

ACC Case/Judgment Review:

<u>Case Name</u>	<u>Date of Verdict/ Sentence</u>	<u>Judge</u>	<u>Verdict</u>	<u>Appeal Status</u>
<i>The State v. Philip Conteh (The ABC Case)</i>	19 May 2011	Hon. Mr. Justice Nicholas Browne Marke	All Accused convicted of several counts	Accused Appealed on 8/06/11. Judgment due on 15/06/12 but reserved by J. Hamilton. Judgments may only be reserved for 3 months under Constitution.
<i>The State v. Allieu Sesay (The NRA Case)</i>	28 June 2011	Hon. Mr. Justice Samuel Ademusu	All Accused acquitted and discharged on every count.	ACC withdrew its appeal
<i>The State v. Philip Lukuley (The SLMA Case)</i>	11 July 2011	Hon. Mr. Justice Nicholas Browne Marke	Accused convicted of several counts	Cross Appeal. Accused is deceased; matter expired.
<i>The State v. Herbert George Williams (The FCC Case)</i>	10 August 2012	Hon. Mr. Justice John Bosco Abubaker Katutsi	5 of the 9 Accused were convicted	No Appeal
<i>The State v. Momoh Konte and Alex Mansaray (The Al Jazeera Case)</i>	24 May 2013	Hon. Mr. Justice Abdulai Hamid Charm	Accused acquitted on all charges	No Appeal
<i>The State v. Kizito Daoh (The Daoh Case)</i>	24 October 2013	Hon. Mr. Justice Abdulai Hamid Charm	All Accused acquitted on all charges	ACC appealed. On 23 June 2015, oral pleadings were held to determine the date of filing synopses. ACC was to file its synopsis in early 2015, but no action taken on file.
<i>The State v. Solomon Katta (The Katta case)</i>	10 April 2014	Hon. Mr. Justice M.A. Paul	The 5 Accused present were convicted	Accused appealed. Appeal not yet ready for hearing.
<i>The State v. Magnus Ken Gborie et al. (The GAVI Funds Case)</i>	2 July 2014	Hon Mr. Justice M.A. Paul	All Accused were convicted	Accused appealed. Also matter came up for hearing in the Supreme Court on 13 April 2015, but no progress was made; adjourned and notice to be sent for the next hearing.

I. Information/Knowledge Management:

All 8 cases reviewed indicate that this is an area, the neglect of which is a significant contributory cause to the commission of corruption offences. Information management (IM) means the systems and processes within an organisation for the creation, collection, management and distribution of information. It may or may not comprise electronic technologies. Knowledge management (KM) means strategies and processes designed to identify, capture, structure, value, leverage, and share an organization's intellectual assets, i.e. the explicit and tacit knowledge of individuals, so as to enhance organizational performance. KM since it refers to the consistent transfer, exchange and circulation of skills and awareness could be seen as a broader concept encompassing IM which centers on the efficient management of hard data¹ by means of the efficient design and employ of systems, structures, tools and databases whether physical or electronic (record keeping and archiving), to effectuate this. However you choose to conceptualise the relationship between the two thematic areas, they are undeniably complementary in the sense that a cohesive information management system cannot be *sustained* in the absence of thorough knowledge management processes, and by contrast, KM comprises as part of the transfer of knowledge/information, mapped out and functional means and methods of information storage and transfer. KM therefore corresponds to organizational culture which exists at a strategic level and information management corresponds to activities carried out at a tactical level. The link between weak IM and the prevalence of corrupt practices has been widely charted.² Recognition that this systemic glitch may be perpetuated in order to be exploited is expressed in *The ABC case* 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 they were meant.*"³ That this systemic glitch easily lends itself to exploitation is also recognized also by Judge Paul in *Ken Gborie* who states that; "*The absence of supporting documents provided him (Magbity) with a convenient shield behind which to hide.*"⁴

This review and the uncovered murkiness surrounding bureaucratic procedure indicate that failures to account are at least partly attributable to a generalized practice/culture of non-reporting, where the weight of reporting is not adequately reinforced through reiteration. The review evinces failure by the concerned MDAs to make the aforementioned management principles central to their organizational management styles, failure to make them premier values and routine, obligatory practices. This can be seen in the evidence of the Accused and witnesses, (whether in leadership/management or more subordinate roles), i.e. their statements explaining their own conduct or their understanding of the role/conduct of colleagues. In *Doah*, the evidence of the Accused and of the ACC investigators showed confusion concerning the precise obligations attaching to particular offices and spheres of activity regarding the extent of the obligation to retire certain types of funds assigned for project implementation, to submit project activity reports, and confusion also concerning the source of such obligations.

