

**IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2020**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, S.R. CHIEF JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: YUSSIF D. KABA ASSOCIATE JUSTICE

J. Brownie Samukai, Joseph P. Johnson and Nyumah)	
Dorkor of the City of Monrovia, Liberia.....Appellants)	
)	
Versus)	APPEAL
)	
The Republic of Liberia.....Appellee)	
)	
<u>GROWNING OUT OF THE CASE:</u>)	
)	
The Republic of Liberia.....Plaintiff)	
)	
Versus)	Theft of Property, Criminal
)	Conspiracy, Misuse of Public
)	Money, Economic Sabotage &
J. Brownie Samukai, Joseph P. Johnson and Nyumah)	Money Laundering
Dorkor of the City of Monrovia, Liberia.....Defendants)	

Heard: November 18, 2020

Decided: February 8, 2021

M.R. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This case concerns the interest and welfare of men and women in uniform of the Armed Forces of Liberia. Men and women who have sworn an oath to defend the Republic of Liberia's territorial integrity with their lives, the most precious gift of God. Realizing and in recognition of this ultimate sacrifice these gallant men and women continue to make in defense of the Republic, the Legislature in 2008 enacted into law the New Defense Act of 2008 repealing the National Defense Law of 1956, the Coast Guard Act of 1959, and the Liberia Navy Act of 1986. This New Defense Act of 2008 provides under Section 10.3 as follows:

"10.3 Pension for Veterans of Armed Forces of Liberia

(a) A service member in the Armed Forces of Liberia, who honorably service the AFL up to retirement age, shall be entitled to a monthly retirement pension based on years of active service. The projected costs of annual pensions shall be submitted by the Ministry of National Defense in the annual defense budget for approval by the Legislature, provided that such cost shall not be less than 50% and not more than 60% of the personnel's last pay during active service.

(b) A service member who incurs a service-connected disability during his or her period of military services shall receive a monthly disability pension; the amount to be determined by the Minister of National Defense, advised by the Chief of Staff of AFL consistent with policy set [by] the Ministry of Defense and approved by the Legislature."

The undisputed facts culled from the certified records before this Court show that J. Brownie Sumakai, former Minister of National Defense, co-appellant herein, having consulted with the AFL's high command sometime between July and August 2009, established the compulsory savings scheme for members of the AFL to augment the benefits accruing to service members under the Pension Act. The scheme requires members of the AFL to make compulsory monthly contributions from their salaries. An Ecobank Account No.1092-522-22019 bearing the title "AFL PENSION ACCOUNT" was created for that purpose. Co-appellant Sumukai and former Comptroller J. Nyumah Dorkor, also co-appellant, cosigned the said account as signatory "A" and "B", respectively. Later, Joseph P. Johnson, former Deputy Minister for Administration of the Ministry of National Defense, also a co-appellant, became the third signatory to the AFL Pension Account and cosigned as an additional signatory "A".

The purpose of the compulsory savings scheme was to supplement the Government of Liberia retirement benefits to the men and women in uniform at the end of their active service to the country and cater to those who may have sustained disability during active service. This scheme was operationalized by deductions made from the salaries of the rank and file of the AFL service members ranging from US\$5.00 to US\$75.00 depending on the ranks of uniform personnel from 2009 up to and including October 2017.

The scheme claimed public attention when, in early January 2018, women claiming to be wives of uniform men staged protests for an accounting of the savings scheme. In response, the High Command of the AFL and the Liberia Anti-Corruption Commission (LACC) launched separate and independent investigations at different times. The findings of these investigations as culled from the records on this appeal informed the indictment brought against the appellants at the behest of the Government of Liberia. Pertinent excerpt from the report of the investigation of the LACC reads as follows:

"During the viewing of bank statements, letters of authorization from the Ministry to Ecobank to pay retired soldiers' benefits and copies of Manager's checks issued is based on ranks:

1. From the payroll examined, we discovered that the AFL contributory pension plan is based on ranks:

Insert table

Relative to pension policy for this fund, there is a draft policy which we read but is yet to be approved to educate personnel making these contributions.

2. Documents reviewed from August 2009 to March 2014 uncovered seventy six (76) AFL Pension checks remitted by the Ministry of Finance to Ecobank to be deposited into the account amounting to USD1,013,469.68 accruing interest of USD38,473.51 and withholding tax on interest of USD3,140.35 payable to Government of Liberia, Ecobank also charged the account USD60.00 for six (6) checks issued to pay six (6) retired AFL personnel.

More to this, the bank also charged the account of USD60.00 from September 2011 to December 2011 as a maintenance charge.

3. In viewing the bank statements, we discovered that on April 25, 2012, Ecobank wrongly posted USD13,230.50 to the account; this was later reversed because of an overstatement."

The report of the AFL high command investigation, incorporated in the LACC's report, found and concluded that a significant portion of the transactions affecting the AFL Pension Account was unrelated to the purpose and intent of the creation of the account. The report recommended that the AFL Pension Account remain separated from the Ministry of the National Defense's operational expenses and that no withdrawal should be made against the account until a clear policy is adopted to manage the account. Excerpts from the AFL high command's report are as follows:

"6. The following findings were established during the overview of the bank account statements:

a. That USD account was opened at Ecobank on July 1, 2009, with account number 10929522222019 titled AFL Pension Funds, Saving Account.

b. That the Minister of National Defense and the MoD Comptroller were the signatories to the account up to October 2017 prior to handing over the account to the AFL.

c. That the first deposit to the account was August 26, 2009, with **Eleven Thousand Two Hundred and Sixteen United States Dollars Forty Cents (11, 216.40)**

d. That apart from the pension fund, there were other funds deposited into the account.

e. That on August 31, 2011, the account number was upgraded from 10929522222019 to 0013174717655601.

f. That from July 2009 to November 3, 2017, a total of 103 deposits for pension fund and other deposits were made into the account in the sum of 1,943,971.99 USD; see details at Annex E.

g. That the balance sum in the account, as at November 8, 2017, is **688,964.96 USD**; details are at Annex E.

h. That there were several withdrawals from the account for disbursement to deceased families and retired AFL personnel as well as other withdrawals not meant for the purpose for which the account was intended for. The total amount withdrawn to cater for deceased families and retired personnel was **147,303.20 USD**, which is attached as Annex B. Similarly, the sum withdrawn from the account not meant for the purpose the Scheme was created was **1,147,656.35 USD** as in Annex D. The total interest accrued in the account from July 2009 to November 3, 2017, is **118,188.15 USD** which is attached at Annex C. The summary of all transactions as contained is at Annex E.

i. That there were inconsistencies in the payment into the Pension Funds Account where monies were paid in part and, at times, not within the specified period.

j. That the AFL pay roster did not reflect each personnel contribution to the Scheme. Deductions were usually done by calculating the number of personnel as per rank and deduct the money and pay the cumulative total into Pension Fund Account. Therefore, the MoD does not have comprehensive data of each personnel contribution to the Scheme.

k. That there has been no approved policy governing the management of the said fund. However, Headquarter AFL has submitted a draft policy on the management of the Pension Fund to the Ministry of National Defense for approval.

l. That the payments of funds to the beneficiaries were done at the discretion of the Minister;

m. From the period the AFL took over the account, there has been no withdrawal made from the account.

n. The Eco Bank Statement balance contradicts MoD's balance statement.

CONCLUSION

Based on the findings, the AFL Pension Account had many transactions other than what it was intended for. Moreso, there has not been comprehensive data of each personnel contribution into the account, but deductions were made as per the number of personnel in rank and paid cumulatively into the account. The Committee also observed that there was no mechanism put in place to inform the personnel of their monthly contributions. Thus, there was no written policy guiding the management of funds in the AFL Pension Account even though troops were aware that the funds were meant for deceased families and those retired personnel. There was, therefore, the need to give appropriate direction on the proper management of the funds.

It is worth noting that co-appellant Samukai, in his capacity as Minister of National Defense, on January 18, 2018, addressed the media and confirmed the foregoing findings and conclusion of the AFL investigation. We quote verbatim the press statement as follows:

"January 18, 2018

**STATEMENT BY THE GOVERNMENT OF LIBERIA ON THE
CONCERNS RAISED BY FAMILIES OF AFL PERSONNEL ON
THE UTILIZATION OF FUNDS IN THEIR WELFARE ACCOUNT
READ BY J. BROWNIE SAMUKAI, J.R., MINISTER OF
NATIONAL DEFENSE**

It has come to the attention of the Government of Liberia that wives of personnel of the Armed Forces of Liberia have raised concerns over the utilization and management of funds deducted from their family members serving in the AFL that were deposited into a pension fund account. They were concerned that funds used from this account on AFL activities should not have been used for that purpose, but that the government should have provided funds in the budget to cater to the welfare of personnel of the AFL.

You may recall that in August 2009, the Ministry of Defense established a contributory savings involving deductions from all ranks of the AFL for their welfare and supplementary pension benefit after their years of honorable service. As of October 2017, the amount of USD2,062,160.14, including accrued interest, was collected and deposited into that account at ECOBANK. It has been established that about USD1,147,656.35 were spent on the AFL, and the balance in the account is USD688,964.96 as of November 8, 2017.

Following this outcry by families of AFL personnel on the status and utilization of said account, the Chief of Staff of the AFL ordered an immediate investigation by a Board of Inquiry (BOI) to determine the status, utilization, and balances of said account. The findings of the report established the following facts:

1. That the Ministry of National Defense did not establish guidelines nor a clear policy on the utilization of this welfare account;
2. That the Ministry of National Defense did not provide timely information to personnel of the Armed Forces of Liberia on the operation and utilization of said account;
3. That the Ministry of National Defense authorized the expenditure of funds from this account on soldiers' welfare without the requisite consent of the AFL High Command;
4. That all monies spent on military payment welfare should have been handled by and through the government normal budgetary appropriation and not from the AFL welfare account;
5. That the MOD failed to seek requisite budgetary appropriations for the welfare of the soldiers and the Ministry of National Defense should

not have used the funds for the benefit of the soldiers without requisite budgetary appropriation;

6. Documents revealed that expenditures made from this welfare account were for the benefits of AFL personnel and their families but should have never been done so.

