SC. CR. APP. NO. 1/2020
IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER

EMMANUEL EKUNDAYO CONSTANT SHEARS-MOSES - Appellant

VS

THE STATE - Respondents

CORAM

HON. MR JUSTICE ALLAN B. HALLOWAY	JSC
HON. MR JUSTICE ALUSINE S. SESAY	JSC
HON. MR JUSTICE MANGAY F. DEEN-TARAWALLY	JSC
HON. MR JUSTICE SENGU M. KOROMA	JSC
HON. MR JUSTICE IVAN A. SESAY	JA

COUNSEL

C.F. MARGAI ESQ. & C. VANDY ESQ. for the Appellant
O.V. ROBIN-MASON ESQ. for the Respondents

JUDGEMENT

DELIVERED this 11th day of APRIL 2022

EMMANUEL EKUNDAYO CONSTANT SHEARS-MOSES, the Appellant herein being dissatisfied with and aggrieved by the Decision/Judgement of the Court of Appeal comprising the **HON. JUSTICE E. TAYLOR-KAMARA JA**, the **HON. JUSTICE S.A. BAH JA** and the **HON. JUSTICE F.B. ALHADI JA** delivered by the **HON. MR JUSTICE E. TAYLOR-KAMARA JA** on the 10th August 2020, hereby on the 3rd September 2020, appeal the said Decision/Judgement on several grounds, Ground One (1) of which inter alia includes the Grounds that the Learned Justices misdirected themselves in law as to whether the offence charged is laid down by the **ANTI-CORRUPTION ACT NO. 12 OF 2008** or by an explanation by the marginal note, misdirected themselves when they stated, that the seal of the ANTI CORRUPTION COMMISSION is not required to indicate that it is the deed of the commission and misdirected themselves when they stated, that there is a distinction

between a bill of indictment and an indictment in Section 130 of the **CRIMINAL PROCEDURE ACT 1965** and therefore the various authorities on when a bill of indictment becomes an indictment do not apply and that the Learned Justices stated that the offence charged is a specific one different from misconduct in public office and so ignored that the marginal notes in the **ANTI-CORRUPTION ACT NO. 12 of 2008** is a short form of misconduct in office which encapsulates Abuse of Office.

I uphold the view, that of the questions of law which were raised from the Grounds of Appeal aforesaid, at the Court below, Two (2) of them are the same questions of law which have been raised at this Court, these being, that the Anti-Corruption Commissioner is not the proper person to sign an Indictment pursuant to Section 130 of the **CRIMINAL PROCEDURE ACT 1965** and that there is no statutory offence of Abuse of Office created by Section 42(1) of the **ANTI-CORRUPTION ACT 2008**.

I am of the view, that it would be best to first address the question of law posed, that the Anti-Corruption Commissioner is not the proper person to sign an indictment which has been preferred, pursuant to Section 130 of the **CRIMINAL PROCEDURE ACT 1965**. The application of the said Section is subject to Section 136 of the **CRIMINAL PROCEDURE ACT** aforesaid, the same which provides that no Indictment shall be signed or filed in respect of any criminal offence unless there has been a committal for trial consequent upon a previous preliminary investigation except in case of Indictments which by law may be preferred by the direction of or with the consent in writing of a Judge. Section 130 aforesaid provides that:

'Subject to Section 136 above of the CRIINAL PROCEDURE ACT 1965 an Indictment charging any person with an offence triable before the High Court may be preferred by any person before a Court in which the person charged may be lawfully indicted for that offence and where an Indictment has been so preferred, a Law Officer shall sign the Indictment and it shall there upon be proceeded with accordingly'.

The principal contention of C.F. MARGAI ESQ. of Counsel for the Appellant, is that further to the preferment of the Indictment charging the Appellant of an offence under the **ANTI-CORRUPTION ACT 2008** and pursuant to Section 130 of the **CRIMINAL PROCEDURE ACT 1965**, the said Indictment should be signed by a Law Officer. C.F MARGAI ESQ. submits, that since the Anti-Corruption Commissioner is not a Law Officer the signing of the said

