

COURT ADMIN COPY

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

V

PHILIP LUKULEY

COUNSEL:

R S FYNN ESQ., for the State

E E C SHEARS-MOSES ESQ and S JAMIRU ESQ for the accused

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 11 DAY OF JULY, 2011.

INTRODUCTION


1. The accused person stands charged on a 194 Count Indictment for various offences under the Anti-Corruption Act, 2008 (ACA, 2008). The Indictment is attached to this Judgment, and forms part of the same. I shall not therefore repeat the charges verbatim. For reasons of clarity, I shall adopt, with certain modifications, the classification used by Mr Fynn in his closing written address. The charges all relate to the manner in which the accused discharged his duties as Executive Director of the Sierra Leone Maritime Administration, (SLMA) an Administration or Authority established by the Sierra Leone Maritime Administration Act, 2000. The accused has been its only Executive Director since its establishment.

THE INDICTMENT

2. Counts 1 and 2 are the 'Tideland Charges'. Count 1 charges the accused with the offence of Misappropriation of Public Funds contrary to Section 36(1) of the ACA, 2008. It alleges that on or about 14 May, 2010 the accused wilfully misappropriated the sum of Le69,954,960 being public funds by making wilful payment of the same to the Sierra Leone Shipping Agency, by way of demurrage charges. Count 2 charges the accused with the offence of Abuse of Office contrary to Section 43 of the ACA, 2008. It alleges that the accused knowingly abused his position as Executive Director of the SLMA in

that he made an excessive payment in the sum of Le69,594,960 to the Sierra Leone Shipping Agency by way of payment of demurrage charges.

3. Counts 3-16 are the Rent and Leave Allowances Charges. The charges are in respect of the offence of Fraudulent Acquisition of Public Funds contrary to Section 48(1)(a) of the ACA,2008. In Count 3, it is alleged that between 1 January and 31 December,2009, the accused fraudulently acquired the sum of Le16,320,000 by a fraudulent calculation of his leave allowance contrary to his terms and conditions of service, thereby causing loss of revenue to the SLMA. In Count 4, the particulars are in respect of the same amount of Le16,320,000 as rent allowance for the year 2010. Counts 5 and 6 allege that the accused fraudulently acquired the sum of Le56,640,000 in 2009 and 2010 as rent allowance for each year. Counts 7 and 8 charge the offence of Wilfully Failing to Comply with Applicable procedures and Guidelines relating to Management of Funds, contrary to Section 48(2)(b) of the ACA,2008. In Count 7, the allegation is that the accused wilfully failed to comply with procedures and guidelines in respect of his rent allowance for 2009 in the sum of Le56,640,000 which he fraudulently acquired. In Count 8 he failed to do the same with respect to his leave allowance for 2010.
4. Counts 9-12 charge the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. They allege that the accused wilfully misappropriated the respective sums of Le16,320,000 and Le56,640,000 being monies paid to him in 2009 and 2010 as rent and leave allowances. Counts 13-16 relate to the same rent and leave allowances. Counts 13 and 14, charge him with the offence of Abuse of Office contrary to Section 42(1) of the Act, in that in 2009 and 2010 respectively, he abused his office by improperly conferring an advantage on himself in the respective sums of Le16,320,000 and Le56,640,000 as payments in those years in respect of those allowances. Counts 15 and 16 charge him with the same offence, with this difference: that in 2009 he conferred an advantage on himself by fraudulently collecting the amount of Le80,640,000 as rent allowance a sum in excess of Le56,640,000 contrary to his terms and conditions of service; and that in 2010 he did the same thing.
5. Counts 17-27 are the 'Per Diem' charges. Counts 17-19 charge the accused with the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. Count 17 alleges that in 2009 the accused wilfully misappropriated the sum of LeUSD2,995 by wilfully calculating his per diem



