The SLMA Case/The State v. Philip Lukuley before Hon. Mr. Justice Nicholas Brown-Marke
11 July 2011

FACTS: Lukuley was the Executive Director (ED) of the Sierra Leone Maritime Association (SLMA). Count 1 charged him with misappropriation under s. 36 (1) ACA of Le 69, 954, 960 paid to the Sierra Leone Shipping Agency in 2010 and count 2 charged him with abuse of office under s. 43 ACA in relation to that same payment. Counts 3 to 6 charged him with fraudulent acquisition under s. 48 (1) (a) ACA of Le 145, 920, 000 of public funds, in the form of leave and rent allowance, contrary to his employment terms. Counts 7 to 8 also based on the aforementioned rent and leave allowances, charged him under s. 48 (2) (b) ACA with willfully failing to comply with the relevant procedures for management of funds. Counts 9 to 12 also based on the rent and leave allowances charged him with misappropriation and counts 13 to 16 also based on the rent and leave allowances charged him under s. 42 (1) ACA with abusing his office by improperly conferring an advantage on himself. Counts 17 to 27 were based on allegations against Lukuley of calculating in excess his per diem travel allowance. Regarding this, specifically counts 17 to 19 charged him collectively with misappropriation of $7883, counts 21-23 charged him with willful failure to comply with applicable procedures, counts 24 to 27 charged him with abuse of office. Count 20 charged him under s. 128 (1) ACA, with conspiring with other persons unknown to willfully miscalculate this per diem. Count 25 replicated the facts of count 27, but merged elements of the charge of abuse of office with willful failure to comply with procedure. Regarding remuneration to the Board of Directors, counts 28 to 160 charge Lukuley with willful failure to comply with procedures, while counts 161 to 169 charged him with offering a monetary advantage to the Board under s. 35 (2) ACA. Counts 170-173 are based on the reparation of allegedly Lukuley's private cars, by Dokkal Ents. Counts 170 and 171 charged Lukuley with misappropriation by paying Dokkal a total of Le3, 442, 800. In relation to the sum specified only in count 171, count 172 charged Lukuley with willful failure to comply with procedure and count 173 charged him with abuse of office. Counts 175 to 176 charged him with conspiracy to commit misappropriation (*presumably in relation to the Dokkal payments*).[1] Count 174 charged Lukuley under s. 130 (1) ACA, with failing to comply with a requirement under the ACA 2008. Counts 177 to 184 were based on allegations of the supply of fuel to Lukuley's private vehicles and generator; counts 177 to 182 charge him with misappropriation of altogether Le 2, 932, 000 by supplying fuel to his private vehicles including for his wife's private trip to Guinea. Count 183 describes the Guinea trip as an abuse of office whilst count 184 treats it as an abuse of position under s. 44 (1) ACA. Counts 185 to 194 charge misappropriation of public funds for disparate payments to members of parliament, provincial authorities, etc. under the vague budget headings of "*Facilitation and Protocol*" and "*Community Relations*."

JUDGE'S REASONING: The SLMA was a public body since it received a government subvention of Le 960, 192, 100 outside its budget in 2009, so that GBBA 2005 and FMR 2007 apply. Therefore the Accused was a public officer. Public money under S.1 (1) ACA 2008 includes money held by, in or paid out of the consolidated fund, as is the case here. Subject to the approval of the board, the ED was responsible under s. 15 SLMA Act 2000 for the SLMA's daily management which would include the administration of funds by subordinates. The SLMA had no internal auditor but had been audited by *Bertin and Bertin* in 2008 who confirmed that all transactions recorded were within the budgetary provisions. However, it takes special and not general audits to expose fraud.

The Prosecution must avoid overloading the indictment (since it makes proving and assessing the elements strenuous and prolongs trial), and instead proffer charges that stand a strong chance of being proven and are in the interests of justice; *Novac (1976) 65 Cr App R 107* and *Blackstone's Criminal Practice, 2007, p. 60, para. D10.60.* "*Overloading"* is acceptable where the evidence is uncertain and juries are involved. Counts 1 and 2 fail since Lukuley was not responsible for the tardiness incurring demurrage payment; the tardiness may have been careless/negligent, but was not willful and dishonest as required by misappropriation.[2] Counts 3 to 16 on the rent and leave allowances fail; Lukuley's conditions of employment were fixed by the Board under s. 14 (2) SLMA Act 2000. The SLMA budget was compiled by departmental heads, decided upon by

[1]None of the references to counts 175-176 in the ***Lukuley*** Judgment; para. 1, p. 5, para 56, p. 25 and para. 131, p. 52 expressly indicate that the misappropriation alleged by these charges relate to the Dokkal payments.
[2] Although not articulated in the Judgment, the natural conclusion is that since the ED could not have misappropriated the demurrage payment, he did not confer that sum upon himself as an advantage as required for the offence of abuse of office.

