THE STATE

vs.

SHEKA SAHID KAMARA,

VICTOR FOH,

IBRAHIM FACKEH CONTEH AND

ABUBAKARR CAREW

C T Mantsebo and *Sow* for the State
L Dumbuya for Nos 5 &6,
HM Gevao with him TE Bundor for No.2,
& S. Will for No1

JUDGMENT DELIVERED ON 15th Decemeber 2021

Reginald Sydney Fynn JA

Background

1. This trial commenced with an eight count indictment dated 14th August 2018. There were originally six defendants but after the prosecution's case it was ruled that counts one and two of the indictment were untenable. It was also ruled that two of the defendants had no case to answer.
2. The trial continued with four defendants; Sheka Sahid Kamara, Victor Bockarie Foh, Ibrahim Fackeh Conteh and AbuBakarr Carew. They all elected to testify and call witnesses. Midway through Ibrahim Fackeh Conteh jumped bail and has not attended court since. A bench warrant has remained in force for his arrest whilst the case against him was proceeded with.
3. I shall refer to the witnesses and their testimony as well as the exhibits as may be deemed necessary. I have reviewed all the testimony and the addresses submitted by counsel orally and in writing(for which I thank counsel), whilst it all helps to form a proper perspective and assessment of the case not all of it is necessary to be included in this judgment, I will only refer to these where it is absolutely necessary to the outcome reasoned.

4. I had assessed the prosecution's evidence in the no case submission ruling and I now incorporate that assessment and the reasoning there wholly. Where necessary however I shall be repeating some of it herein

Immunity Under S.48 of the Constitution

5. In his closing submissions counsel for the 2nd Defendant suddenly invoked immunity under S.48 of the 1991 Constitution of Sierra Leone. He now argues this as an alternative to the 2nd Defendant's, "Not Guilty" plea and the evidence he has led. He submits that at the material time at which the offences in the indictment were allegedly committed No. 2 (Victor Bockarie Foh) was the Vice President of Sierra Leone and so he argues, cannot properly be the subject of criminal process as he is entitled to immunity under the aforementioned section.
6. As it turns out I have already in this case, in July 2020, ruled on a similar application advanced by the 1st defendant, urging for a constitutional reference to the Supreme Court. I now here adopt and repeat what I said then, extending those same arguments and reasoning to the office of the Vice President. I note in particular that S.54 of the constitution describes the "Vice President" as *"the Principal Assistant to the President in the discharge of his Executive functions"*. In my opinion, this in itself if nothing more points clearly at the distinction between the two offices, thereby underscoring at once that not all that relates to "the President" will necessarily relate to or apply to his "principal assistant". I hold therefore as reasoned in my earlier ruling that S.48 of the Constitution of Sierra Leone affords neither a "special assistant" nor the "principal assistant" to the President immunity from prosecution.

The Offences Charged

Conspiracy S.128

1. Conspiracy under the act will be proved like common law conspiracy where there is evidence of the defendants agreeing to commit the prohibited conduct. Whilst proof of the agreement is the best way to establish that a conspiracy exists; it is not the only way to do so. A conspiracy may be proved by the various overt and or covert acts of the parties which when put together disclose a common design or enterprise in achieving the prohibited conduct.
2. The learned autors of Blackstones Criminal Practice in the 2001 Ed have suggested *"that there are no special evidentiary rules peculiar to conspiracy. In*

Murphy the proof of conspiracy was generally a matter of inference deduced from certain criminal acts of the parties accused"

Misappropriation of Public Funds contrary to Section 36,

3. Misappropriation contrary to S.36 has received much judicial attention. It requires that a person *"by himself willfully or through another person...commit an act by which a public body is deprived of any funds or other financial interest or property belonging to that public body"*
4. "Misappropriation" is defined in Black's Law dictionary as *"The unlawful taking of money for an unauthorized purpose"* and it has been opined further that:

