was an A signatory to that account. He did not investigate the individual disbursements from the account.
21. The prosecution re-examined PW1 and he testified that Ola Marrah was the Personal Assistant to the 1st defendant and his passage was paid from donations and personal funds.
22. PW2 is Joseph Bockarie Noah and ACC Senior Investigator he was led in Chief by Calvin Mantsebo Esq. After being sworn on the Holy Bible he proceeded to testify that he supervises an investigation team of four (4) and that as part of his duties he investigates assigned cases and on conclusion submits an investigation report and testify in court if need be. He provided PW1 with support in the investigation of this matter. He interviewed 2nd defendant. He had a total of fourteen interview sessions and each time reminded the defendant of his rights before starting. During all the sessions he was the interviewer and had alternately his colleagues Regina Barrie, Charlotte Johnson or Kinny-Ali Brima-Walker acting as recorder. At almost all the interview sessions Mans-Conteh Esq was present representing the 2nd defendant. He tendered the 2nd defendant's statement which was admitted and marked AE1-106. He also tendered AD which it titled "Receipt" and signed by the 2nd defendant and made in the favour of Arnie

Johansen. PW2 said AD was submitted to the ACC after the indictment. PW2 was in the team that searched SLAF offices. They seized documents they considered relevant to the investigations.

23. Under cross examination by Africanus Sorie Sesay Esq. PW2 testified as to his qualifications. He said the team considered Accounting and Banking issues. Audit reports are considered where necessary. He insisted that "AD" was submitted to the commission after the indictment. He was then on leave and it was submitted through PW1. 2nd defendant had told him about the loan from Arnie Johansen. PW2 told Mr Brima –Walker who was leading the investigations about this. PW2 is aware that SLFA receives sponsorship from LEOCEM but he does not know that LEOCEM was buying tickets for players. PW2 said the 2nd defendant said the loan was for players per diem but does not recall that he was told it was for travel to Sudan. PW2 testified that the defendant told him the loan was given on a weekend and that the money had been passed on to Brima Mazolla Kamara who was a SLAF executive at the time. PW2 knows that 1st defendant is Head of SLAF and that SLAF has a constitution as well as other executive members. He did not question any other SLFA executive members.
24. PW2 recognized K1-4 admitted that some Executive committee minutes were produced to the investigators. He denied knowledge of the loan to Arnie Johansen being approved by the executive committee. Referring to AB1-2 the witness said part of the investigations related to whether MRI tests were done to determine the age of the players. He testified that 1st defendant told him they went to ECOMED for that purpose. He was unaware that the ECOMED results were sent to CAF. He said CAF sent $50,000 for the MRI tests to be done in Niger. He did not contact CAF. He is aware that for some aspects of the tests Choithram's Hospital was contacted.
25. <u>The other prosecution witnesses were shorter witnesses and their testimony will be referred to where necessary in the analysis of the evidence.</u>
26. Upon the prosecution closing its case the defence made a no case submission. The No case submission was ruled on, on 15th October 2018. The ruling discharged the defendants on all counts on the indictment but for the first three. The defendants were put to their election and they elected as follows: The first defendant would rely on her statement to the ACC and upon the witnesses whom they will call jointly. The second defendant will testify on oath and rely also on the witnesses jointly called with the first.

<u>DW1's Testimony</u>

27. DW1 is Christopher Abdul Kamara the 2nd Defendant. He is the SLFA Secretary General coming to the position on 1st May 2014. He tendered the SLFA constitution which sets out his role this was marked AP1-39. He testified that there are administrative processes required before withdrawals from the SLFA accounts. He explained that the General Secretary in collaboration with the Finance Officer will develop a budget which is then approved by the Ex-co. He produced AQ1-6 which he told the court was the SLFA leone account which is tied to Ex W1-9(which is the SLFA dollar account).