Management and under s. 20 (3) SLMA Act 2000 finalized and submitted to the Board by the ED for its approval. Subsequently, it was submitted to Parliament for its approval also. As ED, Lukuley only approved the physical act of paying. There was no evidence that he dishonestly induced the Board or Parliament to authorize certain sums as leave and rent allowances or PW1[3] to pay him in excess of fixed sums, or fraudulently sneaked in an increase into the budget post-its Board approval. In the same vein, counts 28 to 160, alleging that payments to the Board failed to comply with the procedure for management of funds, also fail. These payments complied with the relevant procedures; the SLMA Act, the GBAA 2005 and FMR 2007. The Prosecution argued but failed to prove that payment of *sitting fees* fell outside of the "*remuneration and allowances*" authorized by s. 6 SLMA Act 2000, for the Chairman and members of the Board and did not question PW12[4] about this. Counts 160-169, offering advantage to a public officer through the Board payments, also fail for the same reasons. Although these counts implicate the Board warranting charges against them, the Prosecution did not seek to elicit evidence from Board members, treating them as innocent agents in the fraud practiced to their benefit. Counts 160-169 are also duplicitious charging more than one offence in a count in contrast to counts 28 to 160 which itemize the board payments.

Counts 17 to 27, the per diem charges, fail. Lukuley argued he included travelling time in calculating his per diem at 8 days. The Prosecution argued that travelling time included, the per diem should still have been for 4-5 days, but they did not adduce evidence, (e-ticket/counterfoils) to prove this. The Prosecution failed to contradict PW1's testimony that Lukuley calculated his per diem at the government approved rates of $500; they failed to question PW12 on this, suggesting his evidence was unfavourable to them. Lukuley is discharged on count 25 which replicates count 27 and merges 2 offences. Since the substantive per diem charges fail, count 20, the conspiracy charge on per diem also fails.[5] Counts 161 to 169 were abandoned since they are duplicitious by charging as offences, largely, the same acts itemized in counts 28-160, in only 9 counts. The Court must acquit where a single charge alleges different acts within an extended temporal frame to prevent prejudicing the Accused's defence, especially as misappropriation (161-169) is a single act, not a continuous and intermittent offence.

Count 170, one of the car repair counts succeeds but Lukuley was simply cautioned and discharged.[6] Counts 171 – 173 failed since although Lukuley approved payments to Dokkal for car repairs in December 2008 totaling Le 2, 204, 000, the car's life-card indicates it belonged by then to the SLMA. Count 174 succeeds since he'd been in possession of an ECOWAS passport since August 2010. Lukuley was acquitted on counts 175-176 since the prosecution offered no further evidence in its closing address. Counts 177 to 182 the fuel charges fail for duplicity by charging the commission of a non-continuous offence between two stated dates ***instead of*** alleging the offence was committed "on a day unknown" between two dates; *Amos v. DPP [1988]R T R 198, DC.* They allege that upon the completion of fuel requisition forms by drivers authorized by PW1, the ED and the senior administrative officer, 25 gallons were collected weekly from NP. This fuel should have been for the ED's 2 SLMA cars, but it was alleged that the petrol chits from NP showed that Lukuley's private cars were supplied twice in early October 2009, once in November 2009 and once in January 2010. Drivers testified that even fuel supplies logged as official were actually made to his private cars; that he used an SLMA car officially fueled to campaign in April 2008 in Potoru, Pujehun by-election. Lukuley argued that his private car was only officially fueled for official use. He said he lent his car to the SLMA to transport visiting dignitaries, but according to the testimony of PW1, this was for 4 days in January 2011 and does not explain the logs showing his private car was fueled in October 2009, November 2009, January 2010. Count 183, on the Guinea trip, succeeded. A driver testified to using an SLMA car officially fueled in October 2009 to drive Mrs. Lukuley to the Guinea border to buy cattle, proving that Lukuley abused his position as ED by improperly conferring an advantage on his wife. Since, guilty of count 183, he is discharged on count 184, a redundant charge.

[3] Mrs. Vania Yannie, Accountant at the SLMA.

[4] Mr. Ballah Kamara, Chairman of the Board. He did testify that he and other members of the Board were entitled to monthly remuneration and were also paid sitting fees, ***Lukuley*** Judgment, para. 122, p. 47.

