

Neutral Citation Number HCF/ACD/10/ (2021)

(Anti-Corruption Division)

Case No: HCF/ACD/10/2021

IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN  
ANTI-CORRUPTION DIVISION

Law Court Building  
Siaka Stevens Street  
Freetown

Date: 23 February 2023



Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

The State

v

Saidu Nallo	1 <sup>st</sup> accused
Adikali Foday Suma	2 <sup>nd</sup> accused
Foday Vahfomba Bawoh	3 <sup>rd</sup> accused
Samura Matthew Wilson Kamara	4 <sup>th</sup> accused
Dr Kandeh Foday Basil Kamara	5 <sup>th</sup> accused
Jules Sanders Davis	6 <sup>th</sup> accused

Representation: CT Mantsebo, OV Robin-Mason, EK Amara for the State

MP Fofanh, HM Gevao for the 1<sup>st</sup> accused

I Sorie, B Koroma, JB Sesay for the 2<sup>nd</sup> accused

MP Fofanah, HM Gevao for the 3<sup>rd</sup> accused

FB Kargbo, A Koroma, M Nicol Wilson, I Sorie, B Jalloh, SK Koroma, B Koroma, RA Nylander, IA Kamara, A Showers, M Sesay, Ms A Koroma, , L Dumbuya, for the 4<sup>th</sup> accused.

F Gerber, ET Koroma for the 5<sup>th</sup> accused.

Hearing dates: 6, 12 December 2022

RULING

THE HONOURABLE MR JUSTICE FISHER J

## BEFORE: THE HONOURABLE MR JUSTICE FISHER J

### Introduction

1. This ruling concerns the no case submissions raised by the accused persons at the close of the prosecution's case in this trial. When the matter came up for hearing on the 12<sup>th</sup> December 2023, CT Mantsebo of counsel for the prosecution informed the court that the prosecution wished to close its case but were concerned that there might be a need to reopen the case subsequent to the locus in quo visit which the court was proposing to make to the scene of the chancery building in New York. He therefore considered it prudent to defer the closing of the prosecution's case pending the locus visit.
2. Counsels for the defence were of the view that it was appropriate for the prosecution to close its case to enable them to determine how to put their defence. All counsel were of the view that they would not object should the state decide to reopen its case to deal with any issues arising from the locus visit and to recall any witnesses, if necessary.
3. With these assurances from the defence, Mr CT Mantsebo decided to close the prosecution's case, after an amendment to the indictment was granted. The accused persons, save for the 6<sup>th</sup> accused, subsequently pleaded not guilty to the amended indictment. At this stage of proceedings the prosecution closed its case.
4. When the matter resumed on the 12<sup>th</sup> December 2022, counsels for the accused persons informed the court that they intended to make no case submissions on behalf of the accused persons which would be in writing. Directions were subsequently issued for the no case submission on behalf of the accused to be submitted to the court in writing by the 31<sup>st</sup>

December 2022 and for counsel for the prosecution to file a response by 15th day of January 2023. There was non compliance on all sides with these directions owing to the late submissions in particular with respect to the 5<sup>th</sup> accused, which meant the prosecution could only file a response on the 8<sup>th</sup> February 2023. Notwithstanding, I subsequently received the no case submissions filed on behalf of the accused and the replies there to by the prosecution.

5. On a point of principle and law, it must be pointed out at this stage that this ruling is not intended to nor is it indicative of the guilt or innocence of any of the accused persons. It is merely determinative of the submissions made by the respective counsels as to whether the matters led in evidence by the state are sufficient to amount to a prima facie case against the accused persons, thus requiring them to be put to their election, or whether in the alternative, the prosecution may have failed to establish a prima facie case against them, in which case the no case submissions would succeed. It may well be that at the end of the case after the defence case, the prosecution is unable to discharge the burden of proof.
6. For the purposes this application, these submissions have been assessed to the lower standard of proof which is the sufficiency of evidence test. Contrary to the submissions of defence counsel, the test of beyond a reasonable doubt is only utilised in the determination of guilt or innocence and to that extent I have not utilised that test as it is inapplicable.
7. These submissions are a culmination of a very long trial in which the prosecution led 18 witnesses who were extensively cross examined by

counsel for the accused persons, over a number of weeks, in particular the 1<sup>st</sup> and the 4<sup>th</sup> accused persons, as is their right to do so.

### No Case submissions

8. In criminal cases, whenever an accused raises the issue of a no case submission at the end of the prosecution's case, it is the duty of the trial judge to determine whether to uphold the no case submission or in the alternative whether to dismiss it. The applicable test is that set out by the courts in the case of *R v Galbraith*, [1981] 1WLR 1039 at 1042C

The test set out in Galbraith can be encapsulated as follows:

*"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case.*

*(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.*

*(a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.*

*(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury" (per Lord Lane CJ at p 127).*

9. The *Galbraith* test sets out two separate limbs for the defence to consider when making a submission of no case to answer:

1. Limb 1 - there is no evidence upon which the jury could convict; or

2. Limb 2 - there is some evidence, but it is so poor that it would be unsafe to leave it to the jury.

10. In considering a submission of no case to answer, the judge has a difficult job to do, but will have to bear in mind what was said by the Court of Appeal in *Galbraith*, that where the strength or weakness of the prosecution case 'depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury,' or as in this case the tribunal of fact.

11. Having set out the applicable test and the approach to consideration of a no case submission, I shall now proceed to consider the submissions advanced on behalf of the accused persons starting with the 1<sup>st</sup> accused and the responses thereto.

The 1<sup>st</sup> accused.

12. The 1<sup>st</sup> accused is charged with 30 counts offences contrary to the Anti-Corruption Act 2008, as amended, which can be summarised as follows:

1. *Failure to comply with applicable procedures and guidelines relating to the tendering of contracts, contrary to section 48(2)(b) of the*

Anti-Corruption Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019) in Count 16.

2. *Failure to comply with applicable procedures and guidelines relating to the management of funds*, contrary to section 48(2)(b) of the Anti-Corruption Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019), as contained in Counts 17, 19, 21, 23, 26, 28, 30, 32, 34, 36, 38 and 40.
  3. *Misappropriation of public funds*, contrary to section 36(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019): as contained in Counts 18, 20, 22, 24, 27, 29, 31, 33, 35, 37, 39 and 41.
  4. *Conspiracy to commit a corruption offence*, contrary to section 128 of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of Act No. 9 of 2019): as contained in Counts 25, 42 and 46 accordingly.
  5. *Abuse of office*, contrary to section 42(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019): as contained in Count 43; and
  6. *Deceiving a Principal*, contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019): as contained in Count 44.
13. The prosecution called the Prosecution led a total of 18 (eighteen) witnesses against the Accused. I shall carefully consider the submissions made by Mr MP Fofanah on behalf of the 1st accused on a count-by-count basis.

Count 16

14. With respect to count 16, Mr Fofanah submitted as follows:

1. That, the 1<sup>st</sup> Accused did not "tender or award any contract" at all to Fairfield Construction Associates LLC, inclusive of awarding a contract for additional works to them. The 1<sup>st</sup> Accused met, dealt with and operated within an existing valid contract dated 9<sup>th</sup> December, 2016 which was lawfully executed between the Government of Sierra Leone, represented by the then Sierra Leone's Permanent Mission to the United Nations in New York (as Owner) and Fairfield Construction Associates LLC represented by Mr. Jules Davis as "President and Managing Member" (as Contractor), which was exhibited as Exhibit U. The said contract specifies at Article XVI, para. 16, pages 17-18 how changes can be made to "the basic character, design or scope of the Project" and so forth leading to what it describes as "change orders".
2. That the 1<sup>st</sup> Accused never tendered or awarded any contract for additional works to Fairfield Construction Associates LLC, nor did the latter complain about the 1<sup>st</sup> Accused attempting to do so to it under the existing contract. Besides, the said existing Contract makes provision for "Events of default" in the agreement and for its "Termination or Suspension" by either Party (at Article X, para. 10, pages 11-14).
3. Neither the Prosecution nor the State of Sierra Leone invoked the above clause in pursuit of the purported non-performance or default in the performance of the Contract. The Change Orders were done in 2019, on or about mid-2019, and not the 2018 period referred to in Count 16, and that Fairfield Construction LLC

acknowledged receipt of monies paid out to them on the Change Orders (1 and 2) in the sum of \$542,000 and \$243,555 respectively from the 1<sup>st</sup> Accused as Head of Chancery by letter dated 1<sup>st</sup> July, 2019 - see Exhibit AAY1-4 (Progress Report by Mr. Allan George, at page AAY4).

4. Article XXIII, para. 23.10, at page 23 stipulates that "*This Agreement shall be governed by the laws of the State of New York both as to interpretation and performance and shall be subject to the jurisdiction of the Supreme Court of the State of New York, County of New York*". [Emphasis added]. It is therefore unclear to the 1<sup>st</sup> Accused as to why he is accused of committing an offence in the City of New York, USA under the existing Contract and yet he is being tried extra-territorially in the jurisdiction of Sierra Leone.
5. That the Prosecution has throughout its case consistently failed to state and produce to the Court the "*applicable procedures and guidelines*" that it relies upon in proof of its case. In the absence of such applicable procedures and guidelines, it is submitted that no case has been made against the 1<sup>st</sup> Accused accordingly.
6. That assuming without conceding that there existed any such applicable procedures and guidelines, which the Court and the defence ought to have known, it is submitted further that ample evidence exists to show that the 1<sup>st</sup> Accused and the Chancery Department duly followed all foreign mission procedures in seeking approval for the change orders leading to the construction and addition of the 5<sup>th</sup> and 6<sup>th</sup> floors to the Chancery Building.



7. He relied upon Exhibit AAC1-7, Exhibit AO1-2 and Exhibit AP respectively; with Exhibit AO1-2 being the approval letter for the additional two floors signed by no less a person than PW2, Mr. Paul Bockarie, the State's Principal Works Engineer, on behalf of the then Senior Permanent Secretary in the Ministry of Works and Public Assets. Both PW8, Mr. Richard Williams, the Accountant General, and PW6, Mr. Septimus Johnson, Principal Accountant in the Ministry of Foreign Affairs, explained that 1<sup>st</sup> Accused and his team followed the correct procedures in matters pertaining to the Building Project by seeking information and approval for every segment of the project and reporting on the progress of work as well.

8. That the 1st Accused avers that he fully worked within the full mandate of his job as Head of Chancery, as set out in the letter from PW12, Ambassador Mrs. Florence Bangalie, the then Director General exhibited as Exhibit AAS1-3 and dated 31st July, 2020.

9. In conclusion therefore, he submitted that it cannot be said that the 1st Accused wilfully or negligently failed to comply with applicable procedures and guidelines in the performance of his job and duties. Count 16 as charged ought to be therefore dismissed.

Counts 17, 19, 21, 23, 26, 28, 30, 32, 34, 36, 38 and 40.

15. With respect to these counts, the 1st accused is charged with failing to comply with applicable procedures and guidelines relating to the management of funds, contrary to section 48(2)(b) of the Anti-Corruption

Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019).

16. The central piece of Mr Fofanah's arguments with respect to these counts is based on the argument that neither Fairfield Construction Associates LLC nor its President and Managing Member, Mr. Jules Sanders Davis, ever at any point in time complained of mismanagement of funds or portions of funds due and owing to them, which, he averred, would have triggered investigations into whether procedures and/or guidelines were followed in withholding such funds.

17. He argued that Fairfield Construction Associates LLC, as "Contractors" under the Chancery Building Contract, acknowledged as late as 21<sup>st</sup> April, 2021 (not long before the trial of this matter) to no less a person than PW18, Ambassador Dr. Alie Kabba himself, in Exhibit AN1-2 to have received well over USD \$4 Million (US \$4,000,000.00) out of the contract sum of USD \$5,295,555.00. The said Exhibit stated the "invoiced" sum as USD \$4,669,549.45, following "verified audit"; and that the "balance owing to FCA" as at 21<sup>st</sup> April, 2021 to be USD \$626,005.00. Exhibit AN1-2 above (a letter from Fairfield LLC aka FCA) was signed and endorsed by Mr. Jules S. Davis as "President".

18. He argued that Fairfield and Mr Jules S Davis's only complaint was against the state for failing to fund completion of the building in a timely manner and rushing to criminally indict them for doing far more than was expected of them. He further reiterated that the prosecution had failed to state and produce to the court the "applicable procedures and guidelines it relies upon to prove its case. He relied upon Article XXIII, para. 23.10, at page 23 of the Contract stipulates that "[The Chancery

*Building Agreement] shall be governed by the laws of the State of New York both as to interpretation and performance and shall be subject to the jurisdiction of the Supreme Court of the State of New York, County of New York". [Emphasis added].*

19. It is significant to note that the 1<sup>st</sup> accused supported by the 3<sup>rd</sup> and 5<sup>th</sup> Accused persons, at all material times kept the line Ministry (Foreign Affairs and International Cooperation) fully informed about the activities, programs and projects in New York during the period under review, inclusive of the management of all funds meant for the reconstruction works at the Chancery Building. See Exhibit AAW1-5 (Report to Capital dated 19<sup>th</sup> February, 2019); Exhibit AAX1-12 (Report to Capital dated 29<sup>th</sup> April, 2019); Exhibit AAY1-4 (Report to Capital dated 11<sup>th</sup> July, 2019); Exhibit AAA1-3 (Report to Capital dated 20<sup>th</sup> August, 2020); and Exhibit AAZ1-7 (Report to Capital dated 29<sup>th</sup> April, 2019).

20. He therefore relied upon excerpts of minutes of meetings held on the 22<sup>nd</sup> May, 2020 (Exhibit AAM1-5) at AAM3, Excerpts of Minutes of Meeting held on 1<sup>st</sup> June, 2020 (Exhibit AAN1-2 at pages 1-2),

21. He argued that since June 2020 or thereabout to date, the evidence available to the Court is that the necessary outstanding funds required for Fairfield LLC to complete the Chancery Building in New York so that it can be opened for official use has not been made available to the company, in spite of the said Company's out of pocket expenses. Besides, according to Exhibit AAZ3-6 attached to AAZ1-2, Fairfield LLC had, on the 2<sup>nd</sup> March, 2020 shortly before the above meetings were held, given a comprehensive summary of work on the "Chancery Project", from its

inception in December, 2016 to the 2<sup>nd</sup> March, 2020. The Company also projected what would be done in April and May, 2020 if the required outstanding budgeted funds were available to them to finish the said Project.

22. Further, two Technical Reports on the Chancery Building Project submitted by PW2, Mr. Paul Bockarie, namely Exhibit AK1-46 (the first Technical Report submitted in October, 2019) and Exhibit AK1-46 (the second Technical Report submitted in August, 2021), contained facts, which showed much progress in the rehabilitation work done by the Contractor, even against the myriad funding delays and challenges it periodically faced at the hands of the State, as well as the huge unbudgeted extra costs the Contractor incurred in the demolition exercise, hiring and replacing unpaid staff, insurance matters, and the unforeseen Covid-19 challenges and incidental stop work orders issued by the New York Building Department in respect of the rehabilitation works.

23. He relied upon excerpts from excerpts from Exhibit AK1-46 (first Technical Report done in October, 2019) and excerpts from the second (second Technical Report of 4<sup>th</sup> August, 2021):

24. He argued that none of the sums of money listed out in the Count charges under this rubric could be attributed to wilful or negligent failure on the part of the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Accused to follow applicable procedures and guidelines known to the Accused. All monies disbursed to Fairfield LLC in the existing reconstruction contract were done in accordance with the said Contract, and that the said Company fully acknowledged receipt of same and expended the monies received in the manner specified, incurring

extra and additional costs for unbudgeted and unforeseen situations as well.

Counts 18, 20, 22, 24, 27, 29, 31, 33, 35, 37, 39 and 41:  
Misappropriation of public funds, contrary to section 36(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019)

25. He argued that Counts 18, 20, 22, 24, 27, 29, 31, 33, 35, 37, 39 and 41, are, in view of the evidence led in Court against the 1<sup>st</sup> accused and the analysis already proffered in respect of the previous offences of "failure to comply with applicable procedures and guidelines", most inappropriate.

26. The sum of USD \$4,669,549.45 was acknowledged by Mr. Jules S. Davis (President) as received by Fairfield Construction Associates LLC. In fact, Mr. Davis stated in his acknowledgment letter of 21<sup>st</sup> April, 2021 that he was *"looking forward to working with [Ambassador Alie Kabba as Permanent Representative] and bringing the Chancery project to a conclusion which all parties involved can be proud of"*. Similarly, Mr. Jules S. Davis' Witness Statement tendered as Exhibit F1-36 is replete with admissions by him of receiving the monies meant for the Chancery Project for and on behalf of his Company, Fairfield LLC.

27. He therefore submitted that both the *actus reus* of "appropriation" of the monies cited in the referenced Count charges above, and the *mens rea* of "dishonestly appropriating" same are entirely lacking in the sense that no evidence was led to show that the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Accused took or received the said sums of monies themselves and misappropriated them for themselves to the exclusion of the State of Sierra Leone. Counts 18,

20, 22, 24, 27, 29, 31, 33, 35, 37, 39 and 41 should accordingly be dismissed in their entirety.