28. He explained that FIFA rules prohibit direct use of monies from the forex account except for international purposes. The procedure is for money to be transferred from the forex account to the leone account for local use. He testified that on 9th July 2014 before the $50,000 hit the SLFA dollar account the accounts balance stood at $92.3c. On the same date the leone account had a balance of Le71,694.13c.
29. He testified as regards transfers made after receipt of the $50,000 from one SLFA account to the other; forex to leone. The first of these was $5000 or the equivalent of Le 21,750,000 which was for the purpose of operational expenses including transport allowances for U17 players, utility bills including reconnection of water supply. The second transfer was $3500 or the equivalent of Le 15,260,000 which was used to pay staff salaries in June 2014.
30. A further transfer of $5,000 or Le 21,800,000 was made on 14th July 2014. This amount the witness told the court was used to cover travel allowances of one Mr. Allie Commoner Kargbo (Le 4,300,000) and also to cover SLFA administration expenses (Le 2,162,500). The witness said that after these expenses the leone account had a balance of Le 16,051,138.13c.
31. On 21st July 2014 another transfer was done. This time in the sum of $20,000 or Le 88,000,000 leones. This transfer raised the balance in the leone account to Le 104,051,138.13c. The witness then recounts how the money on the leone account was spent. Le 6,900,000 in respect of U20 leader Abdul Kanesero's trip to Ghana, Le 19,574,180.13c refund to the witness in respect of tests conducted at Ecomed(which he insists were MRI tests), Le 5,000,000 for administrative expenses and petty cash and a further Le 10,000,000 being solicitors retainer fees. By 31st December 2014 the witness said the leone account still ahd a balance of Le 53,277,138.13c whilst the forex account had a credit standing of $16,580. In total by 21st July 2014 the witness maintained that $33,500 had been transferred from forex to leone account and not $38,000 as alleged by the prosecution
32. The witness continues to recount withdrawals and or transfers made and the purpose for which they were made, in 2015. The witness explained SLFA's audit regime under the FIFA Financial Assistance Program (FAP). He told the court their auditors are KING Walker and Associates, producing letters and financial statements from the latter in respect of the audits 2013, 2014 & 2015 these were received into evidence.
33. The witness also testified to an on-site visit by FIFA commissioned auditors Price Water House Cooper, who did a report which is AW1-8. The report had SLFA scoring a pass on all the required parameters. The witness tendered the FAP guidelines as exhibit AX 1-153 (emphasising page 110)
34. The witness explained how he and one Yvonne Avery had gone to Ecomed and met with one Mr Kassim. Tests were done a Ecomed for which the witnesss money was used. This was before the CAF transfer. Further tests were done at Choithrams Physical exams and blood and tool test. Invoices were received from choithrams and from Ecomed in respect of the tests. One was for Le 12.8M and the other for Le 44.2M. There was no money to pay for the tests and the

President 1st defendant was not in country. The witness explained how he had to make recourse to his personal funds (his terminal benefits from a previous job) to ensure the tests were carried out at ECOMED.

35. The witness recounted the shameful saga of how only 2 of the 32 players tested passed the age test the rest shown to have being lying about their age. He explained how SLFA managed that embarrassment, the resulting withdrawal from the U17 competition, the subsequent fine imposed on Sierra Leone and how that was later waived.
36. The witness outlined what a trip to Niger for 35 individuals would have cost. He concluded that $50,000 would not have been adequate to cover such a trip to Niger for MRI tests.
37. The DW1 also testified at length regarding the impugned $5,000 loan. I shall make references to his testimony on this as may be necessary as I proceed. Also testifying for the defence were Allimmay Rassin Wurie of King Walker and Asociates - Auditors, Mohamed Bowen Freeman - SLFA Referees Manager, Abdul Karim Labe - Medical Officer SLFA, John Jebbor Sherrington- Technical Director SLFA, Joseph Toby -Technical Assistant, SLFA and Harold Nat Johnson. Relative to DW1 these were much shorter witnesses and I will refer to their testimonies as I proceed as may be found necessary.
38. In her statement to the ACC the 1st defendant denies the allegations and for most of the factual issues she refers the investigators to the 2nd defendant for answers.
39. I have read and reviewed all the testimony and exhibits presented to the court. I find it necessary only to include in this judgement that which are central to the case and which featured pivotally in in the considerations leading to my conclusions.

The Offences Charged

40. The ruling on the no case submission left unresolved two issues alleged to be criminal conduct. The first relates to the $5,000 paid to Arnie Johansenn and the second relates to $ 50,000 received from CAF. The indictment has presented them in two offences namely; two counts of 'dishonest appropriation' one for each alleged criminal conduct and one count of "conspiracy to commit a corruption offence. I will now discuss each of these offences.

41. **Misappropriation** is mentioned in the side notes to Sections 36 and 37 of the AC Act 2008. In Section 37, under which the defendants are charged the body of the section uses the phrase *"dishonestly appropriate"* instead of the word "misappropriate" which is employed by Section 36. The authorities have so far not pointed at a reason for this change in terminology. Both sections have in the past been treated as creating misappropriation offences. I do not intend to depart from this approach. However I will stress immediately that a key ingredient of the offence is "an appropriation" which must be shown to be "dishonest".
42. In the State vs Komeh & Mans, N C Browne-Marke JA (as he then was) restated the view that misappropriation *".....involves the assumption of the rights of the owner. Here the wilful commission of acts which result in the owner losing funds belonging to it amounts to*

misappropriation". The assumption of the rights of the owner is a pointer to an appropriation by the defendants and it forms the basis of that key ingredient of this offence: dishonest appropriation.