[5]This is because the Prosecution defined its conspiracy theory here/the agreement, as strictly dependent on proof of the alleged substantive acts of misappropriation. That is to say, the Prosecution appears to have had no evidence supporting its conspiracy charge i.e. to willfully miscalculate per diem, other than the evidence supporting the substantive offence of misappropriation, which also supports the substantive charges of, willful failure to comply and abuse of office.

[6]Presumably because the two cars with which Count 170 was concerned were demonstrably Lukuley's, although this rationale is not articulated in the judgment.

Counts 185 to 194, the *disparate payment* charges succeeded. Lukuley requested from PW1 several sums under the budget headings "*Facilitation and Protocol*", later "*Community Relations*" approved by Parliament. Funds allocated to this budget heading more than doubled from 2007 to 2008; it appeared to be a "pig's trough" from which Lukuley could draw on a whim without accounting. Parliament's approval of this budget heading did not extend to unaccounted for/undocumented expenditures under it. In 2008, Lukuley's duty to account for expenditure from the SLMA coffers was grounded in his common law fiduciary position. After 2008, this duty took the statutory form of ss. 231-234 of the Companies Act 2009, and Regs. 11, 12 and 73 (1) FMR.[7] The disbursements under this heading span 2008 to 2010; the supporting evidence consists mainly of payment vouchers mostly without the requests for funds, a cheque and a funding request without receipts. The purposes Lukuley proffers for these expenditures; entertainment, feeding, transport, honoraria, urgent national matters and "*shake hand fees*" could not have been envisaged by the budget heading; "*Facilitation*/*Community Relations*." Several of these payments were made to Parliamentary committees, sub-committees, Law Officers Dept. in connection with statutory and budgetary reviews, some were made to traditional leaders. Lukuley admitted to expending these funds without personally handling any of them, contradicted by PW1 who said she handed them to him, but received no receipts for them from him. It was held that due to his experience and stature, Lukuley must have received them. PW10,[8] PW1, PW9[9] and PW3[10] testified that when the ACC requested all payment vouchers for 2007 to 2010, the latter 3 removed those for "*Facilitation*"[11] on Lukuley's instructions. PW1 testified that she purposefully left some vouchers, informing the ACC upon their enquiry when handing the files over to them, of what had transpired; although this could have made her an accomplice *in the removal of documents*, she was not so charged. Re the *disparate payments*, she only followed the ED's instruction so that s. 96 ACA 2008 would proscribe charges for accomplice liability.[12] Misappropriation requires proof of a dishonest intention to appropriate; these documents were removed because they were incriminating. Although Parliament approved the SLMA budget heading of "*Facilitation*/*Community Relations*," it did not consent to the manner in which Lukuley expended these funds.[13] Lukuley is guilty of misappropriation by failing to account for monies disbursed under these headings. Sentences were imposed for counts 185, 188, 192 and 194, but he was discharged and cautioned for the rest of the *disparate payments*.

Count 174 succeeds. PW2[14] testified that the Accused was invited during investigations for interview, but due to his health complaints not coerced. In response to a s. 57 (1) ACA notice for surrender of his travelling documents to prevent travel hindering the investigation, he surrendered his SL passport, but he held on to his ECOWAS passport. Swifter investigations would avoid this scenario and alternative means to ensure compliance with ACC investigations should be pursued instead of Court remedies. The CIO[15] could have demanded the withdrawal of the ECOWAS passport and the ACC could have arrested Lukuley.

VERDICT: Lukuley was acquitted on counts 1-160, but specifically discharged on count 25 as bad for duplicity, and discharged on counts 161 to 169, also bad for duplicity. Lukuley was found guilty of count 170, *a Dokkal count*, but cautioned and discharged for this. He is acquitted on counts 171 – 173, acquitted and discharged on counts 175-176. Lukuley was discharged on almost all the fuel charges, counts 177 to 182 and 184, since they are bad for duplicity. He was found guilty of count 183 i.e. the Guinea trip, but cautioned

