

prepare short list for bidders, prepare Bidding documents, conduct bid opening for the Bids that were received. That he was a member of the Procurement Committee. He told the Court about the Waiver applied for by the 1st accused – to use the Restricted Bidding method. He said he and Gaiva Lavalay were the ones who developed five known suppliers for the procurement activity which he said he discussed with the 1st accused and the 1st accused was dissatisfied with it and told him that the Asycuda Project was of great importance to him and did not want anybody to mess around with the project. That he wanted that year to be a great mark to his achievement and that he was going to pay more attention to procurement process and will not allow any unknown firm to take part in the bidding process because at the end of the day he as the Commissioner General would be held responsible for any thing that went wrong. According to the witness, 1st accused told him that he should not be reporting to Mr. Lavalay but to his office and that Mr. Lavalay should not make decisions for the NRA on his behalf. That he also warned him about taking instructions about the project from outsiders and that if he wanted to stay in his job he must be prepared to work with him or else he would not get some body else who would work with him and added that his job would be advertised and he would be short-listed. The witness said the short-list he and Mr. Lavalay had prepared was rejected by the 1st accused and a new short list was given to him by the 1st accused with particular emphasis that he must ensure that Taria Enterprises get the contract for the a Supply of Split Unit Air Conditioners. The witness further said his conversations with the 1st accused were verbal and that 1st accused wrote the name on a yellow piece of paper which he kept to himself. That he gave him the telephone number of the contact person for the Taria Enterprises for him to contact him and he complied. That he then told Mr. Lavalay that the short list had changed. He said Mr. Lavalay was annoyed and asked him for the reasons and he told him that he would not give him the reasons. He said he then prepared the Bidding documents and called one Mr. Gabisi because his number was given to him for Taria Enterprises. He said he informed Mr. Gabisi about the instructions received from the 1st accused and that he was the one going to do the supply and fitting of the Split Unit Air Conditioners and that he should send someone to collect the Bidding documents. He said he later saw a gentleman whom I gave the Bidding documents and a register for him to sign for

the Bidding documents. Exhibit T was identified as the register signed by the person named. According to the witness the contact person for Taria Enterprises was G. Gabisi.

The next stage was the Bidding process. The witness said at 11 a.m. the Tender Box for the Split Unit Air Conditioners was taken into a room and in that room the representatives of the various Companies and the representatives of the NRA look at the Bidding documents. The document is dated 26th January 2009. That after the Bids had been opened he gave a copy each to Mr. Henry Vagg DFID Engineer and Mr. Thomas Koroma who was the Architect who had the responsibility of carrying out the Evaluation. The witness said Mr. Thomas Koroma did the Evaluation and that after the evaluation was done, there was a Procurement Committee meeting on 14th July 2009 at which the evaluation was discussed. The witness identified exhibit DD as the Bidding Evaluation document in respect of Split Unit Air Conditioners dated 3rd February 2009. The witness denied being the author of exhibit DD. The witness further told the Court that before the meeting he informed the 1st accused about the Evaluation Report. He said the 1st accused was not happy with the Report. That he questioned the ability of Mr. Koroma to do the evaluation because he said he knew Mr. Koroma as Architect Engineer and should have consulted him before writing the report and added that the roles of the players in the Project had all been identified. That he promised to discuss the issue with Mr. Koroma and said he would put pen to paper if anybody exceeded his role in the future and warned him and reminded him that he as the Commissioner General makes the decision for the Project and not outsiders and any outsiders who wants to make a decision must consult him.

The witness still continuing, said after that discussion there was a Procurement Committee meeting on the 14th July 2009 and that he was at the meeting together with the following: Mr. Demby, Mr. Gaiva Laval; Mr. Henry Vagg, Mr. Gerald Ganda and Mr. Abdul Rahman Rogers.

The witness further told the court that he was involved in I.T. procurement facility and say that the same as in the case of Split Unit was used. That together with Mr. Laval and in consultation with the Director at the NRA Mr. Gerald Ganda a short list was developed of known Suppliers for the procurement activity. He stated that again as happened in the case of the Split Unit it was rejected by the 1st accused for the same reasons that he gave in the Split Unit case. He said after 1st accused had rejected the short list, he gave him verbally a new

short list to work with and he then prepared the Bidding documents and told him to ensure that Tabod get the contract. The witness identified exhibit GG as the register of the short listed Suppliers. He said having issued out the Bidding documents he contacted the 2nd accused to send somebody to come and collect the documents. He added that it was the 1st accused who gave him 2nd accused's phone number.

The next stage was the Bid opening. The witness identified exhibit HH as the Attendance Register in respect of I.T. Equipment at Quay Side Facility. He said the Bidders were Fidelity. Tabod Geeson and Damsel and he gave one set to Mr. Henry Vagg and Mr. T.S. Koroma and the remaining set for the file. He further said the Bids were evaluated by Mr. Koroma (PW10) and identified exhibit WW as the Evaluation of I.T. at First Custom Area.

Still continuing, the witness identified exhibit WWW – the Evaluation Report NRA ports area. He said after receiving the Evaluation Report he informed the 1st accused about the Evaluation Report from Mr. Thomas Koroma (PW10).

That again 1st accused was not happy with it and told him that decision on the Project should be discussed first with him before anybody else makes a conclusion and promised to discuss the issue with Mr. Koroma and that he reminded him, about taking instructions from out siders and threatened that in future if anybody makes a decision without his concurrence he would put pen to paper.

The witness further told the court that after the report there was Procurement Committee meeting and that prior to the meeting he received another Evaluation Report for the Supply and Installation of I.T. Equipment at Customs House when he received the letter from the National Public Procurement Authority (NPP Authority) and he again went to Mr. Laval and that in consultation with I.T. Director – Mr. Ganda a short list of known suppliers was developed and again the short list was also rejected by the 1st accused for the same reasons. The witness said Bidding documents were prepared and issued to Cee Dee Investment Company because 1st accused had told him that for that particular contract Cee Dee Investment Company should be awarded the contract. The witness identified exhibit MM as Register of Bidding Documents and said having given out the Bidding documents that the next stage was the Bid opening for the Supply and Installation of Local Area Network and

Equipment at Customs House. He said he gave a copy of the Bidding documents received to Mr. Henry Vagg and Mr. Koroma (PW 10) and the other copies left in the office file.

Evaluation of the Bids

The witness further told the court that the bids were evaluated. He then identified exhibit XXX as the Evaluation Report dated 5th July 2009. He said he informed the 1st accused about the report and 1st accused asked if the parameters used for evaluation were the same as in other previous contracts. The 1st accused promised to discuss the issue with Mr. Koroma. The witness said that it was after his discussions with the 1st accused there was a Procurement Committee meeting on 14th July 2009 which he attended. He identified exhibit TT1 as the Minutes of the Procurement Committee meeting. He admits that exhibit TT2 is not signed. According to the witness he received these two exhibits from Mr. Abdul Rahman Rogers at different times. That after the meeting on July 14 Mr. Rogers sent copies of the Minutes to all present for corrections and that after the corrections he sent them out again the corrected version and which the witness identified as exhibit TT2. The witness identified exhibit ZZZA1 to 3 as the minutes prepared by him in respect of the meeting of 14th July 2009. He said when he took them to the Mr. Chairman – Director of the Modernisation Programme and Chairman of the Procurement Committee for the project so that he could vet and make necessary corrections it was rejected because I was not the one expected to take down the minutes for that meeting, that it was Mr. Abdul Rahman Rogers' duty and it was those coming from him that would be vetted. The witness stated further that after the meeting of the 14th July 2009 the Procurement Committee did not meet again on the three contracts but he knew that another meeting was required because the Committee made certain recommendations and action points which should be forwarded to the NRA management for comments and directions. The witness identified exhibit AA as the letter he wrote to Taria Enterprises and exhibit X as the response and the business profile from Taria Enterprises.

The witness further told the court that after the meeting of 14th July 2009 he discussed the issues raised with the 1st accused. He said 1st accused asked why the committee was a stumbling block in the award of contracts and why the NRA staff in the Committee allowed Mr. Henry Vagg and Mr. Lavalay to have their way and added that that was an NRA project and

and that they should not encourage Foreigners. After that the witness said he visited the shop at Garrison Street to see what goods were offered for sale there. He further told the court that 1st accused told him that when ever NRA wanted items which the shop had for sale he must ensure that Fatma Allie supply them. He concluded that he complied with the 1st accused's directions. The witness then identified various exhibits relating to the supply of cleaning materials to Income Tax Department. The witness said they requested for quotations from three suppliers and that evaluation was done by the procurement unit and LPO signed. Goods were delivered and payment effected. According to the witness he ensured that all items in Fatma Allie Enterprises which were required by the NRA were supplied by the 5th accused's Enterprises or Company.