7. However, the Ministry of National Defense is responsible for procedural lapses in the management, expenditure, and utilization of said funds.

Consequently, the Government of Liberia has determined that it is appropriate and the right thing to do to reconstitute or refund the full amount of USD1,147,646.35 that was expended on the AFL for the past several years. This fund shall be immediately provided in the next budgetary appropriation to the AFL by the Government of Liberia.

Henceforth, the AFL shall manage all of its accounts itself, including welfare account, through their chain of command without any hindrance nor interference from authorities of the Ministry of National Defense.

There shall be no further withdrawal from this account until such time when a clear and concise policy is put in place that will articulate the management, procedure, criteria, and authorization for the usage and expenditure of monies from the AFL and welfare account. Also, there shall be no further deduction from the morale and welfare account.

The Ministry of National Defense shall not utilize any funds appropriated for or belonging to the AFL for any purpose absolute whatsoever."

As indicated *supra* and based on the foregoing narratives, the appellee, through its Ministry of Justice, requested the special sitting of the Grand Jury during the August Term of the First Judicial Circuit Court for Montserrado County for an indictment against the appellants. The special Grand Jury, having deliberated the appellee's complaint against the appellants, returned a true bill charging the appellants for the alleged commission of the crime of theft of property, criminal conspiracy, economic sabotage, misuse of public money and money laundering. Considering the voluminous nature of the indictment, which the appellee later amended, we deem it expedient to summarize the various counts as follows:

INDICTMENT

COUNT ONE (THEFT OF PROPERTY)

That, the Special Grand Jurors for Montserrado County, Republic of Liberia upon their oath do hereby find more probably than not, that the defendants, J. Brownie Samukai Jr. former Minister of Defense,

Johnson P. Johnson, Deputy Minister for Administration, J. Nyumah Dorkor Comptroller and others to be identified, did conspire, and did commit the Crime of Theft of Property in flagrant violation of 4 LCLR, Title 26, Section 15.51 (a); and 4 LCLR, Title 26, Section 2.2 (a) and (b); and 4 LCLR, Title 26, Section 15.6 (a), (b), (e), (g) and (k); and 4 LCLR, Title 26, Section 15.54, of the Statutory Law of the Republic of Liberia to wit:

1. That during the periods of July 1, A.D. 2009, in the area of Monrovia City, Montserrado County, Republic of Liberia, the Ministry of Defense opened an account named and Styled “AFL Pension Account” at Ecobank Liberia limited with account number 1092-522-22-19. That, said account was based upon salaries deductions and established to provide benefits to pension package to personnel of AFL upon retirement from active service. That, the said account opened under the signatures of Co-defendant J. Brownie Samukai, Jr., former Minister of Defense as “signatory A” and Defendant J. Nyumah Dorkor, former Comptroller of the Ministry of National Defense as “Signatory B” and Defendant Joseph P. Johnson, former Deputy Minister for Administration, Ministry of Defense also a “A”, with no member of the AFL high Command to include: Chief of Staff and Deputy, Brigade Commander, et-al), as signatory to the account.

2. That, personnel of the Armed Forces of Liberia (AFL) salaries were deducted between the period of July A.D. 2009 up to an including October A.D. 2017, for onward deposit in the AFL-Pension account on the basis of rank as showeth in the below chat:

No	Rank	Amount deducted per month
1.	Private-PVT	5.00
2.	Band Unit	10.00
3.	Private first class PFC/SN	10.00
4.	Coporal/SG T/CPL	10.00
5.	SERGEANT -SGT/PO2	11.00
6.	Staff Sergeant- SSGT/PO1	12.00
7.	First Sergeant- 1SGT/Chief	12.00
8.	Master Sergeant- MSG	13.00
9.	Warrant Officer-WO	14.00

10.	2 nd Lieutenant- 2LT/ENS	22.00
11.	1 st Lieutenant- 1LT/LTJG	25.00
12.	Captain- CPT/LT	30.00
13.	Major- MAJ/LTCD R	35.00
14.	Lieutenant Colonel- LTC	36.00
15.	Colonel- COL BTL/C	42.00
16.	Brigadier General /CDI	75.00
17.	Deputy Chief of Staff-D/COS	75.00
18.	Chief of Staff-COS	75.00

3. That, during the periods of July A.D. 2009 up to and including November A.D 2017, the total amount of US\$1, 943,971.99 (Untied States Dollars, One Million Nine Hundred Forty Three Thousand, Nine Hundred and Seventy one and Ninety Nine cent), was deposited into the said account. Thereafter, you defendants J. Brownie Samukai, former Minister of Defense, Joseph P. Johnson, Deputy Minister for Administration and J. Nyumah Dorkor, Comptroller and others to be identified, by virtue of these positions within said entity, knowingly, purposely, criminally and intentionally, withdrawn and or transferred from the said account of US\$1,259,462 (United States Dollars, One Million Two Hundred and Fifty Nine Thousand, Four Hundred and Sixty Two), between the period of September A.D. 2014 up to and including September A.D. 2017, as indicated in the below chat:

N o	Date	Transaction purpose	Amount
		Approved Joseph F. Johnson	
1.	14 June 16	AFL Operation	\$75,000 .00
2.	6-Oct- 16	Preparation of Minusma deployment	\$26,000 .00
3.	14-Jul- 16	AFL Operation	\$20,096 .00
4.	28-Nov- 16	Facilitate AFL Operation	\$35,000 .00

5.	8-Jun-17	Facilitate AFL Operation	\$2,000.00
6.	15-Aug-16	Facilitate AFL Operation	\$18,500.00
7.	21-Jul-17	Facilitate AFL Operation	\$37,200.00
8.	6-Jun-16	Facilitate AFL Operation	\$16,000.00
9.	14-Jun-16	Facilitate AFL Operation	\$20,106.00
10.	26-Oct-16	Facilitate AFL Operation	\$33,000.00
11.	26-Oct-16	Payment for solidier in Minusma	\$23,700.00
12.	24-May-17	Facilitate AFL Operation	\$100,000.00
		Approved by Brownie Samukai, Jr.	
13.	7-Sep-16	Facilitate AFL Operation	\$102,000.00
14.	7-Sept-16	Payment for Minusma	\$369,380.00
15.	5-Sept-16	Facilitate AFL Operation	\$63,000.00
16.	May 20 & 30, 2016	Transferred Fes	\$270.00
		2016	
17.	24-Sept-14	Payment for Minusma	\$208,656.00
18.	10-Mar-16	Facilitate AFL Operation	\$59,550.00
19.	2-Feb-2015	Payment to Gen. Abdurrahman death	\$50,000.00
			\$1,259,462.00

4. That, of the total amount herein supra, Co-defendant J. Brownie Samukai, Jr. the then Minister of Defense, with criminal mind, personally authorized and cosigned defendant J. Nyumah Dorkor, then Comptroller/MOD, thereby causing the direct withdrawal and/or transferred of US\$852,860.00 and intentionally expended same basically on activities that were already provided for under the National Budget of the Republic of Liberia, such as AFL Operation. In addition, to the theft Co-defendant J. Brownie Samukai, Jr. illegally paid U\$50,000.00 (Fifty thousand United States Dollars), as death benefits to the families of the late, general. Abdurrahman, who did not contribute anything to the fund, while serving as AFL as Chief of Staff, as evidence by the below chat:

	Date	Transaction purpose	Amount
1.	7-Sept.-16	Facilitate AFL Operation	\$102,000.00
2.	7-Sept.-16	Payment for Minusma	\$369,380.00
3.	5-Sept.-16	Facilitate AFL Operation	\$63,000.00
4.	May 20 & 30, 2016	Transfers fees	\$270.00
5.	24-Sept.-14	Payment for Minusma Personnel	\$208,656.00
6.	10 mar-16	Facilitate AFL Operation	\$59,554.00
7.	2-Feb-2015	Payment to Gen. Abdurrahman	\$50,000.00

5. That, Co-defendant Joseph F. Johnson, serving within the employ of the Government of the Republic of Liberia, as Deputy Minister for Administration, authorized and cosigned defendant J. Nyumah Dorkor, and caused the withdrawal and subsequent transferred of the sum of US\$406,602 from the AFL-Pension account, contrary to the intended purpose of the funds which was intended for supplementary pension package to personnel of the AFL, see chart below:

	Date	Transaction purpose	Amount
1.	14-June-16	AFL operation	\$75,000.00
2.	6-Oct.-16	Preparation for Minusma Deployment	\$26,000.00
3.	14-Jul-16	AFL Operation	\$20,000.00
4.	28-Nov-16	AFL Operation	\$35,000.00
5.	8-Jun-17	AFL Operation	\$2,000.00
6.	15-Aug.-16	AFL Operation	\$18,500.00
7.	21-Jul-17	AFL Operation	\$37,200.00
8.	6-Jun-16	AFL Operation	\$16,000.00
9.	14-Jun.-16	AFL Operation	\$20,106.00
10.	26-Oct.-16	AFL Operation	\$33,000.00

11.	26-Oct.-	Payment for Soldier in Minusma	\$23,700.00
12.	24-May	Facilitate AFL Operation	\$100,000.00
			\$406,602.00

6. That, all operational funds from the AFL-pension account were authorized to be transferred into the account of the Minister of National, except the amount of US\$16,000.00 (Sixteen Thousand United States Dollars) paid directly to one Joseph Gegeh to be identified. As part of the herein named collusion, all authorization letters directly resulting into the commission of the crime of the theft of property (By deception), was done by Co-defendant J. Nyumah Dorkor. At the same time, on the 3rd day of the Month of October A.D. 2017, former AFL Deputy Minister for Administration, Co-Defendant Joseph P. Johnson criminally and intentionally authorized Ecobank Liberia Limited to change the “AFL-Pension account title to AFL Moral and Welfare Account” without any evidence, Consultation, administrative decision, and or will and consent of AFL High Command, [thereby depriving] the owner aforesaid of the use of their property (fund).