[7] These statutory provisions are discussed below in the **Applied Law** section.
[8] Lukuley's Confidential Secretary, Ms. Enid Faux.
[9] Mariama Jalloh, Accounts Officer I at the SLMA.
[10] Carlton During, Accounts Officer II at the SLMA.
[11] Confirmed by PW3 at ***Lukuley*** Judgment, para. 101, p. 44 and by PW9 at ***Lukuley*** Judgment, para. 119, p. 46.
[12] Discussed below in the **Applied Law** section.
[13] This appears to contradict statements in the judgment suggesting that Parliamentarians understood that payments made under that heading would revert to them, see ***Lukuley*** Judgment, para. 75, p. 32; "*In fact in doing this (flouting regulations), the Accused has left himself open to a more serious charge, offering inducements to Parliamentarians to get them to approve the budget requirements of the SLMA (...) If what he says is true (that he entertained Parliamentarians), in effect, he will be saying that Parliamentarians have to be fed and feted before they could work!"* See also para. 86, p. 37; "*It would appear that, in order to get his budget approved, the Accused had to spend some part of the previous year's approved budget on those who were to give their approval to the new budget*!"
[14] Joseph Bockarie Noah, ACC Investigator.
[15] Chief Immigration Officer.

and discharged of it.[16] He was convicted of count 174 re his passport and fined Le 5 million or 3 years. He was found guilty of counts 185 through 194, on the disparate payments. He sentenced to a Le 30 million fine or a 3 year imprisonment term for each of the following counts respectively; 185, 188, 192 and 194, but cautioned and discharged for the rest of the *disparate payments* counts. The fines were cumulative, but sentences concurrent. He was ordered to" *refund*" Le139, 478,000 in 4 weeks in addition to being fined in total Le 120,000,000.[17]

APPLIED LAW: The Prosecution must proffer charges that stand a strong chance of being proven and not overload the indictment; *Novac (1976) 65 Cr App R 107* and *Blackstone's Criminal Practice, 2007, p. 60, para. D10.60*. Charging more than one offence in a count is bad for duplicity. Single offences can be continuous and intermittent so that they do not have to take place once and for all; *Chiltern D C v. Hodgetts [1983] 1 All ER 1053 HL*. Misappropriation however is not a continuous offence; it is a single act occurring when the money leaves the coffers of the public body. For single act, non-continuous offences, especially where the date of commission of the offence is unknown and the temporal frame is extended, firstly, each criminal act should be charged in a separate count. Secondly, the offence must also be charged to have been committed "on a day unknown" between two dates; *Amos v. DPP [1988] R T R 198, DC*. These two drafting bright lines operate so that there is no lack of clarity about whether the Accused committed several acts on one day or on several days. The Prosecution must prove every element of every offence charged and if it fails to meet this burden, the Defence is given the benefit of the doubt even where its account is not particularly convincing. The Defence, except where it has pled insanity, never bears the burden of proof; *Koroma v. R [1964-1966] ALR SL 542*.

An appropriation is an act adversely interfering with or usurping the owner's right over the thing appropriated; *Morris [1983] 3 All ER 288 HL*. Proof of misappropriation requires the Accused to have acted willfully and with dishonest intention to deprive the public body of public funds; *Gomez [1993]1 All ER 1 HL* and *Gosh [1982] 2 All ER 689*. Where the Accused acts in the realization that his act would be considered dishonest by reasonable and honest people, then he acts dishonestly; *Gosh [1982] 2 All ER 689*. Any belief by the Accused that he is morally justified in his action is irrelevant to the question of dishonesty; *Gosh.* Acting willfully means to act with intent or recklessly; *Sheppard [1981] AC 394*. The more recent case of *G [2003] 4 All ER765 HL* defines recklessness against an objective standard, whereas *Sheppard* defines recklessness against a subjective standard. An intention on the part of the Accused to return public property which he has misappropriated does not nullify his misappropriation; *Velumyl [1988] Crim LR 299.* The owner's express or implied consent to the taking does not in and of itself nullify misappropriation; this is because it is possible to procure an owner's consent dishonestly; *Gomez [1993]1 All ER 1 HL* and *Lawrence v. Metropolitan Police Commissioner [1971] 2 All ER 1253.* Consent relates to purpose and end use and relevant in this regard is s. 28 (2) GBAA 2005, which states that when an appropriation for a budgetary agency has been approved, it shall be used only in accordance with the purpose described and within limits set by the different classifications within the agency's estimates.