43. It is clear therefore that the prosecution must prove that the defendants took the money alleged to have been "appropriated dishonestly". Proof of such appropriation can be found in actual taking. This was the case in The State v Komeh & Mans where the money was actually withdrawn from a government operated bank account and diverted to an account over which the defendants had control. "Appropriation" may also be inferred from a failure to undertake a task for which funds had been provided with the funds themselves proven to have dissipated. This latter situation was found in the Alimu Bah case.
44. I will suggest that where the prosecution relies on an inference from the failure to undertake a project or activity, as the proof of the appropriation, then there must be a complete absence of some other lawful and or authorised use of the funds. It is not my view that appropriation can be merely technical. It must be supported by evidence of a taking or a failure to perform in circumstances such as I have mentioned; anything short will not amount to an appropriation.
45. I am also mindful of the succinct way in which "misappropriation" is defined in Black's Law dictionary as *"The unlawful taking of money for an unauthorised purpose"*. Succinct as it is, this definition in my opinion encapsulates both the ingredients of the offence as well as the possible defences. It suggests clearly that if money is taken unlawfully by a defendant and he applies it to an unauthorised purpose that would be misappropriation. In the same vein it suggests I would think that it may not be misappropriation if an accused person took the money lawfully and applied it to an authorised purpose.
46. Where there has been no appropriation, or there has been no dishonesty then there cannot in my opinion have been a misappropriation.

47. Conspiracy is provided for in S. 128 of the Anti-Corruption Act. It is my opinion that the ingredients of common law conspiracy apply here. It is for the prosecution to show the agreement between the conspirators and to prove it to be an agreement to commit a crime. Whilst proof of an actual agreement is undoubtedly best proof of a conspiracy, compelling incidents and circumstances from which the agreement can be inferred has also been held to be sufficient proof of the conspiracy.
48. The section under which this offence is charged, it has been mentioned before is poorly drafted and creates much room for doubt as to whether it does create an offence at all. The Commission should consider piloting an amendment to bring certainty to this section, which will no doubt lead to much relief and a possible end to the persistent calls for a determination of whether an offence is created by it or not.
49. I hold that a charge for common law conspiracy by the Commission may in the meanwhile be less controversial. I also hold that considering the purpose of the act generally and section 128 in particular the Commission may properly bring on a charge for conspiracy pursuant to this section. I fail to see how an accused person can possibly be prejudiced by such a charge.

50. This absence of prejudice therefore makes it important to note that even if I were to conclude that the charge was badly drafted under Section 128, I would have no hesitation whatsoever to grant leave pursuant to S148 of the CPA 1965 for the indictment to be amended even at this stage; substituting statutory conspiracy with common law conspiracy. Either way the result will be the same the defendants being faced with an offence the proof of which requires exactly the self-same ingredients.

The Burden and Standard of Proof

51. It is now established beyond question that in a criminal case it is the duty of the prosecution to prove the case it has brought. That burden behoves the prosecution to bring sufficient evidence to establish that the alleged criminal conduct was done by the defendant. Not only done but also done with the necessary accompanying mens rea. Lord Birkenhead had opined in DPP v Beard (1920) and it is still good law that *" a person cannot be convicted of a crime unless there was mens rea"* to commit the crime.

52. It must be added that the standard to which the prosecution must prove its case is one beyond reasonable doubt. "Beyond reasonable doubt" it has been said is not the same as "beyond a shadow of a doubt". It is similarly well established that this burden remains with the prosecution and at this standard throughout the trial. Woolmington v DPP is well known and needs not be aired out all over. Suffice it to say that should the defence bring forth evidence in the course of the trial which tends to impeach the prosecution's theory; the prosecution's enduring burden to prove its case demands that for the prosecution to succeed it must repair any such damage to its case and restore the case to the standard required -proof beyond reasonable doubt; *".....no matter what the charge or where the trial the principle that the prosecution must prove the guilt of the prisoner is part of the common law...and no attempt to whittle it down can be entertained."*

53. Regarding the standard where proof is required of the defence, except statute provides otherwise the standard is on a balance of probabilities. This passage from Archbold provides a guide on how to approach the evidence adduced by the defendants and I will be guided by it:

> *(The standard of proof is)"that required in civil proceedings ie on a preponderance of (or balance) of probability. R v Carr-Briant (1943)KB 607. It is usual to tell the jury that the defence will have proved a fact if the jury conclude the it is "more probable than not" or "more likely than not" that the fact existed"* (see Archbold 2005, 4-386)

The CAF $50,000

54. The indictment alleges and it is not in dispute that CAF transmitted the sum of $50,000 to SLFA. I have already found (see my ruling on the no case submission) that the amount was sent for the specific purpose set out in the swift documents ie *"subvention for MRI tests (30 players 5 Officials flight tickets hotel accommodation) Niger 2015"*. Despite the second defendant's protestations, I have also found that the defendants did not do an MRI as was expected by CAF.