Counts 25, 42 and 46: Conspiracy to commit a corruption offence, contrary to section 128 of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of Act No. 9 of 2019):

28. With respect to these counts, he argues that the prosecution has not produced to the Court any such applicable procedures and guidelines, so that it can determine or measure the level and extent of compliance with the said applicable procedures and guidelines. No witness of fact stated or specified the details that entail in them, if any; nor was any expert called to speak to the applicable procedures and guidelines that constitute the corruption offence.

29. Further, he argued no evidence was led whatsoever to indicate or suggest that the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Accused persons were in respective conspiracies with the 1<sup>st</sup> Accused. All the relevant and necessary procedures in managing the funds for the Chancery Building Project and the Project itself were followed; and no one was queried, suspended or dismissed for failing to comply. The 6<sup>th</sup> Accused, Mr. Jules S. Davis, was also not involved in tendering contracts with the 1<sup>st</sup> Accused, considering that the Change Orders were not separate contracts in themselves but were part and parcel of and were integral to the main Chancery Building Contract. This is why PW9, Ambassador Francis Kaikai, sourced for the additional funding from China, a willing donor, so that more floors can be added to the initial 4 storied house. The evidence led inter alia by PW6, PW8, PW9, PW12 and PW 14 indicates that every step was followed through and

approved by Capital, with regular reports being sent as well to Capital to keep the State fully updated and informed about the Project.

30. He argued that Counts 25, 42 and 46 should fail accordingly, on the basis that said Count charges were glaringly left to hang in thin, unsupportive air as their purported principal offences generated by the Prosecution for the Count charges to hang on became, in fact, nowhere to be found. The defence waited to identify the applicable procedures and guidelines but found none; whilst the onus rested on the Prosecution to produce them.

**Count 43: Abuse of office, contrary to section 42(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019):**

31. With respect to this count, he argues that it is central to the prosecution's case that the accused abused his office by improperly conferring an advantage on the 6<sup>th</sup> accused, Mr. Jules Sanders Davis (President of Fairfield Construction Associates LLC); even though the advantage is not specifically stated therein or identified. The 1<sup>st</sup> accused will therefore rely on and adopt the arguments and submissions in respect of the previous Counts above, and wholly denies the particulars set out in the charge. Apart from the fact that no evidence was led by the Prosecution to substantiate the allegation of abuse of office, it is submitted, on the contrary, that it was the 1<sup>st</sup> Accused that in fact used his office to not only work hard and ensure the success of the Chancery Building Project in New York, but stepped in at appropriate points in time to prevail on the Contractors to reduce costs and downsize their budgets, even at the Contractors' constraint, in order to meet the meagre resources available to complete the Project then. Both PW9 and PW12 who were senior career officials in the Foreign Affairs Ministry and at

Chancery in New York alluded to the hard work, enthusiasm and integrity of the 1<sup>st</sup> Accused. This Count (Count 43) should therefore be dismissed as unsubstantiated and unmeritorious as there is absolutely no evidence that the 1<sup>st</sup> Accused ever tried to unlawfully confer an advantage on Mr. Jules Davis and/or on Fairfield LLC Company.

**Count 44: Deceiving a Principal, contrary to section 40(3) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019):**

32. With respect to this count, he argued that the prosecution's case rests on the allegation that the 1<sup>st</sup> Accused deceived his principal, the Ministry of Foreign Affairs and International Cooperation, by giving to the said principal requisition documents which he knew contained misleading information. He argued that the prosecution produced no document that was to the detriment of the State, as the principal, which the 1<sup>st</sup> Accused is said to have intended to use to deceive the State (i.e. via the Ministry of Foreign Affairs). The arguments and submissions thus far made by the 1<sup>st</sup> Accused is to the effect that the State suffered nothing, and instead in fact contributed to the delay in completing the Chancery Building by not paying the outstanding sums of money needed to finish the Project. Both the 1<sup>st</sup> Accused and the Contractor nevertheless did all that they could to sustain the reconstruction works and keep the Project afloat, even to their own detriment - inclusive of being suspended from work (in the case of the 1<sup>st</sup> Accused) and going through this unmeritorious trial as well.

33. In conclusion he submits that the Prosecution has: 1) failed to prove the essential elements in the alleged offences preferred against him; and 2) that the above analysis illustrate that the evidence led by the



Prosecution has been so discredited and is manifestly unreliable that no reasonable tribunal of fact and law (in this case the Trial Judge sitting as Judge and Jury) could safely convict on it. The 1<sup>st</sup> Accused should therefore be accordingly discharged.

The prosecution's response.

34. Mr Mantsebo for the prosecution argued that the 1<sup>st</sup> accused has misconceived the applicable test to be applied to the submissions of no case. He argued that with respect to the charges of failure to comply with applicable procedures and guidelines relating to the tendering of contracts, the gravamen of the charge is that the very contract that was used to facilitate the renovation of the Chancery Building was not tendered in accordance with the said procedures and guidelines.

35. He argued that the relevant legislation are the Public Procurement Act, No. 1 of 2016 and the Regulations on Public Procurement, First Edition, 2006. This court should determine whether the necessary evidence has been led in support of the averments in Count 16, relating specifically to the first accused's failure to comply with applicable procedures and guidelines relating to the tendering of contracts.

36. He argued that the evidence establishes that the 1<sup>st</sup> accused participated in the process relating to the eventual award of the contract to Fairfield Construction Associates, LLC. He referred to Exhibit AAH 1-2 are Minutes of a meeting held by what was termed therein as The Extraordinary Building Renovation and Awards of Contract Committee whose members, among others, included the First Accused. That meeting was held on the 19<sup>th</sup> July 2011, slightly six years prior to the signing of

the contract, Exhibit U 1-26. It is clear from the Minutes of that meeting that the First Accused would have been apprised of the procedures that had to be followed with regard to the procurement of any construction services, as well as the awarding of contracts. There was specific reference to the Procurement Act 2016 as well as to the Financial Management Regulations 2006 that would govern the administration of public funds.

37. In Exhibit A 1-99 at pages 14 and 15, which is the First Accused's statement to the Anti-Corruption Commission, he sought to deny his knowledge of the procurement method that was used to obtain the construction services for the renovation of the Chancery. His responses to the questions put to him at Q12 and 13 are important.

38. Exhibit AA1 1-2 are minutes of the same Committee in respect of a meeting held on the 17<sup>th</sup> August 2011. It is submitted that from those minutes, every member of that Committee, including the First Accused, was already aware of the identity of the contractor who would eventually attend to the renovations. He also referred to the response given by the 1<sup>st</sup> accused at paragraph 4 of the said minutes.

39. He submits that the 1<sup>st</sup> accused cannot claim he was not involved in the tendering of contracts. Almost one year before the signing of the contract, the First Accused was already in correspondence with the Sixth Accused and held meetings with him in connection with the details of the contract that was yet to be awarded to the latter. Exhibit AC2 1-2 captures details of the discussion that were held between the two, well before the signing of the contract. On the 4<sup>th</sup> January 2016 the Sixth Accused, in his capacity as the President of Fairfield Construction

Associates LLC wrote to the First Accused as Counselor detailing the work that needed to be done, the options available and the respective costs of those options. The contractor had already been identified before any of the procedures and processes that are set out in The Public Procurement Act, 2016 and the Regulations on Public Procurement, First Edition, 2006.

40. He argues that the original contract was not undertaken in compliance with procedures and guidelines relating to the tendering of contracts. As if this infraction was not sufficient, the major additions to the scope of the works were made without any pretence of following the related procedures, guidelines, and regulations. As HOC, the First Accused was at the forefront of all the arrangements that were made in relation to the financing and commencement of works under the change orders. In Exhibit A1-99 at pages 17 to 27, the First Accused explains in great detail what was done under the Change Order 3. The procedures and guidelines set out in Section B, Clause 144 to Clause 146 (which were known by the First Accused) were totally ignored.
41. There are two issues he relied upon. Firstly, the cost of putting up the additional two floors was set and agreed with the contractor at USD1,950,000.00 (one million and nine hundred and fifty thousand United States Dollars). This much is clear from the First Accused's statement to the Anti-Corruption Commission, Exhibit A1-99, p18.
42. Secondly, Exhibit W1-22, at pp.12-13 sets out the three Change Orders that were undertaken without following the relevant guidelines and procedures. Given that Change Order 3 should have been the subject of a new contractual agreement, requiring the approval of Cabinet, none of the

processes set out in Clauses 144 and 145 of the Public Procurement Regulations, 2006 were followed. It is clear from the fact that First Accused notified the Ministry of Foreign Affairs and International Cooperation that he was fully aware of the correct procedures that should have been followed. Additionally, in Exhibit AAR1-4, Alie Kabba, and PW18 enumerates the three amounts that were paid under the guise of change orders, Change Order 3 being a clear variation of the original contract. There ought to have been Cabinet approval, given the amount that was expended on it. Needless to state, hardly any work appears to have been done with the USD1, 950,000.00. Alie Kabba summarizes the position that obtained after the Government of Sierra Leone had already expended the sum of USD4,569,737.00 on the project.

43. He relied on the statement of PW18 who made the following remarks in exhibit AAR1-4:

*"We are sadly in a state where about 90% of the Total Contract Price has been paid to the Contractor, and the Contractor admitting to not having the funds to take the project to Substantial Completion. At present, there is an open roof, no work done to add 5<sup>th</sup> and 6<sup>th</sup> floors, and substantial remediation work to be carried out in floors 1 to 4 owing to damage caused due to exposure to inclement weather.*

44. The submissions of the 1<sup>st</sup> accused ought not to be countenanced.

**Counts 17,19,21,23,26,28,30,32,34,36,38 and 40: Failure to comply with applicable procedures and guidelines relating to the management of funds, contrary to Section 48 (2) (b) of the Anti-Corruption Act, No12 of 2008 ( as amended).**

45. With respect to these counts, the prosecution submitted in response to the no case submission that the 1<sup>st</sup> accused being the vote controller was principally responsible for the management of the public funds that had been donated to the Government of Sierra Leone for the renovation and rehabilitation of the Chancery Building. He further argued that the First Accused failed to comply with the terms of the contract entered into with Fairfield Construction and Associates LLC. The procedure for payments under the contract stipulated that payment was to be made in terms of Article VII of the Agreement. The participation and certification of the Architect was a prerequisite to any such payment to be made.

46. In exhibit A1-99, the 1<sup>st</sup> accused was questioned about the involvement of the Architect in the approval of payments to the contractor and he could not produce even one document that showed the involvement of the Architect. He relied upon the following passages in exhibit A1-99.

"..Q37. Did you follow the provisions of Article 7 in making payments to the contractor Fairfield Construction Associates LLC?

Ans Yes, I largely followed the procedure in a very constrained manner..."

47. He referenced Exhibit A1-99 in particular pages 37-99 in which the 1<sup>st</sup> accused is alleged to have authorised as vote controller, various payments of government funds, without following any established procedure, let alone the procedures and guidelines relating to the management of public funds.

48. It is noteworthy to mention that Mr Mantsebo referred to the statement of PW18 in his statement to the police in which he observed that there

was a failure to follow applicable procedures, particularly with regard to the USD1,950,000.00 paid to the contractor for the Fifth and Sixth Floors. There was no Cabinet Approval for this substantial additional work which was procured without following applicable procedures and guidelines. He also makes reference to the amount of USD202, 682.00 that was glaring paid to the contractor without any authorization and which had no documentation through which it could be verified.

49. He submits that there is sufficient evidence, even at this stage of proceedings, to prove that the First Accused failed to follow applicable procedures and guidelines relating to the management of public funds. His application in this regard, as with the rest of his submissions ought to fail.

**COUNTS 18,20,22,24, 27, 29, 31, 33, 35, 37, 39 and 41-  
Misappropriation of public funds contrary to Section 36 (1) of Act No. 12  
of 2008 (as amended)**

50. With respect to these counts, Mr Mantsebo reiterated the law on misappropriation of public funds contrary to section 36(1) of the Anti-Corruption Act 2008 (as amended). The essential submission by counsel was that the elements of the *actus reus* are deliberately widened to include acts committed with or through another person. Further, the gravamen of the offence is the...deprivation of any revenue, funds or other financial interest or property.

51. He urged the court to have regard to the fact that that no element of "dishonesty" is required to be proved by the prosecution. In essence he argues that the prosecution has appealed to the Court of Appeal against

the decision of the High Court in the case of Isha Johansen and Another MISC. APP 4/2019. It was therefore unsafe to rely on that and similar cases as authorities for the proposition that dishonesty is a required element in the offence created under Section 36 (1) of the Anti-Corruption Act, No. 12 of 2008 (as amended).

COUNTS 25, 42 and 46-Conspiracy to commit a corruption offence, contrary to Section 128 of the Anti-Corruption Act, No 12 of 2008 (as amended)

52. With respect to these counts, the prosecution submits that that once evidence has been led in proof of any offence for which a conspiracy is alleged, such evidence will also be taken into account in proof of the alleged conspiracy. It is therefore proper for this Honorable Court to take into account the evidence led against each of the conspirators to prove the existence of a conspiracy, where such evidence is relevant.

53. He argued that there was no doubt whatsoever that the Accused persons alleged to have committed offences in their individual capacities in procuring construction services without following applicable procedures and failing to comply with applicable procedures and guidelines, which offences were in furtherance of the joint enterprise, acted in conspiracy. The 1<sup>st</sup> Accused's argument as contained in paragraph 44 of his submissions cannot be sustained for reasons already canvassed in the prosecution's response.

**COUNT 43-ABUSE OF OFFICE, contrary to Section 42 (1) of the Anti-Corruption Act, No 12 of 2008 (as amended)**

54. With respect to this count, the prosecution relied upon the evidence of PW18 who stated that the so-called Change Order 3, cost the Government of Sierra Leone the sum of USD1, 950,000.00. It is the prosecution's case that an advantage was improperly conferred on the 6th Accused, who has had his company graphically described as a One-Man outfit by PW18. There is absolutely no doubt that the 6th Accused did obtain an advantage through the medium of his company, he argued.

55. Evidence was led by the prosecution to indicate that the agreed cost of adding the Fifth and Sixth Floors was the sum of USD1, 950,000.00. There is nothing tenuous about the evidence that the Prosecution has led in this respect. The submission in respect of Count 43, he submitted, must fail.

**COUNT 44-DECEIVING A PRINCIPAL, contrary to Section 40 (3) of the Anti-Corruption Act, No.12 of 2008 (as amended)**

56. With respect to this count Mr Mantsebo relies upon the documents proffered in evidence that contained misleading information. Under Article V11 of the Contract Agreement, one of the primary requirements that had to be in place was the certification by the Architect. This was a prerequisite to any payments that were to be made by the First Accused's principal, the Ministry of Foreign Affairs and International Cooperation.

57. He referred the court to requisitions contained in Exhibits A1-7, AF1-10, AG 1-8, H1-25, J1-19, KI-18, LI-31, M1-18 and N1-29 shows that all of these requisitions did not contain a certification by an Architect, although there was a cursory mention of certain names as Architects. The



1<sup>st</sup> Accused was fully aware that it was a requirement in terms of the contract but nonetheless forwarded these documents to the Ministry, thereby misleading his principal that all the documents submitted contained all the required information. More importantly, the mention of an Architect's name was intended to mislead the principal that there had been some involvement by an Architect in confirming the work done.

58. He argued there was no merit in the no case submission made by the 1<sup>st</sup> accused.

Analysis and conclusions on the no case submission.

59. I have carefully considered the no case submission on a count-by-count basis as submitted by the 1<sup>st</sup> accused. I have done so in line with the applicable principles in *Galbraith* [1981] 2 ALL ER 1060. I am required to firstly consider whether there is any evidence led by the prosecution that shows that the crime alleged has been committed by the accused. That test requires an analysis of the evidence led by the prosecution and consideration of the elements of the offence in a bid to determine whether an offence known to law is committed.

60. Having considered the totality of the evidence adduced by the prosecution in this case against the 1<sup>st</sup> accused, which includes the evidence in chief, cross examination and the exhibits tendered in this court, I cannot at this stage of the trial come to the conclusion that in accordance with the *Galbraith* test, there is no evidence upon which the court can conclude that an offence is disclosed as charged or the crime alleged in the indictments has been committed by the 1<sup>st</sup> accused.

61. Further, I cannot also at this stage of proceedings conclude that the prosecution's evidence, taken at its highest, is such that a jury (or in this case where I sit alone as the trier of fact and law) and properly directing myself as to the law and the facts could not properly convict upon it. I have however concluded that having reviewed the prosecution's case and the submissions made, the prosecution evidence is such that its strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking within the province of the jury (or tribunal of fact) and where on one possible view of the facts there is evidence upon which I could properly come to the conclusion that the 1<sup>st</sup> accused is guilty of one or all of the offences charged, I am duty bound to allow the case to proceed to be tried on the evidence, thereby requiring the 1<sup>st</sup> accused to put a defence to the charges he faces. I have concluded that in accordance with the decision in *Goddard* 2012 EWCA Crim 1756, taking the prosecution's case at its highest, and having properly directed myself as to the relevant law, where I could be entitled on one view of the evidence to reach an adverse inference on the evidence, I am not entitled to stop the case at this point but to require the 1<sup>st</sup> accused to put a defence in answer to the charges.