In cross-examination by Mr. Tejan-Cole the witness said he made two statements to the ACC. The witness told the court that he was merely Acting Senior Procurement Officer and head of the Section. His immediate bosses were Mr. Charm and a Mr. Kamara. That Mr. Charm was the Director of Policy and Legal Affairs and also Acting Director of Administration and Human Resources whilst Mr. Kamara was his Deputy and that both of them were members of the management of which he was not. He said the channel of communication between him and the 1st accused was through Mr. Charm. He joined the NRA in 2006. He said NRA is a procurement entity. The witness agreed that there was a Procurement Committee before the 1st accused joined the NRA. The witness was au fait with the data base and said that it was part of the 1st accused's schedule and gave the names of those he could remember in it. Before September 2008 their Suppliers for cleaning materials and drinks were Indian companies and could not recall whether there were indigenous ones. The witness said exhibit RRR 1 to 11 was received on 17/9/08. He identified the handwriting of the 1st accused, said it was referred to him and the 1st accused's Minute is dated 20/9/08 and Charm's Minute dated 22/9/08. The witness could not tell whether the 1st accused left the shores of Sierra Leone on 21st September 2009. He denied seeing a letter from the 1st accused to Mr. Charm about warning that preferential treatment should not be given to the 5th accused. The witness left the NRA during the investigation of this matter. That he was sacked by the NRA and Mr. Charm was demoted as a result of the

investigation and that so was Mr. Demby. He admitted that he was the Secretary of the Evaluation Committee and it was his place to write the Minutes of the Committee meeting and was supposed to serve as Secretary of all the Committees.

He agreed that exhibits WWW, VVV and XXX were not written and/or signed by him and did not write any Evaluation Report on them though he was involved in all of them. He said Evaluation Committee should be a minimum of three. That when the Project commenced Thomas Koroma's firm did the evaluation. The witness denied being present at the Evaluation meeting. He recalled a letter written by the 1st accused telling them that they should always observe guidelines in the award of contracts. The witness identified exhibit UU. He admitted that it was written before they started any procurement and that he was a member of the Procurement Committee. The witness told the court that the guidelines were not followed. He denied the suggestion that he hated the 1st accused and that he advised 1st accused in writing to sign the contracts. The witness was confronted with exhibits BB; LL; and QQ which are contract documents for the three contracts. He identified his signature on only exhibit BB.

Exhibit DDDD1 and 2 was tendered through the witness. Exhibit DDDD1 dated 5th August 2009 is a memo from the Ag. Senior Procurement Officer (who was the witness) to the Director Policy and Legal Affairs Thro. Deputy Director Admin/Ag. Director AHRM. It is in respect of the contract for the Supply and Installing Split Unit Air Conditioners Custom Hina-Taira Enterprises 7 Bathurst Street, Freetown. It reads.

"We kindly ask that you vet this documents (see) so that they can be forwarded to the Commissioner General for signing."

Exhibit DDDD2 is also a memo from the witness making the same request in respect of the contract for the Supply and Installing Local Area Network Custom House –Cee Dee Investment Company; contract for the supply and installing Local Area Network Quay Side Facilities – Tabod International initialled by the witness. According to the witness, it was after receiving the Audit Report that he read MOU between DFID and the NRA and that it was after the award of the contract. The witness identified exhibit TTT 1 to 4 dated 28/11/09 as his response to the Audit Report. The witness admitted having encounters with PW1 about Minutes but could not recall him confessing to him that he wrote a fake Minutes.

The witness still continuing with his evidence under cross-examination said he did not know the 1st accused before the year 2008. He was confronted with the Email he sent to the 1st accused dated 23rd June 2009 and tendered through him as exhibit EEEE. This exhibit was just appraising decision of Bid opening up date and nothing more. The witness told the court that opening of the Bids took place on the 26th of June 2009. He explained that he sent the Email. Exhibit EEEE to the 1st accused because the latter was out of the jurisdiction. The witness was next confronted with a document which was tendered through him as exhibit FFFF 1 to 3 purported Minutes of the Procurement Committee meeting of the NRA held on July 16, 2009 and which was signed by the witness. The witness said he agreed with Mr. Demby when he said he did not attend the meeting and also that Mr. Charm was not present at the meeting and finally that there was no such meeting held.

Under cross-examination by Mr. Manly-Spain the witness told the Court that the Deputy Director Admin was in charge of the Procurement Unit.

The witness told the court that in the case of contract to Cee Dee Investment he played a leading role by keeping his supervisor informed and giving him an update but in the case of Tabod he could not recall whether he gave an up date. He said he did exhibit FFFF1 to 3 alone but claimed that he was under direct instruction of the 1st accused and added that he did the same in the case of Cee Dee Investment. he stated that he was not under the instruction of the 1st accused when he went to Mr. Laval who he said drew up the short list with but also taking into consideration the views of others. He further said after the meeting of July 14, he made two statements to the ACC in the case of contract to Cee Dee Investment and Tabod the witness said what was asked was to be done was done in each case but he could not tell whether the work had been completed.

In cross-examination by Mr. James Forna Sesay the witness agreed with the suggestion by counsel that three contracts were awarded after the terms and conditions set for them had been complied with but the witness retracted and said it was not for him to say that the contractors performed.

Under Cross-examination by Mr. Yada Williams the witness told the court that one of the information they put on the data base is the name of the business and the contact person and that in the case of Fatma Allie Enterprises the name of the contact person was Mrs.

Fatmata Sesay and not Mrs. Fatmata Ojubara Sesay. The witness admitted that he used to call Mr. Fatta Gabisi on his Comiun number. He also agreed that the NRA conducted an Internal Inquiry and that the panel was investigating him for DFID project, but he did not know who could have dismissed or terminated his services.

The next witness was A.H. Charrn (PW3). He was the Director of Policy and Legal Department of the NRA. According to him his duties included proffering legal opinion and advice to the NRA; drafting and /or vetting of contract agreements, conveyance and leases. He said in the latter part of 2008 he was appointed to act as the Acting Director of Administration and Human Resources Management department and was to oversee the operations of the department.

The 2nd and 3rd accused persons are his long time friends. He did not know the 4th accused. The witness said he was aware of the three contracts and was the Chairperson of the Procurement Committee but was only involved in post award process of the contracts.

It was during the cross examination of the witness that exhibit GGGG was produced and tendered because the witness admitted receiving it and that he Minuted it to PW2. Mr. Victor Labor. The witness said he was not personally involved in contracts to Fatma Allie Enterprises because her contracts were below the threshold of the Public Procurement Act. He added that threshold within Le15 millior. could be dealt with by the Procurement Unit without reference to the 1st accused. Exhibit HHHH which is the Terms and Conditions of the N.R.A. was produced and tendered through this witness. The witness said he was not privy to the Data base. Exhibit GGGG is dated 19th September 2008 while exhibit RRRR is dated 14th September 2008 minuted to the witness on the 20th September 2008.

One Alfred Hindowa Demby (PW4) was the next witness. He was the Director of Modernisation Programme. He identified exhibit BB which is the MOU between the NRA and DFID Sierra Leone.

The witness said he was involved in developing the MOU and also in all the contracts. He was the Chairman of the Extended Procurement Committee and named the other members. The witness stated that the 1st accused nominated the NRA members and DFID representative were nominated by DFID.

The witness further said that the Committee made recommendations to the 1st accused and which were based on the MOU. That the Committee also agreed that the Field Engineer must be aware of the cost implications of any contract being awarded to enable him prepare the required Authorisation form when required. The witness told the Court substantially the same story as PW2 as regards the process of involved in the award of contracts except that the witness stated that as regards the contract for Air Conditioners, that the Committee recommended that the entire process should be re done. He said there was also the issue of the cost of the Air Conditioners. That the original cost in the DFID was lower than what turned out to be the lowest bid and for that the Committee decided to go back to DFID to see whether they could get more funds. He added that the next issue was the make of the Air Conditioners as the Field Engineer raised some concern. That the next issue was in the Bid document and that they asked the Bidders to provide their profile so that the Committee would examine their track records.

Still continuing, the witness said the Engineer recommended Kelvinator Air Conditioner and also that the firm which did the evaluation recommended that the process be re-run. But they considered that not appropriate in view of the time required and tried to avoid the process be re-run.

The witness further told the Court that he was not aware that the issues they raised the action point they raised to move the process from Tender/Evaluation stage that none of the issues came back to the Evaluation Procurement Committee.

As regards short list of companies, the witness said the Field engineer and the DFID Procurement Agent queried why ICT providers were not included in the short list. The witness also told the court that he knew that at the contracts were subsequently awarded through Mr. Vagg who he said asked him if he knew who awarded the contracts and which he denied knowledge of. The witness was shown exhibit SSS 1 to 3 and he identified it as the Confidential Note he sent to the 1st accused on receipt of the First Audit Report from PKF. He said the 1st accused circulated the Report to members of the Extended Procurement Committee including himself. That the 1st accused asked that they provide him with their impression to assist him reply the Audit Report. The witness concluded his evidence-in-chief by saying that he stood by what he stated in his reply.

Under cross-examination by Mr. Tejan-Cole the witness said he did not know at what stage of the contract the Audit was done. The witness also said that all instructions received from the 1st accused were sent through Mr. Labor(PW2). He witness was shown exhibit XXX. He admitted receiving a copy of it.

The witness told the Court that he was presently Deputy Director Modernisation Programme and became the Deputy at the start of the investigations. The witness told the Court in cross-examination by Mr. Tholley that Mr. Koroma (PW 10) was not a member of the Extended Procurement Committee. This is the evidence of PW4 as far as relevant.

Gerald Hinga Peter Ganda (PW5) was the next witness to testify in this matter. He was the director of ICT. The witness said the 1st accused appointed him to serve as a member of the Extended procurement Committee.

