

**The NRA Case/The State v. Solomon Katta, Idrissa Fornah, Elizabeth King, Momoh Turay,
Emmanuel Sesay, Catherine Katta, Santigie Kargbo before Hon. Mr. Justice M.A. Paul
3 April 2014**

FACTS: Mr. Katta was an NRA customs officer, Fornah a revenue officer at the Makeni NRA Office, King an NRA employee, Turay, Sesay and Mrs. Katta were Ecobank employees, King and Kargbo, at large, were not tried. All Accused were charged with count 1 under s.128 ACA 2008 i.e. conspiring together and with other persons unknown between May and June 2013 to cause loss to the NRA of PAYE tax from Addax Company of Le392,238,864. Count 2 charged Mr. Katta under s. 36 (1) ACA with misappropriation of Le200 million paid to the NRA by Addax. Count 3 mirrors count 2, but concerns Le60 million. Count 4 charged King with misappropriation of Le45 million paid to the NRA by Addax. Count 5 charged Turay and Sesay with misappropriation of Le40 million paid to the NRA by Addax. Count 6 through 13 charged Mr. Katta with misappropriation of taxes paid by Addax to the NRA; Le9 million, Le1 million, Le8 million, Le 3 million, Le 6. 5 million, Le 4 million, Le 3 million and Le 2 million respectively. Count 14 charged Mr. Katta under s. 27 (1) (b) ACA with being in control of pecuniary resources disproportionate to his present official emoluments i.e. le Le2, 015,967,465. Count 15 charged Mr. Katta under s. 122 (c) ACA with failing to give information required by an ACC asset declaration form regarding an Ecobank account. Count 16 charged Mr. Katta under s. 45 (3) ACA with failing to disclose in writing a direct interest of 60% ownership in Magsons' between 2012-13. Count 17 charged Mr. Katta under s. 49 (1) ACA with dealing with suspect property, by receiving Le45 million into his Magsons' account in May 2013, as payment for awarding a contract to Dwight Doherty, knowing it was the result of corruption. Count 18 charged Mr. Katta with misappropriation of Le28, 713,406 paid to the NRA. All Accused pleaded not guilty on all counts. There were no defence witnesses and only Turay and Sesay testified. All Accused relied on their statements.

From 2011, the NRA required its staff to not accept cash/cheque from taxpayers, who were to pay at Ecobank which maintained taxes in a suspense account then transferred them to the consolidated account, Central Bank. The payees should present the paying in slip at the NRA office for an NRA receipt. The NRA keeps copies of that receipt and supporting documents. In May 2013, Fornah accepted payment of Le 392,238,864 of staff PAYE taxes from the Addax Manager, signing the cheque and issuing a signed receipt to the Manager. The NRA retained copy of this receipt bore the same number and date as that given to the Manager, but was made out to "Mohamed Bah" for payment of Le 60,000. Fornah said the Addax cheque went missing on the day it was paid, but that he recorded neither its receipt nor loss in the NRA record books, daily collections reports nor reported the fact to a superior. King later gave this cheque to Turay, Assistant Manager,¹ Head of Retail Operations, Ecobank.² An internal audit in June 2013 revealed that the Addax cheque was diverted from the NRA to Magsons' account by Turay and Sesay, and revealed certain ***internal control lapses***. On discovering the diversion, the Bank's departmental heads called a meeting with Turay and Sesay where Turay admitted to authorizing the conversion of the cheque to a banker's cheque as requested by King, implicated Sesay in inputting the cheque into Magsons' account and confessed to both of them receiving Le 20 million each for this.³ Turay denies in his testimony and statement that he and Sesay were paid for the crediting of the Magsons' account. PW6 testified that Sesay also confessed his role to her.

Turay's instruction to PW5⁴ to prepare a banker's cheque was unusual, standard procedure being for a written signed request to precede from the customer to the Head of Operations and Technology, Bank Manager, or Relationship Officer. Turay testified that as one of the departmental heads in the Operations Department, he could instruct conversion of the cheque and the payment. Turay informed the bank's Addax relationship officer of the conversion. Turay admitted that no written instructions from Addax were attached to this cheque, arguing that the cheque in itself, King's instructions and the email sent to the relationship officer sufficed as a request for conversion. PW5 complied with Turay's request for the preparation of a banker's cheque since the NRA would continue to be payee and since Turay was then the most senior colleague around, the Head of Operations and Technology being absent. The conversion meant that the

¹ ***Katta*** handwritten judgment, p. 63; Turay testified that he was a "career level of assistant manager."

² ***Katta*** handwritten judgment, pp. 42, 63, 74, 75.

³ PW4, Allie Mohamed Sillah, Head of Operations and Technology, Ecobank; PW6, Olabisi Turner, Human Resources Manager, Ecobank.