7. There and then, the crime of theft of property, you defendants J. Brownie Samukai, Jr., Joseph P. Johnson, J. Nyumah Dorkor and other to be identified, while serving within the employ of the Government (GOL), as Minister, Deputy Minister for Administration and Comptroller of the Ministry of National Defense respectively, did do and commit.

8. In relation to the Property and services,” Obtain” means to bring about a transfer or purported transfer of an interest in the property, whether to the defendant or another and secure performance thereof.

9. “Property of another” means property in which a person other than the actor has an interest which the actor is not privileged to infringe without consent regardless of the fact the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in unlawful transaction or was subject to forfeiture as security interest bearing therein even if legal title is in the creditor pursuant to a conditional sales contract of another security agreement.

10. “Owner” means any persons or Government with an interest in the property such that it is property of another as far as the defendant is concerned.

11. A person engages in conduct purposely if when he engages in conduct, it is his conscious objective to engage in conduct of that nature or to cause the result of that conduct.

12. “Derived” means to withhold property or cause it to be withheld either permanently or under such circumstances that a major portion of

economic value, or its use and benefit has in fact been appropriated, and withhold property or cause it to be withheld with the intent to restore it only for payment of a reward or other compensation and dispose of property or use it or transfer any interest in it under circumstances that make its restoration impossible.

13. And that the value of the property stole was \$50,000 or over and the property was acquired or retained by a first or second degree felony.

COUNT TWO (CRIMINAL CONSPIRACY)

18. A person is guilty of conspiracy to commit a crime if, with the purpose of promoting or facilitating its commission, he agrees with one or more persons to engage in or cause the performance or conduct which constitutes the crime, and any one or more of such persons does an act to effect the objective of the conspiracy.

a) If a person that one with whom he agrees or has agreed will agree with another to affect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other identity.

b) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

c) A conspiracy shall be deemed to continue until the crime which is its object is committed or the agreement that it be committed is abandoned by the defendant and by those with whom he conspired. A conspiracy shall be deemed to have been abandoned if no other act to effect its object has been committed by any conspirator during the applicable period of limitations.

COUNT THREE (ECONOMIC SABOTAGE)

Fraud on the internal revenue of Liberia

A person is guilty of a first degree felony, if he

- a) Knowingly conspires or concludes to defraud the government of Liberia
- b) Knowingly makes an opportunity for any person to defraud the Government of Liberia or another
- c) Does or omits to do any act with intent to enable another to defraud the government of Liberia
- d) Knowingly make an opportunity for another to defraud government of Liberia having knowledge of the violation of an y revenue financial law of Liberia or any fraud, fail to report in writing such information commission of internal revenues of the ministry of finance of the republic of Liberia

A person engages in conduct purposely if when he engages in the conduct he knows or has a firm belief unaccompanied by substantial doubt that he is doing so, whether or not it is his purpose to do so

COUNT FOUR (MISUSE OF PUBLIC MONEY, PROPERLY OR RECORD)

A person is guilty of first degree felony, if he:

- a) knowingly steals, takes, purloins, or converts to his own use and benefit or the use of another; or without authority, sells, conveys or disposes of any records, voucher, money or thing of value of the government of Liberia or any Ministry, or Agency thereof, or public corporation, or any property made of being made under contract for the Government of Liberia or any Ministry, Agency thereof or public corporation;
- b) receives, conceals or retains the same with intent to convert it to his use or gain, knowing it to have been stolen, purloined or converted;
- c) disposes of, uses, or transfers any interest in property which has been entrusted to him as a fiduciary, and in his capacity as a public servant or any officer of an institution, in a manner he knows is not authorized and that he knows to involve risk of loss or detriment to the owner of the property or to the Government of Liberia or other person for whose benefit the property was entrusted.

COUNT FIVE (MONEY LAUNDERING)

A person or body corporate or other legal entity commits the offense of money laundering if that person knowing or having reason to believe that is the proceeds of crime:

- a) Converts or transfer the property with the intent of concealing or disguising the illicit origin of the property, or of aiding any person involved in the commission of the criminal conduct to evade the legal consequences of the conduct;
- b) Conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property
- c) Acquires, possesses or uses the property
- d) Engages directly or indirectly in any transaction which involves the property
- e) Receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or bring the property into Liberia, or
- f) Participates in associates with or conspires to commit, attempts to commit, attempts to commit or aids or facilitate the commission of any of the above acts.”

Consequently, the court issued the writ of arrest for the appellants thereby bringing them under the jurisdiction of the First Judicial Circuit Court Criminal Assizes "C" to answer to the indictment. After the preliminary activities relating to the filing of appearance bond, the trial court arraigned the appellants, and they pleaded not guilty to all the charges made against them. The appellants also waived trial by a jury. The appellants having joined issues with the appellee on all charges of the indictment,

the trial court proceeded with a bench trial under the gavel of Judge Yamie Quiqui Gbeisay, Sr.

The records reveal that the appellee paraded two general witnesses, Augustine Mehn and Marc N. Kollie, both investigators of the LACC; three subpoenaed witnesses, Brigadier General Geraldine Janet George, Deputy Chief of Staff of the AFL, Major General Prince C. Johnson, III, Chief of Staff of the AFL and Stephen S. Howard, an employee, and head of Corporate and Investment Banking of ECOBANK Liberia Limited; and one rebuttal witness who happened to be Major General Prince C. Johnson, III aforementioned. The testimonies and documents testified to and produced by these witnesses all tend to support the averments in the indictment.

On the other hand, the appellants produced two general witnesses in persons of co-appellants, J. Brownie Samukai and Joseph P. Johnson; three subpoenaed witnesses, Counsellor Nyenati Tuan, Deputy Minister of Justice for Codification, Dr. Samora P. Z. Wolokolie, Deputy Minister for Fiscal Affairs and Retired Major General Daniel D. Ziankahn, Minister of National Defense. The testimonies of the appellants' witnesses and the documents introduced did not deny that the appellants made unrelated withdrawals from the pension funds. The appellants' evidence however tend to establish that the then President of Liberia and Commander-in-Chief of the AFL, Madam Ellen Johnson Sirleaf, authorized the "unrelated withdrawals" from the AFL Pension Account. The appellants justify their reliance on this authorization from the former President on the "Act of the State Doctrine" base upon which they ought not to be answerable criminally.

At the close of the evidence and following the final arguments, pro et con, the trial judge rendered final judgment finding the appellants guilty of the commission of the crimes of theft of property, misuse of public money, and criminal conspiracy. The trial judge also adjudged the appellants not guilty of the crimes of economic sabotage and money laundering, ordered the appellants to retribute the amount of US\$687,656.35 to the AFL Pension Account and US\$460,000.00 to the appellee, and imposed a suspended jail sentence provided the appellants retribute the sum of US\$1,147,656.35. The latter amount of US\$460,000.00 is said to be the amount the appellee had refunded the AFL Pension Account in the wake of the protests by wives of the service personnel. Essentially, the trial judge's final judgment concluded that the AFL Pension Account is a private property entrusted to the appellants as

fiduciary such that the appellants could not have expended the funds without the authorization or consent of the AFL service personnel. The trial judge also reasoned that the unrelated expenses or withdrawals made on the account contravened the purpose and intent for which the account was established. The judge opined that the appellants' conduct could not be justified under the doctrine of the act of the state, reasoning that if the President of Republic had authorized the expenditure and agreed to refund the amount, the appellee should not be prosecuting this case. The trial judge further opined that the repayment of US\$460,000.00 to the AFL Pension Account by the appellee during the critical period in the democratic transfer of power in early 2018 did not nullify the criminal conduct of the appellants because a third party made the repayment; in this case, the appellee, in the interest of national security.

We quote excerpt of the trial judge's final judgment as follows:

From the above facts summary, there are five cardinal issues that this court deem necessary for the determination of this case. They are:

1. Whether or not the expenditures made by the defendants of the AFL pension funds on AFL operation including uniform, International Peace mission, a token to General Abdurrahman family, salary etc., were legal and supported by the intent and purpose of the account?

To intelligently address the question above, one must first clarify the purpose and intent of the AFL Pension account. In other words, one must establish the legal status of the account. According to co-defendant Brownie Samukai Jr. own testimony, he said that between 2006 to 2009, he had series of strategy discussions with the AFL chain of command as a result of the low salary scale of the AFL personnel, and several decisions were taken and recommendations made to the President of Liberia. One of such decision was to establish pension funds for the AFL soldiers who were often sick and those who succumb to their sickness by death and others to benefit from the funds when they retire. In support of this testimony, General Geraldine J. George, Deputy Chief of Staff, told the court in her testimony in chief that their mentor who briefed the unit told them that the money was intended for the men and women who serve the AFL when they reach retirement stage, the money deducted from them will be given to them as a startup.... While waiting for the official government of Liberia's pension or retirement benefits.

The above testimony was corroborated by General Prince C. Johnson III as a rebuttal witness when he said as far as his memory can serve him, the account was established for retirement and death benefits of the AFL soldiers.

The analysis of the above three testimonies left no doubts in the mind of this court that originally, the intent of the AFL pension saving account was to take care of AFL sick soldiers, dead soldiers, and those soldiers who serve the AFL to their retirement and nothing else. By

logical deduction, it goes without saying that any use of the funds for any other purpose other than AFL personnel illness, death, or retirement without reference to the AFL was wrongful and illegal.