   "The assumption of rights of the owner is a pointer to an appropriation by the defendants and it forms the basis of key ingredient of this offence: dishonest appropriation."
5. *It is my considered opinion* that a significant difference exists between misappropriation under S.36 and that under S.37 in that under S.36 despite evidence of defendant's best actions he may still be guilty of misappropriation if his actions are shown to have "deprived" a public body of funds or other financial interest and property. Of course this assumes he is also shown to have been *"willful"*. On the other hand S. 37 requires positive proofs of "dishonest appropriation" this in my opinion will always be defeated by proof to the contrary ie that there was no such appropriation in the first place.
6. In the present case the charges are under S.36 of the Act and the question then will be whether the defendants' action "willfully" deprived a public body of funds. There has been no dispute that the Hajj Committee is a public body for the purposes of the act and that the funds it controlled were similarly so public funds. I hold them to be so.
7. 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 belongi ng to it amounts to misappropriation".
8. The true question that should always be addressed is whether there is evidence that public property has been lost due to the defendant's *"willful"* conduct. "Willfully" has been approached as indicative of a state of mind. It describes the *mens rea* necessary for the commission of this offence.
9. The defendants would have acted "willfully" if at the time when they acted they knew or ought to have known that their conduct would result in

depriving the public body of funds or they were simply reckless as to the outcome of their action; not caring whether loss would result or not. This mental element is usually inferred from the defendant's conduct.

Knowingly misleading the Commission contrary to Section 127 (i)(b)

10. This offence seeks to punish persons who mislead the commission. To "mislead" will involve sending the commission in the wrong direction on an issue. Synonyms for "mislead" will include: fool, lie, misinform, hoodwink, dupe, misrepresent and misguide, all of which include an element of deception.
11. A person would have misled the commission when a person creates an impression either by act or by word that a certain state of affairs or a set of facts is true when in fact that state of affairs or fact are really untrue.
12. In my opinion the offence will only be complete though if the defendant knew what the truth was but then *"knowingly"* tells the commission or its officers that something else is the truth.
13. I agree also with Counsel for No 1 in his citation of R v Cohen(1951) *"that knowledge may be proved by inference from all the evidence; but that inference must be irresistible"*

Willfully failing to comply with applicable procedures and guidelines relating to the management of funds contrary to Section 48 (b)

14. This offence requires that the prosecution show in addition to the required status of the defendant, what applicable procedure prescribed for the management of funds that the defendant may have failed to comply with.
15. The failure is required to have been willful. This is a reference to the mental element suggesting beyond being deliberate the defendant may have been reckless not caring at all whether or not he had failed or was failing to follow the procedures applicable

The $ 80,000 (Counts 3 & 4)

The 1st defendant.

16. His testimony supports the prosecution's case that $ 80,000 was misappropriated. Whilst he denies that the money was misappropriated he does go on to testify as to what he did with the amount. He thereby admits the money was in fact taken by him and that the whole of it was in his possession as set out in the indictment.

17. In his testimony No.1 (Sheka Sahid Kamara) explains that he had taken the money on the advice of the 2nd defendant for the purpose of supporting Hajj Operations in Saudi Arabia. He testified that he had taken the full amount to No 2 but that No 2 had only received $ 20,000 and that it was agreed that the balance of $ 60,000 be left in Sierra Leone to be transferred to No1 in Saudi Arabia on a later date. The balance of $ 60,000 was alleged left with one Alhaji the No 1's driver who was to hold it in safe keeping till No 2 was ready to make the transmission.
18. No1 insists that he was advised to retain the $80,000 by No.2 who was VP and Chairman of the Hajj Committee. The amount it will be noted was part of $314,000 slated for expenses in Saudi Arabia. No. 2 (Victor Foh) vehemently denies ever giving such instructions. It is word against word as to whether the advise was given at all.
19. The whole story as told by No 1. is difficult to accept. An official of the standing of the No 1 would ordinarily be expected to use more orthodox ways in carrying on government business and whilst dealing with government money. In the very least one would expect the direct involvement of other persons in the employ of government and or the generation of a paper trail by way of minutes or memos, to record what was being done with this amount of money. It is my opinion that the amount of money involved in this count is significant enough for one to raise an eyebrow that it was being handled in such a cavalier and informal manner including the alleged involvement of persons who were not in the service of government at all.
20. I have taken note that No. 1 testified that he is unaware of the limit on the amount of money with which a person is allowed to travel on an airplane without declaring it. I find this hard to believe. I also note that No 1 testified that he travelled on this occasion with a total of $222,000, undeclared. I fail to understand why he had to leave $60, 000 behind if it was needed with him in Saudi Arabia and whilst, according to him, he had no limits on how much he could travel with.
21. The testimony of Abass PW4, Is that the whole of the $ 80,000 was in "bundles of $100 notes" one hundred in a bundle. Eight bundles in all. A small sized package I have concluded. Why put the No.2 to inconvenience and the country to incur charges for a future transfer of funds if it was possible to take it all at once. This is difficult to comprehend.
22. The evidence leaves no doubt that $ 80,000 of the Funds provided to the Hajj Committee was retained in Freetown by No.1 (Sheka Sahid Kamara). Of this amount the ACC has recovered $ 60,000 whilst $ 20,000 remains unaccounted