⁴ PW5, Emmanuel Ngegba, Treasury Officer, Ecobank.

monies were paid into the banker's account, allowing for withdrawals from it, enabling later payment into the Magsons' Account.⁵ PW5 gave King the banker's cheque on Turay's instruction. Turay testified that there was a letter from King authorizing payment of the banker's cheque into the Magsons' account and that King's boss authorized this over the phone. Turay said he was Sesay's supervisor and that Sesay paid the banker's cheque into the Magsons' account. An electronic analysis of transactions confirmed that Turay was the authoriser and Sesay was the inputter. A phone call log of Ecobank staff shows that the Ecobank Accused communicated frequently between the date of the conversion i.e. the 28th, and date of payment into the Magsons' account, 30th May 2013. Prior to this, their communications were infrequent. Payment was followed by series of withdrawals. PW7⁶, a cashier, testified that when he needed confirmation from Ecobank senior staff to process a cheque presented by a Mr. Doherty for Le 45 million from the Magsons' account, he called up Mrs Katta to secure her approval since she was a signatory.⁷

JUDGE'S REASONING: The Defence's argument that, since count 1 was charged under s. 128 ACA, instead of s. 128 (1), it was defective and vague, was dismissed. Similarly, the Defence contestations that the Prosecution's evidence disclosed several rather than one conspiracy and that there was no point charging a conspiracy where the supporting evidence was the same, supporting the substantive offences of misappropriation, were also dismissed. Use of phrases such as; "*it is an offence*" / "*commits an offence*", is unnecessary to create an offence and not specifying the relevant subsection does not make count 1 uncertain and defective, since the Accused must have understood its nature and substance to have pled to it. Count 1 was sufficiently clear to enable the Accused to prepare his defence. His defence is not prejudiced by the amendment to add subsection 1 to s. 128. The Accused should have objected to perceived defects in the charges before even pleading to them, not waiting till final addresses to do so, so that they could have been immediately amended; S. 133 (1) and (2) CPA 1965.⁸ The ACC is entitled under s. 148 (1) CPA to amend the charges at any stage; *The State v. Herbert Akiremi George Williams*. S. 128 does indeed create an offence of conspiracy; *The State v. Alphajor Bah and Ors*, 23 October 2012 Unreported, *The State v. Mustafa Amara and Ors*, 7 June 2013 Unreported, *The State v. Dr Magnus Ken Gborie and Ors* CRN 7/13 10 January 2013, Unreported. A statute should be construed in conformity with common law and the rules of law, unless there is a contrary intention; *The State v. Dr. Magnus Ken Gborie and Ors*, 24 May 2013 Unreported. Therefore, the ACA must be construed as importing the Common Law Offence of Conspiracy. Had the ACA not included conspiracy, the Common Law offence of conspiracy would still work in conjunction with ACA corruption offences. Conspiracies and substantive offences may be charged on the same facts since general conspiracy counts may more accurately reflect the reality than just charging the substantive offences subsumed within it.

The criminal purpose of the conspiracy, the diversion of the cheque into the Magsons' account, determined Fornah's handling of the Addax cheque, since despite his 10 years at the NRA he received it, contrary to permitted practice, thereby *demonstrating motive*. He failed to report the missing cheque to his superior or Addax to stop its encashment, failed to log receipt of the cheque into office records, logged the number of the receipt issued to Addax into the cashbook and daily collection report form, but altered the name and amount. Where there are no contrary suggestions, a conspiracy may be inferred from the natural consequence of the Accused's actions. Although the above acts are not direct evidence of a conspiracy, one may infer based on them that a reasonable man in Fornah's position would have intended to participate in a conspiracy, and that Fornah sought to hide his participation in it. The ACC has proven conspiracy against Fornah beyond reasonable doubt and he is guilty of Count 1.

Turay's testimony and demeanor evinced lack of credibility and reliability. He talked about the request for cheque conversion/misposting, and the request for payment into the Magsons' account/a 3rd party transaction

⁵ **Katta** handwritten judgment, pp. 81-82, as per the reasoning of J. M.A. Paul. However, it's submitted that this routing was undertaken to mask the payment into the Magsons' account, from Addax Company itself, who would not easily be able to track their monies beyond payment into the Ecobank Manager's account.

⁶ PW7, David John, Cashier, Ecobank.

⁷ **Katta** handwritten judgment, p. 104; "*I needed a confirmation from a senior staff of the ECOBANK before I could pay...I recognised that my colleague staff is a signatory to the account...I had to explain to her...that I need confirmation to OK the amount.*" See also, p. 23 of Snapshot **IV. Control and Management of Public Funds: 2. Modes of Control: D. Banks:** "*David John is unclear about the capacity in which he contacted Mrs. Katta to confirm payment.*"

⁸ See **Application of Law** section.