The need to strengthen poor IM/KM systems is clearly supported by the key findings of the audits in themselves, carried out in these contexts, which predated and prompted ACC prosecutions. In the *FCC Case*, the FCC could not provide supporting documents for unsupported expenditures requested by Audit Service SL. The GAVI draft audit which prompted the ACC investigations in *Ken Gborie*, revealed lack of accountability in financial management including lack of basic book keeping, weak record management including expenditures unsupported by documentation. Similarly, the audit in *Doah* that predated the investigations queried the absence of financial reports for funds assigned towards project implementation. Palpably and curiously then, the steadfast obstinacy of the problem of poor IM/KM persists in spite of the consistency of the lucid findings of these audits, which in turn raises the question about the extent to which these findings are being harnessed to inform reformative efforts. **Clearly, it is imperative that both these approaches to institutional/bureaucratic management and administration be**

¹ This conception would require the hard data treated by IM systems to be considered as; "intellectual assets."

² Omolla J. O., (2011), *Strategies to Fight Corruption with Particular Reference to Records Management*, Paper presented during a workshop for Administrators at the University of Nairobi, Kenya,

http://legaloffice.uonbi.ac.ke/sites/default/files/centraladmin/legaloffice/Records%20Manager%20-%20corruption%20prevention%20ccu%201%20%5BCompatibility%20M_0.pdf

Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF

Keorapetse D.L., (2012), *Records Management as a Means to Fight Corruption and Enhancing Accountability in Botswana*, Esaribca Journal/ Journal of the Eastern and Southern Africa Regional Branch of The International Council on Archives, Volume 31.

³ The Attitudinal Behavioural Change (The *ABC Case*)/The State v. Philip Conteh, Allieu Kamara, Lansana Zanto Kamara before Hon. Mr. Justice N.C.Browne-Marke, 19 May 2011, lines 26-28, p. 29.

⁴ The *GAVI Funds Case*/The State v. Dr. Magnus Ken Gborie, Dr. Edward Magbity and Lansana S.M. Roberts, 24 May 2013, lines 13-14, p. 87.

recognized and incorporated as key values and essential modus operandi into current management styles and strategies, suggesting initiatives to transform organizational culture.⁵

This recommendation is buttressed by the following instances; in *Sesay*, the issue of poor IM /KM is discernible from circumstantial evidence strongly suggestive of a flawed procurement; apparently, there may have been poor circulation of information/poor communication between members of the Procurement Committee and Unit respectively, resulting in poor work coordination, and ignorance about one's role and the roles of colleagues. In *Ken Gborie*, the Court stated that it was inappropriate for Ken Gborie in his role as Director DPI and principal signatory to the DPI account to facilitate the hiring of vehicles for the PBF survey or be the go-between regarding payment for 4 hired vehicles, turning a blind eye to the requirements of the law on procurement while doing so.⁶ In *The ABC case*, an Accused openly talks about the ABC having a lax record management system, about it being indifferent to basic accounting principles and about himself not knowing of the relevance of the Financial Management Regulations 2007 as a source of his obligations. The alleged loss/destruction of records at the ABC secretariat raises the issue of secure and alternative storage loci/networks.⁷ In *Daoh*, the case was premised on the failure of the Accused (all senior MOHS staff), to document expenditure of donor funded activities, amounting to misappropriation, but the effect of the judgment tended towards suggesting that maladministration in itself was not necessarily criminal. The evidence in the *ABC case*, *Ken Gborie* and *Daoh* raise issues about the need for more active involvement by donors and Ministries in demanding and securing documentation. In *Lukuley*, the issue of information management is relevant to the Accused's efforts to destroy physical records. In the *FCC case*, charges were brought because of purchases untraceable via logs, suggesting they were missing from the store,⁸ and for undocumented expenditures for FCC projects. Here, FCC management admitted to auditors that they had an inappropriate archiving system. Here also, the need for there be a written formalized statement of reasons proffered for a withdrawal, which is compatible with written receipts later provided was raised and is compelling, there being no other way to guarantee that disparate disbursements with receipts attached were all sourced from a single withdrawal, as alleged. In *Katta*, there was a failure by the staff of a private commercial institution, Ecobank to observe its internal policy and staff were not au fait with the precise bounds of theirs and the responsibilities of their colleagues and so in some instances demonstrated blind obedience to illegitimate exercises of authority.⁹ However, in *Katta*, where one Accused could clearly identify the rules concerning record keeping in his testimony but did not observe them as per the instance, his *awareness* was circumstantial evidence of a *conspiracy* to cause loss. Such *awareness* could also be evidence of willfulness and dishonesty on a charge of *misappropriation* (not in this instance).