62. In the circumstances the no case submission by the 1<sup>st</sup> accused is overruled and he is required to be put to his election in a bid to put his defences to the charges he faces.

#### 2<sup>nd</sup> Accused

63. With respect to the 2<sup>nd</sup> accused, counsel for the 2<sup>nd</sup> accused submitted that he is charged with four counts offences on the amended indictment. Counsel for the 2<sup>nd</sup> accused submitted that he was appointed on the 6<sup>th</sup>

June 2016 as Ambassador Extraordinary and permanent representative to the United Nations in New York. He however assumed duties on the 6<sup>th</sup> September 2016 and presented his letters of credence to the UN Secretary General on the 9<sup>th</sup> September 2016.

64.Counsel argued that the 2<sup>nd</sup> accused did not participate in any of the contract procurement processes including the award of contract to the contractors Fairfield Construction Associates. All of the respective processes were carried out while he was at the material time serving as the Ambassador of the Republic of Sierra Leone to the republic of Guinea with accreditation to Guinea Bissau, Cape Verde Verde, Mali and Niger with residence in Conakry.

65.Counsel argued that but for the erstwhile DG's memo of the 6<sup>th</sup> December 2016 as shown in exhibit AQ1-4, the 2<sup>nd</sup> accused will not have signed the contract by reason of the fact that as political head of the mission, he was neither a member of the procurement committee or unit of the Ministry of Foreign Affairs nor a member of the procurement committee or unit of the Sierra Leone permanent Mission for the purpose of section 18 and 19 of the Public Procurement ACT 2016.

66.Counsel argued that the action of the 2<sup>nd</sup> accused was not wilful or negligent. With respect to the memo, counsel argued that the 2<sup>nd</sup> accused was not accorded a supervisory role in the contract implementation or control over the rehabilitation of the chancery building funds. The funds were disbursed and regulated from headquarters at the Ministry of Foreign Affairs. Counsel referenced the said memo which provided for payments with respect to the rehabilitation work to be approved by the

ministry before payment is made to the contractor for each phase of the work.

67. He suggested that the 2<sup>nd</sup> accused was manifestly and wittingly placed under a duty to comply with the instructions without delay. His role was ceremonial in nature. But for the erstwhile DG's memo, dated 6<sup>th</sup> December 2016, he argued that the 2<sup>nd</sup> accused will not have signed the contract by reason of the fact that as political head he was not a member of the procurement committee. The emphasis on the phrase "without delay", suggests that the 2<sup>nd</sup> accused was not allowed to do anything contrary to or outside the provisions of the said memo. The 2<sup>nd</sup> accused he argued acted in good faith and the prosecution has not shown evidence to prove their case.

68. Counsel further argued that the 2<sup>nd</sup> accused has no premeditation to commit the offences charged on counts 1,2,12 and 45 of the indictment. With respect to count 1, they argue that the prosecution has not adduced evidence to prove that the 2<sup>nd</sup> accused was in charge of managing the funds for the renovation of the chancery building, disbursement of funds, or a member of the procurement committee or unit of the ministry of foreign affairs. The procurement was done even before the 2<sup>nd</sup> accused was appointed.

69. With respect to count 2, counsel relied upon the submissions made with respect to count 1. With respect to count 12, they argued that no evidence was adduced that the 2<sup>nd</sup> accused signing of the contract had improperly conferred an advantage on the 6<sup>th</sup> accused Jukes Sanders Davis. With respect to count 45 which charges the offence of conspiracy, the defence submit that the prosecution has not shown evidence of an

agreement between the 2<sup>nd</sup> accused and the 6<sup>th</sup> accused and significantly the 2<sup>nd</sup> accused did not participate in any procurement process.

70. Counsel further argued that the evidence of witnesses contained inconsistencies.

#### Prosecution's response

71. The prosecution responded by stating that On Friday the 4<sup>th</sup> day of January 2023, Counsel served a No Case Submission on the Prosecution for and on behalf of the 2<sup>nd</sup> Accused. The 2<sup>nd</sup> Accused has been charged with the following offences:

1. One (1) Count of Failure to Comply with Applicable Procedures and Guidelines relating to Procurement, contrary to Section 48(2)(b) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019;
2. One (1) Count of Failure to Comply with Applicable Procedures and Guidelines relating to the Tendering of Contracts, contrary to Section 48(2)(b) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019;
3. One (1) Count of Abuse of Office, contrary to Section 42(1) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019; and
4. One (1) Count of Conspiracy to commit a Corruption Offence, contrary to Section 128 of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019

72. Counsel argued that Counsel for the 2<sup>nd</sup> Accused, Adikalie Foday Sumah, appears to have miscomprehended the nature of a No-Case Submission. More importantly, there seems to be considerable confusion with regard to the law to be applied, with respect to the following offences as charged.

**Failure to Comply with Applicable Procedures and Guidelines Relating to Procurement contrary to Section 48(2)(b) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

73. Counsel argued that Contrary to the submission of Defence Counsel in the 1<sup>st</sup> paragraph on page 8, of its No-Case Submission that the Prosecution has *"failed to adduce evidence of probative value to prove its case..."*. Defence Counsel for the 2<sup>nd</sup> Accused failed to take into consideration *Exhibit "B1-52"* the interview statement of the 2<sup>nd</sup> Accused in his Answer to Question 8 at page 11 through 12 where the 2<sup>nd</sup> Accused states *"it is not my duty as Ambassador to do due diligence as provided in paragraph numbered 1 in memo dated 6<sup>th</sup> December 2016..my duty is to sign the approved standard contract...it is for the HOC...Principal Adviser to the Ambassador to do the due diligence..."*.

74. Failure to comply it is submitted must be a wilful omission. According to the natural meaning of the language used, negligence is sufficient. It is submitted that negligence in this context, is failing to exercise such care or prudence that a reasonably diligent person in the 2<sup>nd</sup> Accused's position would have exercised. The Prosecution hereby submitted that the 2<sup>nd</sup> Accused had a legal duty or responsibility to ensure compliance and exercise reasonable care. In inserting the alternatives "willfully or

negligently fails..." in Section 48(2)(b), the legislature seems to have intended that negligence would suffice in some circumstances.

75. The prosecution relied upon the suggestion that the 2<sup>nd</sup> Accused, deliberately ignored instructions stipulated in a memo dated 6<sup>th</sup> December 2016, Exhibit "AQ1-4", by failing to confirm with the Head of Chancery whether the pre-condition that the Contractor, Fairfield Construction Associates LLC provide "(i) a valid Business Licence/Business Registration Certificate (ii) A valid tax clearance and (iii) Record of audited accounts for the last two years". According to the 2<sup>nd</sup> Accused in Answer to Question 9 of his interview at page 15 of Exhibit "B1-52" he states "it is not a pre-condition for me to see or site the document referred to under the question before signing the contract agreement ...my duty as stated earlier was to sign the approved standard contract...". It is the submission of the prosecution that it is but prudent for 2<sup>nd</sup> Accused to have exercised due diligence before signing the said Construction Contract, Exhibit "U1-26".

**Failure to Comply with Applicable Procedures and Guidelines Relating to the Tendering of Contracts contrary to Section 48(2)(b) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

76. Counsel for the prosecution submitted that Contrary to the defence Counsel for the 2<sup>nd</sup> Accused's submission in the 2<sup>nd</sup> paragraph on page 15, of its No-Case Submission, commencing ("*In particular, we submit, the following chronology of events...*", followed by bullet points "(a) *In April 2016: Cabinet approved the Contract*".) The Prosecution submits that the Cabinet "Minute Paper", Exhibit "AD1-2" does not reflect when Cabinet approved the Contract. Rather on page 2 of Exhibit "AD1-2" under the

**caption "CABINET DECISION" reads *"Cabinet agreed that the Minister of Foreign Affairs and International Cooperation should hold consultations with the Minister of Finance and Economic Development on the funds required for the construction/rehabilitation works"*.**

77. It is the submission of the prosecution that the Procurement was still in process by April 2016 at the time the Memo, Exhibit "AD1-2" was sent, and that discussions were still on-going with regards the nature, format and Contract type when the 2nd Accused assumed duty in September 2016 as Ambassador and Permanent Representative of Sierra Leone to the UN in New York.

**Abuse of Office contrary to Section 42(1) of the Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

78. With respect to this offence, the Prosecution also submits that in further proof of the offences alleged under this section, it must prove that the 2<sup>nd</sup> Accused was acting in the course of his employment as a public officer, when he facilitated payments to the Contractor through its President, the 6<sup>th</sup> Accused, Jules Sanders Davis thereby improperly conferring an advantage.

**Conspiracy to commit a Corruption Offence contrary to Section 128(1) of the ACA 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

79. With respect to this count, the prosecution submits that in this matter, the prosecution has led evidence that the wilful act of the 2<sup>nd</sup> Accused not only caused, but also deprived, the State of public funds.



80. The prosecution referred to the statements of the 2<sup>nd</sup> accused under caution. Exhibit "B1-52" is the interview statement of the 2<sup>nd</sup> Accused, Adikali Foday Bawoh. The 2<sup>nd</sup> Accused's interview statement is part of the Prosecution case, wherein issues were raised that require explanations from the 2<sup>nd</sup> Accused. Counsel argued that it would therefore be premature to decisively determine at this juncture that the essential elements for the offence of Failing to Comply with Applicable Procedures and Guidelines relating to the Procurement; Failing to Comply with Applicable Procedures and Guidelines relating to the Tendering of Contracts; Abuse of Office; and Conspiracy to commit a Corruption Offence have not been proved when it is clear from the 2<sup>nd</sup> Accused's own statements that he was the Ambassador and Permanent Representative at The Permanent Mission of The Republic of Sierra Leone to The United Nations between June 2016 and July 2018; It was during his tenure he signed the Construction Contract Exhibit "U1-26" for and on behalf of the Government of Sierra Leone; and that he signed the Construction Contract without confirming that the pre-condition as provided for in bullet point 1 on page 2 of the Memo Exhibit AQ1-4 *"Request the Contractor, Fairfield Construction Associates LLC to provide (i) A valid Business Licence/Business Registration Certificate (ii) A valid tax clearance and (iii) Record of audited accounts for the last two years."*

81. Counsel argued that evidence abounds that the 2<sup>nd</sup> Accused through his act and omission failed to comply with procedures and guidelines relating to procurement by signing the Construction Contract Exhibit "U1-26" knowing that the necessary pre-requisite as detailed in Exhibit AQ1-4 page 2 at bullet point 1 for signing the said Construction Contract had not been complied with. Evidence abounds that the 2<sup>nd</sup> Accused through his

act and omission committed an offence of abuse of office by improperly conferring an advantage on the 6<sup>th</sup> Accused, Jules Sanders Davis by signing the Construction Contract Exhibit "U1-26" knowing that the necessary pre-requisite as detailed in Exhibit AQ1-4 page 2 at bullet point 1 for signing the said Construction Contract had not been complied with.

82. Evidence abounds that the 2<sup>nd</sup> Accused through his act and omission conspired with the 6<sup>th</sup> Accused to commit a corruption offence by signing the Construction Contract Exhibit "U1-26" knowing that the necessary pre-requisite as detailed in Exhibit AQ1-4 page 2 at bullet point 1 for signing the said Construction Contract had not been complied with.

83. The 2<sup>nd</sup> Accused in his interview with the Anti-Corruption Commission marked as Exhibit B1-52 asserted at page 11 of the said Exhibit in response to Question 8 that "it is not my duty as Ambassador to do due diligence as provided in paragraph number 1 in memo dated 6<sup>th</sup> December 2016 (Exhibit AQ1-4). My duty is to sign the approved standard contract on behalf of the Government of Sierra Leone..."

84. The 2<sup>nd</sup> Accused in his interviews with the Anti-Corruption Commission marked as Exhibit B1-52 at page 40, Question 33, when asked if he knew of the pre-condition to signing the contract replied "It was a pre-condition for the contract between Fairfield Construction Associates LLC for the HOC to comply with the pre-conditions before signing the contract agreement..."

85. The prosecution submitted that the 2<sup>nd</sup> Accused who was the Ambassador and Permanent Representative to the Permanent Mission of the Republic of Sierra Leone to the United Nations between June 2016 and July 2018

failed to verify a very important pre-condition detailed in Exhibit "AQ1-4" before signing the Construction Contract, Exhibit "U1-26", a fact the Defence does not challenge. It is the Prosecution's submission further that his failure as Ambassador and Permanent Representative to exercise due diligence in the performance of his responsibility to verify a very important pre-condition detailed in Exhibit "AQ1-4" before signing the Construction Contract, Exhibit "U1-26" is a cogent and compelling evidence of Failure to Comply with Applicable Procedures and Guidelines relating to Procurement; Failing to Comply with Applicable Procedures and Guidelines relating to the Tendering of Contracts; Abuse of Office; and Conspiracy to commit a Corruption Offence.

86. Counsel argued that this is not a shifting of the legal burden to the 2<sup>nd</sup> Accused but a factual inference of common sense that in the absence of evidence of a satisfactory explanation, this Court can draw from the evidence. Thus, if the Prosecution as in this case proves that the 2<sup>nd</sup> Accused failed to exercise due diligence before signing the Construction Contract Exhibit "U1-26" it may be said that the 2<sup>nd</sup> Accused has the evidential burden to raise or show evidence of an explanation negating the inference of Failing to Comply with Applicable Procedures and Guidelines relating to the Procurement; Failing to Comply with Applicable Procedures and Guidelines relating to the Tendering of Contracts; Abuse of Office; and Conspiracy to commit a Corruption Offence. This Honourable Court is safe to draw the inference of Failing to Comply with Applicable Procedures and Guidelines relating to the Procurement; Failing to Comply with Applicable Procedures and Guidelines relating to the Tendering of Contracts; Abuse of Office; and Conspiracy to commit a Corruption Offence.

87. He further submitted that the absence of a reasonable explanation by the 2<sup>nd</sup> Accused to the charges within the indictment does present not only a prima facie case against the 2<sup>nd</sup> Accused but also adduces strong evidence of the charges as alleged. The Prosecution further states that in fact, evidence abounds that the 2<sup>nd</sup> Accused failed to verify a very important pre-condition detailed in Exhibit "AQ1-4" before signing the Construction Contract, Exhibit "U1-26" in the absence of which the Construction Contract should not have been signed.

88. The Prosecution respectfully submits that on the whole, it has established a prima facie case against the 2<sup>nd</sup> Accused and it is proper that the 2<sup>nd</sup> Accused be put to his Defence.

Conclusions on the no case submission.

89. I have carefully considered the submissions of both counsel in this matter. As part of the consideration of the no case submission and the response, I have also considered exhibit AQ1-4, dated 6<sup>th</sup> December 2016. The said memo required a number of actions to be conducted by the 2<sup>nd</sup> accused which are listed in the said memo at bullet points 1-11. The said memo required and instructed the 2<sup>nd</sup> accused to comply with all of the bullet points 1-11 on the said memo.

90. Having considered the totality of the evidence adduced by the prosecution in this case against the 2<sup>nd</sup> accused, I cannot at this stage of the trial come to the conclusion that in accordance with Galbraith test, there is no evidence that the crime alleged has been committed by the 2<sup>nd</sup> accused.

91. Further, I cannot also at this stage of proceedings conclude that the prosecution's evidence, taken at its highest, is such that a jury (or in this case where I sit alone as the trier of fact and law) and properly directing myself as to the law and the facts could not properly convict upon it. I have however concluded that having reviewed the prosecution's case and the submissions made, the prosecution evidence is such that its strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking within the province of the jury (or tribunal of fact) and where on one possible view of the facts there is evidence upon which I could properly come to the conclusion that the 2<sup>nd</sup> accused is guilty of one or all of the offences charged, I am duty bound to allow the case to proceed to be tried on the evidence, thereby requiring the 2<sup>nd</sup> accused to put a defence to the charges he faces. I have concluded that in accordance with the decision in *Goddard* 2012 EWCA Crim 1756, taking the prosecution's case at its highest, and having properly directed myself as to the relevant law, where I could be entitled on one view of the evidence to reach an adverse inference on the evidence, I am not entitled to stop the case at this point but to require the 2<sup>nd</sup> accused to put a defence in answer to the charges.

92. In the circumstances the no case submission by the 2<sup>nd</sup> accused is overruled and he is required to be put to his election in a bid to put his defences to the charges he faces.