(where the payee endorsed payment into someone else's account). The payee/NRA lacked a proper account and signatory rights so could not have requested a cheque conversion. Similarly, it could not have requested a 3rd Party transaction. Addax manager testified that Addax did not request a cheque. Turay argued his authorization of the conversion without the usual instrument of formal authorization from the payee was lawful. He said that he emailed the Bank's customer relationship officer to inform him of the Addax request for a conversion, but also says this was to seek the officer's confirmation. The email was framed to suggest Addax had already requested a banker's cheque; the Addax cheque attached for confirmation of its authenticity. Given his position and awareness of the MOU between NRA and Ecobank for taxes to be transferred to the central bank, he should have known that the NRA could not have authorized payment of tax into a 3rd party account. Further, 3rd party transactions can only be approved by the Manager of Operations and Technology or his designate,⁹ yet in his absence Turay authorized both conversion and payment, asserting that superior approval of the payment was unnecessary. Turay said that King returned the banker's cheque to him 2 days after she'd received it, asking him to pay it into Magsons' account for clearing and forwarding services and that she presented such a request from the NRA Finance Director on an NRA letterheaded document. Turay claimed to have confirmed the payment over the phone with King's boss, who said he'd spoken with an Ecobank director. Turay said that he personally spoke to Ecobank director/s whom he now did not recall. Turay says he filed the NRA letterheaded document but by then had no superior to whom he should minute it, although there was no evidence that PW4 was absent on that day. Since Turay failed to produce this authorization document, it is held that it was nonexistent.

Turay's motives had to be sinister, given his experience, position and knowledge of the implications of his actions. He denies in his testimony to confessing to PW6 and PW4, but they could not otherwise have known of King, a name consistent with PW5's testimony. Turay's request to the Police when detained to settle the matter amicably implies guilt. His testimony is inconsistent on how he got to know King and on the authorization for conversion. His statement contradicts his testimony on *why* he emailed the relationship officer and on whether he spoke to any Ecobank superior for payment to Magsons', nullifying the reliability of either source; *Egboghonome v. The State (2001) 2 ACLR 262*; *Owie v. State (1985) 1 NWLR (PT.3) 470*. His role in the conspiracy is evident from his overt acts and omissions which **breached all known bank procedures** to ensure the diversion of NRA cheque into the Magsons' account, the criminal purpose of the conspiracy. The case of conspiracy against Turay is established beyond reasonable doubt and he is guilty of Count 1.

Sesay testified that he inputted the NRA cheque into the Magsons' account upon Turay's instructions which were minuted on an NRA letterheaded document, but neither Turay's evidence nor Sesay's own statement corroborate this fact. Sesay said he returned the banker's cheque to Turay. Sesay's statement sometimes contradicted his testimony robbing either source of credibility and reliability; *Egboghonome* and *Owie*. Sesay knew the implications of his actions, admitting this was improper practice, yet still did it. He was dishonest since an ordinary honest person would not pay a tax agency's cheque into a private account without proper explanation. His argument of blind obedience is dismissed. His failure to challenge the allegation that he received Le 20 million, is held to be an admission to it; *Parkes v. R (1976) 1 WLR 1251*. It is reasonably inferable from Sesay's conduct that he became part of the conspiracy to divert the Addax cheque. He is therefore guilty of count 1.

Turay and Sesay were guilty of misappropriation under Count 5 since their acts were deliberate and well calculated, hence wilful and clearly intended to deprive the NRA of Addax taxes. Authorising the cheque's conversion and paying the cheque into the Magsons' account constituted misappropriation since it interfered with the NRA's right to determine the purpose of the money in the cheque, since it was done to the use of another (The Kattas) and since it was done to their own benefit. They were dishonest; honest persons in their stead would not have so acted. Neither the bank's lapse of internal control procedures nor its repayment of the Addax payment, nor its efforts to retrieve its funds from its insurance brokers negates the misappropriation.

Mrs. Katta relied on her statement. She was acting branch manager of Ecobank, Waterloo and held 60% shares of Magsons'. The account opening application bears the Kattas' photos and signatures as co-

⁹ *Katta* handwritten judgment, p. 78.

signatories to the Magsons' account and the account mandate also had their signatures. These signatures matched those on the cheques withdrawn from the Magsons' account after the payment. Mrs. Katta admitted to being signatory, but denied all these signatures. However, admitting to being signatory, meant she indirectly adopted these signatures as hers, even if Mr. Katta's assertion that he had always signed for her were true. Ecobank breached procedure by not securing the required references for the account application because Mrs. Katta was a bank employee and Mr. Katta had a pre-existing account¹⁰ and by making Mrs. Katta a signatory without a board resolution.¹¹ As a bank insider, the bank tended to refer to her for transactions carried out on the account. She denied knowing about the payment into the Magsons' account or being consulted for subsequent withdrawals although cheques above Le 5 million required both signatures. Mrs. Katta must have known the account was stocked since although there was only Le7, 545,402 in the Magsons' account prior to the payment (and there being overdraft facility), she nonetheless authorised Le200 million to Santigie Kargbo and Le 45 million to King. Inconsistencies between PW7's statement and testimony on the exact sequence of persons he contacted in seeking to process the Doherty payment are immaterial; he ended up noting Mrs. Katta's confirmation on the cheque. Her phone conversations to PW7, and to Turay and Sesay on the dates of the conversion and payment, her endorsement of cheques, were the many little things that altogether corroborated the overarching conspiracy to divert the cheque, showing that she was party to it; *Kuwait Oil Tanker Co. SAK v. Al Barder & Ors (2000) All ER (Comm) 271*. Conspiracy is proved beyond reasonable doubt against Mrs. Katta.