allowance at USD4,000 for 4 days overseas travel (31 March-3 April,2009) to Accra, Ghana. Count 18 alleges that he wilfully misappropriated the sum of USD2,744 by wilfully calculating his per diem allowance at USD4,000 for 5 days overseas travel to Accra Ghana between 4-8 May,2009. Both sums of money are said to be in excess of Government approved rates. Count 19 alleges that he wilfully misappropriated the sum of USD2,144 by wilfully calculating his per diem allowance at USD4,000 for 4 days overseas travel to Accra, Ghana. Count 20, appears to be a bonus Count: it charges the accused with the offence of Conspiracy to Commit a Corruption offence contrary to Section 128(1) of the Act. It alleges that between 31 March and 29 May,2010 the accused conspired together with other persons unknown to commit a corruption offence, to wit: to wilfully calculate per diem allowance in excess of Government approved rates. I say this is a bonus Count, because it merely attempts to encapsulate under one head the charges in Counts 17-19 and 21-27.

6. In Counts 21-23 the offence charged is Wilfully Failing to Comply with Applicable Procedures and Guidelines relating to Management of Funds contrary to Section 48(2)(b) of the Act. In these charges, the prosecution alleges that the accused failed to comply with applicable guidelines relating to the management of funds, in relation to the payment of the per diem allowances charged under Counts 17-19. They allege that he wilfully calculated his per diem allowances in respect of each mission abroad, over and above the Government approved calculated rate.
7. In Counts 24, 26 and 27 the accused is charged with abusing his office, by improperly conferring an advantage on himself, by wilfully calculating the allowances referred to above, over and above the Government approved rate. The charge in Count 25 is Abuse of Office contrary to Section 42(1) but the particulars do not only duplicate to some extent, the particulars in Count 27, but allege matters not covered by Section 42(1) but by Section 48(2). It alleges, inter alia, that the accused ".....*wilfully failed to comply with procedures and guidelines....., to wit, improperly conferred an advantage on himself.....*" The duplication appears to be the result of unchecked cutting and pasting. Count 25 in its particulars, therefore charges two separate offences in one Count, and cannot therefore stand. The accused is therefore discharged on this Count.

8. Counts 28 - 169 are the Board Payments Charges. Counts 28 - 160 are all brought under Section 48(2) of the Act. In sum, each of them alleges that the accused wilfully failed to comply with procedures and guidelines relating to the management of funds of the SLMA, in that in each case, he caused to be paid to each of the Directors on the SLMA Board, a certain sum of money as remuneration for the months beginning October, 2008 and ending in December, 2010. The number of months differ in some cases, as some Directors took up appointments at different points in time, or, for some other reasons, did not receive remuneration for a particular month.
9. Counts 161-169 are brought under Section 35(2) of the Act. They allege, that in each case, the accused offered a monetary advantage to a Director of the SLMA Board in a certain sum of money which was not authorised by Parliament. They complement in certain respects, the 'failing to comply with guidelines' Counts. The prosecution is alleging that having failed to comply with the procedures and guidelines relating to the management of the funds of the SLMA, the accused offered the composite sums stated in each Count, as a monetary advantage to each Director. The period covered in each Count, surprisingly appears to be much shorter than that covered in Counts 28-160. For instance, the period covered in Count 161 is January -December, 2010 though it relates to the Chairman of the Board, payments to whom are also charged under Counts 28-54 for the period October, 2008 to December, 2010. In view of the period covered by the subsequent Counts, this may have been an error on the part of the draughtsman of the Indictment, but it remained uncorrected during the trial. In Counts 162-169 the period covered in each case is January, 2009 - December, 2010. These Counts relate to monies paid to the Chairman, and 8 other Directors. Whatever may be the case, the fact remains that each of them charges the offering of a composite amount of money; and in view of Counts 28-160 which itemise these transactions, and show clearly that there was not just one transaction, but several transactions, these Counts clearly cannot stand as they are bad for duplicity. The accused is therefore discharged on Counts 161-169.
10. Counts 170-173 are the Dokkal charges. These charges relate to repairs carried out by Dokkal Enterprises to what the prosecution alleges are the private vehicles of the accused. In Counts 170 and 171, the charge is Misappropriation of Public Funds contrary to Section 36(1) of the Act. In