55. I am at a loss as to the reason for the protracted arguments and counter arguments over whether an MRI test was done or not. I had ruled in the "no case submission" that I am satisfied that no MRI was done. In addition to the reasoning leading to my conclusion in that regard I will now add that the accused persons have come in my estimation to be quite well educated and very intelligent. I cannot believe that two such persons would have gone for an MRI and then received results for an X-ray but still leave ECOMED as satisfied customers.
56. If they were negligent enough for that to happen, after the ACC had tendered the ECOMED papers saying they only conducted X-ray tests the defendants then had ample opportunity to ring up CAF and get them to send the MRI test results for use as part of their defence. Or even to challenge ECOMED that they (Ecomed) had sent an untrue account to the ACC and to the court. None of this happened.
57. In support of the untrue assertion that an MRI test was done the defendants rely on a webpage put up by ECOMED. It is my opinion that this amounts to very little if anything at all. The website of ECOMED advertising MRIs though misleading at the material time was in truth nothing but an "invitation to treat". A person who actually approached them for the test would have been told that the service was not available as I believe the defendants were told which led the No.2 to write to CAF to say MRI capabilities were not in country. The defendants have been shamelessly untrue on this issue and this can significantly undermine their credibility and claim to integrity.
58. The prosecution is emboldened therefore to argue that as long as the purpose for which the money was sent had not been carried out automatically it must be inferred that it has been misappropriated by the defendants who had custody of it. I do not accept this reasoning; nor do I accept that this is the view put forward by the Hon Justice Mary Sey in the Alimu Bah case on which case the prosecution relies heavily in support of this proposition. In fact Justice Sey was very clear that it was the absence of a plausible explanation by the defendant in the face of the allegations that had impacted her deliberations. The honorable Lady Judge had this to say:

    "I find that the explanations given by the accused in relation to the withdrawal and use of the money are peppered with inconsistency. In my considered view the accused has told a number of untruths in this case and these can be seen as evidence of his guilt...."

59. Hon. Justice Browne Marke has said repeatedly in the John Mans case and in the Bendu case that for misappropriation to be complete there needs to be not only appropriation but also some proof of "dishonesty". The word "dishonesty" is actually used in the language of the statute in Section 37 which is the section under which this accused is charged. Its proof is therefore key and in my opinion it forms the mens rea for the offence.
60. I find that that the $50,000 was sent for an MRI test and the ancillary matters mentioned in the money transfer. However the mere fact that the MRI test was not done does not in my humble view in and off itself automatically amount to a misappropriation. Such a scenario no doubt puts the accused persons who had control of the money on their defence. The prosecution has

suggested that the lies told by the defendants with relation to the MRI tests must be seen as sufficient dishonesty to support the misappropriation count as well as to infer a conspiracy to commit the same. If these lies were the only matters standing in the defence of the accused and if no other test whatsoever had been done the prosecutions submission in this regard would have been a very interesting and compelling prospect indeed.

61. The testimony of PW8 Jonathan Leigh, SLFA Finance Officer from October 2006 to December 2014 is very important with regards to how the $50,000 was spent. Among the things PW8 told the court was that he had honoured a bill from ECOMED. He testified further that the Ex Co had resolved that the money would be used on "competitions and administration". Referring to his name on exhibit AH1-4 he said it was he who was mentioned on the minutes.
62. The witness read this portion of the minutes and did not deny the accuracy of the account. In brief the minutes are to the effect that this witness explained the dire financial circumstances that SLFA was facing. He informed the SLFA Ex-Co that salaries were yet to be paid and that the only money in the account was the amount which CAF had sent ie the $50,000. The minutes significantly show that the witness *"asked for approval for the use of the funds as it was the only money available in the FA account.....the Executive approved for the use of the funds."* He finished off his testimony by saying that "the expenses listed are the other expenses resolved for the money to be spent on". He was a truthful witness by any account and it is significant that he had been called by the prosecution.
63. The recently recounted testimony of PW8 does point at the possibility that though the $50,000 may not have been used for the MRI it may have been used for some purpose approved of by the SLFA Ex Co. this in my opinion presents a hint of a doubt that the money was misappropriated at all.
64. This hint appears to grow when in his testimony the second accused explains in detail the various other expenses on which the money was used.
65. DW1 's catalogue of the various things and expenses on which the money was expended has remained in the main unchallenged the prosecution appearing to base it's whole case on the theory that as long as it was not MRI tests that had been conducted then there must have been "dishonest appropriation".
66. Leaving DW1's account uncontroverted as such leaves the court with little room but to accept it as being meritorious. This is aided further by the fact that a perusal of the bank statements does coincide with the narrative of the witness. Further still the witness has two auditing firms that went through his accounts, and to whom, as would be expected in the normal course of an audit, the necessary support documents for these transactions would have been submitted and scrutinized.
67. DW2 Alimamy Rassin Wurie the auditor from King Walker and Associates was resolute about his firm's work and their finding no issues to support the prosecution's propositions. I note that the audit reports were concluded and submitted long before these charges were contemplated.