Mr. Katta was the initiator and centre of the Conspiracy, holding 60% shares in Magsons'. He said that King was his friend and a freelance clearing and forwarding agent, but she was actually his NRA colleague. King's motivation to ensure the cheque diversion was the Le 45 million and their relationship. Katta denies knowing of the NRA payment but only started withdrawing from the Magsons' account after it was made, knowing that it held only Le7, 545,402 before this. He contradictorily said that the signatures were his and his wife's, but later said he signed for her.¹² His asking for 6 months to 10 years to repay the misappropriated monies, is an admission of his complicity in the overarching conspiracy. Further, the state's evidence proved beyond reasonable doubt that Katta was guilty of counts 6 – 13 since within 11 days of the payment, he had authorised the withdrawal of Le339, 500,000 from the Magsons' account, intentionally and illegally assuming the right of the NRA as owner of the Addax taxes. Mrs. Katta should also have been charged with misappropriation since all but 2 of these withdrawals were jointly authorised. The Prosecution established beyond reasonable doubt that Katta is guilty of count 14, being in control of pecuniary resources disproportionate to his official emoluments. He was paid Le252, 421 monthly as an NRA collection assistant. His total salary and emoluments for his entire employment with the NRA from 1 September 2003 to June 2013 amounted to Le77, 285,612.¹³ However, his bank statements show one of his Ecobank leone account by June 2013 had Le2, 015, 967,465.61; his other Ecobank leone account by June 2011 had Le627, 531,658. One dollar account by June 2013 had \$ 47,108 and another dollar account by June 2011 had \$ 220,340. The ACC also established that he was guilty of count 15, failing to make sworn declarations under s. 119 (1) to the ACC of his incomes, assets and liabilities without reasonable cause/explanation. His asset declaration form for 2011 declared the contents of only his Sierra Leone Commercial Bank account i.e. Le 900,000 and not his Ecobank accounts and his failure to comply with the legal obligation to explain this disproportion was compelling.

The Prosecution has a discretion about who to call to prove its case; *R v. Yeboah (1954) 14 WACA 484* and *R v. Mansu (1947) 12 WACA 113* and must simply place before the Court all available and relevant evidence; *R v. Kuree (1941) 7 WACA 175*. It need not call all witnesses listed at the back of the indictment to meet its burden of proof; *R v. Edwards (1848) 3 Cox CC 82*. The Court often repeated that the Accused, (Mr. Katta,

¹⁰ *Katta* handwritten judgment, pp. 96-97, as per PW4's testimony.

¹¹ The fact of the necessity for a Board Resolution in this respect, comes in the form of a Defence submission, the veracity of which appears to have been accepted by the Court; "*The absence of such a board resolution which appears to be a breach of the bank's procedure...*"

¹² *Katta* handwritten judgment, p. 104; "*The 1st Accused did indeed say in his cautioned statement that he signed all cheques for himself and on behalf of the 6th Accused, his wife.*" At p. 117; "*The 1st Accused admitted in his cautioned statement that...the signatures described as specimen signatures are those of him and his wife...*" At p. 118; "*The 1st Accused turned summersault on his answers regarding the 6th Accused's signature.*"

¹³ As per a record produced by the NRA's Commissioner-General, Director of Finance and Budget, and Deputy Director of Administration and Human Resources; *Katta* handwritten judgment, p. 131.

Mrs. Katta, Fornah), in spite of their right to silence, should in the face of incriminating evidence, provide a credible explanation to create reasonable doubt. It reiterated that in reaching its conclusion, it can only consider the evidence before it; *R v. Sharmpal Singh (1962) 2 WLR 238*. It did not address the Defence argument that the offence of, conspiring to "cause loss of revenue to the GOSL" was nonexistent.

VERDICT: Katta is convicted on count 1 and sentenced to 6 years imprisonment, convicted on counts 6 through 14 and per each of these counts, sentenced to a fine of Le200 million and 6 years imprisonment, convicted on count 15 and sentenced to 6 years imprisonment. All sentences were concurrent. He is discharged on counts 16,17 and 18 for which the state conceded to leading no evidence. Fornah is convicted on count 1, fined Le70 million and sentenced to 4 years imprisonment. Turay was convicted on count 1, fined Le 40 million and sentenced to 3 years imprisonment, convicted on count 5 for which he was fined Le 40 Million and sentenced to 3 years imprisonment; both sentences were concurrent. Sesay was convicted count 1 for which he was fined Le 40 million and sentenced to 3 years imprisonment and convicted of count 2 for which he was fined Le 40 million and sentenced to 3 years imprisonment; both sentences were concurrent. Mrs. Katta was convicted of count 1 for which she was fined Le 70 million and sentenced to 3 years imprisonment. The Accused were to remain in prison if by the end of their imprisonment terms they failed to pay their respective fines.

ANALYSIS: I. Case preparation: *1. Non-exhaustive investigative/prosecutorial techniques:* The Prosecution ended up conceding to having led no evidence for counts 16, 17 and 18. It should have been clarified, whether by the parties or the Court, what technical terminology such as; "system maker", "system checker", "system input authorizer" "inputter," "authorizer," "posting," meant.