Count 170, the vehicles concerned are ACM 112 and ADD 178. It is alleged that the accused wilfully misappropriated the sum of Le1,238,800 by wilfully making payment of that sum to Dokkal by means of payment voucher No.44458 dated 20 May,2008 and SLMA cheque 0422841. In Count 171 the vehicle concerned is AAW 071. It alleges that the accused wilfully made payment to Dokkal in the sum of Le2,204,000 by means of payment voucher No.4867 dated 31 December,2008, and SLMA cheque No. 057649. In Count 172, the charge is brought under Section 48(2) of the Act. It alleges that the accused wilfully failed to comply with guidelines and procedures relating to the payment of the sum of Le2,204,000 to Dokkal. The charge is complementary to Count 171. Count 173 charges the offence of Abuse of Office contrary to Section 42(1) of the Act. It alleges that the accused improperly conferred an advantage on himself by using the sum of Le2,204,000 which belonged to the SLMA to pay for repairs to his private vehicle, AAW 071. In Counts 171-173 one transaction has generated 3 charges.

11. As the prosecution led no evidence in respect of Counts 175-176, which fact is admitted by Mr Fynn in paragraph 8 of his written closing address, the accused is acquitted and discharged on both Counts, notwithstanding the caveat inserted in that paragraph by Mr Fynn that he withdraws both Counts. Charges cannot really be withdrawn after the prosecution has closed its case. Once evidence has been led, if the prosecution fails to prove the charges laid in the Indictment, the result is an acquittal, and not a mere discharge. The position is different if evidence has not yet been led.
12. Counts 177-184 are the fuel Counts. They relate to the supply of fuel to vehicles owned by, or used by the accused; and to a generator owned by the accused. Counts 177 - 182 charge the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. Count 183 charges the offence of Abuse of Office contrary to Section 42(1) of the Act; and Count 184 a Public Officer using his office for advantage contrary to Section 44(1). Count 177 alleges that the accused misappropriated the sum of Le296,000 by wilfully causing NP to supply 20 gallons of petrol by means of chit No. 107598 to his private vehicle ACM113. In Count 178 the chit used was No. 107599; through use of that chit, the accused wilfully caused NP to supply 20 gallons of petrol at a total cost of Le296,000 to the accused's private vehicle ABB 052. In Count 179 the sum involved is Le444,000. The chit used

mlm.

was No.118416. 20 gallons of petrol were supplied by NP to accused's private vehicle ACM113. In Count 180 the 35 gallons of petrol valued Le518,000 were supplied to accused's private vehicle ACM113 by means of chit No 128001. In Count 181, the sum involved is Le638,000; the chit used is No. 26111; 44 gallons of diesel were supplied for the use of the accused's generator at Potoru. In Count 182 the sum involved is Le740,000 in respect of the supply of 50 gallons of diesel for the purpose of accompanying the accused's wife to Koinadugu District, and to Farana in the Republic of Guinea. It is not stated how this fuel was used: that is, if for instance, it was supplied to a vehicle, or was put in a receptacle for use later.