As regards the three contracts, the witness said he gave the requirements and specification of ICT equipment. That the committee met on 14th July 2009 to consider the Evaluation Report presented by PW2. he said the Committee asked for the Profiles of the Companies that presented bids and that he was tasked to look at the Bid documents; the proposals submitted by the various Bidders to see whether they tally with what they requested and to look at the technical aspect. The witness told the Court that he did not submit anything to the Committee before he travelled out of the country and that when he came back he learnt that the contracts had been awarded.

One Alimamy Albert Osman Kamara who was Deputy Director Administration and Human Resources Management was PW6. His short testimony is to the effect that he was an ordinary member of the Extended Procurement Committee but did not know the role of the Committee.

PW7 was one Lash Kamrawho was the manager of M.P. Traders dealing in electronics, air conditioners, televisions and general merchandise. The witness was confronted with exhibit V which is a copy of a Proforma Invoice but said that he would not recognise it because it was not their own Invoice. The witness was shown exhibits T and U. Exhibit T is a Bidding document but the witness disowned the signature on it and also denied writing on it. As for exhibit U the witness said Valentine Williams whose name appeared on it as

representing his company was not in his employ. I note that attempts were made under cross-examination of the witness to destroy the credit of the witness but to no avail.

PW8 was Naresh Tekwani who was an employee of Choithams Electricals as sales manager. The witness told the Court blatantly that they did not do any bidding or supply to NRA in 2009. The witness agreed seeing the name of his company on exhibit T but he was not aware of it. There was no questions for the witness.

Deepak Vutani (PW9) was the next witness. He was the Sales manager at S.V. Electricals. The witness was shown exhibit W which is an Invoice. He identified his company's name on it together with his own name. He also identified exhibit T as having the name of his company together with his name. He admitted signing it. That is all. No questions.

I now turn to the testimony of PW10. Thomas Sebora Koroma whose firm T.S. & Company was engaged by DFID as consultant under exhibit JJJJ. According to the witness this Company's role was to help the NRA in pursuing the procurement process as spelt out in Section 3 of exhibit JJJJ at page 15 and to evaluate tenders in exhibit BBBB after which they made their recommendations to the NRA. The witness identified exhibit BBBB as the Evaluation Report. The witness said T.S. & Company submitted their reports to the NRA through the Procurement Officer (PW2). He said they received response from Taria Enterprises and that they gave specifications of the Air Conditioners they were going to install but no response from the other two Bidders. That it was on the basis of the brand of Air Conditioner specified by Taria Enterprises that the NRA approved the contract to Taria Enterprises. The witness stressed that their role was to supervise what they install to ensure that it was what they specified and on monitoring they discovered that there was a variation and this prompted them to write to remove the Media Air Conditioners installed instead of Kelvinator. Exhibit EE is a copy of the letter they wrote and which was responded to in exhibit FF in which they said they had no business with T.S. & Company. The witness identified exhibit WW as the Email sent to him by the 1st accused. This is briefly the witness's evidence in chief.

Under cross examination by Mr. Tejan-Cole. The witness identified exhibit Y as the letter from PW 2 to Taria Enterprises on the recommendation of T.S. & Company. The

witness told the Court that it was after exhibit EE had been written that he received an Email from the 1st accused. The witness said he then discussed with the 1st accused about the Installation and that the 1st accused told him that an NRA personnel who inspected the work approved the one installed and that there was no variation in the price. By the way the NRA personnel according to the 1st accused was one Alusine Koroma, whom he described as Air Conditioner Retainer. I note that this Alusine Koroma was not called to testify. The witness said he was not present at the meeting of Procurement Steering Committee meeting held on 14th July 2009. The witness strongly denied that he had anything to do with an Evaluation Report in respect of Supply and Installation of Local Area Network and Quay Side Facilities though his name appear on it. The witness agreed that his name or that of his firm did not appear in the MOU between DFID and the NRA. The witness also agreed that exhibit VVV dated 3/2/09 for the Evaluation of the Air Conditioners was in existence before the Contract Document between DFID and the NRA. Exhibit JJJJ. He also agreed that before he entered into contract with the NRA he had already started to work for them. The witness agreed that the NRA had paid 30% to the three contractors on the execution of the contracts and that he recommended that they had done work and that the contractors needed money and that he had estimated the amount of work done.

Exhibit KKK which is an Email was produced and tendered through the witness. This exhibit is two fold One part of it emanated from PW 2 who was seeking confirmation from the witness whether the work done by Cee Dee investment and Tabod Investment exceeded 30% and the other part of it is a response from the witness expressing his confirmation that the advance payment bond could be returned to the said contractors but the witness said he could not recall sending the Email on page 2 and this caused him to produce his own copy which is in evidence as exhibit LLLL 1 to 3. I see no difference between exhibit KKKK and LLLL: Exhibit MMMM 1 to 3 which is a Certificate for Payment in respect of contract to Tabod Investment prepared by T.S. & Company and signed by the witness was produced and tendered through the witness after the witness had admitted being the author of it. It is addressed to the NRA Procurement Committee dated 13/11/09. This is the evidence of the witness as far as relevance is concerned.

PW 11 was one Gaiva Paul Laval, the managing director of Salmarcon Ltd and the Local representative of Crown Agents U.K. The witness told the Court the role he played in respect of the three contracts as a member of the Procurement Committee. He said he attended the procurement meetings and he gave advice to the meeting what was to prevail according to the procurement rules. He added that the short listing was done by the Procurement Unit of the NRA and presented to the committee.

A copy of the Email was produced and tendered through the witness as exhibit PPPP. 1 and 2 but the witness denied the suggestion that he gave this as a copy of exhibit NNNN to the ACC. The witness said Mr. Labor (PW 2) was the person they were dealing with. The witness further told the Court that he had been doing purchases on behalf of Crown Agents and the NRA as far back as 2005 and had never had any difference with the 1st accused and that in fact he had any difference with the 1st accused and that in fact he had been supportive of him. Exhibit QQQQ 1 to 6 was produced and tendered through the witness. This exhibit is an unsigned Evaluation Report. The witness told the Court bluntly that he did not take part in the evaluation and that he did not participate in the preparation of this Evaluation Report. The witness rightly described this exhibit as an incomplete document. The witness admitted that they had two Committees namely Procurement and Evaluation Committees. The witness did not know when the Evaluation Committee sat in July 2009 but he admitted that he used to send his representatives to meetings. An Email of May, 7 2009 sent by the witness to Mr. Labor in response to an invitation to an Emergency meeting scheduled for Friday 8th May 2009 was tendered through the witness as exhibit RRRR 1 to 4. The next to be tendered through the witness was an Email from Gerald Ganda to the witness. It was marked exhibit SSSS 1 to 2. Still under cross-examination, the witness told the Court that he did not recall specifically attending the meeting of 14th July 2009. The witness identified exhibit TT1 and TT2 as the Minutes of the meeting held on the 14th of July 2009. He said exhibit TT1 is the minutes of the Procurement Committee meeting held on 14th July 2009. He admitted that he was present at the meeting. He also admitted that his observations were recorded.

The next exhibit tendered through the witness was in respect of the quotations for the Supply and Installation of Split Unit Air Conditioners by Taria Enterprises presented at the Bidders meeting held on 26th June 2009 marked exhibit TTTT 1 to 5. The one from Cee Dee

Investment Company for I.T. Installation at Customs House presented at the same meeting of the 26th June 2009 was tendered through the witness and marked exhibit UUUU 1 to 3. The Response document to quotation for ICT Infrastructures by Tabod International Ltd also presented at the same meeting of the 26th June 2009 was tendered through the witness as exhibit VVVV 1 to 4.

In cross-examination of the witness by Mr. Yada Williams the witness stated that one of his functions was to ensure that appropriate procedures were followed as laid down in the NPPA and the Regulations.

One Abel Arthur Charles Jones who said he was the Network Officer at the NRA was the next witness (PW12). He was tendered by the Prosecution and cross-examined by the Defence. He was confronted with exhibit QQQQ 1 to 4 and said though his name appear on it but he never attended any Evaluation Committee meeting and that he was not a member of any Evaluation Committee.

Another witness also tendered was one John Conteh (PW13). He was the NRA Internal Auditor. He too was shown exhibit QQQQ 1 – 6 He admitted seeing his name on it but strongly denied attending any such Evaluation Committee meeting.

PW 14 was Patrick Martin George, a legal officer at the A.C.C. He told the Court that he was involved in the investigation of this matter and was the one who interviewed the 3rd accused on the 23rd February 2010. The statement is in evidence as exhibit WWWW 1 to 14.

In exhibit WWWW 1 to 14 the 3rd accused told the Commission among other things that he was the one who set up First Fidelity Investment Company and was one of the Directors. At first when asked he said he could not remember the names of the seven (7) shareholders but when confronted with the name of the 2nd accused. Samuel Cole, he admitted that he was a shareholder. When asked the type of business the Company was set up to do? His answer was to do supplies and general maintenance. When also asked whether the Company had ever done I.T. Installation. His answer was in the negative. He also stated that the Company had never applied to the NRA to be included in their Data Base but the company had sent bids to the NRA for award of contract and that the bids were tendered in respect of a contract for I.T. Installations at the Quay. He stated that in the event of winning the contract they would have Sub-contracted it to another Company. The 3rd accused's statement revealed

that First Fidelity Company and Cee Dee Investment Company are Partners but not with Tabod International and that First Fidelity Company and Cee Dee Investment tendered bid to NRA for the award of contract for ICT Infrastructure and they never disclosed the relationship between them to the NRA.