When Mr. Samukai took the witness stand in his own defense, he also told the court that the purpose of the funds was not limited to the reason stated above, in that the money was to take care of budgetary constraints as policy evolves and as directed by the Commander-in-Chief of the Arm Forces of Liberia. However, this statement was not corroborated by any other testimony or documentary evidence. In this jurisdiction, the uncorroborated testimony of an accused is never ever sufficient to acquit him. In the case; Charlie Johnson, Appellant vs. Republic of Liberia, Appellee, 31 LLR280, decided July 7, 1983 syl, 1. The uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt.

The Minister went further to defend his action by saying that, he as Defense Minister, was charged with the responsibility for the welfare of the soldiers to include their training, operation, logistics, etc. he further maintains that as a Defense Minister, he was subject to order by the President and that his duty was to implement orders as given by the President. This court says there is no doubt about the Defense Minister's duty and responsibility, especially a duty to obey the Commander-in-chief. But what the Minister fails to realize is that there is a distinction between public funds and private funds. In the performance of his duty, he is unquestionably required to perform and implement the commander-in-chief orders with public funds as budgeted by the government in accordance with the government budget process. In the instant case, based on the Minister brilliant idea to minimize the poverty stricken condition of the AFL, the government of Liberia elected to increase the earnings and salary of the AFL personnel by injecting a certain amount of funds in their salary account and simultaneously deducting same according to their rank and deposit said money in a special account name and style "AFL pension saving account."

Let it be noted that once the money departs the public domain and hit the account of the AFL personnel, that money automatically becomes a personal and private income of the AFL soldiers individually and collectively. As such, the Minister's statutory duty lay down by law, and his special duty as ordered by the President has no bearing on such money. Consequently, the use of the AFL pension funds as done by the defendants for purposes other than the intended purpose is illegal and wrongful, and criminal in nature.

The AFL compulsory contributory funds was logically a form of retirement income insurance. The government agrees to pay an annuity if the insured (AFL) dies in service or reaches the retirement age, or is sick. Premium paid to an insurance company by employers on behalf of employees is by law always for the employees. The name or title of the Account in question is self-explanatory.

"AFL Pension Saving Account". The Black's Law dictionary abridged eighth edition page 954 defines pension as **"a fixed sum paid regularly to a person or to his beneficiaries by employers as retirement benefits."** The type of pension involves in the AFL scenario is referred to as a vested pension. **"A vested pension according to black law dictionary is a pension in which the employee has the right to the benefits purchased by the employer contribution to the plan, even if the employee is no longer employed by the employer at the time of retirement."** The AFL funds were indeed an invested pension funds, and only the AFL personnel were entitled to it.

To argue that the funds were used to buy uniform for the AFL is to say that the men and women of the AFL were buying uniforms for themselves, to say further that the funds were used for training and logistics and AFL operation, in general, is to suggest that the AFL was funding its own training and buying its own logistics. How possible can that be? Does that mean that the other security apparatus in Liberia to include the police, the immigration, the fire service, etc., were supposed to buy their own uniform, one wonder? In answer to a question during an argument, the defense agreed that there are possibilities for illegal order from a superior officer or the commander-in-chief, but in the case of an illegal order from the commander-in-chief, the defense maintains that the Minister has no option but to obey the order. This court says it disagrees with such a level of reasoning. Like any other minister in the democratic form of government, the Minister of Defense has two responsibilities as lay down by *Marbury vs. Madison*, a landmark case decided by the Supreme Court of the United States of America on February 11, 1803. In that case, the secretary of State of the United States of America, in which case the secretary of State refused to deliver a commission which has been signed by an outgoing President Marbury. The Supreme Court of the USA, in addressing the issue, opined that every Minister in government has two categories of responsibility – that is, his statutory responsibility as laid down by statute and a special duty as commanded by the head of state/president. In either case, both duties must have legal reliance and a legal basis.

This court says the Minister of Defense in the instance has an option. If he realized that the alleged order given to him by the ex-president Ellen Johnson Sirleaf to misused the AFL pension funds was illegal, his option was to have advised or cause the Minister of Justice to advise the President. If the President insists on the implementation of the illegal order, the Minister has the option to disobey the President and honorably resigned his position with integrity. This is what men of conscience and patriots do. Because to do otherwise as he did in the instant case was an abuse of his oath of office in which he pledged to protect and defend.

While co-defendant Joseph Johnson was on the stand, he told the court that around 2016 and there about the Defense Ministry operation funds became a challenge. This may be true, but it cannot be a legal justification why funds already earned by the AFL personnel in terms

of salary and a portion deducted as their pension benefits should be used for the operation of the Ministry of Defense. To do so would amount to the AFL paying themselves their own salary.

The defense also contends and argues that there was no showing that a dime was converted to the defendants' personal use. This court is again constrained to disagree with this proposition, in that a document testified to by prosecution witnesses and marked by the court as exhibit 12 in bulk, which is the bank reconciliation statement of the AFL account, established that there are 12 different withdrawals of money from the AFL account for salaries from April 2016 to August 2017, without saying who was paid. And the defendants failed to show that the Ministry of Finance did not credit the regular payroll of the Ministry of Defense for the period they withdrew the AFL funds. There were also several withdrawals for the Ministry of Defense operation, without the defendants saying whether the Ministry of Finance did not credit the Ministry of Defense's operation account for the period under review. In addition, four manager checks were issued in the name of defendant J. Brownie Samukai, three manager checks issued to unknown businesses, all of which the defendants failed to account for their usage but simply say they were used in the interest of the AFL. The court is left with no choice but to agree with the prosecution that the money rested with the defendants as there are no end-users indicated. The defendants made no efforts to explain and exonerate themselves of these allegations. In *Gbedeh of Lofa County, Appellant, vs. the Republic of Liberia*, 30 LLR page 144, decided July 8, 1982, Sy 14. The Supreme of Liberia said, "***Where the prosecution has offered evidence of defendant guilt, and the defendant fails to refute the testimony of the witnesses or to offer evidence to the contrary, a verdict of guilt justified.***"

To justify the allegation above, the defendants again attempted to hang on straw by arguing that security expenditure cannot be disclosed. Again, this court agreed with the logic that all expenditures need not be disclosed to the public in security matters, but as stated over again, a security matter or an Act of State must be undertaken with State's funds.

We reiterate the funds subject of the indictment, not being a public fund, the defendants have an obligation to tell the court how and why it was used for the sake of their own defense; failure of which this court has no alternative, but to agree that the money was converted to the defendants' pockets.

In Liberia, the power of the President does not extend to private property. Hence, assuming that the past President and the current President ordered the Minister of Defense to use the AFL pension funds without seeking the consent, approval, or acquiescence of the AFL was ultra vara, as no president of Liberia or in any democratic state has such authority to interfere with private property without consulting the legitimate owner.

The second issue is whether or not the Act of Defendants for which they are charged is an Act-of- the State and therefore, it cannot be construed as a crime?

The court says that it has been established sufficiently that the funds that are the subject of this litigation are private funds. Assuming that the act of co-defendant by withdrawing 50,000 was on the order of the ex-President and therefore said Act is an Act of State, this court says an Act of State cannot, should not, and ought not to be performed by private money as in the instant case.

The court perfectly agreed with co-defendant Samukai that had the government failed to make representation at the funeral of General Abdurrahman, who make sacrificial services to Liberia, such failure would have amounted to ingratitude, yes, but such a gesture cannot be implemented with the poverty-stricken AFL pension funds without their implied or expressed consent. More besides, in this jurisdiction, the burden of proof is on one who alleges. Chapter 25, section 25.5 of the civil procedure Law.

The co-defendant content and argued that he was ordered by the ex-commander in Chief to use the AFL funds in the manner and form as he did, but failed miserably to cause former President Ellen Johnson Sirleaf, who is right here in Monrovia to appear or representative of the current President to testify to the truthfulness of this contention. The court says that the President would have loved to send one of his agents to clarify the issue. And the court also believes that the ex-President would have been glad to appear in person to throw light on the issue.

The only form and manner in which a government can legally interfere with private property in this jurisdiction is by condemnation proceeding otherwise known as eminent domain, in which case the owner of the property is given an opportunity for the property fair market value to be paid to him. Therefore act the money was credited, as implied by the defendants, one cannot credit without negotiating with the owners.

The third issue of interest to this court is **whether or not changing the name of the AFL account by the defendants without consulting the rank and file of the AFL was legal?** The court is again constrained to answer in the negative. The court says that none of the defendants charged is a member of the AFL because, by law, the AFL starts from private soldiers and ends up with a Chief of Staff. However, in a civilian government like ours, the Minister of Defense managed the affairs of the Arm Forces of Liberia. The Minister, therefore, served in a fiduciary capacity for the AFL personnel when he opened the AFL pension account and made him and his principal deputy signatories A of the account. In the mind of the court, the Minister serving as the signatory to the account was not wrongful or illegal, because as stated supra, he was performing a fiduciary duty for and on behalf of the entire AFL. But the power of a fiduciary has a serious limitation, and a breach thereof carries serious multiple civil and criminal consequences.

In his opening statement, the Minister told this court that he had a series of consultation and strategic meetings with the AFL chain of command, which led to recommendations that resulted in the opening of the AFL pension account. By that reasoning, the Minister knew or had reason to know that the money in the AFL pension account. By that reasoning, the Minister knew or had reason to know that the money in the AFL pension account was not budgeted for the Ministry of defense operation, and by that parity of reasoning, every cent in that account belongs legally to the men and women of the AFL. Therefore, the Minister was under a legal duty to have consulted the rank and file of the AFL as he did from the beginning if he had a tangible reason to change the name of the account.