They were not a response to the ACC investigations. In this regard I find them to be independent. I have particularly studied the reports for 2014 and 2015 ie AAW 1-17 and AAV 1-18 with the supplements there to. These highlight the other expenses which DW1 had testified about.

68. Whilst I have been advised that an audit may in the context of corruption at best be merely indicative of corruption I will certainly expect that an attempt to impeach an audit report which has not indicated corruption should comprise of more robust and positive allegations other than only the absence of proof that a certain activity has been carried out. Proof of 'dishonest appropriation' must go a step further and discredit at the required standard any alternative expenditure theory put forward to explain the alleged "dishonest appropriation".

Lack of Authority and or Conflict of Laws

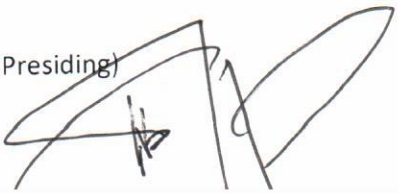
69. The prosecution in cross examination of the defence witnesses has attempted to demolish the defendants account with a suggestion that even if they had acted as narrated by DW2 they had so acted without lawful authority. Framing their submissions as a conflict of laws issue, the prosecution suggests further that authority to act as the defendants claim to have acted ie applying specific-purpose funds to different activities, cannot come from FIFA , CAF or FAP guidelines.
70. I do not see a conflict of law issue here at all. This charge does not relate directly to failing to follow guidelines or applicable laws. It is a misappropriation charge. Neither the ACC act nor the various FIFA, CAF or FAP guidelines tendered tolerate misappropriation or 'dishonest appropriation".
71. WHILST thanking the defence for the enlightening excursion into sports law, I do agree with the prosecution that this case must be decided within the four corners of Sierra Leone law and not any undomesticated international statute. However, I do not comprehend the reasoning of a conflict between our law and the FAP guidelines (which are not law as such but part of SLFAs contractual relationship with FIFA.
72. FAP like the ACC act seeks to prevent misappropriation). It appears that it is the fact that the FAP introduces additional reporting regimes and safeguards but additionally provide that FAP funds could be used on football management and administration expenses that the prosecution objects to. Even if that were objectionable it is useful not to confuse S 37 of the ACC act with regulations that prohibit virement.
73. PW3 Brima Mazolla Kamara had put into evidence a copy of minutes (AH1-4) of a meeting at which he was chairman. After the document had been tendered Mazola then told the court that he had a slightly different recollection of the facts of what transpired at the meeting. He promised that he would go and look for his own copy of those minutes and will produce them. Whilst it remains a of wonder that a prosecution witness would have such an important document and had failed to produce it to the investigators or prosecutors during the investigations and preparations for trial it is a greater wonder that unto the end of his

testimony which lasted several days and even up onto the end of the trial this variation of the minutes for this crucial meeting was not produced at all. The end product therefore on that issue will be that the minutes produced by the defence through PW3 Brima Mazolla Kamara remain uncontroverted. This conclusion is not hard to reach. Whilst it is the legal position it also is the factual position because other witnesses including PW8 and other prosecution witnesses have severally referred to these minutes.