### 3<sup>rd</sup> Accused.

93. The 3<sup>rd</sup> accused is charged with 20 counts on the indictment, as amended, which can be set out in the following terms:

1. Failure to comply with applicable procedures and guidelines relating to the management of funds, contrary to section 48(2)(b) of the Anti-Corruption Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019): as contained in Counts 3, 4, 6, 8, 9, 17, 19, 21 and 23.
2. Misappropriation of public funds, contrary to section 36(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019): as contained in Counts 5, 7, 10, 18, 20, 22, 24 and 27.
3. Conspiracy to commit a corruption offence, contrary to section 128 of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of Act No. 9 of 2019): as contained in Counts 11 and 25.
4. Abuse of office, contrary to section 42(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019): as contained in Count 13.

94. It is not in dispute that the prosecution led 18 witnesses and counsel relied upon the practice directions notes in Branwynne vs. Evans (1962) 1 WLR 227 and the context of the English Court of Appeal decision in Regina vs George Charles Galbraith (1981) EWCA Crim J0519-1. Counsel also relied upon the second limb in Glabraith.

Counts 3, 4, 6, 8, 9, 17, 19, 21 and 23:

**Failure to comply with applicable procedures and guidelines relating to the management of funds, contrary to section 48(2)(b) of the Anti-Corruption Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019):**

95. With respect to these counts on the indictment, it is the prosecution's case against the 3<sup>rd</sup> accused that he by himself, and in some cases, joined or worked together with the 1<sup>st</sup> Accused, Mr. Saidu Nallo, to "wilfully" fail to comply with "applicable procedures and guidelines" relating to the "management" of various specified funds in the Counts above. The defence disputes this.

96. It is submitted by counsel that neither Fairfield Construction Associates LLC nor its President and Managing Member, Mr. Jules Sanders Davis, ever at any point in time complained of mismanagement of funds or portions of funds due and owing to them; which, it is averred, would have triggered investigations into whether procedures and/or guidelines were followed in withholding such funds. In fact, Fairfield Construction Associates LLC, as "Contractors" under the Chancery Building Contract, acknowledged as late as 21<sup>st</sup> April, 2021 (not long before the trial of this matter) to no less a person than PW18, Ambassador Dr. Alie Kabba himself, in Exhibit AN1-2 to have received well over USD \$4 Million (US \$4,000,000.00) out of the contract sum of USD \$5,295,555.00. The said Exhibit stated the "invoiced" sum as USD \$4,669,549.45, following "verified audit"; and that the "balance owing to FCA" as at 21<sup>st</sup> April, 2021 to be USD \$626,005.00. Exhibit AN1-2 above (a letter from Fairfield LLC aka FCA) was signed and endorsed by Mr. Jules S. Davis as "President.

97. He further argued that the case is premised on the fact that the current prosecution is founded on an existing Contract dated 9<sup>th</sup> December, 2016, which was lawfully executed between the Government of Sierra Leone represented by the then Sierra Leone's Permanent Mission to the United

Nations in New York (as Owner) and Fairfield Construction Associates LLC represented by Mr. Jules Davis as "President and Managing Member" (as Contractor). He made reference to Exhibit U. It is within this valid existing Contract that the 3<sup>rd</sup> Accused operated as "Financial attache".

98. The contract which was exhibited as Exhibit (Exhibit U1-26) specifies at Article XVI, para. 16, pages 17-18 how changes can be made to "the basic character, design or scope of the Project" and so forth leading to what it describes as "change orders". Apart from the fact that the 3<sup>rd</sup> Accused never himself tendered or awarded any contract to Fairfield Construction Associates LLC, the said existing Contract makes provision for "Events of default" in the agreement and for its "Termination or Suspension" by either Party (at Article X, para. 10, pages 11-14). Neither the Prosecution nor the State of Sierra Leone invoke the above clause in pursuit of the purported non-performance or default in its performance as alleged against 3<sup>rd</sup> Accused.

99. He further relied upon the fact that Article XXIII, para. 23.10, at page 23 stipulates that "*This Agreement shall be governed by the laws of the State of New York both as to interpretation and performance and shall be subject to the jurisdiction of the Supreme Court of the State of New York, County of New York*". [Emphasis added]. It is therefore unclear to the 1<sup>st</sup> Accused as to why he is accused of committing an offence in the City of New York, USA under the existing Contract and tried extra-territorially in the jurisdiction of Sierra Leone.

100. He relied upon the averment that that the Prosecution has, throughout its case, consistently failed to state and produce to the Court the "*applicable procedures and guidelines*" that it relies upon in proof of



its case, which it alleges the 3<sup>rd</sup> Accused by himself, and together with the 1<sup>st</sup> Accused, willfully breached or failed to follow. In the absence of such applicable procedures and guidelines, it is averred that no case has been made against the 3<sup>rd</sup> and 1<sup>st</sup> Accused persons by the Prosecution.

101. Assuming without conceding however that there existed such "applicable procedures and guidelines", which the Court and the Defence ought to have known before the Prosecution closed its case, it is submitted further that ample evidence exists to show that the 3<sup>rd</sup> and 1<sup>st</sup> Accused, and for that matter the Sierra Leone Chancery Division in New York, duly followed all foreign mission procedures in seeking approval for the change orders leading to the construction and addition of the 5<sup>th</sup> and 6<sup>th</sup> floors to the Chancery Building. Reference is made hereto Exhibit AAC1-7, Exhibit AO1-2 and Exhibit AP respectively; Exhibit AO1-2 being the approval letter for the additional two floors signed by no less a person than PW2, Mr. Paul Bockarie, the State's Principal Works Engineer, on behalf of the Senior Permanent Secretary in the Ministry of Works and Public Assets.

102. He referred to the fact that both PW8, Mr. Richard William, the Accountant General, and PW6, Mr. Septimus Johnson, Principal Accountant in the Ministry of Foreign Affairs, explained that the Sierra Leone Chancery Department in New York followed correct or relevant procedures in matters pertaining to the Building Project by seeking information and approval for every segment of the Project and reporting on the progress of work as well. In particular, PW6 explained the procedure involved in requests for funds from Chancery to Capital as follows: Firstly, the Director General in the Foreign Affairs Ministry, as primary recipient of the foreign mission request, will peruse and then

*minute the request to the Director of Administration; who will look through it and also minute it to the Principal Accountant in the Ministry; who will in turn forward the request to the Ministry's Procurement Unit to review and advise on same before forwarding the approved version to the Budget officer at the Ministry; who will, if there are no queries on the request, eventually endorse it and forward it to the Ministry of Finance for payment to the foreign mission account abroad.*

103. The 3<sup>rd</sup> Accused avers that once the approved sum is at the Foreign Mission, the Head of Chancery, as administrative head of the Mission, takes full charge and control of its use and disbursement as the vote controller of the Mission. The 3<sup>rd</sup> Accused submits that at all material times that he served in the New York Foreign Mission, there was no official Procurement Unit set up there. The Mission only operated an ad hoc Procurement Unit.

104. The 3<sup>rd</sup> Accused also states that he worked within the full mandate and limit of his job as Financial Attache as set out in the procedure above as well as the letter/memo from PW12, Ambassador Mrs. Florence Bangalie, the Director General exhibited as Exhibit AAS1-3. Reference is also made to the 3<sup>rd</sup> Accused's Witness Statement tendered as Exhibit C1-66 at page 33 thereof, in which he stated that because they had no official Procurement Unit, "they relied on information from the MFAIC" (i.e. the Foreign Ministry) and approval from "Headquarter" (i.e. the MFAIC aforesaid). The 3<sup>rd</sup> Accused explained further that in similar vein, it was at a Chancery meeting held in New York that they agreed for the 5<sup>th</sup> and 6<sup>th</sup> floors to be added to "the existing structure" and that "This was communicated by HoC to MFAIC and an approval was granted by

*MFAIC in the form of documentation to go ahead with the reconstruction of the building" - see page 25 of Exhibit C1-66.*

105. He further submitted that the various Progress Reports prepared by PW14, Mr. Alan George, as "Counsellor" and submitted to the Director General in the Ministry of Foreign Affairs and International Cooperation in Freetown (Capital) on behalf of the 1<sup>st</sup> Accused (as Minister Counsellor/Head of Chancery in New York) were consistent with the fact that the 1<sup>st</sup> Accused, supported by the 3<sup>rd</sup> and 5<sup>th</sup> Accused persons, at all material times kept the line Ministry (Foreign Affairs and International Cooperation) fully informed about the Mission's activities, programs and projects in New York during the period under review, inclusive of the management of all funds meant for the reconstruction works on the Building. Reference is made in this regard to Exhibit AAW1-5 (Report to Capital dated 19<sup>th</sup> February, 2019); Exhibit AAX1-12 (Report to Capital dated 29<sup>th</sup> April, 2019); Exhibit AAY1-4 (Report to Capital dated 11<sup>th</sup> July, 2019); Exhibit AAA1-3 (Report to Capital dated 20<sup>th</sup> August, 2020); and Exhibit AAZ1-7 (Report to Capital dated 29<sup>th</sup> April, 2019).

106. There were meetings held and in these meetings organised and/or masterminded by PW18, Dr. Alie Kabba, and his self-appointed 'Monitor' or 'Overseer' of the Chancery Building Project, PW17, Dr. Imran Kanu, in place of the 1<sup>st</sup> Accused, which meetings were attended by Mr. Jules S. Davies for and on behalf of Fairfield Construction Associates LLC, the following were recorded in the said minutes respectively:

a. Excerpts of Minutes of Meeting held on 22nd May, 2020 (Exhibit AAM1-5 at AAM3):

"Payment Terms: Regarding payment to the contractor, the Permanent Representative stated that the project was 75% completed and thus the Mission will not make payment more than 75% in line with project management requirements (...). He assured the Contractor he will be paid and there will be no delay. The first disbursement will be made in two weeks from the date of the meeting. (...). Faithfully submitted, Alan E. George". [Emphasis added].

b. Excerpts of Minutes of Meeting held on 1st June, 2020 (Exhibit AAN1-2 at pages 1-2)

"The Permanent Representative welcomed the contractor to the meeting and informed him that he visited the site which was largely positive experience. He stated that almost all of the work in the 2nd and 3rd floors of the building was completed and 90% of the work on the 1st and 4th floors were completed, although a lot of materials were still stored in the 1st floor. He further informed the Contractor that there was now an extra pressure to complete the building because of the COVID-19 situation as the Mission's current premises is not safe for staff to return. The Mission was now in the process of preparing a reopening plan. He assured the Contractor that the Mission will keep the flow of funds as the project progresses (...). In his response, the Contractor was of the view that if all the funds were in his possession, he will be more comfortable as he was concerned that further delays in the disbursement of funds will lead to interruptions in the work schedule. This will also lead to him losing workers. His main concern was that without the steady flow of funds he cannot guarantee completion of the project (...). Faithfully submitted, Alan E. George, Counsellor". [Emphasis]

107. Since those meetings were held on or about June 2020, the evidence available to the Court is that the necessary outstanding funds required for Fairfield LLC to complete the Chancery Building in New York so that it can be opened for official use has not been made available to the Company, in spite of the said Company's out of pocket expenses. Besides, according to Exhibit AAZ3-6 attached to AAZ1-2, Fairfield LLC had, on the 2<sup>nd</sup> March, 2020 shortly before the above meetings were held, given a comprehensive summary of work on the "Chancery Project", from its inception in December, 2016 to the 2<sup>nd</sup> March, 2020. The Company also projected what would be done in April and May, 2020 if the required outstanding budgeted funds were available to them to finish the Project.

108. The two Technical Reports on the Chancery Building Project submitted by PW2, Mr. Paul Bockarie, namely Exhibit AK1-46 (the first Technical Report submitted in October, 2019) and Exhibit AK1-46 (the second Technical Report submitted in August, 2021), mentioned the following facts, which showed much progress in the rehabilitation work done by the Contractor, even against the myriad funding delays and challenges it periodically faced at the hands of the State, as well as the huge unbudgeted extra expenses that the Contractor incurred in the demolition exercise, hiring and replacing unpaid staff, insurance matters, and the unforeseen Covid-19 challenges and incidental stop work orders issued by the New York Building Department in respect of the rehabilitation works on the Chancery Building:

- a. Excerpts from Exhibit AK1-46 (first Technical Report done in October, 2019):

- At page AK 4, Building Data: (...) iii. Building Code: Initially a residential building was used as a church, before it was purchased by the Government of Sierra Leone; iv. Age of Structure: over 60 years.

- At page AK 13, Progress of Work: (...) Percentage of Works Completed from "main building façade" to 5th and 6th floors of the Chancery Building: Total: 70%

- At page AK 14, Challenges: 1) The building was bought over 30 years ago, and no effective maintenance work has ever been undertaken since, it was used as the permanent mission building in New York; 2) The BoQ only provided cost for demolition and no cost for disposal was factored, the contractor must go the extra mile to dispose the spoil for demolition; 3) There were long delays in payment to the contractor, which resulted in cost overruns, in payment for the services, running cost and no payment to the work force for quiet (sic) an unreasonable time. As a result, the New York Building Department instructed the contractor, to hire a supervisor from the department to supervise the job, which resulted in an extra payment of 40,000 USD; (...) and 4) Also, with every summer period ending (the end of the construction period), workers working in winter must be provided with extra pay for winter gears, which was not budgeted for in the project.

- At pages AK 15-16, Issues & Risk Mismanagement, General Observation:

(...) Work programme: The work programme for the contract took an unending trend; this resulted in cost overruns for services (water, electricity, insurance for the project etc.) provided on site, high cost of penalty for delays. Such additional cost was not budgeted for and if not addressed adequately, it may cripple the project. [Emphasis].

Staff Enrolment on site: if the workers are delayed for long, without pay, the contractor is bound to lose her (sic) much needed experienced staff, which may slow the pace of the work and affect quality achieved (...).

Payment made to Contractor: payment for work achieved can be critical for the achievement of the works in due time, since the contractor, don't have the capability to pre-finance the entire work scope required to be done.

Rate of work accomplishment: encouraging backed by thorough site supervision from the Building department office supervising the works.

Understanding and following instructions: the contractor understood the scope of works, and work requirements.

b. Excerpts from Exhibit W1-22 (second Technical Report of 4th August, 2021):

- At page W3, Objective(s) of the Project: (...) The main objective of the visit was to investigate circumstances of corruption in the reconstruction project of the Chancery Building located at 245 East 45th Street 10017 New York. [Hence, in the team of four,

only Mr. Bockarie was a technical person compared to Exhibit AK2. Also, at page W4, no videos were shown in the Schedule/Programme of activities compared to Exhibit AK3 1.3.(a)].

- At pages W 17-18, Percentage of Works Completed: Total achieved incredibly reduced from 70% in October, 2019 to 47% in August, 2021.

- At page W18 Challenges: There were long delays in payment to the contractor, which resulted in cost overruns, in payment for the services, running cost and no payment to the work force for quiet (sic) an unreasonable time.

- At page W21 Recommendations: (...) 3) The long delays in addressing payment issues, cost government resources, quality and time in delivering the project. Hence projects of this nature, implemented in foreign lands, cannot be micro-managed in Freetown (...).

109. He concluded that none of the sums of money listed out in the Count charges under this rubric could be attributed to wilful or negligent failure on his part and/or of the 1<sup>st</sup> Accused to follow applicable procedures and guidelines known to the 3<sup>rd</sup> Accused. All monies disbursed to Fairfield LLC in the reconstruction Contract were done in accordance with the said Contract, and that the said Company fully acknowledged receipt of same and expended the monies received in the manner specified, and in the process incurring extra and additional costs for unbudgeted and unforeseen situations.



110. He further submitted that the first Report was based on the visit to New York by a Team that comprised the Director of Administration in the Ministry of Foreign Affairs, Mr. Joseph Spencer Thornton; the Senior Deputy Financial Secretary in the Ministry of Finance, Mr. Emmanuel T. Komba; and the Professional Head in the Ministry of Works, Mr. Paul S. H. Bockarie (PW2). None of the Prosecution Witnesses attributed any record of impropriety or fraud to the 3<sup>rd</sup> Accused, over and above the fact that a number of the said Prosecution Witnesses failed to readily identify the 3<sup>rd</sup> Accused at all.

111. He argued that no witness came forward to state the applicable procedure and guidelines referred to in the Indictment, not to talk about how the 3<sup>rd</sup> and 1<sup>st</sup> Accused wilfully breached or failed to comply with them, if any, Counts 17, 19, 21, 23, 26, 28, 30, 32, 34, 36, 38 and 40 should be entirely dismissed against the 3<sup>rd</sup> and 1<sup>st</sup> accused persons.

Counts 5, 7, 10, 18, 20, 22, 24 and 27: Misappropriation of public funds, contrary to section 36(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019):

112. Section 36(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019), states that “A person who misappropriates public revenue, public funds or property commits an offence” [Emphasis added].

113. With respect to these counts, the prosecution has alleged that the 3<sup>rd</sup> Accused by himself, and in some cases, working together with the 1<sup>st</sup> Accused, Mr. Saidu Nallo, “misappropriated public funds”, namely, the respective sums of money listed out in Counts 5, 7, 10, 18, 20, 22, 24 and 27 above. What is, however, unclear is which of the said offences comes

first, the failure to use the applicable procedures and guidelines or the misappropriation? He submitted in this regard that the mens rea and actus reus of the crime of misappropriation are built on fraud or dishonesty, to deprive the State of revenue or funds for oneself; and not on negligence or wilful failure to do so. It would thus be inappropriate to be charged and convicted for both set of offences at the same time.