for till date. The lawful purpose which No 1 (Sheka Sahid Kamara) has used to explain his conduct lacks believability and has therefore failed to raise reasonable doubt in my mind as to the intention which the prosecution has described. It appears to me that but for the intervention of the ACC the amount of $ 80,000 which No 1 admits to being with him and all of it may never have been recovered.

23. I note that there has been no report in this court that Hajj related expenditure which ought to have been carried out in Saudi Arabia had not been undertaken. There has been no voices raised or issues discussed suggesting that the $80,000 which had been left in Freetown had some purpose in Saudi Arabia. Apart from Abass No. 1 trusted personal Assistant and DW2 his wife (both of whom testified as to what No 1 allegedly told them the purpose of the $80,000 was) no one else has come forward to say at the material time No 1 had told them he had left $80,000 in Freetown for the purpose No 1 now alleges. I find this inexplicable considering the size of the committee and the high standing of many of its members.
24. No.1 ought to have known that his conduct in the least looked suspicious or could be misunderstood. I have concluded that when No 1 left in Freetown the $80,000 part of the amount intended for use in Saudi Arabia he at that time willfully appropriated the same causing loss to the government of Sierra Leone.

The 2nd Defendant.

25. The prosecution's evidence against the No, 2 on this count comes mainly from No 1, PW4 (Abass Sesay) and DW2 Ann-Marie Kamara. Sheka Sahid Kamara maintains he gave Victor Foh the sum of $20,000 dollars and a further $60,000 was left with one Alhaji for him.
26. No 2 (Victor Foh) denies ever receiving money $20,000 from No 1 (Sheka Sahid Kamara). Abass Sesay PW4, No 1's Personal Assistant attempts to corroborate the version of the incident given by No 1. His testimony takes us from when No 1 was counting the money at home, the witness travelling with No 1 and arriving at the compound of the No 2's office to deliver the money. The witness testified that at home as No1 counted the money he told him it was for delivery to the No 2. On arrival at the VP's office the witness testified that, the vehicle was alighted by No 1 together, with Alhaji (the driver) who was now carrying the money bag. It is important that this witness admits that he did not go upstairs with the other two who allegedly went with the money

to the No 2 (Victor Foh). Also this witness was no longer in the car when No1 and Alhaji returned from the No. 2's office.