Regarding the fraudulent acquisition of public funds, *Archbold's 2003* defines "fraudulently" as dishonestly prejudicing or taking the risk of prejudicing another's right, knowing one has no right to do, or dishonestly inducing a public servant to act in ways contrary to his duty because he is misinformed, thereby risking injury to the state. Conduct can qualify as fraudulent even where it does not concern a risk of economic loss and need not include deceit; proffering false information to substantiate a genuine claim does not negative an intention to defraud.[18] S. 42 ACA 2008 on abuse of office, aims at covering the dishonest abuse of any position of financial trust or responsibility, including that of a trustee, company director or executor, but is not confined to fiduciary relationships[19] and includes acts committed by employees that cannot be prosecuted as theft. Regarding abuse of position, s. 44 (2) ACA 2008 creates a presumption where a public officer takes any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or

[16] It is curious whether the different outcomes of count 182 and 183 result from differential forms of drafting, i.e. that while count 82 may have been duplicitous, count 83 was not so drafted.
[17] ***Lukuley*** Handwritten Sentencing Judgment, p.2. This appears to be the word "*refund*". Cumulative fines would however appear to total Le 125,000,000?
[18] ***Lukuley*** Judgment, para. 47, p. 20.
[19] See p. 3, FN 10 of the ***ABC*** judgment summary.

indirect interest, that he made use of his office/position for an advantage. S. 44 (3) (a) and (b) ACA 2008 state that the presumption shall not apply to a public officer who as a representative of a body corporate, acts in that capacity in the interest of that body corporate.

S. 11 (1) - (5) SLMA Act 2000, empowered the SLMA to control its revenue and finance itself. The SLMA amendment Act 2007 required SLMA revenue from charges to be paid into the consolidated fund; the SLMA was to be financed mainly by its parliamentary approved budget; s. 21 (a) SLMA AA 2007, although much later in September 2008, responsibility for the freight levy collection was reinstated for the SLMA (provision not cited).[20] S. 20 (3) SLMA Act 2000 states that the annual budget prepared and finalized by the ED shall be submitted at least 3 months before the beginning of the financial year to the Board for its approval. S. 14 (2) SLMA Act 2000 states that terms and conditions of the ED's employment are fixed by the Board, with the approval of the Minister. S. 6 SLMA Act 2000 states that Parliament determines the remuneration /allowances of the Board Chairman and Board members. Duties to account for public funds stem from s. 15 (2) (e) SLMA Act 2000 which accords the ED overall leadership in the conduct and management of daily activities, (in conjunction with)[21] Reg. 73 (1) FMR which states that all disbursements of public money shall be properly supported by payment vouchers and Reg. 73 (3) FMR which says vouchers shall contain full particulars of the service for which payment is made. S. 11 (3) GBAA also states that, every person who collects or receives any public moneys shall keep a record of receipts and deposits thereof (…).[22] Reg. 11(1) FMR requires accuracy in budgetary expenditure estimates/predictions, whereas Reg. 12 (1) FMR requires that the purposes underlying and services comprising budgetary heads be explained in a preamble to the head and Reg. 12 (2) requires that no expenditure be charged to the head unless aligned with that preamble. Duties to account for public funds also stem from common law fiduciary duties such as, for e.g., the duty of Directors not to make a secret profit, not to act against the interest of the corporate body, not to exceed the mandate and powers given to the corporate body by its incorporating statute, in this case s. 3 (1) and (2) SLMA 2000 which make it a body corporate with legal personality. The SLMA's obligations regarding public funds are ***implicit*** in rules/provisions of Company law, concerning employees, executive and board members, and specifically, Lukuley's obligations stemmed from ss. 231-234 of the Companies Act 2009 on Directors' duties and powers.[23]

S. 96 ACA proscribes witnesses in ACA trials from being regarded as accomplices, *where the only implicating act* is their payment/delivery of an advantage to, or receipt of such, from the Accused. S. 57. (1) ACA states that the Commissioner may require the person in charge of any public body, to produce to the ACC, notwithstanding any enactment to the contrary, any document or copy thereof, certified by the person in charge of any such document, which is in his possession or under his control. In sum, S. 87 (f) (ii) of the CPA 1965 provides that an Accused can be a witness for the Defence at every stage of the trial, but that s/he should not be asked/required to answer any question tending to show prior criminal history or bad character unless, the Accused/his Defence raised the issue of his own good character, in his evidence or when examining a prosecution witness or raised the issue of the Prosecution witness' own character.

ANALYSIS: **I. Case preparation:** *1.Non-exhaustive investigative/prosecutorial techniques:* Overloading of the indictment, i.e. multiple charges based on the same facts (duplicity) is criticized here. The Court recommends that only those offences which sit best with the facts be charged, referencing this point made in *The State v. Philip Conteh & Ors 19 May 2011*; "*They are different offences but the complaint in all of them is essentially the same*."[24] Count 27 is also erroneously drafted, since it replicates the particulars in count 25 and then merges two offences; the Accused is therefore discharged on it. Even the manner of duplicating charges seems inconsistent; for e.g. certain acts are criminalized as different offences, but others which also could easily be are not e.g. the Dokkal charges where count 171 but not 170 generates 3 other