74. In the circumstances it will appear that the SLFA Ex Co did in fact resolve that the $50,000 could be applied to expenses other than the stated purpose as already mention in PW8's testimony.
75. **A Final word on the MRI**. I have no doubt in my mind that MRI tests were not conducted. However some tests were in fact conducted at the ECOMED and at Choithram's Hospital. The evidence shows that these tests had to be paid for. In fact there is evidence that a dispute may have arisen between Choithram's and SLFA over the payment for some of these test. The account of how the ECOMED tests were paid for at a time when there was no money in the SLFA coffers (the truth of which is borne out by the bank statements) is in my opinion highly plausible. Commendation not condemnation should be the reward.
76. I have found no evidence that these alternative tests were meant to please or in any way gratify the defendants. It is my opinion that the tests were done in furtherance of the defendant's work even though this is not what the money was sent for. SLFA therefore had to spend money on the tests. This in my opinion cannot be an appropriation as envisaged by Section 37.
77. I will contrast the present circumstances with a situation where a loss of revenue or funds will amount to a misappropriation under Section 36. In section 37 the wording is different and "the taking" or "appropriation" must be proved not by a mere loss. Even if this was not the case it is my opinion that value for money was received on the tests as the results from them were not only received but were used for the purpose intended which was to establish the age of the players. Which results sadly was a source of national embarrassment such as aught never to be repeated.
78. What then about the defendant's insistence that they did an MRI when I have found that in fact they did not? What about this untruth? I am "..... *mindful of the fact that people (may)lie to bolster up a just cause, out of shame or out of a wish to conceal disgraceful behavior..." (as per Justice Sey in Alimu Bah)* . Telling an untruth is not always a necessary indication of guilt. It is especially not so when there exists also a preponderance of evidence suggesting otherwise.
79. The prosecution has not disproved the defendant's strong and compelling defence on this issue. Not one of the alternative expenses raised has been disproved. I am reminded that the burden of proof stays with the prosecution throughout the trial. I am now left with the uncontroverted plausible alternative explanations of how the $50,000 was spent. The law demands that I must resolve in favour of the defendants.

<u>The $5,000 (Le 24,750,000) loan</u>

80. The prosecution's case is that LEOCEM gave SLFA a donation of Le 24,750,000. An ACC notice (Exhibit R) dated 27th September 2016 and addressed to the Operations Manager of LEOCEM requested a *"Record of donations made to SLFA for the period 2013 to date"*. The response to this notice is Exhibit S which in compliance to the notice lists for every year (2013 -2016) the amount and date of sponsorship from LEOCEM to SLFA. In that list is an entry dated 12th June 2015 described as *"Sponsorship Support on Sponsorship (SLFA)"* it is in the sum of Le 24,750,000. With Exhibit K1-4 the defendants withdrew the exact amount of Le 24,750,000 from SLFA accounts.
81. The accused persons have explained the withdrawal of the amount in their statements. Their explanation is that Arnie Johansen had given SLFA a loan and that they were repaying that loan. In support of this explanation the 2nd defendant has produced Exhibit AD which is a receipt made by Chris Kamara in favour of Arnie Johansen in the sum of Le 24,750,000. The accused explain that because of AD they had to make the withdrawal which is evidenced in K 1-2 which are the payment voucher approving the withdrawal of the amount in question.
82. Additionally there are K3 -4. These are i) a GT Bank LEOCEM cheque dated 12th June 2015 (the exact date as the entry in Exhibit S), made out in the name of SLFA and for the exact same sum of Le 24,750,000 and ii) An ECOBANK deposit slip made out in the name SLFA dated 15th June 2015. The details of the deposit show that it was done with a GT Bank cheque with No. 1200741 and in the sum of Le 24,750,000. The evidence of the GT bank LEOCEM cheque, the ECOBANK deposit slip and the list of LEOCEM sponsorship to SLFA give an equivocal account about the origin and nature of the Le 24,750,000. Whilst this account may support the defendant's explanation and resolve the issue, viewed from the prosecutions perspective it may just as well support a claim for deprivation of public funds.
83. None of the prosecution witnesses wavered in relation to their lack of knowledge in respect of this loan. PW3 when confronted that a thank you letter was written insisted that the letter written was to LEOCEM and in respect of LEOCEM sponsorship. The prosecution witnesses simply did not know that this loan existed. The only account of a loan that has come to this court comes either through persons the defendants have told about it, in their statements or in documents one of them has authored. I had ruled that this allegation is intact and taken at its highest the prosecution has here made a case that ought to be answered.
84. In answer the 2nd defendant whilst testifying has described a set of circumstances that led him to ask for a loan from Mr. Arnie Johansen the 1st Defendant's husband. Whilst this is quite an unorthodox manner of carrying on the business of a public office it does not automatically amount to the presence of criminal conduct. I have to make a decision as to whether this account is true and or believable and how such truth or otherwise may affect this count if at all.
85. The testimonies of Jeboh Sherrington, Joseph Toby and Harold Nat Johnson all point to a time before leaving for Lungi to proceed to Sudan when the delegation just sat at Kingtom waiting for the Secretary General to arrive. There was an air of expectancy. Much needed funds for the trip had not been received. Allowances had not been received nor had the imprest for the trip been received.