27. Testifying for the No 1 DW2 AnneMarie Kamara, No 1's wife told the court that the 1st defendant had told her on his return to the vehicle at the VP's office *"the Pa nor take all the money"*. This testimony suggests that No 1 had actually left some money with the No 2.
28. The case against the No2 with respect to this $80,000 relies primarily on whether the court accepts as true the evidence that the $20,000 was given to No 2.
29. The No 2's defense on this issue appears to be threefold. Further to his denial of ever receiving the amount of money as alleged by the No 1 the No 2 has suggested that on the day in question he was too busy to have met with No 1 in his office and received the money from him. He puts forward an alibi showing the several engagements he had on the day he was alleged to have received the money. Also by way of cross examination he suggests that No 1's own account even leaves no room for No 1 to have made the visit to him that he alleges to have made. He also suggests that his involvement with the Hajj Committee was much reduced since the Mudslide disaster and so he was not giving day to day supervision of the committee's work anymore and did not therefore give No 1 any advice relating to the $ 80,000.
30. Some otherwise minor discrepancy is evident in No 1's testimony with respect to the date he travelled and or allegedly gave the money to the No 2. Had an alibi not arisen this would have been minor. However, in the face of an alibi, precision in the timeline of events becomes vital.
31. No. 1 travelled to Saudi Arabia on the 18th August 2017. This was unmistakably a busy day for No1. He maintains he had packed his luggage days before the day he travelled and had sent this ahead of him to Lungi. Abass suggests something slightly different here and that is that the packing was done on the day the money was alleged to have been given to the No 2. Testifying in chief this is what Abass said *"From the bank we went to No 1's house, his wife was present, He went to pack. He had some money; there was also some dollars which he said he was going to give Victor Foh. The dollars was $80,000, there were eight bundles each made of $100 bills. We boarded a vehicle and went to the VPs Office"*.
32. No 1 had testified *"I left the VPs office but it was after 6pm evening hours but I cannot say the exact time. I cannot recall whether from the visa centre I went to my house"* I have contrasted this with PW6 Sulaiman Sesays testimony *"I received my refund from No 1 at the Bintumani Hotel. This was in the evening*

hours it was past 5pm, it could have been around 5.30pm after I had prayed the Assim (which is around 4.30pm)... I am certain it was not past 6.00pm". When these testimonies are juxtaposed, it is clear that they contradict each other; the No. 2 insists he never saw No 1 on that day (being busy with various things he testified about). No 1 insists that he was in the No1s office till after 6pm yet PW6 (Sulaiman Sesay) is certain that around 5.00pm to 5.30pm No 1 was at Bintumani Hotel. Bintumani and the Vice President's Office are not in the same locality. No 1 cannot be in both places at the same time. Adding to confusion that according to Abass they first went home on leaving the bank No 1's movements become significantly difficult to comprehend.

33. On its own, this haziness regarding the time frame is easy to discountenance especially if there is some other reliable evidence to establish beyond reasonable doubt that the No 1 was not only at the No 2's office on the day in question but that he also gave him (No. 2) the money. However, apart from No 1 (Sheka Sahid Kamara) none of the witness can positively testify to the exchange of money between No 1 and No 2, whilst the accounts given by No1 (Sheka Sahid Kamara), Abass (PW4) and AnnMarrie Kamara (DW2) place No1 in No 2's office they are clearly defective; in that at best it is the testimony of an accomplice and at its worst it is hearsay evidence told to one by an accomplice (Abass' knowledge and testimony of what the money was for is derived from No 1). It is generally unsafe to rely on such testimony.
34. In his testimony Victor Foh has denied vehemently that any meeting occurred in his office between himself and Sheka Sahid Kamara on the day 18th August 2017. He denies ever receiving $20,000 from Sheka Sahid Kamara. He has described the hectic day he had on that day with no room for a meeting of the kind that Sheka Sahid Kamara has described. Mr Fohs testimony discloses that on that day he had several external engagements that kept him out of his office. These included receiving visiting heads of state at Lungi, presenting those Heads of State to the President at State House, accompanying the state Visitors to view the site of the mud slide disaster, Attending the burial of the victims of the Regent Mud Slide disaster at Waterloo, being present as the visiting Heads of State took leave of HE the President at State House and then seeing the Heads of State off at Lungi before returning home.
35. When No2's very busy schedule for the day in question is placed side by side with No1's equally full day plus the hazy time frames put forward by the No1 as well as the need to treat the testimony of both No 1 and his wife with caution it will be reasonable for one to doubt whether the prosecution's theory with respect to No 2 and the $80,000 is true or not

36. In the face of the doubt I have mentioned no inferences of an agreement between the defendant can be made. What is seen is one defendant reaching out to the other whilst that other makes a report to the ACC. These facts cannot also sustain a charge that a conspiracy existed between No 1 and No 2 in respect of the $80,000.