114. He relied upon the dictum of Lord Justice N. C. Browne-Marke's definition of "misappropriation" in the unreported ACC case of the State vs. Komeh and Mans has resonated with the Courts. Justice R. S. Fynn JA adopted the same in the unreported ACC case of the State vs. Isha Johansen & Anor, when he said that the offence of "misappropriation" involves *"the wilful commission of acts which result in the owner losing funds belonging to it"*. He opines therefore that *"the prosecution must prove that the defendant took money alleged to have been 'appropriated dishonestly'. Proof of such appropriation can be found in actual taking."*

115. He further submitted that Counts 5, 7, 10, 18, 20, 22, 24 and 27 above are inappropriate, in view of the evidence led in Court against him and the analysis already proffered in respect of the previous offences of "failure to comply with applicable procedures and guidelines". It is unclear how the monies that were unequivocally and fully acknowledged as received and utilised by the 6<sup>th</sup> Accused (Mr. Jules Sander Davis)'s Company, Fairfield Construction Associates LLC, can similarly be said to have been "misappropriated" by the 3<sup>rd</sup> Accused himself, and in some cases, together with the 1<sup>st</sup> Accused; especially to the exclusion of the said Company and/or Mr. Jules S. Davis. He argued that the funds could no longer be described as public funds after they had been acknowledged

and received and utilised by the company on the basis of an endorsed Contract. The claim of ownership of the said funds as theirs, is now subsumed into private ownership, to the exclusion of the State's public claim.

116. In light of the above, reference is made here to Exhibit AN1-2, in which the invoiced sum of USD \$4,669,549.45 was acknowledged by Mr. Jules S. Davis (President) as received by Fairfield Construction Associates LLC. In fact, Mr. Davis stated in his acknowledgment letter of 21<sup>st</sup> April, 2021 that he was "*looking forward to working with [Ambassador Alie Kabba as Permanent Representative] and bringing the Chancery project to a conclusion which all parties involved can be proud of*". Similarly, Mr. Jules Sander Davis' Witness Statement tendered as Exhibit F1-36 is replete with admissions by him of receiving the monies meant for the Chancery Project for and on behalf of his Company, Fairfield LLC.

117. He therefore submitted that both the *actus reus* of "appropriation" of the monies cited in the referenced Count charges above, and the *mens rea* of "dishonestly appropriating" same are entirely lacking in the foregoing Counts as no evidence was led to show that the 3<sup>rd</sup> and 1<sup>st</sup> Accused took or received the said sums of money themselves and misappropriated them for themselves to the exclusion of the State of Sierra Leone. Counts 5, 7, 10, 18, 20, 22, 24 and 27 should similarly be dismissed in their entirety against the 3<sup>rd</sup> Accused.

Counts 11 and 25:

**Conspiracy to commit a corruption offence, contrary to section 128 of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of Act No. 9 of 2019):**

118. Section 128(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of the Anti-Corruption Act No. 9 of 2019), states that "A person who shall attempt or conspire to commit a corruption offence or aid, abet, counsel, command or procure the commission of a corruption offence, commits an offence." [Emphasis added].

119. The prosecution further alleged that the 3<sup>rd</sup> Accused respectively conspired together with other persons unknown (Count 11) as well as together with the 1<sup>st</sup> Accused, Mr. Saidu Nallo (Count 25) to commit a corruption offence, namely, "wilfully failing to comply with applicable procedures and guidelines" relating to "the management of funds".

120. According to Black's Law Dictionary, 9th Edition at page 351, "conspiracy" is defined as "An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement; a combination for an unlawful purpose." The Dictionary further states that "Conspiracy is a separate offence from the crime that is the object of the conspiracy. A conspiracy ends when the unlawful act has been committed or (in most states) when the agreement has been abandoned (...)".

121. In the cases of *The State vs. Alphajor Y. Bah et al* (unreported), *The State vs. Solomon Hindolo Katta & Ors.* (unreported) and inter alia *The State vs. Mustapha Amara & Ors.* (unreported) have established that for a conviction to lie in the offence of "conspiracy", *the Prosecution should prove beyond reasonable doubt that a) there was an agreement*

*between two or more persons; and b) that the said agreement was to commit a corruption offence under the Anti-Corruption Act, 2008 as amended.*

122. The 3<sup>rd</sup> Accused repeats firstly, that the offence of "wilfully failing to comply with applicable procedures and guidelines" relating to "the management of funds" or "the tendering of contracts" should fail because the Prosecution did not produce to the Court any such applicable procedures and guidelines, so that it can determine or measure the level and extent of compliance with the said applicable procedures and guidelines. No witness of fact stated or specified the details that entail in them, if any; nor was any expert called to speak to the applicable procedures and guidelines that constitute the corruption offence. The procedure earlier referred to as contained in the testimony of PW6, Mr. Septimus Johnson, is about the processes involved in obtaining funds from Capital, and not about how to expend the funds when disbursed or transferred by the Ministry of Finance.

123. Secondly, no evidence was led whatsoever that indicated or suggested that the 3<sup>rd</sup> Accused was in respective conspiracies with the 1<sup>st</sup> Accused and with other persons unknown. All relevant and necessary procedures in managing the funds meant for the Chancery Building Project and the Project itself were meticulously followed; and as a result, no one was queried, suspended or dismissed for failing to comply. The 6<sup>th</sup> Accused, Mr. Jules S. Davis, and his Company, Fairfield LLC, made complaint to Capital because there was need for it. The evidence led inter alia by PW6, PW8, PW9, PW12 and PW14 altogether showed that every step was followed through and approved by Capital, with regular reports

being sent as well to Capital to keep the State fully updated and informed about the Project.

124. The 3<sup>rd</sup> Accused therefore submits that Counts 11 and 25 should fail accordingly. The said Count charges were left to hang in thin, unsupportive air as their purported principal offences generated by the Prosecution for the Count charges to hang on became, in fact, nowhere to be found. The Defence waited to identify the applicable procedures and guidelines but found none; whilst the onus rested on the Prosecution to produce them.

Count 13:

**Abuse of office, contrary to section 42(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by Act No. 9 of 2019):**

125. Section 42(1) of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of the Anti-Corruption Act No. 9 of 2019), states that *"A public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence.*

126. The Prosecution alleges that the 3<sup>rd</sup> Accused abused his office by improperly conferring an advantage on the 6<sup>th</sup> Accused, Mr. Jules Sanders Davis (President of Fairfield Construction Associates LLC); even though the advantage is not specifically stated therein or identified.

127. He further submitted that the 3<sup>rd</sup> Accused fully adopts his arguments and submissions in respect of the previous Counts above, and wholly denies the particulars set out in this charge. Apart from the fact that no evidence was led by the Prosecution to substantiate the allegation of abuse of office, it is submitted, on the contrary, that the 1<sup>st</sup> and 3<sup>rd</sup>

Accused in fact used their offices to ensure the success of the Chancery Building Project in New York, even in the face of the severe budgetary constraints that they faced.

128. He relied upon Mr. David Montesi (Fairfield's subcontractor)'s Witness Statement tendered by the Prosecution as Exhibit AX 1-13. At pages 5 to 10 of the said Statement, Mr. Montesi states that due to the Covid-19 pandemic, added to the Company's overheads and rising costs of materials, Fairfield LLC was intent on upholding the total sum of USD \$3,086,270.00 for the Change Orders in respect of the 5<sup>th</sup> and 6<sup>th</sup> floors. But they *"were met with heavy resistance from the Sierra Leone Embassy Team in New York"* (at page AX6). Eventually, when the costs and expenses were reviewed and negotiated, the Change Orders costed only a total sum of USD \$1,800,000.00, which was consequently paid out by Mr. Jules Davis to Mr. Montesi's Empire Group NYC Company, as Fairfield LLC's subcontractors on the Chancery Project (see page AX9 of Exhibit AX).

129. Count 43 should therefore be dismissed as unsubstantiated as there is absolutely no evidence that the 3<sup>rd</sup> Accused ever tried to unlawfully confer an advantage on Mr. Jules Sander Davis and/or on his Fairfield Construction Associates LLC Company. He submitted that relying on Lord Parker CJ's Practice Note in *Brangwynne vs. Evans* (1962) and *Regina vs George Charles Galbraith* (1981) mentioned earlier, it is submitted by the 3<sup>rd</sup> Accused that the Prosecution has: 1) failed to prove the essential elements in the alleged offences preferred against him; and 2) that the above analysis illustrate that the evidence led by the Prosecution has been so discredited and is manifestly unreliable that no

reasonable tribunal of fact and law (in this case the Trial Judge sitting as Judge and Jury) could safely convict on it. The 3<sup>rd</sup> Accused should therefore be accordingly discharged.

The reply by the prosecution.

130. In response, the prosecution submitted that the Defence Counsel served a No Case Submission on the Prosecution for and on behalf of the 3<sup>rd</sup> Accused. The 3<sup>rd</sup> Accused has been charged with the following:

- Nine (9) Counts of Failure to comply with Applicable Procedures and Guidelines relating to the Management of Funds, contrary to Section 48(2)(b) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019;
- Eight (8) Counts of Misappropriation of Public Funds contrary to section 36(1) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019;
- One (1) Count of Abuse of Office, contrary to Section 42(1) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019; and
- Two (2) Counts of Conspiracy to commit a Corruption Offence, contrary to Section 128 of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019.

131. The prosecution submits that there has been a serious miscomprehension of the legal principles involved in the determination of a No-Case Submission, and the grounds upon which the Defence Counsel have predicated its application, and consequently, they respectfully submit that the No-Case Submission should be overruled. They relied upon the dictum of Lord Lane in *Galbraith* [1981] 2 All ER 1060.

132. They cited the case of Goddard [2012] EWCA Crim 1756 in which Lord Justice Aikens stated the following:



*"...We think the legal position can be summarised as follows: (1) in all cases where a Judge is asked to consider a submission of no case to answer, the Judge should apply the 'classic' or 'traditional' test set out by Lord Lane in Galbraith. (2) Where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon the evidence adduced by the prosecution, the exercise of deciding that there is a case to answer does not involve the rejection of all realistic possibilities consistent with innocence. (3) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a Judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury."*

133. In this jurisdiction, Browne-Marke JA (as he then was) in the case of *The State vs. Luseni Joe Baun and Three Others*, in a cyclostyled judgement and after reference to the leading case of *Galbraith* (supra), cited Ames P in his ruling in the case of: *Siaka Stevens & Another vs. Commissioner of Police* [1960-61] Vol.1 SLLR 208 at p.212 and stated that *"...where there is just a mere scintilla of evidence, the accused should be acquitted on a No-Case Submission. Here, I am of the view that at the close of the prosecution's case, there is more than a scintilla of evidence probative of the matters which ...the prosecution has to prove...Taken at its highest, it is evidence upon which a jury*

*properly directed could convict. It is another matter which I have to decide at the end of the case, not at this stage."*

**Failure to Comply with Applicable Procedures and Guidelines Relating to the Management of Funds contrary to Section 48(2)(b) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

134. The prosecution submits that contrary to the submission of Defence Counsel in paragraph 14 on page 6, of its No-Case Submission that the Prosecution has "failed to state and produce to the court the *applicable procedures and guidelines* that it relies upon in proof of its case...". Defence Counsel for the 3<sup>rd</sup> Accused has here failed to take a look at *Exhibit "U" Article VII Payments to Contractor at page 10 to 12, the Construction Contract between the Permanent Mission of The Republic of Sierra Leone to the United Nations and Fairfield Construction Associates, LLC*. Article VII Paragraph 7.01(a) provides that the Contractor and Architect meet at the worksite to review Contractor's performance and completion of certain items of work; and that "*Requisition*" for payment must be "*Approved by Architect*". That said Requisition should set forth the proportion of the contract sum properly allocable to labour, materials and equipment actually incorporated in the work.

135. Failure to comply he submitted must be a wilful omission. According to the natural meaning of the language used, negligence is sufficient. It is submitted that negligence in this context, is failing to exercise such care or prudence that a reasonably diligent person in the 3<sup>rd</sup> Accused's position would have exercised. The Prosecution here submits therefore that the 3<sup>rd</sup> Accused had a legal duty or responsibility to ensure compliance and

exercise reasonable care. In inserting the alternatives "willfully or negligently fails..." in Section 48(2)(b), the legislature seems to have intended that negligence would suffice in some circumstances.

136. The 3rd Accused did prepare and make payments to the 6th Accused whilst deliberately ignoring the provision of the contract that every Requisition must first be approved by the Architect. According to him because "a contract for the renovation of the Chancery building (was) to be signed by the President of Fairfield Construction Associates LLC. (FCA) (He) being the Financial Attaché...started honouring request approved by the HOC in favour of the Contractor." See Exhibit C1-66 answer to question 28 bottom page 23 to 24.

**Misappropriation of Public Funds, contrary to Section 36(1) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

137. Contrary to the defence counsel for the 3rd Accused's submission in paragraph 28 on page 13, of its no-case submission, that "the mens rea and actus reus of the crime of misappropriation are built on fraud or dishonesty...and not on negligence or wilful failure to do so". The Prosecution submits the elements of the offence are created under Section 36(2) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019 does not include "dishonest" rather the elements are: -

- a) a person misappropriates public revenue, public funds or property if he:
- b) willfully;
- c) commits an act, whether by himself, with or through another person, by which;
- d) a public body is deprived;

- e) of any revenue, funds or other financial interest or property belonging or due to that public body

**Abuse of Office contrary to Section 42(1) of the Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

138. They submit that in further proof of the offences alleged under the section, it must prove that the 3<sup>rd</sup> Accused was acting in the course of his employment as a public officer, when he facilitated payments to the Contractor through its President, the 6<sup>th</sup> Accused, Jules Sanders Davis thereby improperly conferring an advantage.

**Conspiracy to commit a Corruption Offence contrary to Section 128(1) of the ACA 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

139. The prosecution submits that they have led evidence that the wilful act of the 3<sup>rd</sup> Accused not only caused, but also deprived, the State of public funds.

140. The prosecution submitted that one of the principles emanating from the many authorities concerning the determination of No-Case Submissions is that this Honourable Court ought to have regard to the totality of the evidence led by the prosecution. This necessarily means the Court should, in determining whether the essential elements of the offences have been proved, look into the statement of the 3<sup>rd</sup> Accused, which was tendered as exhibit C1-66.

141. The 3<sup>rd</sup> Accused's interview statement is part of the Prosecution case, wherein issues are raised that require explanations from the 3<sup>rd</sup> Accused. It would therefore, he submitted, be premature to decisively

determine at this juncture that the essential elements for the offence of Failing to Comply with Applicable Procedures and Guidelines relating to the Management of Funds; Misappropriation of Public Funds; Conspiracy to commit a Corruption Offence; and Abuse of Office have not been proved when it is clear from the 3<sup>rd</sup> Accused's own statements that he did facilitate by preparing and making Payments to the Contractor initially upon request of one Alimamy Sesay (now deceased) former Head of Chancery at The Permanent Mission of The Republic of Sierra Leone to The United Nations and thereafter upon request of the 1<sup>st</sup> Accused, Saidu Nallo, thereby causing loss of public funds to the State.

142. The prosecution alleges that the evidence reveals that 3<sup>rd</sup> Accused through his acts and omissions failed to comply with the procedures and guidelines as stipulated within the construction contract when he consistently prepared and issued Payment Vouchers and Cheque payments Requisitions he received which were not approved by any Architect thereby causing the State to lose public funds.

143. The 3<sup>rd</sup> Accused through his acts and omissions wilfully caused the misappropriation of public funds between December 2016 and 30<sup>th</sup> September 2018 thereby causing the State to lose public funds. The 3<sup>rd</sup> Accused worked under the employ of the Permanent Mission of The Republic of Sierra Leone to the United Nations as Financial Attache between March 2011 and 30<sup>th</sup> September 2018. The 3<sup>rd</sup> Accused through his acts and omissions committed abuse of office by improperly conferring an advantage on the 6<sup>th</sup> Accused by preparing payment vouchers and making payments to the 6<sup>th</sup> Accused knowing that the

necessary pre-requisite approval by Architect for honouring a Requisition had not been complied with.

144. The 3<sup>rd</sup> Accused through his acts and omissions conspired with the other persons unknown as well as with the 1<sup>st</sup> Accused to commit a corruption offence by wilfully failing to comply with applicable procedures and guidelines relating to disbursement of funds upon request by the 6<sup>th</sup> Accused thereby causing the State to lose public funds. See Exhibit C1-66 at page 54 response to Question 78. In his interview with the Anti-Corruption Commission marked as Exhibit C1-66, the 3<sup>rd</sup> accused asserted at page 5 of the said Exhibit that his duties and responsibilities include to *"make payments to service providers such as electricity, water, payment to staff, etc"*. At page page 12 through 17, admitted to having made several payments to the Contractor, the 6<sup>th</sup> Accused as set out in Exhibits AF1-10, AG1-8 and AI1-7.