The next witness called by the prosecution was Osman Rahman Kamara (PW15) an Investigating Officer at the ACC. According to his testimony he was the one who interviewed the 2nd accused on the 22nd February 2010 but I discovered that the witness ended up tendering the statement of the 5th accused dated 25th February 2010 as exhibit XXXX 1 to 7.

The one from Cee Dee Investment Company for I.T. Installation at Customs House presented by at the same meeting of the 26th June, 2009 was tendered through the witness and marked exhibit UUUU 1 to 3. The Response document to quotation for I.C.T: Infrastruuctions by Tabod International Ltd also presented at the same meeting of the 26th June 2009 was tendered through the witness as exhibit VVVV 1 to 4.

In cross-examination of the witness by Mr. Yada Williams the witness stated that one of his functions was to ensure that appropriate procedures were followed as laid down in the N.P.P.A. Act and the Regulations.

Under cross-examination, the witness told the court that as at the 2nd March 2010 he was not investigating the 5th accused for peddling an influence and also not for offering an advantage. The witness said he was not aware that she is charged with the offences and added that it was Senior Felix Kabba (PW1) who gave him the questions to put to the accused. I note that all the offences for which the 5th accused was told that she was being investigated for are completely different from the ones she is charged with in this court. The result of this is that she was never asked any question relevant to the offences for which she is charged.

Joseph Bockarie Noah PW 16 was the next witness to testify. He too said he was an Investigating officer at the A.C.C. He was the one who interviewed the 4th accused on the 22nd February 2010 and the statement obtained from her was tendered in evidence as exhibit YYYY 1 to 21.

I have carefully perused this exhibit, it is a total denial of the allegation or charge against the 4th accused and therefore I do not deem it necessary to recount its contents.

Under cross examination of the witness, he told the Court that he informed the 4th accused that the A.C.C. was investigating various offences and that it was after that he started asking her questions. This is all.

PW 17 was Haruna Alhassan Kabia. He was the Branch Manager of Eco bank Ltd. His testimony reveals that he was called as a witness purposely to come and produce and tender the 1st accused's Foreign Exchange Bank Account for the period 3rd April 2008 to the 14th February 2011. It is exhibit ZZZZ 1 to 6 – (copy of the Bank Statement). Item 8 of ZZZZ 3 shows an entry of cash deposit in the account by Mrs. Sesay of the sum of US\$7000.00 and item 9 on ZZZZ4 showing another entry of payment of the sum of US\$5000.00 into the same account by Mrs. Sesay – the 5th accused. Exhibit AAAAAA which was Bank Paying Slip for the sum of US\$7000.00 was tendered by the witness under cross-examination. Also tendered through the witness was an Email from the 1st accused to Eco Bank dated 29th June 2009 sent to one Mrs. Hawa Bah of Eco Bank. It is exhibit BBBB. Forms Transfer Receipt for the sum of US\$5000.00 was tendered through the witness and marked exhibit CCCCC showing that the said amount of US\$5000.00 was withdrawn by the 1st accused on the 2nd December 2009.

The next witness called was Eugene Emeric Tane Luke who said he was I.T. Consultant at Damsel Business Centre. The witness told the Court that he did not know anything about I.T. Installation at Quay Side. The witness said his business name was Damsel Centre and that it is different from the one in exhibit GG which calls for Damsel Enterprises. This witness told the Court bluntly that he did not know anything about this case.

Jonathan Admire Thomas (PW 19) was the next witness called by the prosecution. A Chartered Accountant working with P.K.F. firm of Accountants. He said their firm was commissioned by DFID to look at a particular contract which they had given to the NRA – in fact a financial grant of £620. That they were to look at the Accounting process to see whether the amount had been properly spent for the intended purposes.

The witness produced and tendered their Report. It was marked exhibit DDDDD 1 to 24. He referred to their conclusions and recommendations on pages 18 to 24 and in conclusion of his evidence-in-chief the witness said "We still stand by our findings and recommendations contained in the Report". I note that among the findings are the following:

1. That the three contracts in question relating to the supply and installation of air conditioners and supply and installation of Local Area Network equipment at both the Customs House and Quay side Facilities were not approved by the Extended Procurement Committee.
2. That the funds were not properly used in accordance with the MOU (Exhibit VV).
3. That the contracts were awarded without taking appropriate actions in that the concerns raised by the DFID Procurement Consultant (PW 11) relating to the three contracts were not addressed.
4. That three contracts were issued by the NRA and signed by the 1st accused in the absence of the certification by the DFID engineer (PW 20).
5. The installation of different brands of air conditioners than that stated in the contract and the 1st accused giving his approval for another brand to be installed without consulting DFID Engineer (PW 20) or the Architect (PW 10) who were directly involved with the works to seek clarification on the suitability of the brand.

Under cross examination, the witness told the court that they supplied the NRA a copy of their report and that after submitting their Report to DFID that the NRA contacted them. The NRA's response to the Audit Report is Exhibit EEEEE 1 to 11 and Mr. Dominic O'Neill's response to this exhibit was tendered through the witness as exhibit FFFFF 1 to 2.

The witness told the court that because of their Report DFID stopped the work and refused to make further payment. The witness said he knew that whenever there is an Audit there must be an Audit Conference but he did not know whether Audit Conference was held in this case.

I now turn to the evidence of Henry Vagg (PW 20) who was the DFID Engineer. The witness said his role was to monitor the projects from inception to contracting procedures as well as monitoring the quality control and checking valuation document for payment. That he was a member of the Extended Procurement Committee and that they had various

meetings. Talking about the three contracts, the witness told the court that the Committee met and they asked for the names of Contractors to do the job and that at the various meetings they asked for the list of contractors from members of the Sub-Committee. He said they invited five contractors to bid in each contract and a list was provided to them by Mr. Labor (PW 2) and that it was from there they requested profile of the Company. That they got back only three out of 15 profiles. The witness said he was not happy with it because they looked identical in the contents and that when he visited one of them he discovered that it had a Boutique and he commented on it.

Still continuing, the witness said when a date was set for Bid opening he told PW2 Mr. Labor that he had not seen the Bid documents.

The witness further told the Court that when the Bids were open they were given to Mr. T.S. Koroma (PW10) to do the Evaluation. The witness identified exhibits VVV; WWW and XXX as the Evaluation Reports and exhibit TT2 as the Minutes of 14th July, 2009, which he said he attended. The witness said further that none of the three contracts had been signed and that PW10 Mr. T.S. Koroma did not recommend any of the contractors listed and he himself did not recommend either and also that the Procurement Committee did not recommend any based on the report of Mr. Koroma (PW 10) which caused them to be sent back. The witness also told that Court that exhibits VVV; XXX and WWW were prepared by PW 10 but did not sign any of them.

The witness said he met the 1st accused only once. He was shown a document in respect of Renovation of Customs Facilities dated 22nd April 2009. He identified his signature on page 2 of it. It was produced and tendered through him and marked exhibit GGGGG 1 to 3. He admitted that he gave approval for payment. He maintained that he did not attend all the meetings. He said he whenever he attended. The witness was shown an unsigned Evaluation Report and by reason of the fact that he commented on it the document was tendered through him. It was marked exhibit HHHHH 1 to 6 but said he did not attend the Evaluation Meeting and that when he was given a copy of the document, he commented on it in the last page that there were four companies instead of five and therefore he queried it and the query was not answered.

I don't see how this exhibit can help the accused persons' case. The witness stated that they rejected the Evaluation Report at the meeting of 14th July 2009 because it was not signed. Another document also tendered through the witness is another unsigned Evaluation Report marked exhibit JJJJJ 1 to 6. The witness said this document was also rejected. This exhibit is also of no evidential value as far as I am concerned and I so hold.

The witness identified exhibit TT2 as the actual Minutes which came out and that the Secretary was Abdul Rogers. The witness also identified an Email dated 3rd November 2009 as the one sent by him to Mr. Ganda (PW5) and copied to the 1st accused and tendered through him as exhibit KKKKK 1 and 2. This exhibit is in respect of the ICT Installation evaluation. Exhibit KKKKK 2 is a letter to (PW10) Mr. Koroma requesting him to submit his report. Another document tendered through the witness is an Email of 1st April 2009 from Alfred Demby copied to the witness among others but it is in respect of a subject matter unrelated to the matter before me. It is marked exhibit LLLLL 1 to 2 I hereby hold that it is completely irrelevant to this case.

The evidence of PW21 who was the next witness called by the Prosecution is better ignored because it is only about the witness's profile. He ended up being tendered. He was not cross-examined.

The last but not the least witness for the prosecution was one Momodu Sitta (PW22). He was the Senior Investigating officer at the ACC. The witness said his task was to carry out certain investigations at the Administrator General's office about certain companies namely Tabod Investment; Habika Enterprises and Taria Enterprises. He said he also conducted inquiries at various premises within Freetown to ascertain whether certain shareholders in certain businesses, enterprises were residing where they were said to be in the M&A and his findings were they were not. That is all. This is the case for the prosecution.

Case for the Prosecution

Defence

1st accused elected to give evidence on oath and calling no witness while the rest of the accused each elected to rely on their statement and calling no witness.