How then to effect a break in entrenched patterns of behavior, or cultural change?¹⁰ First, IM/KM needs to be promoted as a value that is, its functional necessity must be well understood.¹¹ To actively secure staff compliance and

⁵ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 56, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "A strategy for keeping practical, productive records systems must therefore underpin anti-corruption strategies."

⁶ The *GAVI Funds Case*, p. 79; "Conduct that did not seem right."

⁷ Wikipedia, (2015), *Records Management*, https://en.wikipedia.org/wiki/Records_management; "In addition to on-site storage of records, many organizations operate their own off-site records centers or contract with commercial records centres."

⁸ FMR 2007 provides a wealth of provisions on the FCC scenario (see factual summary); Reg. 68 states that every Govt. dept. shall maintain adequate records of stores. Reg. 184 states that all stores received shall be brought on charge in the stores ledger and shall be supported by the relevant receipts. Reg. 188 (1) states that a stores ledger shall be kept in respect of every store to record for each item in stock, the quantity, the value, of all receipts, issues and balances. Reg. 188 (2) states that the stores ledger may be manual and bound, in loose leaf or electronic form. Reg. 189 (1) states that a manual stores ledger shall maintain a separate folio for each item in stock. Reg. 193(2) states that entries of receipts and issues shall be made promptly, so that at all times it correctly reflects the amount held in stock. Reg. 69 (1) states that anyone with government stores under his control shall be personally responsible for their proper custody, care and use. Reg. 222 (1) states that Vote Controllers shall ensure that whenever one officer relinquishes to another the whole or part of his responsibilities for any store, the stocks and store ledgers are properly examined and the handing-over and taking-over conducted in such a manner that there can be no doubt as to the items handed over. Reg. 221(3) states that the officer taking over shall check the accuracy of the stores records, i.e. temporally and factually (as against stock).

⁹ Barata K, Cain. P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 42, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "Formal rules exist in sub-Saharan Africa (public) services. However, the more formal ways of working have gradually become eroded as informal and often ad hoc work methods have prevailed."

¹⁰ Ibid at p. 3; "A phased approach is critical to bringing about records reforms (...). A number of steps must be taken if records are to support accountability efforts. These include: **encouraging a culture** for creating, maintaining and using records. This includes obtaining and retaining the commitment of legislators, senior public officials and high ranking civil servants **to support programme development**; identifying and strengthening current records legislation and enacting legislation where it does not exist. This includes institutionalising records management

participation, it's important to be seen to also engage their views on methods by which to achieve such behavioral shifts. When these have been integrated into the equation, instruction can begin firstly, on how to actually build, maintain and further durable KM/IM systems. Necessarily, this includes; "*providing adequate record keeping storage facilities, (and) employ(ing) qualified records professionals to manage record keeping systems.*" Secondly, instruction should address concrete role play or probable scenarios. Third, instruction should address the practical; institutional and societal consequences of non-adherence to new policies on IM/KM, including penalties/sanctions attached for defaulting on obligations.¹² Fourthly, instruction should serve as a means of reinforcing all the above. Internal monitoring on adherence and internal disciplinary measures should also be consistently enforced.¹³