Some other Matters of Interest

37. Whilst remaining acutely mindful that the burden of proving the case is always on the prosecution, and also being mindful that the standard which should be met, in this and all the counts in the indictment is proof beyond reasonable doubt (see Woolmington v DPP), the following evidential issues have made an impression on my mind and deserve to be mentioned:
38. **The absent recording:** to whom great power is given so too is great responsibility; this saying is now almost a cliché and a truism that cannot be denied. The ACC fits in this mould quite well. Suffice it to say here that once evidential materials of any kind has reached the ACC in the course of an investigation the commission becomes legally and certainly morally bound to preserve the integrity of such material until such time that it may be required or the expiration of the relevant statutory or policy guided retention period.
39. **Section 72** of the Anti-Corruption Act places an unequivocal burden on the Commission *"to take all necessary steps to protect anything obtained pursuant to a requirement or seized"*. Whilst the section is under the part dealing with "search and seizure" the responsibility for material received into the custody of the Commission must necessarily be generally covered too.
40. **That the** ACC was unable to produce the video clip which the No2 had caused to be made when the $60,000 was being handed to him is unfortunate and worse so was the prosecution's submissions on the issue, submitting that the defendants should now have brought the maker to testify or should have taken steps to retrieve the material from other sources.
41. **It is my opinion that where the** ACC receives material that it does not wish to use the duty to "protect" it continues and Section 73 of the act provides that such material *"may be retained by the Commission for such time as is reasonable"* and under Section 72(2) *"it shall make arrangements for such a thing to be returned forthwith to the person from whom it was obtained"*. The ACC abdicated its superior standing and responsibility when it failed to produce that video clip. I hold that a person need not worry about the continued existence and safe keeping of materials that have been safely

lodged with the ACC. The ACC henceforth becomes the custodian of such material and the primary source of its future production.

42. **Whilst it** may be understandable that despite its best efforts even the most vigilant may suffer a slip it must be expected that the benefit accruing from such a slip if any cannot be in favour of the one that slipped. By failing to bring that recording/video clip forward, even after a court order to that effect, the ACC deprived the No.2 of an important bit of his defence and deprived the court of the opportunity to observe first-hand the interactions between the No 2, Ibrahim Fackeh and even DW5 (Aruna Kamara) whose role and presence when Fackeh handed over the $60,000 are important. There's no telling what those observations may have been.
43. **Alhaji's unexplained absence**. Alhaji the driver who allegedly held the bag of money on the visit to the No 2's office, has not been, brought before the court neither by the prosecution nor by the 1st defendant. The value he would have brought to this trial is immeasurable. Regrettably he has neither testified nor has an explanation being advanced for his absence. The only alleged eyewitness to the commission of the offence inexplicably absent at trial.
44. I have had to remind myself who an accomplice is. Phipson on Evidence 12th Edition has been helpful in this regard, stating under the rubric **Accomplice** at paragraph 1631 as follows:

> *" The term accomplice includes when they are called for the prosecution (witnesses) who are **participes criminis** in respect of the actual crime charged whether as principals or as accessories"*

This would mean participating in the criminal conduct either directly or simply by providing assistance to the main perpetrator will for the purpose of the term suffice.

45. I have reminded myself further that such an accomplice would ordinarily have an interest in the outcome of the trial which is why Phipson suggests further that

> *"The jury should be told by the Judge that should they decide that the witness should be or ought to be an accomplice it would be dangerous to convict on his uncorroborated evidence"*

46. The learned author at paragraph 1632 in a more direct and relevant manner states that: *"the testimony of the wife of an accomplice who has himself given evidence is admissible but requires a caution similar to that needed in the case of an accomplice."* I have advised myself according.