The 1st accused's defence is about 25 pages and I observe that his defence is in the main a denial of allegations levelled against him. I shall confine myself to the relevant part of his

testimony/defence. According to him as the Commissioner General he was responsible for the implementations of the decisions of the Board of Directors; the day to day management of the NRA. As head of the Procuring Entity (the NRA) he was responsible for notifying Suppliers or Bidders for the award of contracts and signing of those contracts and lastly he was the Vote Controller of the NRA. He denied providing any short list to anybody including Mr. Labor (PW2) or of any business to be invited to participate in the procurement of the three contracts and that he did not receive from anyone including PW2 any pre-contract Evaluation Report. That he did not participate in any Procurement Committee meetings.

As regards 5th accused's letter to the NRA exhibit RRR 1 to 12 he said when he received it, he minuted to PW3 to let them be in the Data Base. He said what PW2 said about him is not true as he was out of the Country to the United States when he alleged that a meeting physically took place between both of them. It can be seen from the 1st accused's passport that he was out of the Country on and around the date PW2 said both of them met and talked about the 5th accused's *contract*.

By the way exhibit RRR 1 to 12 is dated 11th September 2009. Looking at exhibit SSSSS 1 to 10 which is the 1st accused's *Procurement* ~~contract~~. He said the Department for the procurement of that type of contract was not under his schedule.

As regards the contract to the 5th accused the 1st accused told the court that the Department for the procurement of that type of contract was not under his schedule. This indeed *was* confirmed by PW3 (Mr. Charm).

As regards the Minutes of the crucial meeting of 14th July 2009. Exhibit TT1 and TT2. It would be recalled that TT1 is the one signed by Abdu Rahman Rogers while TT2 is only a Draft. 1st accused told the Court that he acted on exhibit TT1 which according to him recommended that Cee Dee Investment be awarded the contract for the Supply and Installation of Local Area Network at Customs House Cline Town and that he should notify the company of the award. That the Procurement Unit then prepared the letter of Notification which he and the contractor himself signed.

As regards the allegation of receiving advantage of US\$7000/00 and US\$5000/00 1st accused said he was not asked any questions relating to receiving these amounts from the 5th accused. In the course of explaining the circumstances surrounding the receiving of the two

amounts he produced his letter appointment as Commissioner General. It is MMMMM. Starting with the US\$7000/00, he stated that he was in Brussels in the Kingdom of Belgium when he identified a Van Fiat Ducato 2003 model which he considered suitable for his wife the 5th accused's business. That he then informed her about it and after telling her the price, he asked her to send him a sum of 5000 Euros to pay for the vehicle. He added that he did this through an Email. Exhibit NNNNN1 and 2 refers. He produced and tendered the Bill of Lading exhibit RRRR in respect of the Vehicle Fiat Ducato in which the Consignee was Fatmata Sesay. He also produced and tendered the Indemnity Form which he had to sign when he could not present the Original Bill of Lading. It is exhibit PPPP. He also tendered the Invoice in respect of the Vehicle,. Exhibit QQQQQ 1 and 2 refers. I observe that 1st accused's evidence is true that he left these shores on 19th June 2009 and returned on 30th June 2009. These facts are contained in his Passport SSSSS.

The 1st accused still in his defence produced and tendered a letter from Taria Enterprises dated 7th September 2009 to the 1st accused seeking approval for installation of Med:a brand Air Conditioner in place of Kelvinator. It is exhibit VVVVV.

As regards the Audit Report exhibit DDDDD the 1st accused said when the Audit commenced he was in Istanbul. That the Auditors were in the process of preparing their Report when they asked him two questions and was subsequently supplied with a copy of the Report by Mr. Dominic O'Neill who was the head of DFID in Sierra Leone. He told the Court that he sent exhibit EEEEE as his response to Email dated 14 December 2009 from Mr. Dominic O'Neill exhibit WWWW. According to him he made photo copies of the Auditors Report and sent them to all concerned but only members of the Committee who were NRA staff responded to the issues raised in the Report. That as a result of the allegations levelled against him he received exhibit UUUUU dated 18th December 2009 from the President's Office sending him on leave.

Under cross-examination by Mr. Tholley the 1st accused said in Mr. Gérald Ganda (PW5)'s Response to the Audit Report that he indicated that the Mast was 25 meters as specified in the contract and that it could be verified and also that in Mr. Henry Vagg (PW20's) Email; to PW5 that he also confirmed that the Mast was 25 meters. Finally the 1st

accused stated that he had no agreement with the 2nd and 3rd accused persons written or spoken relating to any contract.

In cross-examination by Mr. Y. Williams the 1st accused stoutly maintained that he had nothing to do with the award of contracts to the 5th accused and that the NRA had laid down rules for the award of such contracts. He said the method used for those contracts is called shopping. He then went on to explain the laid down procedures to be followed. He strongly denied the allegations that the 5th accused gave him any money. He also told the Court that all what PW2 said against him was false. He stated that he did not any time tried to influence PW2 or any individual in the N.R.A. to award contract to Taria Enterprises.

Under cross-examination by Mr. Fynn the 1st accused admitted that he had disciplinary powers; recruit staff from the level of principal officer downwards and that PW2 was below the rank of Assistant commissioner; below the rank of Deputy director. He also admitted that PW2 played a very important role in the procurement. He said up to the time of PKF's Audit Report he did not receive any complaints about the processes leading to the award of the three contracts. That PW2 did not have the power to enter into this contract on behalf of the NRA and that he was subject to discipline being in the cadre of those he could discipline. He also admitted that the Procurement Committee was answerable to him. He denied the suggestion that it was his responsibility to ensure that the contract is not awarded to sham companies. 1st accused was confronted with exhibit GGG which he admitted as a letter written by him and that he did not copy anybody. He denied the suggestion that he wrote it after this matter has had come to Court but agreed that the letter raised a very important issue but did not find it necessary to copy the head of the Procurement Unit. This is the 1st accused's testimony.

Applicable Law

In criminal cases owing to the presumption of innocence the prosecutor must prove his case beyond reasonable doubt. The doubt must not be light or capricious such as timidity or passion prompts. It must be such a doubt upon a calm view of the whole evidence, a rational understanding will suggest to an honest mind, or the conscientious hesitation of minds that are not influenced by person or pre-occupied by prejudice or subdue by fear.

It is absolutely necessary that all evidentiary matters on which the prosecution intends to rely as probative of the guilt of the accused should be adduced before the close of the case

for the prosecution. This is because the prosecution cannot expect to get conviction on evidence not adduced during the case for the prosecution. For to require a man to defend himself against a charge based on rumours is to require him to establish his innocence to an accusation founded entirely in the words of Shakespeare on "surmises, jealousies and conjectures in which the evidence is nothing but hearsay and there are no ⁵accused and witnesses to face. It is a cardinal principle of justice that no man is ever convicted on suspicion⁴. A strong suspicion however numerous and however grave can never be multiplied together to produce proof of guilt. That the prosecution should remember that it is not their duty to secure conviction of innocent persons but it is their duty to behave as Lord Hewart L.J. stated in R v Dwyer (1925) 2 K.B. 799 at p. 803 CCA

"With exemplary fairness remembering always that the Crown in the instant case the State has no interest in securing conviction but has interest only in securing the conviction of the right person".

I think it is important to note that the standard of proof where the burden of proof is thrown on the defence or the accused either by statute in this case by section 97 of the Act or Common law is less than required at the hands of the prosecution in proving the case beyond reasonable doubt. See R v Carr-Briant (1943) 29 Cr. App. R. 76 CCA. It is with this in view that I must examine the explanations given by the accused.

Conspiracy

The prosecution has stated the law as follows:

"It is settled law that an agreement between two or more persons to commit a crime is itself a crime. R v Mulcahy 1868 L.R. 3HL 306. This celebrated Irish case demonstrates that

"A Conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means so long as such a design rests in intention only it is not indictable.

What this means is that a Conspiracy is not merely a concurrence of wills but a concurrence resulting from agreement.

The Actus Reus is the agreement and the Mens Rea the intention to carry out the unlawful act. I accept as a correct proposition of law that Acquaintances and or friendliness is not an

ingredient of the offence. See the Ghanaian case of *The State v Boahene* (1963) 2 G.L.R. 554 which says that evidence of mere association with each other without participation in a common design is not enough to constitute the offence of Conspiracy but that the test is whether the parties had a common purpose. The Mens rea which is essential element in Conspiracy requires the prosecution to prove an intention to be a party to an agreement to do an unlawful act. In *R v Anderson* 1986) AC 27 H.L. Lord Bridge at page 39E aptly summarised the position as follows:

“But beyond the mere fact of agreement, the necessary Mens rea of the crime is, in my opinion, established if, and only if, it is shown that the accused when he entered into the agreement, intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course of conduct was intended to achieve. Nothing less will suffice, nothing more is required.”

I accept the prosecution's submission that proof of circumstances from which an agreement could be inferred would be proof of the agreement. That the overt acts which are proved against some defendants may be looked at as against all of them to show the nature and objects of the Conspiracy. See also *R v Stapylton Esdaile and Brown* (1857) 8Cox 69.