13. Count 183 charges the offence of Abuse of Office contrary to Section 42(1) of the Act. It alleges that the accused improperly conferred an advantage on his wife by using the sum of Le740,000 belonging to the SLMA to purchase 50 gallons of fuel for the procurement of cows from Koinadugu District and Farana in the Republic of Guinea. In Count 184, the charge is a Public Officer using his position for advantage, contrary to Section 44(1) of the Act. It alleges that the accused abused his position as Executive Director by improperly conferring an advantage on his wife by using the SLMA funds in the sum of Le740,000 for the procurement of the same cows referred to in Counts 182 and 183. The single transaction relating to the purchase of cows, has thus give birth to 3 Counts.
14. Counts 185 - 194 charge the offence of Misappropriation of Public Funds contrary to Section 36(1) of the Act. They relate to alleged payments made as Honoraria to Parliamentary Sub-Committees, urgent national matters, Chiefdom Authorities, Village elders and wharf harbour Masters, and for a visit by a delegation to Gbangbatoke and Kitchom.
15. To sum up, on the Counts in the Indictment, they charge offences under the Act of Offering an Advantage to a Public Officer contrary to Section 35(2); Misappropriation of Public Funds contrary to Section 36(1); Abuse of Office contrary to 42(1); Abuse of Position contrary to 43; Public Officer using his position for advantage contrary to 44(1); Fraudulent Acquisition of Public Funds contrary to 48(1)(a); Wilfully Failing to Comply with Applicable Procedures and Guidelines contrary to Section 48(2)(b); Conspiracy to commit a corruption offence in Count 20, to wit, conspiracy together with other persons unknown to wilfully calculate per diem allowance in excess of Government approved rates, which is really a conglomeration of all the

Counts relating to the per diem allowances paid to the accused, and was probably inserted as a safety net and catch-all; Conspiracy to Commit Misappropriation of Public Funds contrary to Section 128(1) in Counts 175 & 176- abandoned; and Failure to comply with a requirement under the ACC Act 2008 contrary to Section 130(1) respectively.

16. Before explaining the Law relating to each of these offences, other than that charged in both Counts 175 and 176 which were abandoned by the prosecution, I think I should set out what I may describe as the background or the fundamentals of the case, which fundamentals apply to all the charges.

OVERLOADING AN INDICTMENT

17. Firstly, the prosecution must avoid at all cost, overloading the Indictment. There is a danger, when an Indictment contains too many Counts, charging different offences, that vital elements of offences may be overlooked both by the prosecution, by the defence, and maybe by the Judge. I have had to go through the charges in this Indictment over and over again, to make sure I have not overlooked any. I think I shall deal with all of them below, but if I do leave out any, it would be as a result of the sheer weight of the Indictment. My perception is strengthened by the words of BRIDGE, LJ (as he then was) in NOVAC (1976) 65 Cr App R 107 at page 188: "*We cannot conclude this judgement without pointing out that most of the difficulties which have bedevilled this trial, which have led to the quashing of all convictions except on the conspiracy and related counts, arose directly out of the overloading of the Indictment..... the wider and more important question has to be asked whether in such a case the interests of justice were likely to be better served by one very long trial, or by one moderately long and four short separate trials..... we answer unhesitatingly that whatever advantages were expected to accrue from one long trial, they were heavily outweighed by the disadvantages. A trial of such dimensions puts an immense burden on both ^{just} and jury....*" Here, I am sitting alone as both the tribunal of Law and of fact. The trial has not been long, but the multiplicity of Counts have not, I believe, helped the prosecution either. As the Learned Editors of BLACKSTONE'S CRIMINAL PRACTICE, 2007 Edition opined at paragraph D10.60 page 60: "*A further aspect of not overloading Indictments is that when, as not infrequently happens, the criminal conduct alleged against an accused may be said in law to amount to a*

mlu

number of distinct offences but the gist of what he did can conveniently be brought under one charge, then the prosecution should have just one count for the obviously appropriate offence - nothing is gained and much is lost in terms of simplicity of presentation to the jury if the indictment contains counts for all the offences of which the accused might possibly be guilty. This is without prejudice to cases where the prosecution evidence is such that the drafter is genuinely unsure about which of a number of possible alternative offences the jury might choose to convict on. In that situation it is proper to put all the alternatives in the indictment." This is a trial by Judge alone, and the prosecution do not find themselves dealing with a jury untutored in the law.