II. Potentially erroneous legal, factual findings: The contention that there is no substantive offence in the ACA of "causing loss of revenue to the GOSL" which can be conjointly charged with conspiracy goes unaddressed while the charge is upheld in relation to all the Accused. It is never clarified that this offence alleged can easily be construed as misappropriation. The Court ignored that the emphasis of the Defence's argument against the pleading of s. 128 was less that the Accused misunderstood this charge, but that the charge was founded on nonexistent/bad law. Addressing Defence contentions head on means preempting their being raised as grounds of appeal and as general/press criticism.

IV. Precedential consistency: "*This Court has held repeatedly that s. 128 ACA creates the offence of conspiracy*"¹⁴ referring to similar situations in; *The State v Alphajor Bah and Ors, 23 October 2012, Unreported*; *The State v Mustafa Amara and Ors, 7th June 2013, Unreported*; *The State v Dr Magnus Ken Gborie and Ors, CRN 7/13, 10th January 2013, Unreported*. Amending s. 128 to 128 (1) under s. 148 (1) CPA is permissible at any stage of the trial referring to; *The State v. Herbert Akiremi George Williams and Ors, 10 August 2012, Unreported*. Note that key evidential principles stated in other cases here reviewed are repeated in **Katta**. One such principle is that the Court can only draw inferences based exclusively on the evidence before it and cannot speculate outside of this; the fact of the Accused not testifying denies the Court of the opportunity of assessing his demeanour and the credibility of his account and exercising a choice; *R v. Sharmpal Singh (1962) 2 WLR 238*.¹⁵ Likewise, choosing not to testify means the Accused's case stands or falls with the Prosecution's case; *Akinyemi v. State 2001*. Inconsistencies between investigative statements and testimony nullify the reliability of either; *Egboghomone v. The State (2001) 2 ACLR 262* and *Owie v. State (1985) 1 NWLR (PT.3) 470*. Failure by an Accused during testimony to challenge an allegation is an admission to it; *Parkes v. R (1976) 1 WLR 1251*. The Defence must not wait till closing addresses to object to defects in charges, later confirmed in; *The State v. Dr. Magnus Ken Gborie and Ors, 24 May 2013, Unreported*.

V. Re Governance: Of relevance is J. Paul's statement that the most relevant theory of punishment to misappropriation is deterrence not reformation and that the public's welfare should be the preoccupation of the Court given the frequency of these incidents at the NRA. The **Katta** incident and others like it, (the disappearance of another Addax cheque, paid at the same NRA office in March 2013), were enabled by

¹⁴ **Katta** handwritten judgment, pp. 20-21.

¹⁵ **Katta** handwritten judgment, pp. 27-28.

failure to exercise due diligence¹⁶ and to follow established procedure at the NRA and Ecobank. The Court openly recognised that the conversion and the payment were made "*in breach of all banks' laid down procedures.*"¹⁷ The circumstances make clear therefore that; **standard procedures must be known, their observation characterized by due diligence and must inhere an in-built guarantee of their own observance in order to be watertight.** The NRA directive 2011 prohibiting the direct receipt of tax which aimed precisely to avoid situations such as that in *Katta* was breached. The MOU between Ecobank and the NRA that tax should be transmitted to the government's consolidated account, central bank was also directly contravened by Ecobank staff. Additionally, the bank breached its own internal procedure by not demanding the provision of references in setting up the Magsons' account for its staff member and by appointing her signatory without the necessary board resolution. The *Katta* scenario therefore raises the question of awareness; **public awareness of NRA customer related policies, and staff awareness of key policies of their employer institution.** The **issue of diligence** is also manifest in the customer relationship officer's being duped by Turay's email into believing the request for conversion had already been made so that he simply confirmed the payment of the cheque without asking to see the actual formal request for conversion as was the standard procedure. Secondly, **it may be necessary for banks to clearly articulate the extent to which the practice of bankers' of confirming significant transactions with customers by telephone¹⁸ is appropriate, if only to avoid its being employed as a legitimating defence.** PW7's securing of Mrs. Katta's confirmation over the phone for processing a Le45million cheque drawn on the Magsons' account was accepted by the Court. Similarly, Turay explained that he sourced authorization for a nearly 400 million Leones payment over the phone from King's boss and his own supervisors. However, this was rejected as beyond acceptable, because it was a 3rd party transaction and since he could not identify them by name. Fourthly, **these instances raise again the issue of awareness, here specifically of the bounds of one's roles/responsibilities and those of colleagues, and the need to question the unlawful exercise of authority.** Here, note that PW5 complied with Turay's request for conversion despite recognising that standard procedure, in the form of the requisite supporting documents, was absent and that the request was not sourced from or addressed to the appropriate parties. PW5 said he complied partly out respect for Turay the most senior staff around on that day. Similarly, Sesay complied with Turay's request despite knowing this was improper practice,¹⁹ pleading superior instructions.²⁰