Lifting the Corporate Veil

It is part of the prosecution's submission that one of the accepted circumstances in which it is allowable to lift the Corporate Veil is where the Veil is being used as a cloak to hide violations of the law. It is their contention that at this case calls for such a lifting of the Corporate Veil. They cited the case of *Tesco Supermarket v Natrass* (1972) A.C. 153 H.L. Having read this authority, I am quite unable to see what comfort or aid the prosecution can derive from the case. I do not see the need for the lifting of the Corporate Veil in this case just because somebody is a member of more than one company. It is trite law that a Company is a distinct entity from its members and therefore there is nothing in law ~~in~~ precluding somebody ^{from} being a member or shareholder in as many contracting companies as possible. I see nothing wrong in the symbiotic/conjoin twins relationship existing between Cee Dee Investments and First Fidelity Company Ltd. I am not prepared to accede to the curious argument being proffered by the prosecution that this without more should be taken as evidence of collusion. If such were the law, investors' rights and opportunity to invest

would be extremely curtailed and that would be contrary to the basic principle and rules governing Free Enterprise being practised all over the world. I do not share the view that there is anything unhealthy as regards the position of Cee Dee Investment, First Fidelity Company Ltd and Tabod International tendering for one contract. Suffice it to say that I do not see any overt conduct on which a Conspiracy by the three can be inferred safely. Whether or not the offences laid against the 2nd and 3rd accused persons are proved will be determined when dealing with the charges. I share the view that there is nothing in the Public Procurement Act No. 14 of 2004 which expressly prohibits a parent company and its subsidiary from bidding for the same contracts.

At the risk of being accused of prolixity, I deem it necessary to reiterate that it is essential; that to make a person liable for disobeying a penal statute it must be proved that the act or omission prohibited was done with particular motive or intention hence the Latin maxim.

ACTUS NON FACIT REUM NISI MENS SIT REA. In other words, proof of guilty knowledge is absolutely necessary.

Willfully failed to comply

The prosecution's argument is that they have to establish that in the course of his duties, the accused "willfully failed" to comply with the applicable procedures and guidelines relating to the tendering of contracts and that this duty has two ambits namely:

First to show that there was a failure to comply, and secondly, to show that failure to have been "willful" hence the phrase. "Wilfully failed" The authority relied on in support of this proposition is the decision of Mary Sey J in The State V. Sheku Tejan Koroma of 11th March 2010 (unreported) where she cited Re Sheppard (1980) 3 All ER 899 in which the same word had been construed. To me, wilfully is a positive physical act. But the live issue in that case which was on appeal was whether the neglect of the child was wilful because that was a case relating to neglect of a child. I see no similarity between the two cases cited and the case before me.

As to the: "A person whose functions"

The prosecution has submitted that and quite rightly that section 48(2)(b) of the Act requires that the prosecution shows that the Accused was a person whose functions concern the

administration, custody, management, receipt or use of any part of the public revenue or public property.

Counsel for the 1st and 4th accused's argument is that section 48(2) of the Act creates an offence in various ways. He contended that the phrase "wilfully failing to comply with procedures and guidelines" cannot be used as particulars under section 128(1) Conspiracy. That it will only apply if the accused fulfils the words of sub-section 2 which says:

"A person whose functions concern the administration, custody management, receipt or use of any part of the public revenue or public property."

He finally submitted that in the case of the 4th, 2nd and 3rd accused persons that they are not covered by the above subsections.

In his own submission, Counsel for the 2nd and 3rd accused expressed the same views. The pith of his submissions is that the sub section is directed at the conduct of a public officer. That the offender must be a public officer. He posed the question whether Cee Dee Investment and Tabod International are public entities under the ACC Act? He submitted that the answer is a resounding no and that therefore they are not amenable to the ACC's criminal prosecution regime. He concluded that they cannot in law be accountable for the non observance of any internal irregularity or lapses on the part of the National Revenue Authority.

As to the word "knowingly"

The prosecution has alleged that the 1st accused knowingly misled the A.C.C. about the 5th accused's name and interest in a business entity doing businesses with the NRA being in the NRA data base. It is their submission that the word "misled" means to intentionally lead in the wrong direction "to lead into error of thought or action". That the word when used requires proof of mens rea and that in order to prove mens rea the whole of the material circumstances in which the offence is committed ought to be proved including the offender's knowledge.

The word "knowingly" has been judicially defined in many cases that I am aware of. Among them are cases on Customs & Excise Act e.g. in the offence of knowingly harbouring customs goods (R v Cohen (1951) 1 K.B. 505. In R v Iregbu 4 WACA 32 it was held that knowledge may be proved by inference from all the evidence. But the inference must be irresistible.

It is in the light of the foregoing principles that I now embark on examination of the evidence adduced in relation to the charges and determine whether or not the prosecution has proved the offences as laid.

To start with, the 1st accused is charged with 53 (Fifty-three) offences under the ACC Act 2008 Act No. 12 of 2008. 47 (Forty-seven) of the offences are under part IV of the Act under the rubric "Offences" and 6(six) under part IX under the rubric "Miscellaneous" of the Act.

If I may say so at the outset, this case opens a new field in the Criminal Law. It raises the question of far reaching importance whether the 1st accused should be held criminally liable for the acts and conduct of the other employees of the National Revenue Authority in the handling and processing of the three contracts. In saying this, I noticed that in the course of the trial a lot has been said in so many words about how the Extended Procurement Committee went about the whole process in the award of the three contracts. Mindful of the uncontroverted evidence that the 1st accused did not at any time take part in the deliberations of the Procurement Committee not being a member of it, and also for the absence of any evidence that he influenced the decision of the Committee, I cannot phantom the basis for the argument that 1st accused had the requisite mens rea which is an essential element of the offences charged in relation to the three contracts.

It would be recalled that the Recommendation the Evaluation Committee reads as follows:

Recommendation

After all the discussions the Senior Procurement responded that all the observations will be taken into consideration for future procurement activities.

It was decided to accept the recommendation of the Evaluation Committee and expedite the award of contracts so that work will commence soonest.

I think it is also necessary to bear in mind that apart from Mr. Labor (PW 2) whose evidence I will comment on later, none of the members of Procurement and Evaluation Committees who testified before me said they were influenced by 1st accused and/or that the 1st accused approached them on behalf of those who won the contracts. It is also worthy to note that even Mr. Labor (PW2) did not for one moment say he told the Committee to violate the

procurement rules or that the 1st accused sent him to the Committee. Assuming without conceding that this is true the question to ask is. Does this constitute a crime?. The 1st accused's statement is very clear on this issue. The prosecution's argument is that the 1st accused as the Commissioner General has the overall responsibility to ensure that the procuring entity which he heads observes procurement and other rules. That he was given an early warnings that the process was flawed but he chose to ignore it. I have read very carefully the prosecution's argument and submissions on Counts 1,2,3,4,5 and 6 of the Indictment which alleged that the 1st accused "wilfully failed to comply with procedures and guidelines relating to the tendering of contracts contrary to section 48(2)(b) of the ACC Act 2008. I find them to be superficially attractive but if accepted I would be encouraging the importation of the doctrine of vicarious liability which belongs to the law of Tort into the Criminal Law. The argument and submissions in question tantamount to saying that because the 1st accused was the Commissioner-General he was negligent and therefore he should be vicariously liable in each of the Counts. I think it is important to say that the law relating to Tort is not applicable in this case. The result is that for all the foregoing reasons I hold that the prosecution has failed to establish the guilt of the 1st accused on the above Counts, the 1st accused is acquitted and discharged on Counts 1,2,3,4,5 and 6.

I find it convenient to deal with Counts 7,8 and 9 together because the offence in each case is Conspiracy Contrary to section 128(1) of the ACC Act 2008. In each of these counts, the evidence led must be consistent with the particulars of the offence. To start with the statement of offence in each of the charges is at variance with the particulars of the offence as well as the evidence led by the prosecution. I agree with the submission that the phrase "wilfully failing to comply with procedures and guidelines" is directed at the conduct of a public officer and following what I have stated earlier Taria Enterprises, Cee Dee Investment and Tabod International arte not and cannot in my view be held amenable to the ACC offence as laid in Counts 7,8 and 9. Without further ado, I accept the submissions of counsel for the 1st, 2nd, 3rd and 4th that the 2nd, 3rd and 4th accused persons do not fulfil the words of section 48 (2) of the ACC Act. I also hold that there is no law in the ACC Act which makes any of them accountable for the non observance of any irregularity or lapses on the part of the NRA. In my own opinion there is no way in which the prosecution could have proved these three

charges as laid. Suffice it to say that I find each of the accused persons not guilty. The 2nd and 3rd persons are accordingly acquitted and discharged on counts 7 and 8. The 4th accused is acquitted and discharged on Count 9. For the foregoing reasons I find the 1st accused not guilty on each of the Counts 7, 8 and 9. He is accordingly acquitted and discharged.

Count 10

The 1st accused is charged with Misleading the Anti-Corruption Commission Contrary to Section 127(1) of the Act. The particulars of offence alleged that in a letter dated 14th September 2009 the 1st accused being the Commissioner-General of the NRA knowingly misled the Commissioner by stating that the NRA Service providers database did not contain the name of Mrs. Fatmata Ojubara Sesay knowing the same to be untrue. The source of this statement is exhibit B which was in response to exhibit A but exhibit D which disclosed the name in the NRA debunked the allegation laid in this particulars of offence. The evidence adduced before me reveals that it is a fact that the NRA was not doing any business with either Mrs. Fatmata Ojubara Sesay or with Mrs. Fatmata Sesay. Strictly speaking it cannot be said that the 1st accused misled the Commission as alleged. The argument and submissions by the prosecution that the offence has been proved beyond reasonable doubt is nothing but a misappreciation of the evidence led. I therefore uphold the defence counsel submission that this offence has not been proved beyond reasonable doubt. The 1st accused is accordingly found not guilty. I acquit and discharge him on Count 10.