DUPLICITY

18. Secondly, the prosecution must comply with the rule against Duplicity. All Counts in the Indictment must charge one offence only. If they charge more than one offence, they are bad for Duplicity, and deprive the Court of jurisdiction to try them. Duplicity is a matter of form, and not of evidence. In this respect, the Law requires that the accused person be discharged for those offences. If also, on its face, a Count appears not to have charged two separate offences, in the sense that it does not allege the commission of an offence on more than one day; or, that it does not charge the commission of two separate offences on the same day, and therefore not duplicitous; but the evidence discloses that in fact that particular Count has in effect charged two separate offences, that Count will also be bad for Quasi-Duplicity, in that the evidence discloses that more than two offences have been charged in that Count. In this respect, the law is now more tolerant than it was before. The cases show, that what the Court is concerned with is that no injustice is caused to the accused person, in the sense that he might be put in a position where he would not know to which particular allegation he must apply his defence. Where the charge is so framed, that it would not be evident whether the allegation is that the accused committed one of several acts on a particular day, or on several days, it is best that each criminal act be charged in a separate count. As stated in ARCHBOLD 2003 Edition at paragraph 1-133: *It is not an essential characteristic of a single criminal offence that the prohibited act or omission took place once and for all on a single day, since it can take place continuously or intermittently over a period of time and still remain a single offence."* The case of CHILTERN D C v

HODGETTS [1983] 1 All ER 1053 HL is cited in support of this proposition. *"...Upholding the conviction for failure to comply with an enforcement notice, the House said the offence should be alleged to have been committed between the date when compliance with the notice was first required and the date when the information was laid or the notice complied with, whichever was the earlier."* In that case, LORD ROSKILL, in delivering the leading judgment for the house, in which all the ^{Lords} Lords concurred, said at page 1060 paragraph h: *"It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all on a single day. It may take place continuously or intermittently, over a period of time. The initial offence created by sub-s (1) (of the Town and Country Planning Act, 1971) in the case of non-compliance with a 'do notice' is complete once and for all when the period of compliance with the notice expires; but it is plainly contemplated that the further offence of non-compliance with a 'do notice' created by sub-s (4), though it too is a single offence, may take place over a period of time, since the penalty for it is made dependent on the number of days on which it takes place..... if it were otherwise, it would have the bizarre consequence that on a summary conviction a fine of £400 per diem could be imposed for each such separate offence committed by the offender received before his first conviction....."* What I can glean from what LORD ROSKILL had to say in that case, is that, for instance, in a case where the charge is failing to comply with applicable procedures, the prohibited act or acts may take place over a period of days: one day, it might be that a voucher was prepared or not prepared, the other day it would be that a cheque was prepared for the amount stated in the voucher, and so on. If the prosecution were to charge an accused separately for each of these acts which collectively constitute the failure to comply with applicable guidelines, the accused would be faced with a multiplicity of charges, emanating from the prohibited acts, which together really constitute just one offence.

19. The situation is otherwise, where, for instance, the charge is misappropriation of public funds. The act of misappropriation is a single act. At the moment the amount of money leaves the coffers of the public body, there has been an appropriation. What makes it a misappropriation, is the wilfulness of the act, and the dishonest intention to deprive the public body

of funds or revenue. This is what, in my respectful view, LORD BROWNE-WILKINSON was trying to explain in the case of *GOMEZ* [1993] 1 All ER, 1 at page 39 paragraphs f and g. As I have stated repeatedly in the past cases I have adjudged, I will not convict an accused person of the offence of Misappropriation of public funds, if the prosecution has not led evidence from which it could be inferred that the accused was dishonest, notwithstanding the absence of the word dishonest from the definition of Misappropriation in Section 36(2) of the AC Act, 2008. What makes an appropriation a misappropriation, is the dishonest intention to appropriate,