Indictment by him violates Section 130 aforesaid, the said Section which has not been repealed, nor is a Law Officer signing an indictment as stipulated in Section 130 aforesaid, an act which has been excluded by the **ANTI-CORRUPTION ACT 2008.** It cannot be disputed, that the whole of Section 89 of the **ANTI-CORRUPTION ACT** aforesaid, which is relied upon by the Respondents as giving authority for the Anti-Corruption Commissioner to sign an Indictment is completely silent on the signing of an Indictment. It gives authority only for the Anti-Corruption Commission to prefer an indictment. It would seem then that Sections 130 of the **CRIMINAL PROCEDURE ACT** aforesaid, implies that when an indictment which has been preferred by the ANTI-CORRUPTION COMMISSION, must be signed by a Law Officer before it is filed and served on the Accused person(s). But this position seems to have been contradicted by Section 89 of the **ANTI-CORRUPTON ACT 2008** which provides in part as follows:

'An Indictment preferred by the Anti-Corruption Commission shall be filed and served on the Accused'...

The above section of the **ANTI-CORRUPTION ACT 2008** amplifies the fact that the whole of Section 89 of the said **ACT** is silent on the signing of an Indictment preferred by the Anti-Corruption Commission. It cannot be disputed that it would seem as if the above section implies that an Indictment preferred by the Anti-Corruption Commission need not be signed. It shall immediately, after such preferment be filed and served on the Accused person(s). Obviously this cannot be the position of the law, by reason that before an Indictment is filed and served on the Accused person(s) it must not only have been preferred, it must be signed. I hold the view, that it is by reason that it cannot be the law for an Indictment to be filed and served on the Accused person(s) immediately after it is preferred without it been signed and by reason that Section 89 (4) of the **ANTI-CORRUPTION ACT 2008** does not fill in that gap requiring a signature is what I feel has provoked C.F. MARGAI ESQ. to conclude that this gap which Section 89 (4) of the **ANTI-CORRUPTION ACT** aforesaid, creates ought to be filled up by the provisions of Section 130 of the **CRIMINAL PROCEDURE ACT 1965,** in that it is a Law Officer who shall sign an Indictment which has been preferred.

C.F MARGAI ESQ of Counsel for the Appellant, reinforces his conclusion above by his submission that Section 130 of the **CRIMINAL PROCEDURE ACT 1965** is still good law and has not been repealed nor is a Law Officer signing an Indictment as stipulated in Section 130 aforesaid, an act which has

been excluded by the **ANTI-CORRUPTION ACT 2008**. I hold the view that the conclusions of C.F MARGAI ESQ. will be upheld if I cannot show anything contrary to the law which he has submitted reinforces his conclusion aforesaid. In other words, if I cannot show that Section 89 of the **ANTI-CORRUPTION ACT 2008** gives authority to the Anti-Corruption Commissioner to sign an indictment after the same has been preferred and or I cannot show that a Law Officer signing an indictment as stipulated in Section 130 aforesaid is an act which has been excluded by the **ANTI-CORRUPTION ACT** aforesaid.

In considering the submission of C.F MARGAI ESQ, that the signing of an Indictment by a Law Officer that has been preferred by the Anti-Corruption Commission is still good law because Section 130 of the **CRIMINAL PROCEDURE ACT 1965** has not been repealed, reference will be made to Section 108 of the **CRIMINAL PROCEDURE ACT** aforesaid, the same which provides as follows:

'where a person is before the Magistrate charged with an offence which is triable exclusively by the High Court or in the opinion of the Magistrate ought to be tried by such Court, the Magistrate shall conduct a preliminary investigation into the charge alleged, in accordance with the procedure laid down in PART III of the CRIMINAL PROCEDURE ACT 1965'.

It cannot be disputed that all offences created under the **ANTI-CORRUPTION ACT 2008** are criminal offences and that by virtue of Section 89 (1) of the said ACT, the said offences are triable exclusively by the High Court. This being the case, and by the application of Section 108 of the **CRIMINAL PROCEDURE ACT** aforesaid, a Magistrate should conduct a preliminary investigation into the charge alleged of an offence under the **ANTI-CORRUPTION ACT** aforesaid, in accordance with the procedure laid down in **PART III** of the **CRIMINAL PROCEDURE ACT** aforesaid. It is the case however, that by virtue of Section 89(2) of the **ANTI-CORRUPTION ACT** aforesaid, an Indictment relating to an offence under the **ANTI-CORRUPTION ACT,** shall be preferred without any previous committal for trial, meaning thereby, that an exception is made for the compliance of the conduct of a preliminary investigation by a Magistrate in accordance with Section 108 of the **CRIMINAL PROCEDURE ACT** aforesaid, for all offences under the **ANTI-CORRUPTION ACT** aforesaid. In this regard, it cannot be disputed that Section 89(2) of the **ANTI-CORRUPTION ACT** aforesaid, gives authority to the Anti-Corruption Commission to prefer an Indictment of a criminal offence