[20] ***Lukuley*** Judgment; para. 38, p. 15.
[21] Author's insertion.
[22] The ***Lukuley*** Judgment states at para. 75, p. 32; "The obligations under Regulations 11, 12 and 73 of the 2007 Regulations were clearly flouted by the Accused." It is questionable whether s. 11 GBAA which appears more relevant is not what is actually meant.
[23] The Companies Act 2009: s. 231; *Duties of Directors*, s. 232; *Duty of Care and Skill*; s. 233; *Directors as Trustees and Agents of Company* and s. 234; *Exercise of Directors' Power*. In 2014, the Companies Amendment Act was passed, which by s. 45 amends s. 231, obligating Directors to disclose conflicts of interest and directors of the Board to publish it.
[24] ***Lukuley*** Judgment, para. 50, p. 22.

subsequent charges and count 182 on the cow purchase which generates 3 counts, whereas the other fuel counts do not. Duplicity also refers to a situation where more than one offence is contained in an individual count; here, this resulted in some counts being struck down. The issue of the Prosecution not adducing the level of evidence required for proof remains consistent. It led evidence on counts 175 and 176, the conspiracy to misappropriate charges, then attempted to withdraw these charges in its closing submissions. The Accused was therefore not discharged on counts 175 to 176, but acquitted on them. The Prosecution also was not diligent enough re willful failure to comply on the per diem, counts 21 to 23, since it did not adduce evidence showing what the rates should have been in 2009-2010.[25] The Prosecution failed to examine key witnesses, Board Chairman, on pivotal issues so that the presumption of the examining party avoiding eliciting evidence unfavourable to its case arises. Similarly, in relation to s. 35 (2) ACA, the Prosecution doesn't ask Board members what the advantages it alleges they were offered by the ED, were in exchange for. The receipt of allegedly excess payments normally should have engendered awareness by the Board that they were excessive, so that the allegations against the ED imply the complicity of the Board. This should have necessitated a more targeted inquiry into their role or mindset in line with the elements of the offence. Lastly, it may not be necessary to frame the conspiracy charges as having been committed with "other parties unknown" where there are already identifiable co-conspirators.

II. Cumulative circumstantial evidence: Unlike the ***Daoh***, ***Sesay*** and ***Al-Jazeera*** cases, where this study suggests that the collective significance/weight of circumstantial evidence may not have been captured and expressed in a succinct and cohesive analysis to the Court, here, key pieces of circumstantial evidence were pivotal to the verdict concerning counts 185-194. The convergence of PW3 and PW9 and PW10's testimony on the point that Lukuley was in his office while vouchers relating to "*facilitation*" payments were being removed, rendered discrepancies in their accounts, regarding who summoned who to the ED's office and who was the last person to leave the office inconsequential. Their concurrence on this fact made it irrefutable. It was circumstantial evidence of the fact that the discovery of the vouchers would have led inevitably to the discovery of Lukuley's criminal acts.[26] This evidence clearly supported a charge of attempting to pervert the course of justice (not brought). S. 87 (f) (ii) CPA 1965 mitigates reliance on circumstantial evidence, which pertains to personal character/history. As per the review, based on references to s. 87 (f) (ii) CPA 1965 in the ***Lukuley*** judgment, and the potential for such evidence to descend into *low blows*, the Prosecution tends to avoid including such circumstantial evidence in any aggregation, underlining and piecing together of other pieces of circumstantial evidence, for the benefit of the judge. Hence, although here the Defence while cross examining PW4, did not relent in seeking to elicit evidence about his past professional wrongdoings, in spite of being warned by the Judge that doing so might entitle the Prosecution to do likewise, the Prosecution apparently did not follow suit.

III. Precedential consistency: *The State v. Fofanah and Mans*; *The State v. Philip Conteh & Ors* (the No-Case Submission Judgment)[27] are referred to in confirming that Abuse of Office applies where a Public Officer uses his office to improperly confer an advantage on himself or on any other person. *The State v. Philip Conteh & Ors*; *The State v. Sesay & Bendu* are referred to, (the latter is not cited, which would have been preferable), in discussing the charge, Failure to Comply with Applicable Procedures. The circumstances of ***Sarah Bendu***,[28] i.e. of the Accused referring ACC investigators requiring an interview to the Minister, are referred to, specifically in relation to the subject of Accused who are less than cooperative with the ACC. As in ***Conteh***, the point is made in ***Lukuley*** that suspects should endeavour to comply with ACC requests, and that rather than bring charges for uncooperative conduct, alternative means of ensuring compliance with ACC investigations should be pursued. 5 of the 8 cases reviewed involve charges for misappropriation where the facts evinced failure by the Accused to provide documentation supporting expenditures they made. In the ***ABC*** judgment of May 2011, J. Brown-Marke stated that; "*The only reason why proper and adequate records of expenditure were not kept, was to use the monies donated for purposes other than those for which*