20. Still, on the issue of duplicity, at paragraph 1-139 of ARCHBOLD 2003 Edition it is stated that: "*In AMOS v DPP [1988] R T R 198, DC, it was said at page 203 that uncertainty in the mind of the defendant is the vice at which the rule against duplicity is aimed and that the rule is a salutary one, designed to counter a true risk that there may be confusion in the presenting and the meeting of charges which are mixed up and uncertain.*"

PRE 2008 ACTS AND OMISSIONS

21. Thirdly, some of the charges in the Indictment relate to acts and omission which occurred in early 2008, before the passing of the 2008 Act, particularly Counts 170, 181, 185, 186, 187, 188, 189. These Counts charge the offence of Misappropriation of Public funds contrary to Section 36(1) of the 2008 Act. This provision is in the same terms as those in Section 8(1) of the repealed 2000 Act, and is therefore not a new offence. The accused is not therefore facing trial on charges which are based on acts committed when those acts were not offences.

THE SIERRA LEONE MARITIME ADMINISTRATION

22. Fourthly, all the charges relate to the accused in his position as Executive Director of the SLMA, the nature and operations of the SLMA, including the operations and functions of the SLMA's Board of Directors, and the role of Parliament, and Parliamentary Committees, or Sub-Committees. It would be necessary therefore, to discuss what the Law says about the SLMA and the role of Parliament in its functions.

23. The Sierra Leone Maritime Administration was established by Section 3(1) of the Sierra Leone Maritime Administration Act, 2000 - SLMA Act, 2000. Sub-section 3(2) provided that "*The Administration shall be a body corporate having perpetual succession and capable of acquiring, holding and*

disposing of any property, whether moveable or immoveable, and of suing and being sued in its corporate name and, subject, to this Act, of performing all such acts as bodies corporate may by law perform." This provision makes it clear that the rules and regulations governing those employed by, or holding executive and Board positions in a company or corporate body, apply to the SLMA. So, therefore, the rules relating to the fiduciary obligations of Directors, the duty not to make a secret profit; the duty to not act, against the interest of the corporate body, the obligation not to exceed the mandate and powers given by to the corporate body by its Articles of Association, and in statutory corporate bodies such as the SLMA, the Statute establishing the body, apply to the accused.

24. Subsection 3(3) provides that *"The Administration shall have a common seal, the use of which shall be authenticated by the signature of the Executive Director and other members of the Board designated in that behalf by the Board."*

25. The Board is established by Section 4(1) of the SLMA Act, 2000. It provides that *"The governing body of the Administration shall be a Board which shall, subject to this Act, have the control and supervision of the Administration."* This means that, generally, the Officers and employees of the Administration will be subject to the authority of the Board. Subsection 4(2) provides that *"Without prejudice to subsection (1), the Board shall be responsible for:- (a) securing the implementation of the functions of the Administration; (b) the approval of policies for the proper management of the Administration; and (c) the sound and proper financial management of the Administration."* Subsection (4) provides that *"The Board shall consist of a Chairman and 8 other members.* By Subsection (5)(c), the Executive Director appointed under Section 13 of the Act, is also a member.

26. Most importantly, for the purpose of deciding the efficacy of Counts 29 - 160, Section 6 of the Act provides that: *"The Chairman and the other members shall be paid such remuneration or allowances as Parliament shall determine and shall be reimbursed by the Administration, with the approval of the Minister, for expenses incurred in connection with the discharge of their functions."* Section 2 provides that the "Minister" is *"the Minister responsible for Transport"*.

27. Section 7 deals with the proceedings of the Board. The quorum for meetings is 6. Each member has one vote, but in the case of a tie, the Chairman has a

casting vote. "All acts, matters or things authorized or required to be done by the Board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of at least two-thirds of the members." Further, "Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next meeting of the Board." It has a proviso which is not necessary for the purposes of this Judgment.