exclusively triable at the High Court without a Magistrate conducting a preliminary investigation into the charge alleged. It is also true to say that the said Section 89(2) specifically excludes such a criminal offence to be subject to the conduct of a preliminary Investigation by its provision that an offence under the **ANTI-CORRUPTION ACT** shall be preferred without any previous committal for trial and it shall in all respects be deemed to have been preferred pursuant to a consent in writing by a Judge granted under Section 136(1) of the **CRIMINAL PROCEDURE ACT 1965** and shall be proceeded with accordingly.

It should be noted that Sections 108 and 136 of the **CRIMINAL PROCEDURE ACT 1965** is still good law and has not been repealed even by the enactment of Section 89(2) of the **ANTI-CORRUPTION ACT 2008**. All that can be said is, that Sections 108 and 136 of the **CRIMINAL PROCEDURE ACT** aforesaid will not apply when a criminal offence which is triable exclusively at the High Court are offences under the **ANTI-CORUPTION ACT** aforesaid, but which said provisions will apply fully when the said offences are ones other that those under the **ANTI-CORRUPTION ACT**. The above issues regarding Sections 108 and 136 of the **CRIMINAL PROCEDURE ACT 1965** have been brought up to establish the fact that criminal offences generally have now been distinguished in that those **created** under the **ANTI-CORRUPTION ACT 2008** are distinct from those other general criminal offences. The procedure adopted in treating general criminal offences in so far as preliminary investigations are concerned, is different from that of offences under the **ANTI-CORRUPTION ACT** aforesaid.

It cannot be disputed that at the time the **CRIMINAL PROCEDURE ACT 1965** was enacted all criminal offences prosecuted in the name of the Republic of Sierra Leone was at the suit of the Attorney-General and Minister of Justice or some other person authorised by him, the same which was reinforced by the provisions of Section 64(3) of the **CONSTITUTION OF SIERRA LEONE 1991**. In this regard, all criminal offences which were triable exclusively by the High Court, even though they might have been preferred by any person, they shall be signed by a Law Officer after its preferment without any exception. The enactment of the **ANTI-CORRUPTION ACT 2000** saw the establishment of the Anti-Corruption Commission, which created several offences separate and distinct from the other general criminal offences. This distinction notwithstanding, interpretation of the applicable law is that these offences were still been prosecuted in the name of the Republic of Sierra Leone at the suit of the Attorney General and Minister of Justice or some other person

authorised by him and in that regard, Section 130 of the **CRIMINAL PROCEDURE ACT** aforesaid still had to be complied with. The pertinent question is **'did this position remain the same after the repeal of Section 64(3) of the CONSTITUTION OF SIERRA LEONE 1991'**. An answer to this question could be found by considering Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008** which provides thus:

'The CONSTITUTION OF SIERRA LEONE 1991 is amended by the repeal and replacement of Sub section (3) of Section 64 thereof by the following sub section (3) that all offences prosecuted in the name of the Republic of Sierra Leone except offences involving corruption under the ANTI-CORRUPTION ACT 2000 shall be at the suit of the Attorney General and Minister of Justice or some other person authorised by him in accordance with any law governing the same'.

It cannot be disputed that the enactment of the above changed the position above, in that all offences under the **ANTI-CORRUPTION ACT 2000** prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Anti-Corruption Commissioner. By extension and at the enactment of the **ANTI-CORRUPTION ACT 2008** which repealed the **ANTI-CORRUPTION ACT 2000**, all offences under the **ANTI-CORRUPTOIN ACT 2008** prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Anti-Corruption Commissioner. Obviously the position which prevailed before the enactment of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDEMENT) ACT 2008** that all offences under the **ANTI-CORRUPTION ACT 2000** prosecuted in the name of the Republic of Sierra Leone at the suit of the Attorney General and Minister of Justice changed thereafter. Obviously, if prosecution of an offence under the **ANTI-CORRUPTION ACT 2008** prosecuted in the name of the Republic of Sierra Leone, is at the suit of the Anti-Corruption Commissioner, then it cannot be a Law Officer that would have to sign the Indictment that is preferred by the Anti-Corruption Commission since the autonomy which was given the Anti-Corruption Commission by Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDEMENT) ACT 2008** as spelt out in the **ANTI-CORRUPTION ACT 2000** which established it would still be non-existent. Section 130 of the **CRIMINAL PROCEDURE ACT 1965** no longer applies in so far as Indictments preferred by the Anti-Corruption Commission are concerned. The same now fully empowers the Anti-Corruption Commissioner to sign all Indictments preferred by the Anti-Corruption Commission.