V. Knowledge/Information Management: Little can be done by way of logging information when parties are intent of not doing so, in order to effect the crime. This fact underscores the importance of rigorously maintaining modes of IM, since any departure from the norm would help trigger detection alarms. For e.g., Fornah was set on not logging any details about the Addax cheque. Note that although the original of the Addax company cheque was tendered in court,²¹ only copies of the banker's cheque could be produced at trial,²² being retained as part of standard procedure, as should also have been the original banker's cheque upon payment. However, this original was irretrievable.²³ After PW5 gave King the banker's cheque, she returned it to Turay, who then gave it to Sesay to credit the Magsons' account. Although Sesay says he returned it to Turay after this, Turay could not explain its loss and said that it was supposed to be in Sesay's work. Also, Turay said he filed the NRA letterheaded document from the NRA Finance Director authorizing the payment, but he did not produce it at trial. In *Katta*, modes of IM were used to detect the crime. PW4 used "flex cube" the bank's "core application" to investigate the Addax cheque. The app. allowed for field-based queries such as, "system maker/checker/system input authoriser", for both transactions; the conversion and the payment. It also enabled print outs of transaction reports/lists. In this way, PW4 uncovered the involvement of Sesay as inputter, and Turay as authorizer. Also, the analysis of the Africell call logs of staff "virtual private network lines" enabled detection of frequent communications between Mrs. Katta, Turay and Sesay on the critical dates.

¹⁶ *Katta* handwritten judgment, (Sentence), pp. 145-146.

¹⁷ *Katta* handwritten judgment, p. 109.

¹⁸ *Katta* handwritten judgment, p. 107; judicial notice is taken of this practice.

¹⁹ *Katta* handwritten judgment, p. 91; "improper practice."

²⁰ *Katta* handwritten judgment, p. 92; "...acted in the normal course of his employment as one who takes and executes instructions from his superior."

²¹ *Katta* handwritten judgment, pp. 43-44; tendered by PW4 as Exhibit M.

²² *Katta* handwritten judgment, p.44; Tendered by PW4 as exhibits N and N2 respectively.

²³ *Katta* handwritten judgment, p. 44; "PW4 said the original banker's cheque could not be located from the 5th Accused, Emmanuel Sesay..." At p. 84; "The original of Exhibit 'N' (the Manager's cheque) had been deftly thrown away."

APPLIED LAW: The Defence must not wait till closing addresses to object to defects in charges. S. 133(2) Criminal Procedure Act 1965 makes it impossible, except with leave of the Court, for the Accused after he has pleaded to the charges, to object that his trial has been improper due to defects, omissions or irregularities relating to the depositions or committal or any other matter out of the preliminary investigation. S. 133 (1) CPA states that by pleading not guilty to charges, an Accused had obliged the trial process. Rule 3(4) (b) in the 1st Schedule to the Rules made under s. 50 CPA provides that it shall be sufficient if only the words of the section of the enactment creating the offence are set out in the particulars of the offence.

S. 128 ACA creates the offence of conspiracy; *The State v Alphajor Bah and Ors*, 23 October 2012, Unreported; *The State v Mustafa Amara and Ors*, 7th June 2013, Unreported; *The State v Dr Magnus Ken Gborie and Ors*, CRN 7/13, 10th January 2013, Unreported. Amending charges, including s. 128 to 128 (1) under s. 148 (1) CPA is permissible at any stage of the trial; *The State v. Herbert Akiremi George Williams and Ors*, 10 August 2012, Unreported. A statute should be construed in conformity with common law and the rules of law, unless there is a contrary intention: *The State v. Dr. Magnus Ken Gborie and Ors*, 24 May 2013 Unreported, *R v. Morris (1867)LR ICCR 90*; *Lord Eldon v. Hedley Bros (1935) 2 KB1 24*; *R v. Thomas (1950) 1 KB 26*. S.74 of the Courts Act 1965 makes common law part of the existing laws of Sierra Leone.

It is difficult to detect corruption in public service since participants consciously cover their tracks; *Public Prosecutor v. Yuvaraj (1970) AC 913*. The actual offence in a conspiracy is the agreement between 2 or more persons to do an unlawful act. Conspiracies come in different forms, with roles of varying significance. Conspirators need not know each other, neither do they need to have simultaneously started the conspiracy, it can be joined tacitly; *Kuwait Oil Tanker and Ali Barder and Ors (2000) 2 All ER (Comm) 271*, and at a later stage; *R v. Meyrick and Ribuff (1929) 21 Cr. App. R. 94*. A conspirator is deemed to have joined the conspiracy at a later stage where he is aware of all the essential facts of the conspiracy and entertains the same object. The unlawful act is the act done in pursuit of that criminal purpose and the unlawful frame of mind is the intention to do the unlawful act.²⁴ These can rarely be proved through direct evidence, but are inferable from the acts or omissions of the parties. Very often, the act is the only proof of conspiracy. Circumstantial evidence combined with other evidence are thus relied upon to demonstrate the agreement to participate or commit the crime and the commission of the crime itself. Complicity in a conspiracy may be corroborated by varying/disparate pieces of evidence; *Kuwait Oil Tanker Co. SAK v. Al Barder & Ors (2000) All ER (Comm) 271*. In proving conspiracy, the words/acts or omissions of an Accused conspirator in furtherance of the common design, made in the absence of the other Accused conspirators, may be admitted in evidence against these other conspirators; *R v. Luberger (1926) 19 Cr. App Rep. 133*; *R v. Boulton (1871) 12 Cox CC 87*; *R v. Cooper and Compton (1947) 2 All ER 701*.²⁵ This is determined on an individual case basis.