The court says that it appeared that the sole purpose for changing the account title was to widen the scope of operation of the account so as to enable the account to cover all illegal withdrawals that were made not within the perimeter of the objective of the account as named. Even at that, the court observed that by the time the name of the account was changed in October 2017, most of the illegal withdrawals had already been made. The court note that the intention of the change of the AFL account from AFL pension and saving account to AFL morale and Welfare account has criminal motives and intended to camouflage, disguise, and concede the misapplications by the defendants.

The fourth issue which court considers gamine to the resolution of the contention, in this case, is, Whether or not the alleged commitment by the past and present President of Liberia to pay, and partial payment made by the current government to the AFL, dismisses the alleged criminal conduct of the defendants?

The court again answers No, never. It has been established that money deposited in the AFL's pension account was deducted from the AFL members' salaries and deposited for their benefit upon sickness, death, or retirement. The court has sufficiently explained that the defendants lack the legal authority to have expanded the money purposes other than the intended objectives. The defendant agreed that yes, we expanded the money but relied on the law and the authority of the commander-in-chief. So far, this court has said that both the Constitution, the executive law, and the financial management Act referenced by co-defendant, Samukai have no chapter, section, or clause that authorizes a Minister to interfere with private funds. Money intended for the operation of all ministries are budgeted by the Executive branch of government annually and passed into law by the National Legislature and approved by the President. The funds subject of the indictment against the defendants is not a budget line in the Defense Ministry budget nor a budget item in the Ministry of State budget. In spite of these, co-defendant Samukai contends that the past and present government committed themselves to pay the money and that partial payment having been made, assuming there was criminality said criminality had been made null and void by the partial payment.

First of all, the court says, assuming arguendo that ex-president Sirleaf made a commitment to pay, and President Weah also made a

commitment to pay, the Act of an individual president is not the Act of the government of Liberia. The government of Liberia is a Republican form of government that consists of three branches, the Executive, the Legislature, and the Judiciary branch. To legally obligate the government of Liberia financially, that obligation must be sanctioned by both Executive and legislative branches of government. **More besides, the court says, ordinarily, criminal conduct is nullified when a part payment or partial payment is made by the person who commits the crime. But on the contrary, it is the government of Liberia, which is prosecuting the defendants that made a partial payment to the AFL account and not the defendants.**

The rationale for the nullification of crimes when the person committing the crime made a partial payment is that the person has admitted and repented and the person against whom the crime was committed has accepted and forgiven him. But in the instance case, it is a third party, the government of Liberia, who made the partial payment for a reason best known to itself. This cannot be construed as having nullified the criminal conduct of the defendants.

In fact, when the Deputy Minister for Fiscal Affairs at the Ministry of Finance and Development Planning testified before this court, as the defendants own witness, he indicated that the misused of the AFL funds caused unbearable embarrassment to the new incoming government when families of the AFL soldiers set a roadblock and issued threats to the government and the peace and security of the people of Liberia; as a consequence of which a national security council meeting was convened, and the government was advised to make some payment to the soldiers.

This testimony was never rebutted and therefore taken as facts. Such circumstances cannot erase criminal conduct.

Besides, the President of Liberia is an embodiment of the State. So when the State, through the Minister of Justice, charges, indict and prosecute a matter, it presupposes that the President is prosecuting that matter as in the instances case, President George Manneh Weah is prosecuting the defendants.

The State also paraded General Geraldine J. George, Deputy Chief of Staff of the AFL, who testified that she headed a committee constituted by the Minister to investigate the AFL fund and that she observed that **the defendants used USD1,474,00** plus of the money for what is referred to as unrelated purpose. The prosecution also cited a witness Steven Howard from the ECOBANK who testified to the establishment of the account and the document establishing the account by the name AFL Pension and Saving Account and /That Co-defendant J. Brownie Samukai, Joseph Johnson, J. Nyumah Dorkor were signatures to the account and that all the withdrawals from the account were over their signatures.

When two of the defendants took the witness stand, they testified that yes indeed, they opened the account not only for AFL personnel pension but also to meet up with other budgetary constraints. Co-

defendant Samukai while on the witness stand, admitted that he withdrew and utilized the money, but he did it in his capacity as Minister of Defense, and the money was used in the interest of the AFL. He testified further that as the Minister of Defense, his duty was to receive orders and implement. In answer to a question on the cross, he told the court that he did not need to consult anyone in the performance of his statutory duty. Co-defendant Joseph Johnson corroborated the co-defendant testimony to the effect that as a principal deputy, he obeys all orders given to him by his boss. When he acted as Minister, he performed the duty that a Minister would have performed. The third Defendant, J. Nyumah Dorkor, elected not to testify, apparently relying on the testimonies of his accomplices or his colleagues.

The defendants also caused the court to subpoena the Minister of Justice, who was represented in the court by the deputy Minister of Codification, who testified that he did not locate the original of the letter that emanated from Minister Edward McClain to the effect that the withdrawal was authorized by the President. He, however, came with a copy. The defendant prayed the court to subpoena President George M. Weah to testify to the effect that he, President George Weah, is aware of the use of the money and made a commitment to pay the money and that he had paid a portion thereof. The application was resisted and denied by the court on the grounds that it is impractical to have a sitting president and head of State subpoenaed and that if the defendants strongly desire the President's testimony, they had the option to subpoena some of the President's agents such as the Minister of State, Minister of Finance, Central Bank Governor, all of whom should have a certain knowledge of the funds or the withdrawals. The defendants caused the court to subpoena the deputy minister for fiscal affairs who testified that the government paid **USD460,000** to the AFL funds because the AFL wives have set a roadblock in demand of the money and through the advice of the National Security Council, the government was warned to make some payment.

From the analysis of testimonies on both sides, it is crystal clear that the defendants did not deny the withdrawal and use of the AFL funds but instead set up two justifications. (a) That they acted in line with the Constitution and relevant laws, (b) that they acted on the orders of the ex and current President of Liberia. This court has said that the AFL pension account is a private money owned by the AFL personnel and that the Minister of Defense was correct in making himself and his deputy and comptroller as signatories to the funds, in that the AFL is under the umbrella of the Ministry of Defense who administer the affairs of the AFL. As such, the Minister of Defense is by law a fiduciary of the AFL. However, the court is of the considered opinion that the Minister breached and abused his fiduciary duty to the AFL men and women when he elected to misuse their funds for purposes other than intended.

Theft of Property is defined by our statute under ***Chapter 15 section 15.51 of the Penal code as follows: "A person is guilty of theft if he (a) knowingly takes, misappropriates, converts, or exercises unauthorized control over, or makes an unauthorized transfer of an interest in the***

proper of another with the purpose of depriving the owner thereof; (b) knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof or, purposely deprives another of his property by deception by threat (c) knowing receives, retain, disposes of property of another which has been stolen with the purpose of depriving the owner thereof."

The fact that the money subject of the dispute is private and personal money of the AFL, the action of the Minister falls squarely within the definition of Theft of Property as quoted above as found on section 51.51(a) of Penal Law, because the Minister knowingly takes misappropriate, converts, and exercise unauthorized control over the AFL's pension funds; by that, the defendants misappropriated, because the money was not intended for the purposes for which they used USD 1,147,656.35.

The defendants violated Article 20(A) of the Constitution of Liberia, which reads thus, "No person shall be deprived of life, liberty, security of person, property, privilege or any other right, except as an outcome of a hearing judgment consistent with the provision laid down in this constitution and in according with the due process of law..." There is no iota of doubt in the mind of this court that defendants herein are in flagrant and recalcitrant violation of the above article of our Constitution against the men and women of the AFL.

The defendants attempted to grab a straw when they vehemently argued that the prosecution, having admitted that the money subject of the crimes is private money, misused of public money as charged in the indictment should be dismissed. This court is at a loss with that absorb contention. The Penal Law of Liberia at section 51.81 defines misused of public money as follows: "***A person is guilty of first-degree felony, if he a...b..(c) disposes of, uses, or transfer, any interest in property which has been entrusted to him as a fiduciary, and in his capacity as a public servant or any officer of any institution, in a manner he knows is not authorized and that he knows will involve risk of lost or detriment to the owner of the property or to the government of Liberia, or other persons for who benefits the property was entrusted.***" This court has earlier, in this opinion, declared and proclaimed that the co-defendant Brownie Samukai and, by extension, his principal deputies were fiduciaries of the AFL personnel, which fiduciary capacity permits them to be signatories to the AFL funds. The manner in which they used the money squarely falls within the definition of 51.81 (c) of the Penal code quoted above. By that, the defense's contention that misused of public funds is not applicable to private money has no support in the Liberian law as per the definition quoted above.

The court is also of the considered opinion that the fact and circumstances of the commission of the crimes against the AFL in these proceedings by the defendants in which they illegally, wrongfully, intentionally withdrew funds from the AFL account by their directive and authority by using the comptroller of the Ministry of Defense, acted in concept and as such criminal conspiracy will lie against them. However, the court did not see the element of Economic Sabotage and

is not persuaded by the prosecution testimonies and argument that the defendants committed the crime of money laundering. This court hereby dismisses the Crimes of Money Laundering and Economic Sabotage against the defendants herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, defendants, J. Brownie Samukai Jr., Joseph P. Johnson, and James Nyumah Dorkore are hereby adjudged guilty of the crimes of Theft of Property, Misuse of Public money, and Criminal conspiracy. The defendants are hereby ordered to retribute the amount of **USD687,656.35** to the AFL pension Saving account and **USD460,000.00** to the government of Liberia account, making a sum total of **USD1,147,656.35**. This court, having not seen enough evidence of Economic Sabotage and Money Laundering, both charges are hereby ordered dismissed. Meanwhile, the sentence will be pronounced pending pre-sentence investigation in obedience to chapter 31, section 31.5 of the criminal procedure law. The clerk of this court is, therefore, hereby ordered to communicate with the probation service of Montserrado County to proceed to conduct a pre-sentence investigation of the defendants herein and report to this court in 15 days as of today's date.