By reason of the above, I hold the view, that by virtue of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDEMENT) ACT 2008**, Section 130 of the **CRIMINAL PROCEDURE ACT 1965,** cannot be applicable to offences created under the **ANTI-CORRUPTION ACT 2008** and in this regard, a Law Officer cannot be the one signing an indictment preferred by the Anti-Corruption Commission. The fact that Section 130 of the **CRIMINAL PROCEDURE ACT 1965** has not been repealed is immaterial to the non-applicability of it in so far as offences under the **ANTI-CORRUPTOIN ACT 2008** is concerned. Analogous to the situation regarding Sections 108 and 136 of the **CRIMINAL PROCEDURE ACT** aforesaid, whereas Section 130 of the said **ACT** have not been repealed, even by the enactment of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008**, it will not apply when a criminal offence which is triable exclusively at the High Court are offences under the **ANTI-CORRUPTOIN ACT 2008**, but the same will still be good law and will apply fully when the said offences are ones other than those under the **ANTI-CORRUPTION ACT** aforesaid. If it cannot be true that Section 130 of the **CRIMINAL PROCEDURE ACT 1965** cannot be applicable to offences created under the **ANTI-CORRUPTION ACT 2008** and that it is a Law Officer that would have to sign an Indictment preferred by the Anti-Corruption Commission and it is him that should sign all Indictments preferred by the Anti-Corruption Commission, then Section 130 aforesaid, would conflict with Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008**. Consequently, Section 130 of the **CRIMINAL PROCEDURE ACT 1965** would be void and of no effect in so far as offences under the **ANTI-CORRUPTION ACT 2008** are concerned, by virtue of Section 171(15) of the which provides thus:

'The CONSTITUTION OF SIERRA LEONE 1991 shall be the Supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistencies be void and of no effect'.

I hold the view that even though as stated above, the whole of Section 89 of the ANTI-CORRUPTION ACT is silent on the signing of an Indictment preferred by the Anti-Corruption Commission, it does not make the signing of an Indictment aforesaid, by the Anti-Corruption Commissioner void and of no effect. It is an Indictment which has been preferred and not signed before it is filed and served on the Accused person(s) that would be void and of no effect. It stands to reason that an Indictment which has been preferred by the Anti-Corruption Commission would eventually be signed before it is filed and

served on the Accused person, in which case omission of the signing part in Section 89 aforesaid is immaterial. Obviously, since by virtue of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008**, all offences under the Anti-Corruption Act 2008 shall be at the suit of the Anti-Corruption Commissioner it can be no other person but him that would have the authority to sign an Indictment preferred by the Anti-Corruption Commission or any other person lawfully authorised by him in that regard. In this case, the Indictment herein was signed by the Anti-Corruption Commissioner.

On the issue of the signing of the Indictment by the Anti-Corruption Commissioner without affixing the seal of the Anti-Corruption Commission, I hold the view that it is not the seal that makes the signature of the Anti-Corruption Commissioner authentic. It is the signature itself which makes it authentic. Obviously, the signature itself is always authentic, unless evidence is shown that it was not the signature of the Anti-Corruption Commissioner. In this case there is no such evidence that the signature on the Indictment preferred against the Appellant was not that of the Anti-Corruption Commissioner. On the issue of the Anti-Corruption Commissioner bringing its prosecution in the name of the State and not in the name of the Anti-Corruption Commission, it should be pointed out that all criminal offences whether or not they are offences under the **ANTI-CORRUPTION ACT 2008** are brought in the name of the Republic of Sierra Leone. It is clear that by virtue of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENET) ACT 2008**, all criminal offences except those under the **ANTI-CORRUPTION ACT 2008** are at the suit of the Attorney-General and Minister of Justice. For those offences under the **ANTI-CORRUPTION ACT 2008**, those offences are at the suit of the Anti-Corruption Commissioner. Consequently, the distinction here is that in whose name the offence is brought and at the suit of who. It is the case therefore that all criminal offences in Sierra Leone including those under the Anti-Corruption Act 2008 are brought in the name of the Republic of Sierra Leone. In this regard, I hold the view that nothing was wrongly done by the Respondents in bringing the offence for which the Appellant is charged herein in the name of the STATE.