Wilfully Failing to Comply (Count 8)

47. This count alleges that Mr AbuBakarr Carew whilst serving as Permanent Secretary of the Ministry of Social Welfare Gender and Children's Affairs willfully failed to comply with the applicable proceedures when he approved a request from the Hajj Committee for the sum of $314,000. The thrust of the prosecution's case was that contrary to his Minister's clear objections Mr. Carew the 6th defendant went ahead and approved the said request.
48. I have been clear in the ruling on the no Case submission that Mr Abubakarr Carew had to provide an answer to the question on why he countermanded clear instructions from his supervising Minister. The answer which Mr. Carew has given this court is undoubtedly the most mundane reason ever. He claims he did not receive the Minister's instruction at all. To establish that he did not receive the Minister's instruction two way books have been put into evidence.
49. The way books have been tendered by DW6 Alhaji Morlu Kanneh, Social Services Officer from the Ministry of Social Welfare. Alhaji Kanneh attended court on a sub poena order at the instance of the defendant AbuBakarr Carew. The first is the way book ~~is~~ that is used in the Permanent Secretary's office. In it are recorded letters moving out of the Permanent Secretary's office. This is marked Exhibit DEF6 the second book is the one used to record documents moving out of the Minister's Office that one is marked exhibit DEF7.
50. In Exhibit DEF6 The Permanent Secretary's way book, there is an entry ; *Request for Approval of Payment for Hajj Operations* dated 14th August 2017, which suggests that a document left the Permanent Secretary's office for the Minister on that date. There are several entries in the Minister's way book which are addressed to the Permanent Secretary. However none of them is a corresponding entry returning this crucial letter (which now would have included the Minister's minutes to the Permanent Secretary). There is no explanation why this is so thereby raising a significant gap in the prosecution's case. Did Mr. Carew receive these all important minutes?
51. The nature scope and importance of the minutes in question cannot be overemphasized. To ignore those minutes deliberately will have dire consequences. However would the result be equally grave where the impugned action was taken without any knowledge of the existence of those clear and explicit minutes?
52. Two other important facts which have arisen on this issue are firstly that the Minister, who is author of the minutes, was at the time indisposed. She was not in the office for a day or two. There is no evidence that she had a direct conversation on the issue with the defendant. The testimony of the Ibrahim

Sesay pw5, Accountant attached to the ministry of Social Welfare and that of the defendant Abubakarr Carew are uniform in this regard. It is unclear whether the Minister had written the minutes in the office or from some other location from which she may have been working. This may have explained why there is no record in the way book of her minutes leaving her office for the Permanent Secretary.

53. The second and more important fact that has left an impression in my mind is that the original of the Minister's minutes were secured by the ACC from the Minister herself (as per PW1). Again this may appear mundane but it is important. One does not write minutes on a letter or document which is in action and keep the minutes. The minutes will normally be issued for them to be acted upon. The author of the minutes will usually send the minutes she has written to the person she intends to take the action set out in the minutes. It is the original that would usually be sent. If this were so I have to wonder how come the Minster would have still, had in her possession for production to the ACC the original, in her green ink, of the minutes she has already issued. These minutes had been written and allegedly issued long before the investigations started, for them to have still been in the Minister's possession ought to have been explained in the face of a denial of receipt.
54. The Prosecution needed to clear this up. The prosecution needed to ascertain that Mr. Carew had actually received the Minister's minutes. The fact that the minutes were written and extant does not by itself establish criminal conduct and certainly so not in circumstances were the minutes are denied to have been received and with evidence to corroborate that denial. The sum effect of the evidence introduced by the defense is that it does raise a significant doubt as to whether Mr. Carew received those crucial minutes at all.
55. I have been very clear; Mr. Carew, Permanent Secretary cannot willfully countermand his Minister without lawful excuse. If he did so he immediately exposes himself to criminal censure as charged. In a similar manner it is my opinion that he cannot be said to have so countermanded the Minister if he had not in fact received the Minister's commands.
56. The evidence is that an emergency had arisen and action needed to be taken in the Minister's absence and without the benefit of the Minister's direct instructions. I am satisfied that a Permanent Secretary has a duty to ensure that government's business is not held up and therefore such a Permanent Secretary may act within his remit in the Minister's absence. The Accountant General said as much in his reference to the PS being the Vote Controller and

having authority on occasion to authorize expenditure under the Public Finance Management Act 2016.