*"When government practices reflect known rules and adhere to acceptable standard codes of behaviour, the tendency is for public servants to behave rationally with equity and fairness. It is when the rules are unknown or ambiguous that the environment opens up to corruption. The same principle is applicable to records systems. If the systems are rule-based in design and consistently follow regular routines, they can provide a disincentive to individuals tempted to tamper with the evidence they manage."*¹⁴ Since non-awareness of the applicable regulations and the precisely applicable provisions thereof is apparently contributory to the commission of corrupt acts, it is recommended that human resources sections in tandem with governance institutions like the ACC and even the Office of the Ombudsman devise training/orientation sessions and manuals for MDAs. These sessions should identify relevant legal/policy provisions as per the office, openly examine them and exemplify their application, with an emphasis on consistent circulation and dissemination of these expositions, and reiteration of their content and importance; for e.g. regulatory instruments in most of these instances were the Government Budgeting and Accountability Act 2005 (GBBA 05), the Financial Management Regulations 2007 (FMR 07), the Public Procurement Act 2004 (PPA 04), the Public Procurement Regulations 2006 (PPR 06), and the Anti-Corruption Act 2005 (ACA 05). Specifically s. 11(3) FMR 07 requires every person who collects or receives any public moneys to keep a record of receipts and deposits thereof in such form and manner as the Accountant General may determine. It is these sorts of provisions that should be identified, extracted and disseminated.

Importantly, attention should be brought to the need for MDA staff to also own the responsibility to identify applicable rules/conditionalities that attach to donor funds and further, to construe these in conjunction with obligations in the national regulatory framework including institutional policies for e.g. MDA staff in the *Daoh case*, should have owned the responsibility to identify the more precision driven obligation to account, with regard to a particular field of action/domain/type of expenditure, since this was stipulated by donors, (in the GAVI Draft Audit) making it clear that specifically the provision of activity reports was required. Regarding longstanding donor funded programmes with a consistent approach, these matters should be encapsulated in memoranda addressed to the relevant parties; superiors as well as subordinates working on that programme. The watchword is ***awareness*** so that vigilance is always exercised in bringing the relevant to the fore, which suggests that HR units should be particularly attentive to identifying and promoting understanding of these issues. Internal audit mechanisms should be strengthened (see section **IV. Control and Management of Public Funds**), and regular reviews of IM systems should be ensured.

*through legislation and **empowering records managers to enforce compliance** with public sector record keeping requirements; defining and implementing records related standards and introducing or strengthening the record keeping components of accounting and auditing standards; **developing financial management systems that explicitly incorporate a record keeping component.**"*

¹¹ Wikipedia, (2015), *Records Management*, https://en.wikipedia.org/wiki/Records_management; "*Records management is often seen as an unnecessary or low priority administrative task that can be performed at the lowest levels within an organization. Publicised events have demonstrated that records management is in fact the responsibility of all individuals within an organization and the corporate entity.*"

¹² Barata K, Cain, P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 40, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF; "*Even when public servants have appropriate technical skills, they may not have incentives to make improved financial management systems work. Strengthening internal regulators may provide the necessary incentives.*"

¹³ Aiim, (2015), *What is Information Management?*, <http://www.aiim.org/What-is-Information-Management#sthash.0pFiW0ZG.dpuf>; "*Information management is a corporate responsibility that needs to be addressed and followed from the upper most senior levels of management to the front line worker. Organizations must be held and must hold its employees accountable to capture, manage, store, share, preserve and deliver information appropriately and responsibly. Part of that responsibility lies in training the organization to become familiar with the policies, processes, technologies and best practices in IM.*"

¹⁴ Barata K, Cain, P, Thurston A., (1999), *From Accounting to Accountability: Managing Accounting Records as a Strategic Resource*, World Bank infoDEV Programme 980121-257, International Records Management Trust, p. 53, http://www.irmt.org/documents/research_reports/accounting_recs/IRMT_acc_rec_background.PDF

There is however a need for actual interactive sessions as opposed to just distribution of information. Training would appear to already be mandated by the existing legal framework; for e.g. under s. 15(1) of the Sierra Leone Maritime Association Act, the Executive Director is responsible for SLMA staff training and development based on guidelines approved by the Board. There are likely similar provisions in the governing instruments of other MDAs. Moreover, staff should be encouraged to seek assistance in clarifying these issues from HR departments at an agency or ministerial level. This is so that, vis-à-vis observations made above, staff will benefit from greater clarity regarding their and the roles/obligations of colleagues.