I uphold the submission of C.F MARGAI ESQ, that the question whether it is the Law Officer pursuant to Section 130 of the **CRIMINAL PROCEDURE ACT 1965** or the Anti-Corruption Commissioner that should sign an indictment preferred by the Anti-Corruption Commission, for an offence under the **ANTI-CORRUPTION ACT 2008** is indeed a very important issue. In this regard it

cannot be gainsaid that all possible avenues available within the law must be explored so that a comprehensive, correct and good law addressing the issue be put in place. C.F. MARGAI ESQ. of Counsel for the Appellant submits that the signing by the Anti-Corruption Commissioner of an Indictment preferred by the Anti-Corruption Commission is wrong in law and since this is what has been done persistently in the past in so far as offences under the **ANTI-CORRUPTION ACT 2008**, is concerned, this Court now has the opportunity to solve and pave the way for the proper thing to be done since an Indictment signed by the Anti-Corruption Commissioner, even when it is preferred by the Anti-Corruption Commission in respect of an offence created under the **ANTI-CORRUPTION ACT** aforesaid, would be ineffective and must render a trial on it a nullity.

Even though I have held above that Section 130 of the **CRIMINAL PROCEDURE ACT 1965** cannot be applicable to offences created under the **ANTI-CORRUPTION ACT 2008** and in this regard, a Law Officer cannot be the one signing an Indictment preferred by the Anti-Corruption Commission, I am particularly swayed by the submission of C.F. MARGAI ESQ. that Section 89 of the **ANTI-CORRUPTION ACT 2008** did not make any provision for the Anti-Corruption Commissioner to sign an Indictment and that under Section 89(4) of the said **ACT**, Parliament significantly omitted to give any such power to the Anti-Corruption Commissioner. In my view, the pertinent question is, **'was it the intention of Parliament when it omitted in Section 89(4) of the ANTI-CORRUPTION COMMISSION ACT aforesaid, to expressly give power to the Anti-Corruption Commissioner, that it is Section 130 of the CRIMINAL PROCEDURE ACT 1965 that would apply regarding the signing of an Indictment preferred by the Anti-Corruption Commission'**? It cannot be disputed that if the answer to the question above is in the affirmative, then the ANTI-CORRUPTION COMMISSION will be placed in real jeopardy as regards all Indictments which have been signed by the Anti-Corruption Commissioner. All indictments, prosecutions and convictions thereof from the day when the Anti-Corruption Commissioner first signed an Indictment preferred by the Anti-Corruption Commission, including the Indictment herein to date could be declared null and void. Consequently, all subsequent prosecutions and convictions stemming therefrom would be questionable and could be the subject to litigation both within and outside Sierra Leone particularly in relation to fundamental Human Rights as contained in **Chapter III** of the **CONSTITUTION OF SIERRA LEONE 1991**.