57. Suffice it to say that the defence has raised in my mind a reasonable doubt as to Mr. Abu Bakarr Carew's culpability. In the absence of a direct countermand of the Minister's instruction the prosecution has failed to show what procedure it is that Mr. Carew may have violated.

Knowingly Misleading the Commission (Counts 5 & 6)

58. In these counts the prosecution allege that No 1, No 2 and Ibrahim Fackeh Conteh knowingly misled the Commission that only $60,000 had been left with Victor Foh when in truth and in fact $80,000 had been left with Victor Foh. The prosecution's closing submission on this count is succinct such that I can reproduce it in whole:

"It does not make sense that the first accused would have on his own volition given USD60,000 to the first accused in the middle of investigations with the limelight directed at him. This does not explain the evidence of PW4 who had no axe to grind with anyone. The prosecution submits that the issue of the USD60,000 was intended to obfuscate matter and create doubt as to exactly what transpired. Fifth accused must have been requested by First Accused to approach the second accused, obtain the USD80,000 and surrender it to the ACC. However the second accused only had at $60,000 of the $80,000 that had previously been handed to him before first accused left for Saudi Arabia"

59. In this passage the prosecution puts forward a theory that it has submitted no evidence whatsoever in respect of. The 1st Defendant insists that he of his own volition and whilst in detention sent the $60,000 to the No 2. The prosecution says this is not so and whilst the prosecution is entitled to deny this it has brought forward no evidence with which to challenge it. The prosecution wants to rely on PW 4 (Abass') testimony that No 1 had told him that he was taking $80,000 to the No 2 ignoring completely that PW4 did not witness the delivery and those who were closest to the delivery agree that there was only part delivery. On what evidence does the prosecution seek to convince the court then that No 2 always had with him $80,000 of government money. No such evidence has been adduced.
60. The prosecution ignores large swathes of statements made to them by No 2 with respect to conversations he had with HE President about the receipt of the $60,000. There is no evidence that the prosecution did anything to investigate these claims which are now in evidence. Also the prosecution

makes these assertions in the face of the fact that a video recording of the handing over of the $60,000 was done by the No 2's ADC and handed over to the prosecution who then lost it.

61. Aruna Kamara DW5 the security to the No 2, was a credible witness, I believe his account with respect to the receipt of the $60,000. He corroborates the No 2 in every material particular and remained unshaken under cross examination. His telling is more plausible than the prosecution's theory and his is backed with the arrest of Ibrahim Fackeh and $60,000 that were delivered to the ACC. This was a witness who had not been merely told rather he had been present and perceived himself the things he now told the court about.
62. DW5 testified as follows *" The ADC was set to record. I opened the sliding door whilst the VP and FAckeh went in. Fackeh took the money out of the bag. He said No 1 had sent him with the money. He said No 1 had said as VP was their God father he should help them. VP asked "help them for what?". Fackeh said No 1 had already made statements to ACC that he had left $80,000 with the VP. No 1 wants VP to know he has gone all out to get the money but had only got $60,000. No 2 asked about No 1's whereabout, Fackeh replied that he was at Hill Valley Hotel. Then the ADC came out. It was only then that Fackeh realized that the event was being videoed".*
63. It was thereafter that the money so received together with Fackeh who had brought it was taken to the ACC. It seems to me that the incidents testified about here did happen and were in fact recorded digitally. If they did happen then the ACC theory cannot hold. Whilst the video clip may have provided immutable evidence that these did happen; the arrest and hand over of Fackeh and the money to the ACC do also provide indirect evidence that the events did happen.
64. The prosecution's theory on misleading in respect of $60,000 therefore simply cannot hold and not in respect of any of the defendants. The truth that the prosecution holds out in respect of has not been established to be such.
65. Whilst it is possible that Fackeh must have been aware that he was being recruited and that he was actually taking part in a cover up or the obstruction of an investigation, the theory of that cover up cannot in the face of the evidence be that which the prosecution has alleged, the requisite knowledge of a set of facts and the deliberate intention to have the ACC believe a different set and as set out in the indictment has not been proved beyond reasonable doubt.