145. He further, submitted that Exhibits AG1-8 and AI1-7 have supporting Requisition Order Forms, titled **"APPLICATION AND CERTIFICATE FOR PAYMENT"**, but although they bear the name of the Architect, N&K Consultants, LLC, both Requisitions do not contain the signature of the said Architect; whereas Exhibits AF1-10 is not supported by any Application and Certificate for Payment Form. The 3<sup>rd</sup> accused he argues has not challenged the evidence that he prepared and made the payments in Exhibits AF1-10, AG1-8 and AI1-7.

146. Exhibits AN1-2, details all the payments received by Fairfield Construction Associates LLC through its President, the 6<sup>th</sup> Accused, Jules Sanders Davis. The said Exhibit reflects and confirms the 3<sup>rd</sup> Accused's statement in Exhibit C1-66 at page 12 through 16. Exhibits

AN1-2 at page 1 confirms that the initial payments commencing from "Deposit 2016 of US\$250,000 to the 9th payment made on August 13th 2018 of US\$187,000.

147. The Prosecution submits that the 3rd Accused being the Finance Attaché between March 2011 and 30th September 2018 prepared and made the said payments, a fact the Defence does not challenge. It is the Prosecution's submission further that his failure as Finance Attaché to exercise due diligence in the performance of his responsibility to verify all supporting documents received for payment is a cogent and compelling evidence of Failure to Comply with Applicable Procedures and Guidelines relating to the Management of Funds, Misappropriation of Public Funds, Abuse of office and Conspiracy to commit a Corruption Offence.

148. The prosecution submits that this is not a shifting of the legal burden to the 3<sup>rd</sup> Accused but a factual inference of common sense that in the absence of evidence of a satisfactory explanation, this Court can draw from the evidence. Thus, if the Prosecution as in this case proves that payment of public funds was prepared and payment effected by the 3<sup>rd</sup> Accused it may be said that the 3<sup>rd</sup> Accused has the evidential burden to raise or show evidence of an explanation negating the inference of Failure to Comply with Applicable Procedures and Guidelines relating to the Management of Funds, Misappropriation of Public Funds, Abuse of Office and Conspiracy to commit a Corruption Offence. This Honorable Court is safe to draw the inference of Failure to Comply with Applicable Procedures and Guidelines relating to the Management of Funds, Misappropriation of Public Funds, Abuse of Office and Conspiracy to commit a Corruption Offence.

149. In the *State v. Mustafa Amara (2013)*, Katusi J. cited *Cross on Evidence* 6th ed., with approval and states:

*"The evidence against a man maybe strengthened by his failure to give an explanation of conduct proved or alleged against him or the inadequacy of the explanation which he gives..."*

150. The prosecution further submits that the absence of a reasonable explanation by the 3<sup>rd</sup> Accused to charges within the indictment does present not only a prima facie case against the 3<sup>rd</sup> Accused but also adduces strong evidence of the charges as alleged. The Prosecution further states that in fact, evidence abounds that proper systems and processes were in place which the 3<sup>rd</sup> Accused failed to follow. *Exhibit "U" Article VII Payments to Contractor at page 10 to 12, the Construction Contract between the Permanent Mission of The Republic of Sierra Leone to the United Nations and Fairfield Construction Associates, LLC.*

151. The prosecution submits that the no case submission is ill-conceived and should be dismissed.

#### Conclusions on the no case submission

152. I have considered very carefully the submissions made, particularly with respect to alleged inconsistencies in the evidence adduced and in the response of the 3<sup>rd</sup> accused.

153. Having considered the totality of the evidence adduced by the prosecution in this case against the 1st accused, I cannot at this stage of the trial come to the conclusion that in accordance with Galbraith test,



that there is no evidence that the crime alleged has been committed by the 3rd accused.

154. Further, I cannot also at this stage conclude that the prosecution's evidence, taken at its highest, is such that a jury (or in this case where I sit alone as the trier of fact) and properly directing myself as to the law and the facts could not properly convict upon it. I have however concluded that having reviewed the prosecution's case and the submissions made, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury (or as in this case sitting as judge and jury) and where on one possible view of the facts there is evidence upon which I could properly come to the conclusion that the 3<sup>rd</sup> accused is guilty of one or all of the offences charged, I am duty bound to allow the case to proceed to be tried on the evidence, thereby requiring the 3<sup>rd</sup> accused to put a defence to the charges he faces. I consider that in accordance with the decision in *Goddard* 2012 EWCA Crim 1756, taking the prosecution's case at its highest, and having properly directed myself, I could be entitled on one view of the evidence to reach an adverse inference, I am there not entitled to stop the case at this point but to require the 3<sup>rd</sup> accused to put a defence in answer to the charges.

155. In the circumstances the no case submission by the 3<sup>rd</sup> accused is overruled and he is required to be put to his election in a bid to put his defences to the charges he faces.

#### The 4<sup>th</sup> accused

156. The defence team for the 4<sup>th</sup> accused submitted a no case submission on his behalf on the 3<sup>rd</sup> January 2023. I have carefully considered the contents of the entirety of the submissions and that of the prosecution in response, which I shall set out below.

157. The 4<sup>th</sup> accused is charged with two counts on an amended 48 count indictment, that is Counts 47 and 48. Count 47 under section 40(3) of the Anti-Corruption Commission Act 2008 as amended by the ACC Act No. 9 of 2019. The 4<sup>th</sup> accused is also charged with Misappropriation of public funds contrary to section 36(1) of the Anti-Corruption Commission Act 2008 as amended by the ACC Act No. 9 of 2019.

158. The submission relied upon the Anti- Corruption Commission Act 2008 as amended by the ACC Act No. 9 of 2019, The Criminal Procedure Act 1965 and also relied on the Evidence Act, (unknown) and The Public Procurement Act 2016 (as amended). Further, defence counsel relied upon the following:

- a) Woolminton v D.P.P (1935) 1 AC 462;
- b) Thorpe v Commissioner of Police (1960-61) SLLR 19;
- c) R. v Bob-Jones (1967) ALR 267,
- d) R v Galbraith (1981) 1WLR 1039,
- e) Lord Parker's Practice Direction (Submission of No Case) (1962) 1WLR 227.

Local authority on Misappropriation.

159. They also relied upon a number of exhibits which were tendered by the prosecution in their case, which can be set out as follows:

1. D1-58 Interview Statement of 4th Accused

2. U - Construction Contract: Renovation of Chancery Building dated 9 December 2016
3. AC1-5 - Cabinet paper dated 18 April 2016
4. AD1-2 - Minute paper dated 18 April 2016
5. AQ1-4 -DG letter dated 6 December 2016
6. AS1-4 - invitation for bids to renovate the Chancery Building dated 21 September 2015.

160. With respect to count 48, he is charged with Misappropriation of Public Funds Contrary to Section 36(1) of the Anti-Corruption Act 2008 (as amended by the Anti-Corruption Act No. 9 of 2019). He argues that in the indictment the 4<sup>th</sup> accused is described as "being a former Minister of Foreign Affairs and International Cooperation". He argues that the fourth accused at the time the alleged offence was committed was not "former" Minister but substantive Minister. Clearly, there is a discrepancy between the description of the said accused and the actions for which he is purportedly charged.

161. They submitted that is the duty of the prosecution to prove the guilt of the 4<sup>th</sup> accused beyond all reasonable doubt, but that the Prosecution has failed to attain this sacred duty in the instant case. The 4<sup>th</sup> accused should be acquitted and discharged on both counts by reason of the following:

1. With respect to count 47, which is the charge of deceiving a Principal Contrary to Section 40(3) of the Anti-Corruption Act 2008 (as amended by the Anti-Corruption Act No. 9 of 2019), it was submitted that the prosecution will only succeed if they are able to prove beyond reasonable doubt that the 4<sup>th</sup> Accused

knowingly and intentionally submitted to Cabinet, a Cabinet Paper document that was misleading and untrue and with intent to mislead, presumably, the Government of Sierra Leone. No evidence whatsoever was led to that effect.

2. They referred the court to Exhibit D 1-58 (Statement obtained by the Anti-Corruption Commission from the 4<sup>th</sup> accused over several days). In the aforesaid statement the 4<sup>th</sup> accused categorically refuted the allegation of misleading the principal. What is the evidence before the court? For that they relied on Exhibit D1-58 in which the 4<sup>th</sup> Accused totally denied the accusation of misleading the Government of Sierra Leone. They also referred the court to Exhibit AC 1-5 (Cabinet Paper dated 18<sup>th</sup> April 2016) and AD 1-2 (Minute Paper dated 18<sup>th</sup> April 2016) neither of which was authored by the 4<sup>th</sup> accused.
3. They argued that this was confirmed by the testimony of PW3, Ms. Sonia Karim who testified in court that Exhibit AC1-5 (Cabinet Paper dated 18<sup>th</sup> April 2016) was prepared by the Cabinet Secretariat in conjunction with the Directorate of Foreign Affairs and International Cooperation without the participation by the 4<sup>th</sup> Accused. Following on from that, Mr. John Sumaila (PW4), the Cabinet Secretary and Head of the Civil Service testified that the 4<sup>th</sup> accused was not present in Cabinet and did not present or participate when the matter of Exhibit AC 1-5 was discussed. Furthermore, the testimony of Mrs Khadijatu Bassir (PW12) is instructive. She stated that the 4<sup>th</sup> was not involved in the

preparation of the Cabinet Paper (Exhibit AC1-5), nor did he sign it or concerned with the implementation of projects.

4. She emphatically told the court that implementation of projects approved by Cabinet was the business of civil servants and that the Minister can only be informed of progress. Allie Kabba (PW18) confirmed this narrative in testimony to the court and stated that the Minister is generally not involved in financial matters or the implementation of projects at the Ministry of Foreign Affairs and International Cooperation, where he once served as Minister. The prosecution have therefore not proffered any or any sufficient evidence beyond reasonable doubt that the 4<sup>th</sup> accused deliberately, knowingly and intentionally misled his (undefined by the prosecution) principal to wit: supposedly, the Government of Sierra Leone. On the contrary they argue that there is uncontroverted evidence that by the time the 4<sup>th</sup> accused left office in 2017, the sum of US\$2,000,000.00 (Two Million United States Dollars) was already ring-fenced for the New York Chancery Building project. We get confirmation of this from Bockarie Noah (PW1) who testified that the investigation of the matter by the Anti-Corruption Commission revealed that the sum of US\$2,000,000.00 had indeed already been deposited in the Consolidated Revenue Fund at Bank of Sierra Leone.

5. That on the totality of the evidence therefore, they submit that the prosecution has failed in its duty in that they produced no evidence whatsoever to prove beyond all reasonable doubt that the 4<sup>th</sup> accused knowingly and intentionally misled his principal,

presumably the Government of Sierra Leone, in this regard. Accordingly, they submitted that the court must by law acquit and discharge the 4<sup>th</sup> accused for want of any evidence to prove the charge as laid.

6. They argued that the prosecution must prove that the 4<sup>th</sup> accused knew the effect of his conduct as being misleading to the principal (presumably, the Government of Sierra Leone). In the instant case, the 4<sup>th</sup> accused neither prepared nor did he present the cabinet paper (Exhibit AC1-5) to Cabinet. Consequently, he could not have deceived or knowingly presented a misleading document to the principal. The resultant effect is that the prosecution have failed to prove the case against the 4<sup>th</sup> accused on Count 47 of the indictment.
7. Further, the defence submitted that the inter-ministerial committee is tasked with the implementation of the cabinet conclusion. This consisted of the Ministry of Foreign Affairs and International Cooperation, Ministry of Works, Housing and Infrastructure, Ministry of Finance and Economic Development, the Attorney General and Minister of Justice, National Public Procurement Authority, the Sierra Leone Permanent Mission to the United Nations and Chief of Staff (State House).
8. It is further argued the 4<sup>th</sup> Accused had no part whatsoever in all of this other than having been nominally the Minister of Foreign Affairs and International Cooperation. Monies were transmitted without his knowledge, approval or participation. He was neither copied in on any correspondence, nor did he take part in the

proceedings or financial transaction whatsoever in relation to the New York Chancery project. Consequently, they humbly reiterate their submission that there is no evidence or no sufficient evidence upon which a successful prosecution and conviction of the 4<sup>th</sup> can be secured.

162. With respect to count 48, the 4<sup>th</sup> Accused was charged with Misappropriation of Public Funds Contrary to Section 36(1) of the Anti-Corruption Act 2008 (as amended by the Anti-Corruption Act No. 9 of 2019).

163. The 4<sup>th</sup> accused was in no way, either by action or omission, implicated as charged, the evidence presented does not prove the elements for a successful prosecution for the offence of Misappropriation. They relied upon this proposition on the basis of the dictum in the principles laid down for a successful prosecution for this offence in the case of *The State v Isha Johansen and Christopher Kamara* (unreported), in which Fynn JA had this to say:

*"misappropriation is mentioned in the side notes to sections 36 and 37 of the Anti-Corruption Commission 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."*

164. The learned judge they argued went on to cite with approval at page 7 the dictum of Hon. Mr. Justice N. C. Browne-Marke, JA (as he then was) in the unreported case of *The State v Komeh and Mans* where he described Misappropriation in the following words... *"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"*.

*"It is clear therefore that the prosecution must prove that the defendant took the money alleged to have been 'appropriated dishonestly'. Proof of such appropriation can be found in actual taking. per R. S. Fynn, JA*

165. In summary, they submitted that the Prosecution did not lead and/or tender any evidence that even remotely suggests that the 4<sup>th</sup> Accused while serving as Minister of Foreign Affairs and International Corporation appropriated or took all or any part(s) of the funds allocated for the rehabilitation/construction of Sierra Leone Chancery building in New York. As a matter of fact, there is documentary evidence that confirms that Jules Sanders Davies (the 6<sup>th</sup> Accused) acknowledged receipt of all payments made to Fairfield Construction LLC in respect of the referred project.

166. They further submitted that applying the said dictum, they argued that the prosecution did not lead and/or tender any evidence that even remotely suggests that the 4<sup>th</sup> Accused while serving as Minister of Foreign Affairs and International Corporation appropriated or took all or any part(s) of the funds allocated for the rehabilitation/construction of Sierra Leone Chancery building in New York. As a matter of fact, there



is documentary evidence that confirms that Jules Sanders Davies (the 6<sup>th</sup> Accused) acknowledged receipt of all payments made to Fairfield Construction LLC in respect of the referred project. They rely on exhibits X, Y, Z. He further relied upon the evidence of PW1, and concluded that there is no sufficient evidence to convict the 4<sup>th</sup> accused.

167. On the issue of dishonesty, they argued that the fundamental question to address is having regard to the totality of the evidence and bearing in mind the absence of any shred of evidence that the 4<sup>th</sup> accused appropriated all or any part of the referred funds, can the Prosecution seriously and/or successfully argue that the 4<sup>th</sup> Accused committed any act of dishonesty?. The case of Galbraith was relied upon to substantiate this submission. They argued that the evidence led by the prosecution up to the closing of its case, establishes no nexus between the 4<sup>th</sup> Accused and the alleged offences committed. The evidence is insufficient and additionally, so tenuous that it is most unlikely to secure a safe conviction in any circumstance, including a jury trial. They further submitted that the 4<sup>th</sup> accused has no case to answer and would end with a paraphrase of the law as stated at page 1430 of Blackstone's Criminal Practice of 2002, a no case submission must be considered if the prosecution witnesses' evidence is too inherently weak and vague for any sensible person to rely on it.

168. It went further to state that, in other words, the judge need not pretend to believe arrant nonsense. Thus, if the witnesses undermine their own testimony, as in this case, by conceding that they are uncertain about vital points material to proving the essential elements of the Prosecution's case, or if what they say is manifestly contrary to reason,

the judge may be entitled to hold that no reasonable jury properly directed could rely on the witnesses' evidence and therefore (in the absence of any other evidence) there is no case to answer.

Response by the prosecution

169. The prosecution responded to the no case submission by the defence. They relied upon the following matters:

1. The indictment refers to "former minister" as the 4<sup>th</sup> Accused was not the Minister of Foreign Affairs and International Cooperation as of the date on the indictment.
2. The Prosecution's onus to prove the case against the 4<sup>th</sup> Accused beyond reasonable doubt could not be enquired into or asked for at this stage of the trial.
3. Reference is made to Section 39(7)(a) of the Anti-Corruption Act No. 12 of 2008 (As Amended) which provides "that a Cabinet Minister shall be deemed to be an agent for both the Cabinet and the Government". It is submitted therefore that even if the Indictment had not so claimed the said provision would have been in place.
4. Section 40(3) of the Anti-Corruption Act No. 12 of 2008 (As Amended) provides inter alia "an agent who to the detriment of his principal uses or gives to his Principal a document that he knows contains anything that is false or misleading in any material respect commits an offence.