It should be pointed out, that as stated earlier, on the establishment of the Anti-Corruption Commission by the enactment of the **ANTI-CORRUPTION ACT 2000**, all Indictments preferred by it had to get the consent of the Attorney-General and Minister of Justice and the eventual signing of it by a Law Officer pursuant to Section 130 of the **CRIMINAL PROCEDURE ACT 1965,** before the prosecution of the offence charged could be proceeded with. The autonomy given to the Anti-Corruption Commission by the **ANTI-CORRUPTION ACT 2000** seemed to have been eroded by the above. In order to remedy this mischief, Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008** was enacted paving the way for prosecution of offences under the **ANTI-CORRUPTION ACT 2000** to be brought at the suit of the Anti-Corruption Commissioner which by implication as stated earlier gave power to the Anti-Corruption Commissioner to sign all Indictments preferred by the Anti-Corruption Commissioner to sign all such Indictments. Clearly, if it is the case, that Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008** remedied the mischief mentioned above, the fact that Section 89 of the **ANTI-CORRUPTION ACT 2008,** which said **ACT** was enacted after the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008,** designed to give effect to the provisions of Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008** and which said **ACT** did not make any provision for the Anti-Corruption Commissioner to sign an Indictment and that under Section 89(4) of the said **ACT**, Parliament significantly omitted to give any such power to the Anti-Corruption Commissioner, the said facts would eventually result in prompting what the intentions of Parliament were, by such omission. It has been seen above, that if the intentions of Parliament was to give back to the Law Officer, the power to sign all Indictments, including those that charged offences under the **ANTI-CORRUPTION ACT 2008**, it shows above what the consequences would be. In the Judgement of this Court in the case between **IBRAHIIM SORIE** and **GENERAL LEGAL COUNCIL** SC No. 6/2019 in the Supreme Court of Sierra Leone (unreported) the Court held that it should reject a position that will create a disproportionate counter mischief. It referenced the Seventh Edition of **BENNION ON STATUTORY INTERPRETATION** by **DIGGORY BAILEY** and **LUKE NORBURY** on **CONSTRUCTION AGAINST ABSURDITY** at paragraph 12.7 under the rubric **'Avoiding a disproportionate counter-mischief'** at page 390 where it is stipulated thus:

'The presumption against absurdity means that the Courts will generally avoid adopting a construction that cures the mischief the enactment was designed to remedy only at the cost of establishing another mischief'

Clearly, it is the enactment of Section 89 of the **ANTI-CORRUPTION ACT 2008** that was designed to give power to the Anti-Corruption Commissioner to sign all Indictments preferred by the Anti-Corruption Commission and which said power was given by Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008,** the same remedying the mischief of eroding the autonomy given to the Anti-Corruption Commission by the **ANTI-CORRUPTION ACT 2000**. The fact that the **ANTI-CORRUPTION ACT 2008** omitted to expressly give power to the Anti-Corruption Commissioner to sign all Indictments preferred by the Anti-Corruption Commission, prompted the determination of what the intentions of Parliament were by omitting to expressly give such power to the Anti-Corruption Commissioner. It has been established that if the intentions of Parliament in this regard was that it is a Law Officer who should sign all Indictments even those preferred by the Anti-Corruption Commission and that such intentions had been misconstrued so that all such indictments preferred since 2008 were signed by the Anti-Corruption Commissioner, the same would put the Anti-Corruption Commission in real jeopardy with devastating consequences, if the intentions of Parliament aforesaid, were to be upheld by this Court. In the circumstance, I hold the view that this Court cannot uphold the construction in Section 89(4) of the **ANTI-CORRUPTION ACT 2008**, that Parliament intended to allow a Law Officer continue signing an Indictment even if it was preferred by the Anti-Corruption Commission by omitting to expressly give power to the Anti-Corruption Commissioner to sign all such indictment which said power had been given to him by Section 1 of the **CONSTITUTION OF SIERRA LEONE (AMENDMENT) ACT 2008** because clearly, it would create a disproportionate mischief than the one which Section 89(4) aforesaid, was designed to remedy. Conclusively, the submissions of C.F. MARGAI ESQ. that the Indictment herein should have been signed by a Law Officer rather than by the Anti-Corruption Commissioner is hereby overruled.

I now turn my attention to the second question of law aforesaid, raised at this Court, the same being that there is no statutory offence of Abuse of Office created by Section 42(1) of the **ANTI-CORRUPTION ACT 2008**. C.F. MARGAI ESQ of Counsel for the Appellant submitted, that Section 42(1) aforesaid is itself void of an offence, as it does not state the offence of Abuse of Office. O.V ROBIN-MASON ESQ. of Counsel for the Respondent submitted, that the offence prescribed is in the body of Section 42(1) of the **ANTI-CORRUPTION ACT 2008** and agrees with the Learned Trial Judge when she stated at page 551 – 552 of the Records of Appeal that **'the**