GIVEN UNDER MY HAND AND SEAL
OF COURT THIS 24TH DAY MARCH A.D. 2020.

YAMIE QUIQUI GBEISAY
ASSIGNED CIRCUIT JUDGE PRESIDING.

Pursuant to the instruction of the trial judge, the Bureau of Correction and Rehabilitation, Division of Probation and Parole Services of the Ministry of Justice conducted a pre-sentencing investigation and submitted findings to the court. Predicated on the report, the trial court imposed sentences on the appellants. We quote excerpt of the court's sentence as follows:

“The said report was filed with the clerk of this court, the synopsis of which indicated that it found no previous criminal record against any of the defendants herein, but concluded that the crimes as charged and proven by the State post a national security threat to the nation, considering that the money, subject of the crimes, is for men and women of the Armed Forces of Liberia.

This Court, therefore, says that, considering that the defendants have no previous criminal records within or without the Republic, the court hereby imposes sentences on the defendants as follows:

1. That co-defendants, J. Brownie Samukai and Joseph P. Johnson are hereby sentenced to common prison for a period of two (2) years each, and that the said two (2) year sentence is hereby suspended provided they elect to retribute the whole or substantial amount of the judgment sum within six (6) months and the balance stipulated to be restituted

within twelve (12) months, as of this ruling; failure of which they shall serve the full two (2) year sentence.

2. That through co-defendant James Nyumah Dorkor elected to reserve the right to the privacy of his health status, this court considering his physical condition and his minor role in the commission of the crime, is hereby sentenced to six (6) months imprisonment; which six (6) month sentence is also hereby suspended, provided he retribute his share of the judgment sum in whole or in substantial part in six (6) months and file a stipulation to pay the balance in twelve (12) months; failure of which he shall serve the full six (6) months in common prison and make restitution.

GIVEN UNDER MY HAND AND
SEAL OF COURT THIS 23RD DAY
OF APRIL, A.D. 2020.

YAMIE QUIQUI GBEISAY, SR.
ASSIGNED CIRCUIT JUDGE
PRESIDING”

The appellants entered exceptions on the record to the final judgment and announced an appeal to this Court. The appellants, in their Bill of Exceptions, complained of fifteen errors allegedly committed by the trial judge. In order to appreciate these contentions in the determination of this appeal, we quote verbatim the appellants' bill of exceptions as follows:

"APPELLANT/DEFENDANTS' BILL OF EXCEPTIONS

Defendants/Appellant in the above entitled cause of action, submit the following exceptions, the same constituting their Bill of Exceptions, to Your Honor's Final Judgment of March 24, 2020, and most respectfully request Your Honor to kindly approve the herein contained exceptions so as to allow for appellate review of said Final Judgment by the Honorable Supreme Court of Liberia, sitting in its October Term, A.D. 2020, for the following reasons, to wit:

Because defendant/appellants say, Your Honor committed reversible error when Your Honor convicted the defendants and adjudged them guilty, thereby ignoring, denying, overruling, and setting aside their denials and defenses, claims and contentions as contained in their oral testimonies and supported by their documentary evidence. For this legal error, the judgment should be reviewed and reversed.

2. In the case, Your Honor was seated as jury defacto and also judge of the law, and therefore, the facts that border on the evidence adduced during the trial must be consistent with your verdict. Accordingly, the verdict reached by Your Honor is contrary to the testimonies from the witnesses as well as documentary evidence adduced during the trial, and as such, it is sufficient for the said verdict and Final Judgment to be reviewed and reversed and the defendants acquitted and discharged.

3. The gravamen of this Bill of Exception lies in the following errors for a reversal would lie:
 - a. That Your Honor committed a reversible error when you ruled that the prosecution's second witness, Marc N. Kollie, testified that the transaction subject of this litigation ended with the defendants. This portion of your ruling was an inadvertent error, which is sufficient to trigger a reversal of your ruling.
 - b. That on page nine (9), paragraphs two (2) and page 5, paragraph 2, a sentence of Your Honor's ruling, you inserted the pronoun "WE" in said ruling, meaning that one judge did not make your ruling, but rather it was a ruling done by another judge along with you that need to be known; thus setting the basis for the verdict and or this ruling to be reversed and the defendants declared Not Guilty.
 - c. That Your Honor also committed a reversible error when you held the defendants personally liable for the act performed by them based on the instruction of the former President of Liberia, Ellen Johnson Sirleaf; the act which was performed on the basis of master/servant relationship. This Act under our law suggests that the master takes the responsibility of its servant, when done in the regular course of business, as in the instant case; yet Your Honor ignored same and held the defendants for the Act sanctioned by their boss.
 - d. That Your Honor also committed an inadvertent error holding the defendants liable for the part payment of **USD460,000.00** based on discussion reached by the outgoing President, Ellen Johnson Sirleaf, Commander-in-chief of the AFL and the incoming President, George Manneh Weah upon settling on an informed decision that the AFL pension money used by the defendants was an expenditure made on behalf of Government of Liberia, yet you took it as personal expenses of the defendants and ruled them to retribute same.
 - e. That Your Honor insisted that the prosecution has proved a prima facie case, despite the fact that all the prosecution's witnesses, minus Augustine Mehn, while on the witness stand, told the court that the expenses made by defendants were not personal expenses; and that thread of testimonies ran through the case with respect to all the prosecution witnesses, again unless Augustine Mehn who said that the financial transaction involving this case rested with the defendants yet you held the defendants criminally liable.
 - f. That Your Honor also committed reversible error when you held that the defendants committed theft of property, Misuse of Public Funds, and Conspiracy without any proof from the prosecution. More besides, Your Honor erred when you misinterpreted and wrongly applied the law on Public Money to what the Prosecution had called Private Money.
 - g. That Your Honor further erred or committed a reversible mistake when you ruled that the defendants, having testified that President Sirleaf ordered them to expend the money, the burden shifted to the

prosecution to bring Madam Sirleaf as a rebuttal witness. Therefore, Your Honor's ruling placing such a burden on the defendants is contrary to our practice and law obtaining in this jurisdiction.

4. Defendants/Appellants further say and complain that Your Honor further committed reversible error when in your Final Judgment Your Honor deliberately misstated facts as contained in the record, or injected sua sponte information that was not even adduced by the Prosecution, or are not part of the record at all. For example:

A. **MANAGERS CHECKS ALLEGEDLY ISSUED TO SAMUKAI AND JOHNSON**

In your closing, Your Honor claimed that the defendants wrote twelve managers check to themselves [four allegedly to Samukai, three allegedly to Johnson, and five to unknown businesses). That ruling of Your Honor is totally false and misleading; when one looks at the bank statement, one sees in the description, names to whom manager's checks were written on instructions letters written either Joseph F. Johnson or Samukai. If the bank issued a check to Samukai or Johnson, it would say in the description. For example, on August 28, 2017, the defendants asked the bank to issue checks to beneficiaries in specified amounts; they were Vivian Kamaa, Jerry Dennis, Nor Dro, Gbalee Togba Boo, David Mulbah, and others. These names are clearly spelled out on the bank statement. Defendants say there is nowhere in the records where the Prosecution produced oral testimony or documentary evidence regarding managers checks in the names of the defendants, during the trial that portion of the judge's imagination, for ruling which the Final Judgment must be reversed.

B. **THE REASON FOR MOJ SUBPOENA**

The reason the defense subpoenaed the Minister of Justice was to bring the original copy of a letter written to the Minister of Justice by the Minister of Defense, informing him of the uniform purchase from an international vendor, but in Your Honor ruling, you said the Minister of Justice was represented in court by the Deputy Minister for Codification who testified that he did not locate the original letter that emanated from Minister Edward McClain to the effect that the withdrawal was authorized by the President....Again, the Deputy Minister for Codification did not testify to McClain's letter, as he was subpoenaed to do.

C. **AMOUNTS CHARGED TO THE DEFENDANTS**

If the prosecution is claiming that the total amount for unrelated spending was **USD 1,147,656.35**, how did they arrive at the amount of **USD 852,860.00** for Samukai and **USD 406,602.00** for Johnson? These two amounts total amounts total **USD\$1,259,462** a difference of **USD111,805.65[1,259,462-1,147,656.35]**. who pays for this? The prosecution failed to show how these amounts were added up. Yet Your Honor convicted the Defendants of such inconclusive and speculative amounts, which is a clear ground for the reversal of the Final Judgment.

5. Defendants say Your Honor was in absolute error when you ruled that the defendants and former President Ellen Johnson Sirleaf were in violation of the Constitution when they used and relied upon the Executive Law of Liberia to carry out their functions in the oversight of the AFL. Defendants contend that the constitutionality of actions or conduct of persons and the law on which they rely to act is within the domain specifically reserved for the Supreme Court of Liberia.
6. Defendant contended and complained that Your Honor committed serious reversible error when you ruled that defendants did not prove their allegation that they acted on orders and were instructed and authorized by former president Ellen Johnson Sirleaf, in her capacity as Commander-in-chief to expend funds from the pension Account on reimbursable bases your Honor seriously held that defendants should have brought President Sirleaf as a witness. To that judging of Your Honor, defendants contend that Your Honor erred and was in breach of the law when the burden shifted to the State to disprove defendants' allegation. Not only that, but more importantly, the defendant says the prosecution itself did not refute, rebut, or deny this averment of defense by the defendants. For this legal blunder, defendants say this judgment should be reversed.
7. In addition to the oral testimony, the defendants also produce documentary evidence in the form of letters wherein the President specifically mandated and instructed the defendants to use or expend funds from the pension account to be reimbursed. To give effect to the reimbursement of monies taking from the Pension Account, the government of Liberia represented by former president Ellen Johnson Sirleaf and current President George M. Weah both committed themselves and undertook that the government would repay the money, for which president Weah has already commenced partial repayment in the amount of **US\$460,000.00**. This very important fact in support of the defendants' defense you disregarded and went further to pay order the defendants to this money to the Government treasury. For this prejudicial and illegal ruling, the judgment must and should be reversed.
8. Your Honor erred when you did not take into account the fact that prosecution witnesses testify in open court that none of the funds expended from the Pension Account went to the personal benefits of the dependents. On the contrary, these witnesses confirmed that all funds taken from the pension account were spent on AFL matters even though some of these expenses were not for Pension related matters. Your Honor overlooked this testimony and ordered the defendants to retribute the same, for this judgment should be reversed.
9. And also because defendants/appellants say and contend that Your Honor committed serious prejudicial and reversible error when Your Honor failed and refused to take into account the fact that the defendants proved that there was no crime in any actions they took; they showed that all their actions were authorized and ordered by the Commander-in-Chief; of the AFL they proved **without rebuttal or denial**, that because these expenditures were legitimate and authorized,