170. The prosecution submitted that the phrase "in any material respect" in this provision and within the context of the 4<sup>th</sup> Accused statement to Cabinet Exhibit "AC1-5" must mean the fact of verification and vetting which the Accused submitted and which the Accused cannot now support by evidence.

171. They further submitted that the phrase "in any material respect" in this provision and within the context of the 4<sup>th</sup> Accused statement to Cabinet in Exhibit "AC1-5" must mean the fact of verification and vetting which the Accused submitted and which the Accused cannot now support by evidence. The 4<sup>th</sup> accused knew at the time of submitting the cabinet paper that he did not have at his disposal any facts of vetting or verification, and that it is to be implied that even if there was no falsity there was at least an entity to wit the Cabinet that was misled, resulting from his categorical statement. He further submitted the proper approach to no case submissions is that set out in the case of *Galbraith* and in the case of of Goddard [2012] EWCA Crim 1756. Counsel further submitted that there is need to consider the evidence as a whole is what was illustrated in *Shippey [1988] Crim LR 767* and the decision did not depart from the two-legged test set out in Galbraith.

172. In the case of *The State vs. Luseni Joe Baun and three others*, in a cyclostyled judgement and after reference to the leading case of *Galbraith* (supra), cited Ames P in his ruling in the case of: *Siaka Stevens & Another vs. Commissioner of Police [1960-61] Vol.1 SLLR 208* at p.212 and stated that "*...where there is just a mere scintilla of evidence, the accused should be acquitted on a No-Case Submission. Here, I am of the view that at the close of the prosecution's case, there is more than a*

*scintilla of evidence probative of the matters which ...the prosecution has to prove...Taken at its highest, it is evidence upon which a jury properly directed could convict. It is another matter which I have to decide at the end of the case, not at this stage."*

**Deceiving a Principal contrary to Section 40(3) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

173. With respect to this offence the prosecution submitted that it is established that the 4<sup>th</sup> accused was the Minister of Foreign Affairs in 2016 and that in his capacity as Minister he presented to Cabinet for the consideration and conclusion of the Cabinet "A Cabinet Paper" Exhibit "AC1-5", in which the statement. *"the companies undertaking the Construction/Renovation are reliable and were subjected to rigorous vetting".*

174. The prosecution further submitted as follows:

1. That, the 4<sup>th</sup> Accused must of necessity have submitted the said paper with the intent that Cabinet will accept such proposals.
2. That as the Minister with such responsibility the onus and responsibility was on him that at the end of the day such statement was true and was being presented consciously.
3. That by implication the 4<sup>th</sup> Accused was saying even though in not so many words that the said companies including Fairfield Construction were to be relied upon by Cabinet and the Government of Sierra Leone,

175. The prosecution further submitted therefore that the 4<sup>th</sup> Accused was submitting to Cabinet through the said paper, that the Company being recommended had been scrutinized in a thorough logical and scientific way and that the same had been "examined with extreme care" and that as a question of fact that what the 4<sup>th</sup> Accused was suggesting was not the case for the following reasons and given the following circumstances.

176. The statement to Cabinet was submitted on the 18<sup>th</sup> April 2016 and a decision taken on the same on the 22<sup>nd</sup> April, 2016 by Cabinet. In that light, it is significant to note the contents of the 4<sup>th</sup> accused statement to the Anti-Corruption Commission. In that statement at page 20, the 4<sup>th</sup> accused was asked what rigorous vetting had been done in respect of the said Company the 4<sup>th</sup> Accused replied that he could not tell. He stated clearly on the same page of his said statement that the Cabinet paper he submitted was based on information by the Inter-Ministerial Technical Committee which had been ordered by Cabinet.

177. The prosecution disputes this version of events on the basis that said Committee came into existence or was ordered to be formed after the said Cabinet paper had been presented to Cabinet by the 4<sup>th</sup> Accused on the 18<sup>th</sup> April, 2016. In that same interview 4<sup>th</sup> Accused could not tell who the members of the said Committee were but more interestingly after several suggestions had been made to the 4<sup>th</sup> Accused in the interview he agreed that there may not have been any vetting at all of the Company referenced in his Cabinet paper, thus establishing Cabinet being misled.

178. Reference was made to the following issues which suggest that at the time the Cabinet paper was being presented to Cabinet the Ministry of Foreign Affairs and International Cooperation was not in possession of relevant facts upon which the 4<sup>th</sup> Accused could have based his judgment of proper scrutiny or vetting.

179. By a memorandum from the then Director-General and Ambassador-at-Large to the Minister Plenipotentiary and Head of Chancery dated 6<sup>th</sup> December, 2016, Exhibit "AQ1-4" the Head of Chancery (HOC) was "inter alia" being asked to ensure that the following details were to be supplied by the Contractor Fairfield Construction Associates LLC:

1. A valid business licence.
2. A valid tax clearance.
3. A record of audited account for the previous two years.

180. This memorandum of the 6<sup>th</sup> December, 2016 was said to have been as a result of a Memorandum dated 30<sup>th</sup> November, 2016 from the then Solicitor General giving his opinion on the matter. However, three days subsequently, the Director-General and Ambassador-at-Large had sent this Memorandum to the Minister Plenipotentiary and Head of Chancery that the contract between Fairfield Construction Associate LLC and the Government of Sierra Leone was signed by the 2<sup>nd</sup> Accused.

**Misappropriation of Public Funds contrary to Section 36(1) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

181. With respect to this count, the prosecution placed reliance on the interpretation of the words "wilfully" as enacted in section 36(2) of the

Anti-Corruption Act 2008, as amended. The ingredient of the offence has been declared in some cases e.g the State vs Lukuley and the State vs Haja Afsatu Kabba as intentionally recklessly or deliberate though some schools of thought have suggested that the literal meanings of deliberately or voluntarily should not be the yard stick.

182. The prosecution submitted that it was by the aforementioned act by the accused that the public body, the Government of Sierra Leone was subsequently deprived when all the disbursements and payments made to and received by the Contractor Fairfield Construction Associate LLC during the period 2016 and 2021. It is submitted as a question of fact that had there not been the said Cabinet paper Exhibit "AC1-5" with the said statement contained therein made by the 4<sup>th</sup> Accused and signed, all the consequential circumstances resulting therefrom may have been different. The issue which triggered the whole scenario from 2016 to 2021 was the Cabinet paper of 18<sup>th</sup> April, 2016.

183. In conclusion, the prosecution submits, it has established a prima facie case against the 4<sup>th</sup> Accused and it is proper that the 4<sup>th</sup> Accused be put to his Defence. The no-case submission is ill-conceived in this matter. The case should not be stopped as there is overwhelming evidence against the 4<sup>th</sup> Accused that need to be addressed.

#### Conclusions on the no case submission

184. I have carefully considered the submissions made by counsel for the prosecution and defence. I have also carefully considered Exhibit AC1-5, which the prosecution alleges was the vehicle through which the offences allegedly committed by the 4<sup>th</sup> accused were committed. The

said cabinet paper makes the following points which I consider significant and it is therefore expedient to set it out albeit in summary form:

1. That the document dated 18<sup>th</sup> April 2016 was a memorandum issued by the Minister of Foreign Affairs and International Cooperation.
2. That cabinet was invited to consider a number of recommendations, which included the following matters in summary form:

- I. Approval of option II totaling US\$2,560,000, as cost of completing the rehabilitation of the chancery building in the New York Mission, subject to negotiations with Fairfield Construction Associates and Government to be represented by the Ministry of Foreign Affairs and International Cooperation.

- II. Authorization of the transfer of US\$2,000,000 by the Ministry of Finance to the permanent mission of Sierra Leone in New York, being grant funds provided in 2012 by the Peoples Republic of China and ring fenced in the budget for the rehabilitation of the chancery building in New York.

- III. Authorization of the transfer of US\$500,000 by the Ministry of Finance to the permanent mission New York, being budgetary allocation for the said rehabilitation.

- IV. Authorize the Ministry of Foreign Affairs, Finance and the Attorney General and Ministry of Justice to monitor and supervise the rehabilitation works to the chancery and residence and provide regular reports.



V. No addition of a fourth floor and a construction period of 36 weeks, to name a few of the financial implications as provided for by the then Minister of Foreign Affairs and International Cooperation who is the 4<sup>th</sup> accused.

VI. Consultations across government were carried out with the Ministry of Foreign Affairs, Ministry of Works, the National public Procurement Authority amongst others, the office of the Chief of Staff and the office of the Attorney General and Minister of Justice amongst others and issued with the concurrence of the Acting Minister of Works, Housing and infrastructure.

VII. Evidence that proposed intervention is needed and will work includes an averment that the companies undertaking the renovation/constructions are reliable and were subjected to a rigorous vetting process.

VIII. Annexed to the document is a document from Fairfield Construction Associates in respect of the New York Mission, dated the 4<sup>th</sup> January 2016 and addressed to the 1<sup>st</sup> accused. This document referred to a meeting held on 30<sup>th</sup> December 2015 and signed by the 6<sup>th</sup> accused.

IX. Signed by the 4<sup>th</sup> accused Dr Samura MW Kamara as the Minister of Foreign Affairs and International Cooperation.

185. Having considered the totality of the evidence adduced by the prosecution in this case against the 4<sup>th</sup> accused, I cannot at this stage of the trial come to the conclusion that in accordance with Galbraith test,

there is no evidence that the crime alleged has been committed by the 4th accused.

186. Further, I cannot also at this stage conclude that the prosecution's evidence, taken at its highest, is such that a jury (or in this case where I sit alone as the trier of fact and law) and properly directing myself as to the law and the facts could not properly convict upon it. I have however concluded that having reviewed the prosecution's case and the submissions made, the prosecution evidence is such that its strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which I could properly come to the conclusion that the 4th accused is guilty of one or all of the offences charged, I am duty bound to allow the case to proceed to be tried on the evidence, thereby requiring the 4<sup>th</sup> accused to put a defence to the charges he faces. I consider that in accordance with the decision in *Goddard* 2012 EWCA Crim 1756, taking the prosecution's case at its highest, and having properly directed myself on the law, I could be entitled on one view of the evidence to reach an adverse inference, I am not entitled to stop the case at this point but to require the 4<sup>th</sup> accused to put a defence in answer to the charges.

187. In the circumstances the no case submission by the 4th accused is overruled and he is required to be put to his election in a bid to put his defence to the charges he faces.

The 5<sup>th</sup> accused.

188. The 5<sup>th</sup> accused submitted his no case submission on the 23<sup>rd</sup> January 2023. He is charged with 16 counts offences which can be summarised as follows:

**One Count of Conspiracy to Wit:**

1. Conspiracy to commit a corruption offence, contrary to section 128 of the Anti-Corruption Act No. 12 of 2008 (as amended by section 14 of Act No. 9 of 2019): as contained in Count 42.
2. Eight Counts of Failure to comply with applicable procedures and guidelines relating to the tendering of contacts. Contrary to section 48(2)(b) of the Anti-Corruption Act No.12 of 2008 (as amended by the Anti-Corruption Act No. 9 of 2019 as set out in Counts 26, 28, 30, 32, 34, 36, 38, and 40.
3. Seven Counts of Misappropriation of public funds, contrary to section 36(1) of the Anti- Corruption Act No. 12 of 2008 (as amended by No. 9 of 2019) as contained in Counts 29, 31, 33, 35, 37, 39 and 41.

189. With respect to this no case submission, the 5<sup>th</sup> accused relies on both limbs of the Galbraith test and submits that the prosecution has not made out its case and that they are solidly making a no case submission because the accused is under no obligation to respond to tenuous and vague allegations. The proper approach to a submission of no case to answer. They argue is very well beautifully established and they rely on the test set out in Galbraith. The no case submission of the 5<sup>th</sup> accused can be summarized follows:

**SECTION 48(2)(B) OF THE ACT NO. 12 OF 2008 (AS AMENDED BY THE ANTI-CORRUPTION ACT NO. 9 OF 2019) STATES TO WIT: Count 26**

190. The defence refers to the fact that this count alleges that the 5<sup>th</sup> accused being the Financial Attaché of Sierra Leone's Permanent Mission to the United Nations in New York, on a date unknown between the 1<sup>st</sup> of January, 2017 and the 30<sup>th</sup> day of November, 2017 at the Sierra Leone's Permanent Mission to the United Nation in New York City , New York in the United State of America, negligently failed to comply with applicable procedures and guideline relating to the management of funds to wit: payment of the sum of US\$35,000 to Jules Sanders Davis, President of Fairfield Construction Associates LLC.

191. Counsel relied upon Exhibit E1-51 which showed that in 2016 to some part in 2018 the 5<sup>th</sup> Accused Person was the Senior Accountant in the Ministry of Health and Sanitation and it was in August of 2018 that he was posted to the Permanent Mission of Sierra Leone to the United Nations in New York. Infact it was at the end of September, 2018 that he took over the said position as Financial Attaché.

192. He therefore submitted that the 5<sup>th</sup> accused was not even posted at the said Mission as at the 1<sup>st</sup> day of January, 2017 and the 30<sup>th</sup> day of November, 2017. The defence essentially argue that the 5<sup>th</sup> accused had an alibi for the period in question and to that extent the 5<sup>th</sup> accused had made it categorically clear that he was at the Ministry of Health and Sanitation as the Senior Accountant in 2016 to some part of 2018. He argued that the state failed to investigate what essentially was an alibi raised by the 5<sup>th</sup> accused. The 5<sup>th</sup> accused should be discharged on count 26.

COUNTS 28, 30, 32, 34, 36, 38, AND 40:

FAILURE TO COMPLY WITH APPLICABLE PROCEDURES AND GUIDELINE RELATING TO THE MANAGEMENT OF FUNDS, CONTRARY TO SECTION 48(2)(B) OF THE ANTI-CORRUPTION ACT NO. 12 OF 2008 (AS AMENDED BY THE ANTI-CORRUPTION ACT NO. OF 2019).

193. The 5<sup>th</sup> accused's counsel referred to the provisions of section 48(2)(b) of the Anti-corruption Act No.12 of 2008 (as amended by the Anti- Corruption Acts No. 9 of 2019) reads to wit:

"A person whose function concern the administration, custody, management, receipt or use of any part of the public revenue or public property commits the offence if he -willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditure"

194. In the Attorney General's Reference No.3 of 2003 (2004) EWCA 868 the court approved the definition of "Wilful" as deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or" not.

195. The evidence reveals that the 5<sup>th</sup> Accused was not present at the Mission in New York when the Construction started and came at a stage when the work was in progress. The 5<sup>th</sup> Accused person met a system and pattern of payment which he followed accordingly, and all the Payment Vouchers made by him were duly authorized and signed by the Head of Chancery (the Boss of the 5<sup>th</sup> Accused).

196. The 5<sup>th</sup> accused argued that throughout the prosecution's case no such manual was tendered given the procedures and guidelines that were breached or not complied with. No payment was made without approval from Head Office and confirmation and or authorization from the Head of Chancery. He argued that the 5<sup>th</sup> Accused Person worked fully within the confines/mandates of his job as Financial Attaché to the said mission and at no point in time he was ever queried for not following due processes and or willfully, negligently failed to comply with procedures or guidelines. He argued that the 5<sup>th</sup> accused should be discharged on Counts 28, 30, 32, 34, 36, 38, and 40 of the Amended indictment.

Counts 29, 31, 33, 35, 37, 39 AND 41

197. The 5<sup>th</sup> accused no case submissions with respect to this count is predicated on the prosecution's allegations in this count that the 5<sup>th</sup> and 1<sup>st</sup> Accused Persons on misappropriated public funds to wit: US\$500,000, US\$553,300.85, US\$329,000, US\$995,416.40, US\$150,000, US\$202,682 were paid to Jules Sanders Davies, President of Fairfield Construction Associates LLC. He argued that it came out uncontrovertibly that all these payments were made to the 6<sup>th</sup> Accused Person (the Contractor) and all of the witnesses for the Prosecution confirmed same and that the said 6<sup>th</sup> Defendant never raised any issue that any of the said sums was not paid to him. Nothing was done by the 5<sup>th</sup> Accused that would impute dishonesty on his part as all the vouchers processed by him were duly paid to the 6<sup>th</sup> Accused Person and in all meetings held it came out glaringly that the said funds were received by the 6<sup>th</sup> Accused Person and he urged the court to discharge the 5<sup>th</sup> Accused person of the offences referenced supra.

## Count 42

**Conspiracy to commit a corruption offence, contrary to section 128 of the Anti-corruption Act no.12 of 2008 (AS amended by section 14 of the Anti - Corruption Amendment Act, No.9 of 2019.**

198. The 5<sup>th</sup> defendant relied upon the fact It is settled law that an Agreement between two or more persons to commit a crime is itself a crime R.v. Mulcahy 1868 L.R. 3HL 306. This celebrated IRISH case demonstrates that, "A conspiracy consists not merely in the intention of two or more but in the Agreement of two or more to do an unlawful act by unlawful means so long as such a design rests in intention only it is not indictable". He argued that the totality of the evidence before the court does not disclose any evidence led against the 5<sup>th</sup> Accused leading to the fact that he conspired with any of the Accused persons - not even the 1<sup>st</sup> Accused (whose counsel in court at a stage even grew annoyed on the basis that the 5<sup>th</sup> Accused was trying to shift the burden).