provisions of Section 42(1) of the ANTI-CORRUPTION ACT aforesaid, after which reading, no question ought to be asked, as it is clear that the Accused, a public officer using his office to improperly confer an advantage on himself or any other person remains the offence proof of which elements must show a clear sign of an Abuse of Office as referenced in the marginal notes which the Prosecutor captured in the particulars of offence against the Accused'. O.V ROBIN-MASON ESQ. submitted that Section 42(1) of the **ANTI-CORRUPTION ACT** aforesaid, properly creates the offence of Abuse of Office pursuant to which the Appellant was charged, tried and convicted. O.V ROBIN-MASON ESQ. submitted that the glaring indication of the offence of Abuse of Office can be seen in the marginal notes which is an aid to the understanding and interpretation of the said section. O.V. ROBIN-MASON ESQ. submitted that the marginal notes steers the reader to the appropriate section, and it briefly indicates the fundamental part of the section. C.F MARGAI ESQ. submitted that the marginal notes are not part of the section and therefore cannot state the offence. Section 42(1) of the **ANTI-CORRUPTION ACT 2008** itself provides thus:

'A Public Officer who uses his office to improperly confer an advantage on himself or any other person commits an offence'.

It cannot be disputed that from the contents of the above section, the separate and distinct elements which are required to be proved includes inter alia **'the use of the Public Officer's office'** and **'the improper conferring on the said Public Officer an advantage or the improper conferring on any other person an advantage'**. Clearly a Public Officer would have done absolutely nothing criminally wrong by using his office simplifier, otherwise why then was he put in office. Obviously he was put in office to use it. Again I do not know and understand how one can improperly confer on advantage, being that the operative word here is **'improperly'**. In volume I the Third Edition Revised with Addenda, of the **OXFORD UNIVERSAL DICTIONARY ILLUSTRATED** prepared by **WILLIAM LITTLE, H.W. FOWLER** and **J. COULSON**, Revised and Edited by **C.T. ONIONS**, the word 'improperly' at page 971 means 'wrongly' 'incorrectly', 'unsuitably' 'unbecomingly'. Clearly one cannot wrongly confer an advantage, one cannot incorrectly confer an advantage, one cannot unsuitably confer an advantage and one cannot unbecomingly confer an advantage. One can only confer an advantage simpliciter.

It follows from the above that if a Public Officer would have done absolutely nothing criminally wrong by using his office and could not have improperly conferred an advantage on himself or could not have improperly conferred an advantage on some other person by the use of his office, then no offence would have been created or stated by Section 42(1) of the **ANTI-CORRUPTION ACT 2008**. However, my conclusion aforesaid, should not be made in isolation of the submission of O.V. ROBIN-MASON ESQ. of Counsel for the Respondents that for the purposes of Section 42(2) of the **ANTI-CORRUPTION ACT 2008**, the drafters of the said **ACT** would not have intended to create an offence in vacuum, a submission which I fully uphold. In this regard and to pay heed to the said submission, I had to cautiously consider various rules of interpretation of a statute, one of which, as stated in the case between **LUSENI** and **FOFANA** (1970-71) ALR SL 63 at pg 65 is that:

'It is a cardinal rule of Interpretation that in construing an ACT, it is the duty of the Court to read the ACT as a whole including the provisions of any amending ACTS and not read the words of a section in isolation'.

If it is a cardinal rule that in construing an ACT the Court must read it as a whole and not in isolation, it follows that in construing a section of an ACT, the Court must read the section as a whole without isolating parts of it. Authority for this proposition could be found in the case between **MOBIL PRODUCING NIGERIA UNLIMITED** and **FIRS** (2021) LPELR-53436 (CA) in the Court of Appeal (ABUJA JUDICIAL DIVISION), where it was stated thus:

The position of the Law is, that provisions of legislations are construed holistically in order to garner or reach at the intention of the Legislature. That is to say, provisions of enactments are not to be subjected to fragmentary interpretation'

Obviously, my conclusion aforesaid that no offence would have been created or stated by Section 42(1) of the **ANTI-CORRUPTION ACT 2008** was arrived at by reason that Section 42(1) of the **ANTI-CORRUPTION COMMISSION ACT** aforesaid, was construed in fragments and not holistically, contrary to the position of the law as laid down in the case between **MOBIL PRODUCING NIGERIA UNLIMITED** and **FIRS**, cited above. applying the principle as laid down in the said case in order for me to know what the intention of Parliament was, I came to the conclusion that it is the word **'improperly'** which was misplaced in Section 42(1) aforesaid. Consequently, when I construed Section