the Government of Liberia, by and thru the former President Ellen Johnson Sirleaf as well as the current President Dr. George Manneh Weah, undertook the obligation and committed itself to the full reimbursement or repayment of the money. The Defendants also proved that in fulfillment and recognition of the Government's obligation, President Weah approved, authorized, and ordered repayment of the money, for which the Ministry of Finance paid and the Ministry of Defense received the amount of **USD460,000.00**. This payment was confirmed by Hon. Dr. Samora Wolokolie, Deputy Minister of Finance, and also by Retired Major General Daniel D. Ziakahn, both of whom appeared as subpoena witnesses for the defendants. The prosecution produced rebuttal witnesses but made no attempt to rebut or otherwise overcome this evidence by the defendants.

10. Your Honor also committed prejudicial error when you defined the word pension "as a fixed sum paid regularly to a person or to his beneficiaries by an employer as a retirement benefit". Your Honor went on to say that the type of pension involves in the AFL scenario is referred to as a vested pension. On the contrary, the defendant contends that your Honor erred when you referred to the AFL pension as a vested pension because in this instant case, the AFL pension is not a vested pension in that if a soldier is dishonorably discharged, he does not receive ANY pension, whereas, in the case of a vested pension, the employee would receive his pension whether or not he is dismissed or have attained the retirement age, he would benefit from the vested pension. On the contrary, the Blacklaw dictionary defines pension as "stated allowance out of the public treasury granted by the government to an individual, or to do his representatives, for his valuable services to the country, or in compensation for loss or damage sustained by him in the public service. A stated allowance out of the public treasury granted by the government to an individual, or to his representatives, for his valuable services to the country, or in compensation for loss or damage sustained by him in the public service. **Price v. Society for Savings, 64 Conn. 362, 30 Atl. 139, 42 Am. St. Rep. 198; Manning v. Spry, 121 Iowa, 191, 96 N.W. 873**. Because of this prejudicial error by your Honor in misapplying the definition of pension, the defendants insist that your Honor's final judgment should be reversed.
11. Your Honor erred when you declared that the defendant Samukai had the option to disobey the commander-in-chief and President or resigned because, according to your Honor, the actions of the defendants did not constitute an act of State. Defendants contend that the act-of-state doctrine is different from the ruling of Your Honor in that the Act of state doctrine is an exercise of sovereign power as a matter of policy or political expediency, which is not available against a citizen...Even if, under normal circumstances, the Act would have amounted to tort, if there is a statutory authority, the defendant cannot be held liable. Accordingly, the defendants say that Your Honor committed a reversible error in your holding for which your final judgment must be reversed and the defendants acquitted and discharged.
12. On page 10 of the Final Ruling, your Honor referred to the Minister of Defense as a "**Fiduciary**". Meaning he was right to make himself and

his deputy as Signatories A. but, Your Honor did not specify the limitations of a "*fiduciary duty*". For this legal blunder, the defendants contend that your Honor's final judgment should be reversed and the defendants discharged.

13. Your Honor committed further reversible error by violating the constitutional doctrine of separation of powers when you ruled that the President of Liberia, as Commander-in-chief of the AFL, had no authority to order and instruct the Minister of National Defense to perform duties specified by her, the President. Defendants contend that orders from an elected President and commander-in-chief, and strict adherence to the chain of command, are core elements of civilian control of the military that serve other very important value in the normal course of events of a Sovereign Country. For this constitutional violation, the defendants say that Your Honor's final judgment should be reversed.
14. Defendants say Your Honor committed several additional reversible errors for which the final judgment should be reversed because Your Honor misstated certain facts or injected facts that were not testified to by any of the witnesses for both parties, especially the prosecution:
 - a. In your honor ruling on page 7 paragraph 6, Your Honor stated, the government agrees to pay an annuity if the insured (AFL) dies in service or reached the retirement age or is sick". Defendants say that this statement of paying an annuity is untrue and was never testified to by any witnesses.
 - b. Your Honor stated that "once the money departs the public domain and hits the account of the AFL personnel, that money automatically becomes a personal and private income of the AFL soldiers, individually and collectively... consequently, the use of the AFL pension funds as done by the defendants for the purposes other than the intended purpose is illegal and wrongful and criminal in nature" Defendants contend that your Honor overlooked and misinterpreted the fact that the monies used by the defendants did not come from the net pay, which is the soldier's personal and private income, but rather came from the gross income which was still part of the public domain. For this misunderstanding of the defendant's testimonies, Your Honor's final judgment should be reversed.
 - c. Your Honor further erred when you ruled that both former President Ellen Johnson Sirleaf and current President George Manneh Weah did not have the authority to commit the government of Liberia to the reimbursement of funds authorized by the Commander-In-Chief to be expended from the AFL funds; you Honor ruled further that for a president to commit the government of Liberia, that the President needed legislative approval and therefore, in this instant case, the two presidents commitment of the Liberian Government to reimburse funds to the AFL pension funds was illegal. Your Honor further said that the Act of an individual President is not the Act of the government of Liberia. For these three errors of law and mis-interpretation of the

Constitution, the defendants insist and contend that your Honor's final judgment must be reversed.

15. For these and other reasons, and owing to all the errors committed by Your Honor, you humble defendants/appellants respectfully submit this Bill of Exceptions for Your Honor's kind approval to allow the Honorable Supreme Court of Liberia, sitting in its October Term, A.D. 2020, to subject this Final Judgment to rigorous legal scrutiny, review and analysis, and ultimate reversal.

PRAYER

WHEREFORE, and in view of the foregoing, the defendants/appellants most respectfully pray Your Honor to kindly approve these exceptions to Your Honor's Final Judgment of March 24, 2020, and thereby allow the Honorable Supreme Court of Liberia, sitting in its October Term, A.D. 2020, to subject this Final Judgment to critical legal scrutiny, review, and analysis, and that Your Honor would grant unto the said defendants/appellants herein any and all other and further relief as would be just, legal and equitable.

1) that the trial judge erred when he held that the defendants failed to established how the funds from the unrelated withdrawals from the pension fund was expended, and concluded that the funds were converted by the appellants for their personal use and benefit; 2) that the trial judge erred when he held the appellants personally liable for acts performed by them based on the instruction of the former President of Liberia; in other words, the appellants acted on the instruction of the President of Liberia, and were agents whose actions were answerable by the master as supported by the repayment of US\$460,000.00 to the account; 3) that the trial judge erred when he applied the law on public money to a conduct which the appellee called private money; 4) that the trial judge erred when he referred to the co-appellant, Minister of National Defense as a fiduciary without specifying the limitations to a fiduciary duty; and 5) that the trial judge imputed facts not supported by the records of the case.”

There is a single contention that runs throughout the appellee's brief; which is, that the appellee's evidence satisfied and met the burden of production and the burden of persuasion standards. In support of this contention, the appellee submitted that the appellants admitted to the facts: that they were cosignatories to the AFL Pensions Account; that the service personnel of the AFL made compulsory personal monthly contributions to the account; that the appellants made withdrawals from the account without a showing of the end usage of the moneys taken from the soldiers' account; and that the appellants failed to posed any material challenge to the appellee's evidence.

The material facts of this case not being disputed, this appeal presents three determinative issues at bar:

- 1) Whether under the “Act of the State Doctrine” the appellants could legally expend funds from the AFL Pension Account by the authority of the President of Liberia for purposes unrelated to the intent of the funds and without the knowledge and consent of contributing service members?
- 2) Whether the evidence adduced by the appellants established that, they expended the unrelated withdrawals from the pension funds for and on behalf of the Government of Liberia?
- 3) Whether the trial judge's final judgment is consistent with the evidence adduced during trial so that the appellee is said to have met and satisfied the burden of proof beyond a reasonable doubt?

Before we proceed to addressing these issues, it is necessary that we inquire into whether the pension funds was a public or private funds or property, since this seems to be an issue raised by both parties and featured extensively in the trial judge’s opinion. Generally, under the common law, a public property is defined as a state or community-owned property not restricted to any one individual's use or possession as opposed to a property protected from public appropriation over which the owner has exclusive and absolute rights. *Black's Law Dictionary Ninth Ed. Page 1337*. The case at bar presents the question whether the soldiers' individual savings deposited in an account with a commercial bank for the sole purpose of attending to their welfare can be termed a public property. The evidence couched in the certified records before this Court does not appear to support the theory that the funds are public property. The records do not only show that the monies deposited in the AFL Pension Account at Ecobank Liberia Limited were deductions from the salaries of the service personnel, but that the Government of Liberia applied withholding tax on the interest that accrued on the said account in the tune of US\$3,140.35 during the period under review. Furthermore, it is undisputed that the AFL Pension Account is not a budgetary item for public appropriation; that is why the appellants assumed control over the account to manage it as the evidence more fully show *infra*. In that case, the appellants were fiduciaries of the service personnel.