Count 11

This is also another charge under section 127 (1) of the ACC Act 2008. The difference here is in the particulars of offence which alleged that the 1st accused had stated in his letter of 14th September 2009 that the Service providers database of NRA did not contain the name of any business entity in which Mrs. Fatmata Ojubara Sesay had an interest knowing the same to be untrue. This count is founded on the 1st accused's letter of the 14th September – Exhibit B but it is observed that the contents of exhibit B are at variance with the particulars of offence. In Exhibit B which is the 1st accused response to Exhibit A the 1st accused wrote to say that the Service provider database did not contain the name of Mrs. Fatmata Ojubara Sesay except with Landlords exceptionally. That the information requested could only be obtained from the Service providers' database which does not contain the name of Mrs. Fatmata Ojubara Sesay.

In my own opinion, this is an issue which the prosecution should not have capitalised on but I believe it was raised because the prosecution was on fault-finding spree. I will be content to say that the prosecution has not proved this charge with the certainty it deserved. I therefore find the 1st accused not guilty I acquit and discharge him on count 11.

Count 12

This is again another charge under Section 127(1) of the ACC Act 2008. The particulars of offence here alleged that the 1st accused knowingly misled the Commission by failing to disclose that Fatmata Allie, an entity in which Mrs. Fatmata Ojubara Sesay had an interest, did have transactions with the NRA despite having been specifically asked to do so by a Notice pursuant to Section 57 (1) of the ACC Act 2008 dated 9th September 2009. Having gone through the evidence I have observed that this charge is bound to fail for the following reasons.

1. This being a criminal offence it is incumbent on the prosecution to prove the offence beyond reasonable doubt as laid and that failure to discharge this burden will be fatal to their case.
2. There is no evidence that Mrs. Fatmata Ojubara Sesay had an interest in Fatma Allie.
3. There is no scintilla of evidence that Fatma Allie transacted business with the NRA and/or that the name was in the NRA database.
4. As there was no amendment sought, the charge stands as laid and has not been proved as laid.

In conclusion, I hold that the prosecution failed to prove this offence, the 1st accused is therefore entitled to acquittal and discharge. He is therefore acquitted and discharged on Count 12.

Let me now turn to the indictment against the 5th accused before continuing with the ones against the 1st accused.

Count 50

Offering an advantage Contrary to Section 28(1)© of the ACC Act 2008. Particulars of offence alleged that the 5th accused on or about 29th June 2009 gave an advantage to the 1st

accused to wit- the sum of US\$7000/00 as a reward for his having favoured the said 5th accused doing business as Fatma Allie enterprises in the transaction of business with NRA.

The 5th accused faces an allied offence of offering advantage to the same 1st accused and the amount involved is US\$5000/00. Both offences can be treated together. I think it is beyond argument that the prosecution has a burden of proving that these two sums of money were paid by the 5th accused to the 1st accused as an advantage failing which the charges will fail. I think I should point out that PW1 who was the Senior Investigator in this matter said nothing about these two offences in his evidence-in-chief. It was under cross-examination by Mr. Tejan-Cole that the witness told the court that he investigated the US\$7000 and US\$5000 but did not take the US\$7000/00 not take it up with the 1st accused and that the issue about it was not in the interview of the 1st accused.

He went further to say that he did not know that in June 2009 the 1st accused was in Belgium and that the money in his account was for the purchase of a vehicle. The witness did not know what the US\$5000/00 was meant for.

Under cross-examination by Mr. Yada Williams the witness admitted that the 5th accused attended the ACC office for interview on several occasions and neither he nor any of his colleagues asked the 5th accused about the two sums of money paid into the Account of the 1st accused and would not know why they were paid. He further stated that he did not come across any evidence why the sums were paid into the Account. Still under cross-examination, the witness stated that about 18 contracts were awarded to Fatma Allie Enterprises and the total amount is about Le55 million plus. He said he knew that the 1st accused was out of the Country when the moneys were paid into his Account. I think it is striking to note that the witness told the court that he was not in a position to tell the Court why the A.C.C came up with the allegation that US\$5000/00 and US\$7000/00 were reward for contracts and yet the prosecution is contending that they have proved the case beyond reasonable doubt.

The next prosecution witness who testified in relation to the offences charged against the 5th accused was one Osman Rahman Kamara (PW15). He produced and tendered the Interview statement of the 5th accused – Exhibit XXXX1 to 7.

Under cross-examination, the witness told this Court that as at 2nd March 2010 he was not investigating the 5th accused for peddling an influence and/or for offering an advantage.

The witness added that he was not aware that the 5th accused is charged with the offences. He concluded by saying that it was PW1 who gave him questions to put to the 5th accused.

As I have stated earlier all the offences for which 5th accused was interrogated for are completely different from the ones she is facing in this Court. It is clear as crystal that she was never asked any questions on the offences charged. As far as my records of evidence goes there is not a jot of evidence adduced by the prosecution in an attempt to prove the charges as laid. I recall stating earlier on him in this judgment that the prosecution cannot expect to get conviction on evidence not adduced during the case for the prosecution. This is clearly an instance where I can comfortably say that the 5th accused has no case to answer for want of evidence. But at the same time, this can in my own opinion, rightly be described as an abuse of the provisions of section 97 of the ACC Act 2008. The totality of the evidence before me is that whilst the 1st accused was out of the Country his wife -5th accused made deposits into his Foreign Exchange Bank Account. As the defence counsel for the 5th accused has submitted quite rightly, no evidence was proffered as to the purpose of the said deposits. I would add that for a wife to deposit money into her husband's account is not without more an offence. We should remember the maxim. "Who asserts must prove". In this case, "He who alleges must prove." The prosecution has proved nothing but placing undue reliance on section 97 of the Act. If per adventure I am said to be wrong in my conclusion, I have taken due cognisance of the fact that the 1st accused has given a coherent explanation of what transpired. I do not wish to recount the evidence of the 1st accused in detail because it speaks for itself. I wish to say that the rampart on which his evidence stands is unassailable as far as I am concerned. The result is that I find the 5th accused not guilty on Counts 50 and 52. She is acquitted and discharged.

Count 51

Accepting an advantage contrary to Section 28(2) of the A.C.C. Act 2008.

The 1st accused is alleged to have accepted an advantage. The particulars of offence alleged that on or about 29th June 2009 he accepted an advantage from the 5th accused to wit: The sum of US\$7000/00 as a reward for having favoured the 5th accused etc etc. I adopt in its entirety my findings and conclusions on Counts 50 and 52. Without further wasting more time

I hold that the charge could not be proved by the prosecution. The result is that I acquit and discharge the 1st accused on the count.

Counts 54 and 56

The 5th accused is charged with the offence of Peddling influenced Contrary to section 31(2) of the ACC Act 2008. The particulars of offence alleged that on or before 29th June and 1st October 2009 the 5th accused gave an advantage to the 1st accused to wit the sum of US\$7000/00 and US\$5000/00 respectively.

I adopt in its entirety what I said in respect of Counts 50 and 52. I wish to add that in these circumstances it seems necessary to remind the prosecution that excepting in cases such as where section 97 of the ACC Act strictly applies they are always subject to the duty of proving the guilt of the accused beyond reasonable doubt in terms of these often repeated words of Viscount Sankey LC in *Woolington V DPP* (1935)AC 402 at 4891.

“No matter what the charge or where the trial the principle that the prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained.”

The onus cannot properly shift to the defendant/accused. What is required of the accused who sets out to give an explanation is to show that he had no criminal intent or knowledge. But bearing in mind that the standard of proof is less than required at the hands of the prosecution. See *R v Carr-Briant* (supra). It is with this in view I have considered the explanation given by the 1st accused. Having carefully considered the 1st accused's explanation together with the documents he tendered I have no good reason to disbelieve him. I accept his explanation as the truth of the matter without wasting further time, I acquit and discharge the 5th accused on Counts 54 and 56.

Count 55 and 57

The 1st accused is alleged in the two counts for peddling influence contrary to Section 31 (3) of the A.C.C. Act 2008. The particulars of offence alleged that he on or about 29th June 2009 and 1st October 2009 respectively accepted an advantage from Fatmata Ojubara Sesay to wit: the sum of US\$7000/00 and US\$5000/00 respectively as a consideration for using his influence to secure contracts from the N.R.A. etc etc. This indeed seems to be a case of the prosecution just mounting charges against the 1st accused. Without evidence to support them.

Framing charges just for the sake of framing them without ensuring that there is cogent and credible evidence in support of them can be a waste of the valuable time of the Court and place unnecessary burden on the Judge. I think this practice should be deprecated and I do so in this case. Without intending to repeat myself I hold that the prosecution has failed to produce evidence in support of these counts. I acquit and discharge the 1st accused on the counts.

Count 49 Conflict of Interest

The 1st accused is charged here with Conflict of Interest Contrary to Section 45(1) of the A.C.C. Act 2008. The particulars of offence alleged that he on or about the 20th September 2008 failed to disclose in writing a direct and personal interest in Fatma Allie Enterprise an undertaking proposing to do business with the NRA an entity owned by his wife.