42(1) aforesaid, holistically by putting the word **'improperly'** where it should be, I came to the conclusion that the offence which Parliament intended to create was, **'that a Public Officer who uses his office improperly to confer an advantage on himself or uses his office improperly to confer an advantage on some other person, commits an offence'**, I hold the view that it is the marginal note which tells that the offence committed in this regard is **'Abuse of Office'**. To illustrate how marginal notes are used in this way, reference is made to Sections 27 to 34 of the **ANTI-CORRUPTION ACT 2008**. It cannot be disputed that in the same way as Section 42(1) of the **ACT** merely outlines the elements which make up the offence but does not state the offence committed and it is only the marginal note which tells that the offence committed is 'Abuse of Office' so also is it the case that the contents of Sections 27, 28, 29, 30, 31, 32, 33 and 34 of the **ANTI-CORRUPTION ACT 2008**, only tells what elements make up the offences committed, but does not state the offence itself, it is the marginal notes that tell that the offences committed are **'Possession of explained wealth'**, **'offering, soliciting, or accepting, advantage' 'using influence for contracts'**, **'influencing a Public Officer'** and **'Bribery of a Public Officer to influence decision of Public body'** respectively.

I hold the view that notwithstanding the fact that Section 42(1) of the **ANTI-CORRUPTION ACT 2008** does not state the offence of 'Abuse of Office' it cannot be said to be void since it is the marginal note that state that the offence committed by Section 42(1) aforesaid, is 'Abuse of Office'. The question which should now be of paramount concern and which I have observed has never been brought up neither by the prosecution nor the Defence nor addressed by the Court below and the Court below it, is whether the offence of Abuse of Office which the Appellant was charged with has been disclosed in the Indictment herein preferred by the Anti-Corruption Commission signed by the Anti-Corruption Commissioner against the Appellant herein. In the 35th Edition of **ARCHBOLD PLEADING, EVIDENCE & PRACTICE IN CRIMINAL CASES** edited by **T.R. FITZWALTER BUTLER** and **MARSTON GARSIA**, at paragraph 102 under the rubric '**STATEMENT AND PARTICULARS OF OFFENCE'** at page 46 and also as provided in Section 51(1) of the **CRIMINAL PROCEDURE ACT 1965**, it is stipulated thus:

'Every Indictment shall contain and shall be sufficient if it contains a statement of the specific offence or offences with which the Accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the charge'.

The Indictment herein is found at pages 1 to 3 of the Records of Appeal herein. It charges the Appellant herein on Two (2) Counts of the offence of Abuse of Office contrary to Section 42(1) of the **ANTI-CORRUPTION ACT 2008**. Each of the counts aforesaid, must not only contain a statement of the specific offence with which the Appellant is charged with, it must also state such particulars as may be necessary for giving reasonable information as to the nature of the charges against the said Appellant. In other words each court must give reasonable information as to how the Appellant improperly used his office and separately and distinctly give reasonable information as to the advantage which the Appellant conferred upon himself or some other person by the improper use of his office.

On Count I of the Indictment, the particulars of offence state that the Appellant being Acting Head of the Department of Law in the Faculty of Social Sciences and Law at Fourah Bay College of the University of Sierra Leone on a date between the 1st of July 2015 and the 31st January 2016 abused his office to wit: Improperly Conferred an advantage on ALIMATU TITY GEORGE a student of Law by improperly awarding her passing examination grades for the module 'Dissertation' when in fact and truth ALIMATU TITY GEORGE did not submit a Dissertation for grading. Clearly sufficient and reasonable information as to how allegedly, the Appellant improperly used his office was given, the same being, by improperly awarding her passing examination grades for the module 'Dissertation' when in fact and truth ALIMATU TITY GEORGE did not submit any Dissertation for grading.

On Count II of the Indictment, the particulars of offence state that the Appellant being Acting Head of the Department of Law in the Faculty of Social Sciences and Law at Fourah Bay College of the University of Sierra Leone on a date between the 1st of July 2015 and the 31st of January 2016, abused his office to wit: improperly conferred an advantage on JAMILATU ALICIA SESAY, a student of law by improperly inflating her examination grades for the module 'Jurisprudence and Legal Theory'. Clearly, sufficient and reasonable information as to how allegedly, the Appellant improperly used his office was given the same being by improperly inflating the examination grade for JAMILATU ALICIA SESAY, a student of Law.

As regards reasonable information as to the advantage which the Appellant conferred upon himself or some other person by the improper use of his office, Count I state that the Appellant abused his office by improperly conferring an