86. The tense waiting was brought to a happy end by all the accounts when the Secretary General returned with $5000 which he gave to PW7 Harold Nat Johnson as the imprest for the trip. The accounts do not coincide on where the money was handed over whether it was under the tree or in the second defendant's office. What the witnesses are agreed on is that the money was received and on that day, it was brought by Chris Kamara and that it is what was later used by the Sudan delegation during their travels as imprest. PW3 also agrees that it was the 2nd defendant who had brought the $5,000 and had handed it to the delegation.
87. What has become of crucial importance though is the source of these funds. Where did the 2nd defendant get this $5,000 from? DW1 as already stated would have the court believe that this was a loan from Arnie Johannsen. The prosecution denies this but does not offer an explanation as to where $5000 had suddenly came from on that Sunday afternoon. In cross-examination PW3 agrees that $5,000 was given to Harold Nat Johnson for the players but he does not say where the money had come from.
88. Harold Nat Johnson DW7 had more to say about the $5,000 and I will reproduce a portion of his testimony;

> *As the President was not around accessing funds from SLAF accounts was not possible. I made calls to No.2 (the 2nd defendant) prior to departure date requesting to be kept abreast of the travel plans. The VP and I prevailed on him to go to the General Manager of LEOCEM to assist with the difficulties facing the delegation. On the day of departure I received a call from No. 2 informing me that he had secured funds from Mr. Johansen.....I went to Kingtom and the Sec Gen gave the VP $5,000 which the VP handed over to me"*

89. Nat Johnson's narrative and his personal involvement and knowledge of how the $5,000 was sourced are credible and were not dented by cross examination at all.
90. The witnesses recounted a lot about what happened during that trip. First in Ghana and later in Sudan I have received all of that as useful background information. It underscores why it was important to have an imprest and how useful and life saving the $5000 turned out to be. This information is however of little value in deciding the truly crucial question here, which is, where did the money come from? The source of the $5,000 will be of some assistance in deciding whether or not a loan was raised through Mr. Johannsen. Similarly so, it is my opinion that the question of whether a loan was approved or not will provide little aid to the search for an answer especially as the scenario we have been presented with was one that allegedly speaks of an emergency.
91. The defence witnesses Jeboh Sherrington, Joseph Toby and Harold Nat Johnson all tend to agree that a loan was procured. It is of particular importance that Harold Nat Johnson already mentioned takes personal responsibility when he testified that he was one of those who had *"prevailed"* on the second defendant to approach Mr Johannsen with the problems which they were facing.
92. The testimony of Mohamed Bowen Freeman DW3 who was also on the Sudan trip is not unlike the other other three. He testified inter alia as follows;

"...we were at SLFA, Kingtom. Whilst waiting for the tickets. The (LEOCEM Man) who brought the tickets was asked by Brima Mazola Kamara about the imprest . Upon receiving an answer Mazola called Chris....when Chris came Mazola asked him for the imprest. Chris said he did not have it but they will find a way to get it. Chris then telephoned Mr. Johansenn and Chris left. He later returned with an envelope which he gave to Mazolla. It was on a Sunday, Mazola gave Harold Nat Johnson the envelope telling him it was $5,000."

93. Bowen Freeman and the other defence witnesses give an account of a Sunday emergency which lends added credence to their story, considering the near impossibility to access banks and many offices on a Sunday. They were all credible witnesses and they were all present at Kingtom when the events were played out. I find them to be more credible than Brima Mazolla Kamara who was also present and a participant to the events.
94. Mazola, PW3 though chairman of the meeting to which it was reported that the loan had been acquired he does not remember the report. He tenders the relevant minutes but argues with the contents and again fails to produce his own copy that should tell the story of what happened at the meeting differently. I now reproduce an excerpt of his testimony:

" I am aware of a meeting on 2nd July 2015 I was the chairman of the meeting and I want the court to see a copy of the minutes of that meeting. Tendered as AK 1-4. I am unaware of a loan from Arnie Johannsen. I see page 2 of AK1-4 the secretary General reports the loan to the meeting. I am the Brima Mazola Kamara referred to but the facts are wrong"

95. Regrettably, Mazola does not offer a different version of the events nor does he produce minutes for the meeting which may offer the court a different set of facts regarding what may have transpired at the meeting especially so about the loan.

Exhibit S – LEOCEM Sponsorhip

96. All the witnesses who testified in relation to LEOCEM acknowledge that LeoCEM provided support to SLFA. SLFA in turn advertised LEOCEM products on its jersey etc. Exhibit S was produced into evidence by the prosecution. It catalogues impressively the support that SLFA received from LEOCEM over a period. Listed in the exhibit is a payment of Le 24,750,000 which is the same amount as the questioned SLFA cheque made out to Mr. Johansen and which is the equivalent of the sum Mr. Johansen was alleged to have given to SLFA as a loan.
97. DW 1 testified interestingly that LEOCEM never in all its sponsorship ever gives money to SLFA directly. After attaching value to their intended sponsorship LEOCEM would identify what aspect of the SLFA project it is that they wished to support and LEOCEM would usually proceed to implement the project themselves directly. Thus if they are paying for flight tickets SLFA will give them the names of the players and LEOCEM will then deal with the travel agents and pay for those tickets directly. Another example; if LEOCEM is paying player allowances the court was told they will settle a list and a LEOCEM official will then pay the allowances directly to the players.