The Court in reaching its conclusion can only consider and draw inferences based exclusively on the evidence before it and cannot speculate outside of this; *R v. Sharmal Singh (1962) 2 WLR 238*. The Accused in spite of their right to silence, should in the face of incriminating evidence, provide a credible explanation to create reasonable doubt. Choosing not to testify (relying exclusively on their statements), means the Accused case stands or falls with the Prosecution's case; *Akinyemi v. State (2001) 2 ACLR 32*. Where a witness's statement contradicts his testimony, either source is robbed of credibility and reliability; *Egboghonome v. The State (2001) 2 ACLR 262*; *Owie v. State (1985) 1 NWLR (PT.3) 470*. Failure by an Accused during testimony to challenge an allegation is an admission to it; *Parkes v. R (1976) 1 WLR 1251*. Requests by the Accused to be allowed to make good losses he is accused of imply admissions of guilt; Turay requested an amicable settlement in his statement,²⁶ and Katta requested in his statement a grace period of between 6 months, 5 -10 years to repay the diverted money.²⁷ There's is no need to call an expert where the Court can form its own conclusions of the facts; expert opinion is relevant and admissible where it

²⁴ *Katta* handwritten judgment, pp. 28- 29.

²⁵ However, see Snap **III. Conspiracy and Procurement: 1. Conspiracy: B. Evidence:** p. 2, para. 1; the *Al Jazeera case* made it clear that although the acts of the Co-Accused may be admitted to prove involvement in a conspiracy, of the Accused, the Co-Accused's act sought to be admitted should be in furtherance of a common plan between himself and the Accused/it should indicate the pursuit of a plan between them and even where this criterion is met, other independent evidence implicating the Accused in the conspiracy is needed. Therefore, evidence of the Co-Accused's conduct by itself does not suffice.

²⁶ *Katta* handwritten judgment, pp. 84-85; Such requests often imply admission of guilt.

²⁷ *Katta* handwritten judgment, p. 118; It was held that Katta's statement was "in the nature of an admission of guilt."

provides scientific or technical information unknown to the judge; *R v. Rickard (1918) 13 Cr App Rep 140*; *R v. Turner (1974) 60 Crim. App. R. 80* and *DPP v. Jordan (1977) AC 699*.

The Prosecution bears the burden of proof beyond reasonable doubt for the elements of all the offences against the Accused; *Woolmington v. DPP (1935) AC 462*. Proof beyond reasonable doubt need not reach certainty, but must carry a high degree of probability. A remotely possible but highly improbable doubt operating in favour of the Accused is not a reasonable doubt; *Miller v. Ministries of Pensions (1947) 2 All ER 372* and *Nasiru v. State (1999) 2 NWLR (PT. 589) 87*. The Prosecution has a discretion about who to call to prove its case; *R v. Yeboah (1954) 14 WACA 484* and *R v. Mansu (1947) 12 WACA 113* and must simply place before the Court all available and relevant evidence; *R v. Kuree (1941) 7 WACA 175*. It need not call all witnesses listed at the back of the indictment to meet its burden of proof; *R v. Edwards (1848) 3 Cox CC 82*. . To prove Katta violated s. 27(1) (b) ACA, the Prosecution must make out a prima facie case that Katta was a public officer, and that the amount of his pecuniary resources was disproportionate with the amount of his total official emoluments up to present. Establishing these ingredients of the offence, reverses the burden of proof, placing it on the Accused, who must proffer an explanation, on a balance of probabilities, to satisfactorily show that the pecuniary resources came from legitimate sources. The Accused's right to silence is affected since reticence in these circumstances indicates that the Accused has something to hide. S. 119 (1) ACA requires public officers to make sworn declarations of their incomes, assets, liabilities to the ACC, within 3 months of becoming a public officer and in each succeeding year not later than 31 March. Therefore, under s. 122 (c) ACA, failing to give information required by the ACC, specifically its asset declaration form in s. 119 (1), the Prosecution must prove that the Accused was a public officer, that he was obligated to make yearly assets declarations and failed without reasonable cause to do so.

An act done in pursuit of an unlawful design does not stop it being a misappropriation. Under s. 36 (1) ACA, misappropriation is the intentional, illegal use of public property/funds for one's own use, or to the use of another unlawfully, or other unauthorised purposes. Misappropriation requires the owner of the property appropriated to be public body. The NRA, a public body created by a Parliamentary Act was the owner of the money in the Addax cheque. An owner has a package of rights, one of which was to authorise that cheque be used for the purpose for which it was made; a misappropriation involves doing an act expressly or impliedly unauthorised by the owner, amounting to an adverse interference with those rights; *R v. Morris 1983 All ER 288*; *R v. McPherson (1973) Crim L.R. 191* and *Anderton v. Wish (1980) 72 Cr. App. R. 23*. The misappropriation must be wilful. Wilfulness in itself imports elements of dishonesty; *The State v. Kasho Wellington and Anor (unreported)*; *R v. Ghosh (1982) 2 QB 105*.