199. In conclusion counsel submits that the 5<sup>th</sup> Accused Person should be accordingly discharged as the evidence adduced before this court is so weak and unreliable for a conviction to be sustained at the end of the trial (which would have occasioned so much hardship on the part of the 5<sup>th</sup> Accused) and a waste of time and resource of this Honourable court.

### The prosecution's response

200. In response to the late submissions filed by counsel for the 5<sup>th</sup> accused, dated 8<sup>th</sup> February 2023, counsel for the prosecution submitted that on Friday the 27<sup>th</sup> day of January 2023, Counsel for the 5<sup>th</sup> Accused served a No Case Submission on the Prosecution for and on behalf of the 5<sup>th</sup> Accused, who stands charged with 16 Counts under the Anti-

Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019 which can be summarized as follows:

1. One (1) Count of Conspiracy to commit a Corruption Offence, contrary to Section 128 of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019 - as contained in Count 42;
2. Eight (8) Counts of Failure to Comply with Applicable Procedures and Guidelines relating to Management of Funds, contrary to Section 48(2)(b) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019 - as contained in Counts 26, 28, 30, 32, 34, 36, 38, and 40.
3. Seven (7) Counts of Misappropriation of Public Funds, contrary to Section 36(1) of the Anti-Corruption Act, No.12 of 2008 as amended by the Anti-Corruption (Amendment) Act, No.9 of 2019 - as contained in Counts 29, 31, 33, 35, 37, 39, and 41

201. In response, the prosecution contends that, on an assessment of the totality of the evidence led by it, the submission of No-Case against the 5<sup>th</sup> accused must fail. It was submitted, that certain of the offences charged against the 5<sup>th</sup> Accused, by their very nature and definition require the 5<sup>th</sup> Accused to proffer an explanation. These are the cases in respect of which the law imposes a duty on the 5<sup>th</sup> Accused to act in a specified manner and the evidence shows that he failed to do so. In such cases it was submitted by the prosecution that a No-Case submission is unlikely to succeed without the 5<sup>th</sup> Accused being given the opportunity to prove, albeit on a balance of probabilities, that he acted in accordance with the precepts of the duty imposed upon him by law. To curtail



proceedings at the close of the Prosecution case, in such cases like the present, would offend against the dictates of the law.

202. Counsel for the prosecution raised the question as to whether the approach of this Honourable Court be any different in the determination of a No-Case submission where the Prosecution case is based, wholly or partly, on inferences to be drawn from circumstantial evidence?

203. Counsel relied upon Blackstone's *Criminal Procedure* and the test in Galbraith [1981] 2 All ER 1060 and the case of Goddard [2012] EWCA Crim 1756. Counsel submitted that the Galbraith principles require that the court considers and evaluates the whole of the evidence adduced by the prosecution. Should there be any inconsistencies in the prosecution evidence which may impact on the reliability of such evidence, the case must continue for the assessment of the evidence by the Court at the finalisation of the matter. The evidence must be considered as a whole as was illustrated in the case of *Shippey [1988] Crim LR 767*, which did not depart from the two-legged test set out in Galbraith.

204. Further reference is made to the case of *The State vs. Luseni Joe Baun and three Others*. The Prosecution contends that, on a proper identification of the elements of the charged offences and the assessment of the evidence led by the Prosecution in proof thereof, the No-Case Submission must necessarily be overruled.

205. In response to the assertion by counsel for the 5<sup>th</sup> accused that the prosecution has failed to tender any manual to the Court that states the 'applicable procedures and guidelines' that it relies upon in proof of its case counsel for the prosecution argued that these procedures and

the failure to comply with them, have been stated by the relevant Prosecution witnesses and most importantly, it is a well-known principle of the common law that legislation, statutes and regulations in particular, are proved simply by the Court taking judicial notice of their existence and familiarity to the Court. In support of that proposition, counsel relied upon the authoritative text of Phipson on Evidence, the learned editors state succinctly the principle in the following terms:

*"Judicial notice will be taken of the existence and contents of all public statutes; and of all Acts of Parliament of a public nature; as well as of every branch of unwritten law obtaining in England or Ireland.....Thus, if in a common law court, points of equity, or of parliamentary, ecclesiastical or Admiralty law arose, even before the Judicature Acts, they had to be determined not by calling experts, but by the court itself, either of its own knowledge, or by inquiry, or by hearing authorities and argument....."*

206. Consequently, counsel argues that the the argument proffered by the 5<sup>th</sup> Accused with regard to the claimed absence of proof of applicable procedures, guidelines and laws must not be countenanced by the Honourable Court.

207. The prosecution recognizes the argument as stated by Counsel that "the 5<sup>th</sup> Accused was not posted at the said mission as at 1<sup>st</sup> January, 2017 and the 30<sup>th</sup> day of November, 2017" and therefore could not have made the said payment as charged in Count 26.

208. The Prosecution contends however that the 5<sup>th</sup> Accused in his witness statement to the Anti-Corruption Commission dated 26<sup>th</sup> July 2021, Exhibit E1-58, at page 34 in his response to Question 66 states

that "I have processed payments eight (8) times as follows: first payment was made on November 28<sup>th</sup> 2018 in the sum of Thirty-Five Thousand Dollars (USD\$35,000.00)". This is corroborated by the 6<sup>th</sup> Accused in witness statement Exhibit F1-36 at page 22 when he was asked in question 38 "Take a look at the payment voucher dated 28/November 2018 for the amount of \$35,000 dollars...was it you that signed for and received the amount on the said payment voucher (pv)?" To which he replied "Yes". A look at Exhibit AN1-2 shows however that the 6<sup>th</sup> Accused recorded that he received the payment of USD\$35,000 on May 4<sup>th</sup> 2017. There is no record in Exhibit AN1-2 reflecting that the 6<sup>th</sup> Accused received any payment on November 28<sup>th</sup> 2018.

209. The prosecution counsel further argued that the 5<sup>th</sup> Accused in his witness statement to the Anti-Corruption Commission dated 26<sup>th</sup> July 2021 Exhibit E1-58 at page 34, when questioned about payments he had processed, informed the investigators about the said payments and of some significance is the following exchange with the investigators of the Anti-Corruption Commission:

"..Q66. How many times have you processed payment made to the Contractor, Fairfield Construction Associates LLC?

Ans: I have processed payments Eight (8) times as follows..."

210. From page 34 through page 37 of Exhibit E1-58, is a rendition of the various payments that were made, largely under the authorization of the 1<sup>st</sup> Accused as vote controller, without following any established procedure, let alone the procedures and guidelines relating to the

management of public funds. A confirmation of payments made as charged in Counts 26, 28, 30, 32, 34, 36, 38, and 40.

211. Counsel further argued that contrary to the submission of counsel in their no-case submission that the prosecution failed to tender or provide the Court with the manual that states the applicable *"procedures and guidelines that were breached or not complied with"*. Counsel for the 5<sup>th</sup> Accused has failed to take a look at *Exhibit "U1-26" Article VII Payments to Contractor at page 10 to 12, the Construction Contract between the Permanent Mission of The Republic of Sierra Leone to the United Nations and Fairfield Construction Associates, LLC*. Article VII Paragraph 7.01(a) provides that the contractor and architect meet at the worksite to review Contractor's performance and completion of certain items of work; and that *"Requisition"* for payment must be *"Approved by Architect"*. That said requisition should set forth the proportion of the Contract Sum properly allocable to labour, materials and equipment actually incorporated in the work.

212. Counsel further referred to the fact that the 5<sup>th</sup> Accused by his own admission admits that he had not read the *"Construction Contract"* specifically its Article VII, prior to commencement of the Anti-Corruption Commission investigation see interview dated 26<sup>th</sup> July, 2021 Exhibit E1-58 at page 34 question 65 in his witness statement.

"Q65. When did you read the said portion (Article 7) of the Contract?"

Ans. From the 23<sup>rd</sup> July, 2021"

213. The prosecution contends that the 5<sup>th</sup> Accused assumed duty as at *"end of September 2018"* (see Exhibit E1-58 response to question 8 at

page 5 of interview dated 21<sup>st</sup> June 2021) but he was already making payments without having read or seen the Construction Contract Exhibit "U1-26" or familiarised himself with *Article VII Payments to Contractor* of the "Construction Contract". Not only did the 5<sup>th</sup> Accused prepare and make payments to the 6<sup>th</sup> Accused, he deliberately ignored the provision of *Article VII 7.01(a)* of the Construction Contract that every Requisition must first be approved by an Architect. According to him because *"the Head of Chancery who is the Vote Controller explained to me the Contract terms and specifically the payments terms and as there was an ongoing payment towards the project before my arrival..."* See Exhibit E1-58 answer to question 68 at page 37 to page 38 of interview dated 26<sup>th</sup> July 2021.

214. Counsel contends that it is but prudent for 5<sup>th</sup> Accused to have exercised due diligence by familiarising himself with Exhibit "U1-26", *Article VII* of the Construction Contract before preparing and making payments to the 6<sup>th</sup> Accused without validating the merit of the Requisition submitted.

215. PW18, in his statement to the Anti-Corruption Commission, commencing at page 8 to 9, makes the same observation of the failure to follow applicable procedures, particularly with regard to "Change Order Three" which made provision for payment of One Million Nine Hundred and Fifty Thousand United States Dollars (USD1,950,000.00) to Fairfield Construction Associates LLC represented by the 6<sup>th</sup> Accused for construction of the 5<sup>th</sup> and 6<sup>th</sup> Floors. There was no Cabinet Approval for this substantial additional work which was procured without following applicable procedures and guidelines. He also makes reference to the

amount of USD202,682.00 that was glaringly paid to Fairfield Construction Associates LLC represented by the 6<sup>th</sup> Accused without any authorization and which had no documentation through which it could be verified.

216. The 5<sup>th</sup> Accused by his own admission, when questioned whether various requisition payments he made were supported with document certified by an Architect in his interview with the Anti-Corruption Commission investigators dated 26<sup>th</sup> July 2021, Exhibit E1-58, commencing page 40 to page 43 question 71 to question 76 affirms that the various requisitions were not supported with certified documents by an Architect and he re-affirms this in his reply to question 74.

217. The act of failure to comply it is submitted must be a wilful omission. According to the natural meaning of the language used in the Act, negligence is sufficient. It is submitted that negligence in this context, is failing to exercise such care or prudence that a reasonably diligent person in the 5<sup>th</sup> Accused's position would have exercised. The prosecution here submits therefore that the 5<sup>th</sup> Accused had a legal duty or responsibility to ensure compliance and exercise reasonable care. In inserting the alternatives "willfully or negligently fails..." in Section 48(2)(b), the legislature seems to have intended that negligence would suffice in some circumstances.

218. Not only did he prepare payment vouchers and make payments, he also deliberately ignored his responsibility to exercise due diligence when making payments. He further argued that there is no merit or substance to the submission on his behalf that he should be discharged. The

Procedure was blatantly disregarded and all the elements that constitute the offence have been proved, he argued.

**Misappropriation of Public Funds contrary to Section 36(1) of The Anti-Corruption Act No. 12 of 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

219. With respect to this offence, counsel argues that Parliament, in its wisdom, omitted any reference to "dishonesty" as an element, or as the requisite mens rea, in the offence. It is also to be noted that the elements of the actus reus are deliberately widened to include acts committed with or through another person. Further, the gravamen of the offence is the deprivation of any revenue, funds or other financial interest or property.

220. Counsel sought to draw a distinction between the offence under section 36 dealing with misappropriation of public funds and section 37 which deals with misappropriation of donor funds, where the aspect of "dishonesty" is deliberately stated.

221. Not only did the 5th Accused prepare and make payments to the 6th Accused, but he also deliberately ignored the provision that every requisition must first be approved by an Architect. According to him, he did this because "the Head of Chancery who is the Vote Controller explained to me the contract terms and specifically the payments terms and as there was an on-going payment towards the project before my arrival..." he relied on Exhibit E1-58 and the answer to question 68 at page 38. He further submitted that it was by the aforementioned act by the 5<sup>th</sup> Accused that the public body, the Government of Sierra Leone, was subsequently deprived when all the disbursements and payments were

made to and received by the Contractor Fairfield Construction Associate LLC during the period 2016 and 2021.

222. He further submitted as a question of fact that had the 5<sup>th</sup> Accused familiarized himself with *Exhibit "U1-26" Article VII Payments to Contractor at page 10 to 12, the Construction Contract between the Permanent Mission of The Republic of Sierra Leone to the United Nations and Fairfield Construction Associates, LLC* before preparing and making payments to the 6<sup>th</sup> Accused all the consequential circumstances resulting therefrom may have been different.

**Conspiracy to commit a Corruption Offence contrary to Section 128(1) of the ACA 2008 as amended by the Anti-Corruption (Amendment) Act No.9 of 2019**

223. With respect to this offence, the prosecution submitted that once evidence has been led in proof of any offence for which a conspiracy is alleged, such evidence will also be taken into account in proof of the alleged conspiracy. It is therefore proper for this Honourable Court to take into account the evidence led against each of the conspirators to prove the existence of a conspiracy, where such evidence is relevant. This buttresses the trite principle of law that proof of conspiracy is largely a matter of inference.

224. Counsel submitted that there is no doubt whatsoever that the accused persons alleged to have committed offences in their individual capacities in failing to comply with applicable procedures and guidelines, and misappropriation of public funds, which offences were in furtherance of the joint enterprise, acted in conspiracy. The 5<sup>th</sup> Accused's argument as contained in the last paragraph of his submission preceding his "Conclusion" that "*from the totality of the evidence before*



*this Court no evidence was led against the 5<sup>th</sup> Accused leading to the fact that he conspired with any of the Accused persons - not even the 1<sup>st</sup> Accused (whose Counsel in Court at a stage even grew annoyed on the basis that the 5<sup>th</sup> Accused was trying to shift the burden)" cannot be sustained for reasons already canvassed in the prosecution's response.*

225. In this matter, the prosecution has led evidence that the wilful act of the 5<sup>th</sup> Accused not only caused, but also deprived, the state of public funds.

226. The Prosecution respectfully submitted that on the whole, it has established a prima facie case against the 5<sup>th</sup> Accused and it is proper that the 5<sup>th</sup> Accused be put to his Defence. The Prosecution submits that the No-Case Submission is ill-conceived in this matter. The case should not be stopped as there is overwhelming evidence against the 5<sup>th</sup> Accused that need to be addressed.

#### Conclusions on the no case submission

227. I have carefully considered the submissions of counsel for the 5<sup>th</sup> accused and the prosecution. I come to the conclusion that the prosecution has laid a prima facie case against the 5<sup>th</sup> accused. There are aspects of the evidence adduced against him that require further consideration.

228. Having considered the totality of the evidence adduced by the prosecution in this case against the 5<sup>th</sup> accused, I cannot at this stage of the trial come to the conclusion that in accordance with Galbraith test, that there is no evidence that the crime alleged has been committed by the 5<sup>th</sup> accused.

229. Further, I cannot also at this stage of the trial conclude that the prosecution's evidence, taken at its highest, is such that a jury (or in this case where I sit alone as the trier of law and fact) and properly directing myself as to the law and the facts could not properly convict upon it. I have however concluded that having reviewed the prosecution's case and the submissions made, where the prosecution's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury (or I as the trier of fact) and where on one possible view of the facts there is evidence upon which I could properly come to the conclusion that the 5<sup>th</sup> accused is guilty of one or all of the offences charged, I am duty bound to allow the case to proceed to be tried on the evidence, thereby requiring the 5<sup>th</sup> accused to put a defence to the charges he faces. I consider that in accordance with the decision in *Goddard* 2012 EWCA Crim 1756, taking the prosecution's case at its highest, and having properly directed myself, I could be entitled on one view of the evidence to reach an adverse inference, and in those circumstances, I am not entitled to stop the case at this point but to require the 5<sup>th</sup> accused to put a defence in answer to the charges.

230. In the circumstances, the no case submission by the 5<sup>th</sup> accused is overruled and he is required to be put to his election in a bid to put his defences to the charges he faces.

#### The 6<sup>th</sup> Accused

231. The 6<sup>th</sup> accused has not filed any no case submission and has not participated in this trial neither has he subjected himself to the jurisdiction of the court. I did give an order that the trial proceed

against him in his absence. In any event, the prosecution has led sufficient evidence to warrant the 6<sup>th</sup> accused to, even at this stage file a defence to these charges, if he so pleases. I consider the prosecution's case to be sufficient to warrant him to put a defence on the charges he faces.

232. The no case submissions fail in their entirety and all accused persons save for the 6<sup>th</sup> accused would now be put to their election. The court would assess the case against him in accordance with the evidence before the court.

Dated this 23<sup>rd</sup> day of February 2023.

The Hon Mr Justice A Fisher J.