[25] ***Lukuley*** Judgment, para 53, pp. 23-24.
[26] ***Lukuley*** Judgment, para. 119, p. 46.
[27] ***Lukuley*** Judgment, para. 50, p. 21;" *I adopt what I said in my Judgment (?) on the No-Case Submission at para. 7*."
[28] Responses furnished by the Former Director of Prosecutions, ACC, Mr. Reginald Fynn, 5 June 2015; "*I can only conjecture based on hints during trial (remember I tried this one) that it was a reference to the Sarah Bendu case. I was not involved in the latter so I cannot be absolutely certain*."

they were meant."[29] Nearly 2 months later, in the ***Lukuley*** judgment of July 2011, an approximate statement was made by the same judge; "*The only reason he could have flouted these regulations was because he needed to cloak the purpose of the expenditures with the clothing of benevolence to Parliamentarians."* [30] This suggests the Accused violated FMR obligations to account with accuracy for expenditures *by claiming* the expenses were for Parliamentarians, as the claim is unsubstantiated by payment vouchers/receipts made out to them. The essence of this statement is that undocumented expenses often hide illegitimacies. ***Both statements suggest the emergence of a tacit yet compelling inference/rebuttable presumption of misappropriation where the facts are as such***, as do the ***ABC*** and ***Lukuley*** verdicts and the verdicts in the ***FCC*** and ***Ken Gborie*** cases. This principle may well have influenced the Prosecution's case theory in the ***Daoh*** judgment of October 2013 where the Prosecution's argument that; *the circumstances indicated dishonesty since there is no other reasonable explanation of why senior officials will with such impunity avoid accounting for funds*[31] was dismissed by judges, for reasons relating to prosecutorial diligence.[32]

V. Re Governance: Firstly, pragmatism should dictate that budget headings be lucid and unambiguous and have annotated, clarification of terms and descriptions of activities that fall thereunder. Reg. 12 (1) FMR requires this, stating that the purposes of expenditure and the services to be provided under each head shall be outlined in a preamble to the head called; "*The Ambit of the Vote*." Reg. 12 (2) FMR also states that, no expenditure shall be charged to the head unless it falls within the ambit of the vote. The information in the judgment does not clarify how "*Facilitation and Protocol*" and "*Community Relations*" were explicated upon in the budget. The judgment suggests that the SLMA budget, especially the headings of "*Facilitation*" and "*Community Relations*" were approved because the interests of Parliament's members were catered for therein and that Parliament was cajoled into passing SLMA related laws.[33] The judgment necessarily implies the involvement of Parliamentarians in corruption by framing this case's facts (only implicitly), within the definition of corruption in s. 1 (1) ACA, since it juxtaposes the offer of an inducement as against budget heading approvals, essentially the exchange element in a corruption offence. S. 1 (1) ACA states; "*Corruption means … (a) any conduct whereby in return for an advantage, a person performs or abstains from performing any act in his capacity as a public officer*." The scenario described by the judgment,[34] might well have been triable as an offence under the following ACA charges, the most fitting of which would have been, (in observance of the overloading principle), s. 34, ACA; *Bribery of or by Public Officer to influence decision of public body*, s. 46 ACA; *Treating of public officer* and s. 33; *Corrupting a Public Officer*. Other offences such as, s. 28 ACA *Offering, soliciting or accepting advantage*, s. 31; *Peddling Influence*, s. 35*; Soliciting, accepting or obtaining advantage for public officer* and s. 47; *Receiving gift for a corrupt purpose*, might also apply. The elements of offence for these charges appear to be very generally consistent with each other, i.e. an advantage is either offered or promised as an inducement or reward for an act/omission of a public officer, or sought by or on behalf of the latter for his act/omission. Only ss. 31 and 28 ACA make the coalescence of the offence contingent upon the offering or acceptance of an advantage which is without lawful authority or reasonable excuse. In this vein, Parliamentarians had already legitimized their receipt of advantages for statutory reviews and amendments that may have favoured the SLMA, so that any contestation of Parliament's corruption needs to be antecedent to the inception of legitimacy. In other words, the contested corrupt act here should ideally be Parliament's approval of a vague but promising budget heading. To avoid all this, vague budget headings should be struck out completely or alternatively, not construed to the benefit of Parliamentarians.