98. I have pondered over why this time LEOCEM had to make a cheque to SLFA for this particular amount. This amount it is agreed was part of sponsorship relating to the Sudan trip. In all the sponsorship amounted to $90,000 or Le 445,500,000 (by my calculation). However no other cent of this amount was sent into the SLFA account but for this Le 24,750,000. I have looked through the SLFA bank statements carefully and it is this one payment only that I find in the whole of 2015 from Leocem to SLFA. One must pause to ask why this one payment had to be made to the account varying the LEOCEM policy of direct implementation. I have had to consider whether it was not because direct implementation was no longer possible.

99. I have had to consider and it does appear plausible and in keeping with the evidence, that if LEOCEM had not provided the imprest at the time of travel but being committed to pay it LEOCEM then had no other recourse this time but to pay the amount to SLFAs account. IF LEOCEM did not pay the imprest for the trip at the time of the trip who could have done so. It is not far-fetched to infer that SLFA needing the imprest at the time of travel must have made some arrangements as narrated by the defence witnesses.

100. This appears a plausible possibility to me. LEOCEM was committed to buy the tickets, pay players allowances and provide an imprest for the Sudan trip. By some sloppy management (we do not know if this was on the SLFA side or LEOCEM side) up on to the day of travel which day was a Sunday nothing was certain but LEOCEMs commitment. So it turned out that when the tickets arrived that Sunday they came without the imprest and the allowances. Whilst the allowances could be transferred later the imprest was needed for travel exigencies and had to be sourced immediately. It was a Sunday and LEOCEM was inaccessible.

101. Taking a loan from a willing benefactor to cover the amount, of course to be offset when LEOCEM made good their commitment could have been a way out. This loan could have been taken from anyone but it was taken from Arnie Johansen who is not only LEOCEM CEO but also husband to SLFA President. Whilst these relationships may have made negotiating the loan easier they similarly potentially fueled suspicious minds. Once the trip was done and over LEOCEM would have found that it still had with it committed funds for an imprest for the Sudan trip. However it could no longer directly implement because the trip had happened. SLFA would have found that it owed money to Arnie Johannsen because that's where they got money for the imprest on loan when LEOCEM did not come through.

102. Resolving this situation required two cheques: one from LEOCEM to SLFA and the other from SLAF to Arnie Johannsen no surprise that both cheques had to be in the same amount of Le 24,750,000

103. This is the story that has emerged after I have pieced the evidence together. I have relied on Exhibit AK 1-4 and on the testimony of DW1, Freeman, Nat Johnson, Joseph Toby, and Jebbor Sherrington in this regard. It is regrettable that the court did not have the benefit of testimony from the maker of Exhibit "AD". Arnie Johannsen could have spoken conclusively to the receipt alleged to be his. It is similarly regrettable that the maker of Exhibit S did not testify bringing more clarity his document.

104. In the absence of a firmer theory from the prosecution it is my considered opinion that the defence has been able on a balance of probabilities to offer an explanation which is

acceptable to the court as being more likely than not. I find that Chris Kamara on behalf of SLFA took a loan from Mr. Arnie Johannsen and I so hold. I hold further that SLFA had to pay that loan back. I find that Exhibits K 1 & 2 were made pursuant to repaying Mr. Arnie Johannsen. The prosecution's case in regard to the $5,000 loan is therefore fatally undermined.

105. **The Conspiracy charge** relies solely on the evidence provided for in the allegation on the CAF $50,000. No actual agreement was alleged nor has any evidence of such an agreement been led by the prosecution. The prosecution relied on the alleged "dishonest appropriation" of the $50,000 being proved to infer the conspiracy from it. The court having found the opposite, the conspiracy count must therefore succumb to the same fate as the other count relating to that amount. I hold that there is no evidence before me which will support a charge for conspiracy to commit a corruption offence.

Conclusion

106. It follows from my forgoing considerations therefore that none of the present charges can stand; neither those brought pursuant to Section 37 for dishonest appropriation nor that brought under section 128 for conspiracy. I therefore acquit and discharge the accused persons on all three counts.

Costs

Even though the defendants have been acquitted and discharged, these were by no means frivolous charges. The defence could have been more cooperative during investigations. Also, had different management practices been employed by SLFA less excitement may have been generated in the minds of persons with fertile imagination. The prosecution should not be made scared of bringing cases to court though certainly they should not bring any lightly. As I do not think that this case was brought lightly. I make no order as to costs.

.....**Reginald Sydney Fynn JA**