66. I hold also that the attendant conspiracy to mislead the commission as theorized by the prosecution cannot for the reasons already stated be maintained.

The Le300M (Count 7)

67. In this count the prosecution alleges that the 1st defendant misappropriated the sum of Le 300M by depositing the same in a joint account in his and his wife's names. The 1st defendant does not deny making the deposit as charged. In his testimony No 1 (Sheka Sahid KAmara) and later his wife AnnMarie Kamara DW2 and also Abass PW5 attempt to explain that the Le 300M was deposited in the EcOBANK Account in the names of husband and wife for safekeeping and prompt access in case any Hajj Committee suppliers or service providers came forward for their payments. I note that throughout the trial no report reached this court of any such supplier or person owed by the Hajj Committee had come forward to demand payment.
68. I have found it difficult to believe that it was easier to save Le 300M meant to be spent on Hajj expense in Sierra Leone in a new joint account with a wife rather than leave it in an office safe; Or with a trusted Accounts officer at State House. I am hoping that there is at least one safe at state House where the No. 1 had his office for him to have deposited this amount and received a receipt from the official manning such a safe. No 1's version of the story proves particularly unbelievable when contrasted with what the same individual did with money meant to be spent in Saudi Arabia. He did not send it through a bank to himself to receive on arrival nor take it with him as he was already taking a huge amount he chose to leave it in Freetown with his driver to later give it to the No.2 who would then send the amount of $60,000 to him in Saudi Arabia. I do not believe this story it sounds unbelievable and what's more there is no credible evidence to corroborate it.
69. Wives are expected to be supportive of their husband's career (and vice versa) but there must be a limit to how much involved the other spouse can be allowed to be, in the affairs of state without himself or herself being an official of the state. Transferring state funds to a supportive partner and giving them absolute access and power over same certainly crosses a line and a lot more than mere words can provide a justification for such conduct. I do not accept the explanation proffered by No 1 and his wife as to how this amount of money; government funds came to be found in their joint names in a bank. I find the request to open another account for the transfer of the money very

suspicious and more so due to the No 1 and his wife's shabby attempt to deny they had ordered the opening of the further account.

70. The Defendant Sheka Sahid Kamara and his wife's attempt to accuse the bank officials of a set-up is weak, without foundation and completely ineffective. I have seen no reason why the Bank officials may want to create another account to transfer the No1 and his wife's money. The No 1 and his wife had surely asked for the second account to be opened to further facilitate the misappropriation of the money. Both No 1 and his wife deny causing papers to be generated for the opening of the second account thereby suggesting obliquely that the bank had done so on its own volition. This of course appears a ludicrous suggestion with no discernible purpose. The suggestion therefore leaves an unfavourable impression about those who have made it and their intention for making it.
71. Misappropriation in my opinion was without a doubt complete when the irregular payment of government funds was made into the joint bank account of husband and wife. I restate that under Section 36 there is no need to prove seperately dishonest appropriation. The willfulness of the misappropriation is evident in the loss that government has suffered.

Before I conclude:

Recommendations for future possible ACC Interventions:

i. the current quota system in which high ranking members of government dish out Hajj scholarships to individuals without a well-publicized and transparent process leaves room for corrupt practices or corruption to thrive.
ii. Scholarships that costs the country in excess of $ 1m annually may require a closer look and rethink;
iii. As the Hajj date is fairly predictable, A clear timetable with a cut-off date for concluding names and settling numbers of pilgrims at least a month away from the travel date should be explored. The frantic last minute planning used for the 2017 Hajj left significant room for corrupt practices and corruption.

72. In conclusion I have found as follows
    a. That the case of conspiracy to misappropriate $80,000 against the 1st and 2nd Defendant in Count 3 does not succeed to reach the required standard of proof beyond reasonable doubt;
    b. That the case of the misappropriation of $80,000 in count four is proved against the 1st Defendant beyond reasonable doubt but not so against the 2nd Defendant.