Secondly, note that under s. 11 (1) - (5) of the SLMA Act 2000, the SLMA controlled its own revenue and could self-finance. The SLMA amendment Act 2007 changed this by requiring that SLMA revenue be paid into the consolidated fund with the SLMA to be financed mainly by a parliamentary approved budget. However, in September 2008 responsibility for the freight levy collection was reinstated to the SLMA.[35] If however, the aforementioned vague budget headings made it past Parliament from 2008-2010, query the

[29] The ***ABC*** Judgment, p.29.
[30] ***Lukuley*** judgment, p. 32.
[31] ***Daoh*** judgment, p. 24, para. 31.
[32] See ***ABC*** case summary, **V. Knowledge/Information Management**, pp. 4-5.
[33] See FN 13.
[34] See FN 13.
[35] See FN 20.

SLMA's autonomous capacity for transparency/accountability if left to fully manage its own revenues, in the absence of any externally sourced procedural check. Thirdly, query the practice of indicating on payment vouchers that the payee is "*cash*" instead of naming the individual/institution, for the purposes of attributing responsibility.

VI. Information/Knowledge Management: Firstly, PW1's testimony that, she simply followed instructions from the ED, dutifully carrying out transactions on the items he put forward as long as they had been approved and that she had not got the power to challenge the ED, raises the need for a starker understanding by MDA staff members of the formal/official demarcation of their roles, responsibilities and those of colleagues with whom they directly interact. Secondly, PW1 acknowledged that the professional standards of an accountant applied to her position, but said she could not apply them in the peculiar situation in which she found herself. The question is then how to prepare staff to respond to situations where they are aware of the appropriate standards but feel their hands are tied and they cannot apply them.[36] Thirdly, s. 15 (2) (d) SLMA Act 2000 which makes the ED responsible for SLMA staff training and development based on guidelines approved by the Board also raises the question as to how practical provisions of this sort are, in situations where the very Vote Controller seeks to overstep his bounds, or co-opt the assistance of subordinates in his commission of corrupt acts. Lastly, as evinced by the review, the existing rules mostly address the issue of information management but are simply not being adhered to; for e.g., Lukuley failed to account for the disparate payments in spite of the requirement in s. 11(3) GBAA 2005 that every person who collects or receives any public moneys shall keep a record of receipts and deposits thereof in such form and manner as the Accountant General may determine.

MEDIA REVIEW: Coverage of the proceedings were factual and detailed. Opinionated coverage peaked at the indictment and verdict stages and the verdict was contextualized against preceding and succeeding ACC verdicts. The ***Lukuley*** verdict was deemed good PR against the ***Sesay*** public disappointment. In 2010, the press had reported of corruption involving Lukuley including his avoidance of procurement procedure to purchase an allegedly dilapidated search and rescue boat for Le 4.1 million. It was also reported that he had been earmarked by APC as an election candidate for Pujehun District in 2012, that he used Le 80 million to campaign under APC for Pujehun, that the Jetty project was being used for political campaigning and that he stole massive amounts of SLMA fuel. It was alleged that his political establishment connections helped veil his corruption, as with other corrupt civil servants, giving rise to politicized trials; contextualizing this again, against Nassit *ferrygate*, the ***Sesay*** and ***Kabba*** judgments, and the by then, investigations into the FCC Mayor and Administrator.

PRESS ARTICLES REVIEWED:

Unnamed, (2011), *Philip Lukuley convicted on 13 counts charge*, The Patriotic Vanguard; http://www.thepatrioticvanguard.com/philip-lukuley-convicted-on-13-counts-charge

Tam Baryoh D., (2010), *Who Will Tell the President the Truth?,* Newstime Africa; http://www.newstimeafrica.com/archives/12176

John S., (2011), *Lukuley Granted Le500m bail*, Awoko; http://awoko.org/2011/02/04/lukuley-granted-le500m-bail/

Kamara A., (2011), *First witness testifies in Lukuley case*, Awoko; http://awoko.org/2011/03/07/first-witness-testifies-in-lukuley-case/

Unnamed, (2011), *Where is Philip Lukulay of Maritime fame?,* Sierra Express Media; http://www.sierraexpressmedia.com/?p=25075

Unnamed, (2010), *President Koroma Caught in his Own ABC Trap*, Silaspunch's Blog, https://silaspunch.wordpress.com/page/2/

[36] See Snapshots: **Section I**., on **IM and KM**, which refers to the possibility of staff training via use of role playing exercises.