28. The reason why I have cited these provisions is to illustrate that the ultimate decision making body at the SLMA, is the Board. Once the Board has taken a decision, the executive or management of the Administration are duty bound to carry it out. From the evidence led, it is clear that the annual budget for the SLMA is put together by the various heads of departments, and decided on by Management. Management then submits it to the Board for approval. Upon approval by the Board, it is sent to the Ministry of Finance for its own endorsement, and for presentation in Parliament. The budget is implemented once it has received Parliamentary approval. It follows therefore that if Parliament has approved the budget as presented, and if management keeps its expenditure within that approved budget, management cannot then be said, to have wrongfully utilised funds which have budgeted for.
29. Section 14 of the SLMA Act provides for the appointment of an Executive Director (E/D). It states that: (1) "The Administration shall have an Executive Director who shall be appointed by the President on the advice of the Minister, subject to the approval of Parliament." The prosecution has not tendered the accused's letter of appointment, but it has tendered as exhibit 43 A&B, a copy of a letter dated 20 April, 2001 written by the then Chairman of the Board, Capt Abraham Macauley. Therein, the accused's appointment by H E The President is acknowledged in these words: "...in compliance with paragraph 2 of the Secretary to the President's letter dated 27th August, 2000 appointing you to that post."
30. Section 14(2) provides for the terms and conditions of service of the E/D. It states that: "The appointment of the Executive Director shall be upon such terms as the Board may, with the approval of the Minister, determine." It is not for the E/D to fix the terms and conditions of his employment.

That is a matter for the Board. In exhibit 43A&B the Board, in 2000 fixed the terms and conditions of service of the accused. ⁷The conditions included payment of a basic annual salary then fixed at USD24,000; annual rent allowance of USD 6,000 i.e. 25% of the annual basic salary; leave/travelling allowance of 15% annual basic salary; a furnished house; 2 official vehicles a 4x4 four wheel drive and a salon car, preferably a Mercedes Benz car; responsibility allowance; and an entertainment allowance. NH.

31. His duties are set out in Section 15, and they are, inter alia: "*....(he) shall be responsible for the efficient organization and management of the Administration; and.....it shall be (his) function as the Chief Executive Officer of the Administration but subject to any directions from the Board, to-(a) formulate and implement the operational policies, programmes and plans relating to the functions of the Administration as may be approved by the Board.....(e) to provide overall leadership in the conduct and management of the day to day business or activities of the Administration.*" What these provisions tell us, is that, the E/D should seek the approval of the Board in respect of any matter of importance; and that ultimate responsibility for the day to day running of the affairs of the Administration lies with him.

32. It follows therefore, that he cannot, for instance, dictate to the Board, the level or quantum of its remuneration package; the quantum or level is fixed by Parliament - Section 6. His business would be to prepare, in conjunction with his management, a budget which would be ultimately presented to Parliament for approval. Section 20(3) provides that "*an annual plan of activities prepared and finalized by the Executive Director shall be submitted not later than three months before the beginning of the financial year of the Administration for the approval of the Board*". This is what I believe are the "*Projections for the years ending 2008 and 2009*" respectively or budgets, tendered as exhibits 54 and 55. Exhibit 55 page 8 shows that the budget was most probably prepared at the end of October, 2008 or in November, 2008 as it gives the actual expenditure up to October, 2008. In exhibit 54, it is not so clearly stated, but a perusal of page 8, particularly the columns headed 'actual 2007 Le' and 'variance' shows that the budget for 2008 was prepared probably before the end of 2007.

33. By Section 25 of the Act, a statement of account in respect of all financial matters for any particular year must be audited by the Auditor-General or

by an Auditor appointed by him. The statement of accounts and the audit report thereon are submitted to the Board for approval and a copy is submitted to the Minister as part of the annual report to be laid by the Minister before Parliament under subsection 3 of Section 28. The reference to Section 26 in Section 25(3) of the Act is wrong, and will have to be amended by Parliament, as there is no Subsection 26(3). Section 26 has no sub-sections.