The evidence before me says that when the 1st accused was interviewed on this issue, he said when the 5th accused's document reached his Desk he minuted it to the Administrative and Human Resources Management Department (AHRAD) for then to update their database of suppliers as potential suppliers. He also said he minuted to the Acting Director (AHRAID) informing the Procurement unit through him that his wife (the 5th accused) had an interest in Fatma Allie Enterprises but they should not be treated with preference if they intend to do business with the NRA. That he also informed them that he had no business or financial interest in the enterprise. This is to be found in his statement when the 1st accused was interviewed by PW1. I find the submissions made by the prosecution on this count to be without any merit having reposed to ignored the evidence before the Court.

In my view, the 1st accused having so stated in his statement exhibited YYY the next thing the Interviewer should have asked was where was the Minute? If he did not produce it and was unable to give a satisfactory explanation as to why he could not produce it then the argument would be in place why it was only at the trial it was produced by PW3. (Abdulai Charm). PW3 through whom the document exhibit GGGG was tendered is somebody I would credit as having integrity. The witness told the court that PW2 was aware of this exhibit. After all, the prosecution did not treat him as a hostile witness. The result is that I accept his evidence as true. I do not believe that Exhibit GGGG is an after thought as the prosecution would want me to hold. The conclusion I have reached is that this charge has failed. I therefore acquit and discharge the 1st accused on the Count.

Abuse of Office Contrary to Section 42(1) of the ACC Act 2008.

Counts 13 to 30

The particulars of offence alleged that the 1st accused as Commissioner General abused his office in respect of the award of various contracts for the supply of drinks and/or cleaning materials to the NRA by improperly awarding contracts to Fatma Allie Enterprises, a business Enterprise owned by his wife. Fatmata Ojubara Sesay.

Having perused the evidence before me it is abundantly clear that all the above charges hinged on the testimony of PW2 and nothing else. I note that no other witness testified in relation to the award of the contracts to Fatma Allie Enterprises. Coming back to PW2, he stated in this Court that the 1st accused told him (which was denied) that whenever NRA wanted items which 5th accused's shop had for sale he must ensure that Fatma Allie Enterprises supplied them. According to the witness it was he who ensured that all items in Fatma Allie Enterprises which were required by the NRA were supplied by Fatma Allie Enterprises. Assuming for one moment that this evidence is true, the question arises: Can you in the light of this evidence say that the 1st accused is criminally liable for the action of PW2? The answer to this question is in my opinion is a resounding No. The next question is: Can the charges as laid be said to be proved that the 1st accused as the Commissioner General of the NRA the one who was at various times improperly awarding the contracts when the one who did the act said he ensured that all items in Fatma Allie Enterprises which were required by the N.R.A. were supplied by Fatma Allie Enterprise? In my humble opinion, all that can be said about the charges is that the various contracts were awarded by PW2 by reason of the fact that he surrendered himself to intimidation. Then assuming what is alleged is true, the 1st accused can only be accused of using undue influence on PW2 but this has no place in Criminal law but only in the law of tort. Again, the prosecution appeared to have overlooked the fact that in a penal statute it is essential and admits no compromise that the accused charged must be proved to have had the mens rea and of course the actus reus. In saying all this, I have not lost sight of the fact that there is irrefutable evidence that Fatma Allie Enterprises supplied all the items required to the NRA at various times for which payments were approved by the 1st accused and others who deputised for him namely Mr. Bamba and Haja Kallah Kamara.

I think it is significant to recall that PW2 under cross-examination by Mr. Tejan-Cole admitted that there was a letter written by the 1st accused telling the Evaluation Committee that they should always observe guidelines in the award of contracts. The prosecution's argument is that the 1st accused used his position to ensure that his wife gets a regular flow of contracts. In my mind, this argument may be valid in a civil Court but will have no place in a criminal Court. The question of the 1st accused receiving direct financial gain from the whole enterprise is abundantly baseless. How could his wife who supplied goods to the value of Le55 million plus give out US\$12,000/00 Leone equivalent of which will be in the region of Le48 million plus. This is preposterous to say the least and this can only be said to the marines. I will not buy this from anybody that the prosecution has established as they have asserted abundant and compelling evidence.

While I still reserve my comments on the evidence or veracity of the PW2. I am satisfied enough to say that the prosecution has failed to prove counts 13 to 30 as laid. The result is that I acquit and discharge the 1st accused on those counts.

Counts 31 to 48;

Abuse of Position Contrary to Section 43 of the ACC Act 2008.

Particulars of offence alleged that the 1st accused as Commissioner General of the NRA abused his position as Commissioner General in respect of the award of contracts for the supply of soft drinks and/or cleaning materials by improperly awarding the said contracts to Fatma Allie Enterprises, a business enterprise owned by his wife Fatmata Ojucara Sesay.

These counts are almost the same as Counts 13 to 30 except the change of the title "Office" to that of "Position".

Elements of the offence

Section 43 of the Act states thus:

"A public officer who knowingly abuses his position in the performance or failure to perform an act, in contravention of any law, in the discharge of his functions or duties commits an offence....."

The essential ingredients of the offence are as follows:

1. The 1st accused is a public officer knowingly abused his position in the performance or failure to perform an act.

The prosecution made no attempt to prove the essential ingredients of this offence. I will here adopt my observations expressed in respect of counts 13 to 30. There is undeniable evidence before me which I accept that it was PW2 who according to him awarded the contracts in question and not the 1st accused as alleged. I wish also to observe that the evidence of the 1st accused is clear that contracts were not awarded by him. He stated categorically that he could only be involved in the award of contracts if they are Le15 million and above. He added that all the contracts to Fatma Allie Enterprises were below Le15 Million. It would be recalled that PW3 (Mr. Charm) testified that he was not involved in the contracts to Fatma Allie Enterprises because the contracts were below the threshold of the Public Procurement Act. That the contract within Le15 million could be dealt with by the Procurement Unit without reference to the 1st accused. This piece of evidence demonstrates that it was not part of the functions or duties of the 1st accused to award the contracts to Fatmata Allie Enterprises for which the 1st accused is being alleged to have abused his position. I share the view that the charge is misconceived. Without further ado, I acquit and discharge the 1st accused on Counts 31 to 48. 1st accused is accordingly acquitted and discharged on each count.

Turning back to the evidence of PW2. Watching the witness in the witness box he gave me the impression as somebody who had no regard for the truth and refrained from speaking the truth. My assessment of his answers to questions put to him under cross-examination left me in no doubt that he had no regard even for the Oath he took to speak the truth. Here was a witness who in one breath gave the impression that he was the confidant of the 1st accused but in another breath that the 1st accused constantly threatened him that he might lose his job if he did not cooperate with him in the procurement process. He was to ensure that the contracts for Asycuda projects were awarded to the 2nd, 3rd and 4th accused person's companies and/or Enterprise because according to him the 1st accused did not want anyone to mess around with the project. The witness would also want the court to believe that he was a witness of truth and accept his story which I have no doubt he fabricated that the 1st accused gave him a list of companies to be invited to bid for the contracts but when asked he could not produce

the yellow paper bearing the instructions or names allegedly written by the 1st accused. It would be recalled that the same witness admitted when put to him that he received the 1st accused minutes admonishing the Procurement Committee to follow strictly the procurement rules and guidelines. I find myself unable to believe that it is the same accused who did that called him into a corner and instructed him to bend the procurement rules. But for the evidence of PW 3 this witness would have got away with all his abominable lies. Here is a witness who admitted been long in employment of the N.R.A. telling this Court that he never saw let alone being served with a copy of N.R.A. Terms and Conditions of service. I believe as a fact that this witness finding himself in the Procurement Unit turned it to a cesspool of corruption. This is why it is not a surprise to me that he prepared fake minutes. The prosecution placed too much reliance on the testimony of this witness who was dismissed or his service terminated because of involvement in the procurement process. I believe as a fact that the 1st accused is more intelligent than what the witness wanted this court to believe that he did. Suffice it to say that believe that PW 2 is a double face person and that he had a lot of things to hide than he told the court.

It has to be remembered that the law is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything but to raise any reasonable doubt. If the accused can raise only such a reasonable doubt he must be acquitted vide *Chan Kan alias Chan Kai V The Queen* (1952) A.C. 206; *John Brown Akosa V. The C.O.P.* (1950) 13 WACA 43; *George Kwaku Danso & Anor V The King* (1950) 13 WACA 16 at p. 18, *R.V Hepworth and Farnley* (1955) 2 Q.B. 606.

Having gone through the voluminous evidence before me it is disheartening to come to the conclusion that the prosecution's case is based substantially on speculations and mere guessing. I have found that the charges against the 1st accused were offences that could be said to have been committed by his subordinates and which offences could not have been committed at his instance. Bearing in mind that the 1st accused is not accused of or charged with the offence of misappropriation of public or donor funds; nor is he charged with the offence of unexplained wealth, I would have thought there was no need for just charging him for offences which the accused persons were

case as far as humanly possible. The conclusion I have reached is that the prosecution
^{has} had been unable to prove any of the charges as laid. The result is that all the accused
persons are found not guilty. I acquit and discharge each of them.

[Signature] J.A.
24/6/11