MEDIA REVIEW:

Reports amply covered the trial facts, investigative, prosecutorial phases, gradual streamlining of the 17 mainly NRA and Ecobank suspects, the 2 resultant ACC cases (*Lavalley and Ors.*) and King's arrest in Banjul. The trial, the verdict, sentencing stages, reaction of the court audience, and positive public reception, were vividly captured; the public were actively present during the trial. This 1st mandatory custodial sentence in an ACC case (1st imposition of a combined sentence of fines and imprisonment), was meant to reflect the gravity of the offences and send a stark message to similarly placed persons. The Sierra Leone Telegraph claimed this sanction was prompted by journalistic activism and debated whether this was an instance of selective justice. Katta's and Fornah's fines were presented at times as cumulative, at others as concurrent; the ACC Media Unit's press release and The Sierra Leone Telegraph calculated cumulatively. Awoko's references to responses and rejoinders as "*bites*" highlight a need for knowledge of basic legal terminology. It was misreported that the Accused were also convicted of conspiracy to commit Felony, of various forms of conspiracy, that Katta was paid Le 680,000 monthly and in possession of Le 2.6 billion, (see contrary Facts above). Ecobank's lapses of internal procedure were reported, but it asserted its non-collusion and strengthening of its control systems. Commissioner Kamara described the conviction under s. 27 (1) (b) ACA as historic and a default charge of sorts.

PRESS ARTICLES REVIEWED:

ACC, (2014), *NRA Convict Solomon Katta 'The Architect of An Overarching Conspiracy*, ACC; http://www.anticorruption.gov.sl/show_news.php?id=335

Unnamed, (2014), *Sierra Leone News: April 3 Judgment day for Solomon Katta & four others*, Awoko; <http://awoko.org/2014/02/26/sierra-leone-news-april-3-judgment-day-for-solomon-katta-four-others/>

Unnamed, (2014), *Solomon Hindolo Katta and Four others of NRA & ECO Bank have been convicted on charges of conspiracy to Commit Felony and misappropriation of public revenue contrary to the Anti-Corruption Act of 2008*, SLBC; <http://www.slbc.sl/solomon-hindolo-katta-and-four-others-of-nra-eco-bank-have-been-convicted-on-charges-of-conspiracy-to-commit-felony-and-misappropriation-of-public-revenue-contrary-to-the-anti-corruption-act-of-200/>

Unnamed, (2014), *'Ecobank ...Reckless' - Justice Paul*, NewsWatch Sierra Leone; <http://newswatchsl.com/article/%E2%80%98ecobank%E2%80%A6reckless%E2%80%99-justice-paul>

Kamara J.K., (2014), *Commentary, Conviction for Unexplained Wealth: ACC Charts New Path*, The Patriotic Vanguard; <http://www.thepatrioticvanguard.com/conviction-for-unexplained-wealth-acc-charts-new-path>

Unnamed, (2013), *Arrested in Banjul: Corruption Trial for Elizabeth King*, Standard Times Press; <http://standardtimespress.org/?p=4555>

Thomas A.R., (2014), *Corruption kills – 5 jailed in Sierra Leone*, The Sierra Leone Telegraph; <http://www.thesierraleonetelegraph.com/?p=5924>

Unnamed, (2013), *Public Revenue Theft, Corrupt Transactions*; <http://sierranetworksalone.com/home/news/item/214-public-revenue-theft-corrupt-transactions.html>

Mansaray J.B., (2014), *ACC Wins NRA Case*, Global Times; <http://www.globaltimes-sl.com/acc-wins-nra-case/>

Tommy E., (2013), *In Sierra Leone, As police indict Chief Tony, Kabba Khalu...ACC Drags 17 Persons to High Court*, Awareness Times; <http://news.sl/drwebsite/exec/view.cgi?archive=9&num=23148>

Randall B., (2014), *Local Sierra Leone News: As Justice Paul Slams Custodial Sentences...Anti Corruption Fight Makes Citizens Proud*, Awareness Times; http://news.sl/drwebsite/publish/printer_200525204.shtml

By ACC Media Unit, (2014), *High Court Pronounces Custodial Sentences & Huge Fines on Convicted NRA/Ecobank Staff*, Awareness Times; http://news.sl/drwebsite/publish/printer_200525204.shtml

Koroma M., (2014), *Stiff Jail Terms for NRA, Ecobank Convicts!*, Sierra Leone News Hunters; <http://www.sierraleoneonewshunters.com/article/stiff-jail-terms-nra-ecobank-convicts>

Unnamed, (2013), *Over NRA Fraud...Two freed, My Sierra Leone*/Awoko; http://mysierraleoneonline.com/sl_portal/site/news/detail/1521