34. The financial obligations of the Administration do not end there. Section 28 provides that within 3 months after the end of each financial year, which Section 26 says is the same as that of the Government, i.e. January - December, the Administration shall submit for the approval of the Board an annual report of its activities, operations, undertakings property and funds for that year. That report shall contain, inter alia, a copy of the audited accounts together with the Auditor-General's report thereon. A copy of the Report approved by the Board, is sent to the Minister. This Report, referred to also above, when dealing with Section 25, is laid before Parliament by the Minister.
35. So, if Parliament approves the budget submitted to it by the Minister, and the Administration implements its provisions, it would not be true to say that the remuneration package, for instance, of the Board was fixed by the accused. As Mrs Yannie, PW1 herself said in evidence on 28 March, 2011, after the budget is prepared, it is taken to the Board for approval. But this is a matter I shall return to shortly, when dealing with Counts 29 -160.
36. These provisions, in particular, Sections 15 and 20(3) respectively, mean also, that the E/D takes responsibility for all the acts of his subordinates, and cannot hide under the cloak of ignorance. For instance, if the E/D has made a request for the payment of a certain amount of money, he cannot be heard to say that it was the responsibility of his subordinate to see that it was properly applied. He is responsible to the Board for such expenditure.
37. At its inception in 2000 Section 11(5) of the SLMA Act, 2000 empowered the Administration to manage and to apply the funds derived from the charges imposed under Subsections (1) to (4) of Section 11, *'...to finance the activities and objectives of the Administration....'* This was all changed in 2007. The Sierra Leone Maritime Administration (Amendment) Act, 2007 - Act No. 14 of 2007 repealed and replaced Section 11(5) with the following new subsection: *"(5) the proceeds of any charge imposed under this Section*

by an Auditor appointed by him. The statement of accounts and the audit report thereon are submitted to the Board for approval and a copy is submitted to the Minister as part of the annual report to be laid by the Minister before Parliament under subsection 3 of Section 28. The reference to Section 26 in Section 25(3) of the Act is wrong, and will have to be amended by Parliament, as there is no Subsection 26(3). Section 26 has no sub-sections.

34. The financial obligations of the Administration do not end there. Section 28 provides that within 3 months after the end of each financial year, which Section 26 says is the same as that of the Government, i.e. January - December, the Administration shall submit for the approval of the Board an annual report of its activities, operations, undertakings property and funds for that year. That report shall contain, inter alia, a copy of the audited accounts together with the Auditor-General's report thereon. A copy of the Report approved by the Board, is sent to the Minister. This Report, referred to also above, when dealing with Section 25, is laid before Parliament by the Minister.
35. So, if Parliament approves the budget submitted to it by the Minister, and the Administration implements its provisions, it would not be true to say that the remuneration package, for instance, of the Board was fixed by the accused. As Mrs Yannie, PW1 herself said in evidence on 28 March, 2011, after the budget is prepared, it is taken to the Board for approval. But this is a matter I shall return to shortly, when dealing with Counts 29 -160.
36. These provisions, in particular, Sections 15 and 20(3) respectively, mean also, that the E/D takes responsibility for all the acts of his subordinates, and cannot hide under the cloak of ignorance. For instance, if the E/D has made a request for the payment of a certain amount of money, he cannot be heard to say that it was the responsibility of his subordinate to see that it was properly applied. He is responsible to the Board for such expenditure.
37. At its inception in 2000 Section 11(5) of the SLMA Act, 2000 empowered the Administration to manage and to apply the funds derived from the charges imposed under Subsections (1) to (4) of Section 11, *'...to finance the activities and objectives of the Administration....'* This was all changed in 2007. The Sierra Leone Maritime Administration (Amendment) Act, 2007 - Act No. 14 of 2007 repealed and replaced Section 11(5) with the following new subsection: *"(5) the proceeds of any charge imposed under this Section*