In further support of the theory that the AFL Pension Account is a private property, the National Defense Act of 2008 is clear and unambiguous as to the accountability

of the AFL funds other than the funds now under judicial scrutiny. Sections 9.3 and 9.4 of said Act are instructive as follows:

"The Chief of Staff of the AFL shall be accountable for the proper receipt, record keeping, storage, use and ultimate disposal of all public properties, including real property, in the charge of the AFL. The Chief of Staff of the AFL shall be similarly accountable to the Minister of National Defense for the public property, including real property, held by the AFL.

The Chief of Staff of the AFL shall be accountable for the proper receipt, recording-keeping, disbursement and audit of **public funds** and property in the charge of the AFL. The Chief of Staff of the AFL shall be similarly accountable to the Minister of National Defense for the public funds held by the AFL." Emphasis ours

The records clearly reveal that neither the Chief of Staff nor any members of the AFL High Command were signatories to the AFL Pension Account until the appellants unilaterally, on October 6, 2017, changed the title of the account to AFL Morale and Welfare Account. The account was exclusively controlled by the appellants. The records are devoid of any evidence that the funds were included in the Ministry of National Defense annual budget plan as required by the *Public Finance Management Act Section 23* which provides as follows:

"1. In-year revenue collection and spending will be subject to the preparation of annual plans in the manner and format prescribed in regulations under this Act.

2. The Minister shall require, within thirty (30) working days following the submission of the Proposed Budget to the Legislature, all ministries and heads of Spending Agencies, to prepare and submit to the Ministry, annual spending plans and timing of revenue inflows (in the case of revenue generating entities) broken down by month, which may be revised;"

Now, having convincingly reached the conclusion that the funds lodged in the AFL Pension Account are privately owned by contributing service personnel of the AFL, we shall now proceed to address the first issue.

A scrutiny of the certified records show that the primary defense of the appellants is that the former President instructed them to make the unrelated expenses from the AFL Pension Account. They argued that they acted simply in obedience to the order of the Commander-in-Chief of the AFL, therefore they cannot be made to answer for an "act-of-state". Our search of the law and precedents in this jurisdiction informs

us that the defense pleaded by the appellants appears to be of first impression. A recourse to the common law consistent with long standing practice in this jurisdiction reveals that the “act-of-state” doctrine is the principle that no nation can judge the legality of a foreign country's sovereign acts within its own territory. As originally formulated by the U.S. Supreme Court in 1897, the doctrine provides that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84 (1897). *Black's Law Dictionary, Ninth Ed, page 40.*

Now, we understand from the foregoing articulation of the doctrine that the “act-of-state” defense is not applicable to the facts and circumstances of this case and therefore is not available to the appellants so situated as in this case. However, let us appreciate the angle of the appellants' defense. They argued that the former President of Liberia gave them the instruction to spend the funds. Our search of the records found the evidence unresponsive and unpersuasive. The records show that the two letters dated March 24, 2014 and January 13, 2015, purportedly from the then Minister of State for Presidential Affairs, Dr. Edward B. McClain, Jr. authorizing the co-appellant, J. Brownie Samukai, to spend unspecialized amount for operational expenses of the Ministry of National Defense and US\$50,000.00 as gratuity to the family of the late Major General Abdurahman, a Nigerian Army General who was seconded to Liberia as the Chief of Staff of the AFL, respectively. The purported letters however provided that the amounts expended from the account should be budgeted in the succeeding years, that is, 2015 and 2016. We quote the two letters as follows:

“The Executive Branch
Ministry of State for Presidential Affairs
Executive Mansion
Monrovia, Liberia

MOS-RL/EBM-COS/O240/2014

March 25, 2014

Hon. J. Brownie Samukai
Minister
Ministry of National Defense
Monrovia, Liberia.

Dear Minister:

Re: Approval of the usage of AFL Funds with subsequent reimbursement

The President acknowledges receipt of your letter dated March 20, 2014 (with reference MOD-BJS/EIS-002/RL/14) informing her of the 8% reduction in your proposed budget of 2014/2015 and the challenging impact it will have on her directives and orders for the support and sustenance of AFL missions and national security requirements.

As a direct result of this projected decrease, you are seeking approval to utilize some of the funds out of the AFL Pension and Welfare Fund to support AFL activities and thereby replenish said monies used when replenishment are captured in subsequent budgetary appropriations.

The President interposes no objection in allowing you to withdraw and expend funds for the sustenance of the AFL missions and National Security requirements. Please ensure that withdrawal and expenditure made from said account are captured in subsequent budgetary preparation for the Ministry of National Defense to ensure that the funds are replenished.

Sincerely,
Edward B. McClain, Jr.”

The second letter reads as follows:

“MOS-RL/EBM-COS/0124/2015

January 13, 2015

Hon. J. Brownie Samukai
Minister
Ministry of National Defense
Monrovia, Liberia.

Dear Honorable Minister:

Re: Approval of Death Gratuity to Haji Fatima Wali-Abdurahman

Based on our discussion held with Madam President on the death of the Command Officer in Charge of the Armed Forces of Liberia, MG Abdurahman and consistent with the invaluable services rendered to our Country, your request for death gratuity to his widow, Madam Haji Fatima Wali Abdurahman is hereby approved for USD50,000.00 (fifty thousand USD).

Owing to the fact that there is no money in the budget for such an expenditure, the President understands the importance of the gesture and herein approves said request and notes that reimbursement to the Ministry of National Defense will be requested for by the Ministry in the next budgetary cycle.

Sincerely,
Edward B. McClain, Jr.”

Although the above quoted letters purport to have come from the former Minister of State for Presidential Affairs, Dr. Edward B. McClain, Jr. of sainted memory (he died on Saturday July 23, 2016, about three years before the indictment of the appellants), the appellants did not produce the original copies of these letters and the records is devoid of any showing that the letters were authenticated by authority of the Ministry of State for Presidential Affairs. The veracity of these letters not being established by the authority of Ministry of State for Presidential Affairs, this Court is not inclined to credit the letters as sufficient to exonerate the appellants because they suppose the existence of better evidence. The Liberian law provides that the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence. *Civil Procedure Law Revised Code:1:25.6*

Howbeit, the letters produced by the appellants in support of their defense denote three relevant facts worth noting here: (1) that the purported authorization by the former President was solicited and requested by the Co-appellant Samukai, then Minister of National Defense, (2) that the alleged directives of the former President recognized that the AFL Pension Funds were not intended for the operational use of the Ministry of National Defense, and (3) that the funds lodged in the AFL Pension Account are privately owned, therefore the directive required the appellants to make provisions for reimbursements in subsequent budgetary appropriation for the Ministry, which reimbursements or budgetary allocations for said purpose did not happen.

Assuming that these letters were authentic, was the instruction to expend the service personnel funds lawful? Stated differently, assuming the availability of sufficient evidence that the former President gave the order to expend the service personnel's provident funds outside of its intended purpose; can such order be considered a lawful order? Were the appellants under legal duty to obey such order? We do not think so.

It is the law extant in this jurisdiction that a conduct of a public official is justified when it is required or authorized by: (a) The law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties or (b) The law governing the execution of legal process; or (c) The judgment or order of a competent court or tribunal; or (d) The law governing the armed services in

the lawful conduct of war; or (e) Any other provisions of law imposing a public duty. *Penal Law Revised:5.2* The appellants argued that they acted on the instruction of the former President of Liberia who also happened to be the Commander-in-Chief of the AFL in line with the Executive Law of Liberia and evoke *Section 24.2 of the Executive Law* as follows:

Subject to the authority and direction of the President as Commander-in-Chief, the Minister of National Defense shall have complete authority over the armed forces of Liberia, including all matters relating to their training, operation administration, logistic support and maintenance, development, welfare, preparedness and effectiveness. The President shall however, make all military appointment.

This Court takes judicial notice of the above quoted statute and inquires as to whether the statute also confers on the President the authority to expend funds personally owned by the service personnel in the fulfillment of the obligations spelt out therein? Or does the authority granted under said statute give the Minister of National Defense the authority to expend the soldiers' provident funds without the soldiers' consent? We answer both questions with a resounding no. It is important to note that co-appellant Samukai, in the statement read by him on behalf of the Government of Liberia, admits, under count 4 of the January 18, 2018 press statement *supra*, that "*that all monies spent on military payment welfare should have been handled by and through the government normal budgetary appropriation and not from the AFL welfare account*". This suffice to support the conclusion that the authority of the Minister of National Defense under *Section 24.2 of the Executive Law ibid*, does not extend to the use of private money for the operations, training, administration and other responsibilities given under the statute. So, the admission in the press statement read by the appellants that the unrelated expenses should have been handled through budgetary appropriation convinces this Court that the appellants recognize that the conduct in the instant case was without the pale of the law. It goes without saying that the appellants' defense of acting pursuant to the above quoted statute is also not persuasive. As indicated already, the purpose of the soldiers' provident funds was to benefit service personnel after active duty, cater to disabled members, and pay death benefits to deceased from the rank and file of the AFL. The appellants' conduct not being justified under *Section 5.2 of the Penal Law supra*, we inquire whether the appellants should personally answer to the offenses as charged in the indictment?

To answer the above inquiry, we take recourse to the universal principle of accountability which the framers of our law recognized when they incorporated said principle in the *Code of Conduct Act of 2014* which governs the conducts of all public officials and employees of the Government of Liberia. *Section 3.4 of the said Code* provides as follows:

All Public Officials and Employees of Government shall be held personally responsible and liable, for his or her own acts of commission or omissions, done either mistakenly or deliberately, or which evidence gross negligence or result in substantial damage or injury to the Government and/or against the public interest. All Public Officials and Employees of Government shall obey all lawful instructions issued to him or her by their supervisors and shall decline to obey orders he or she knows or ought to know to be wrong or unlawful.

Now, the compelling answer to the inquiry whether the appellants can be held personally responsible for the offenses charged against them is obviously in the affirmative. Several reasons support this position taken by the Court: (a) this Court has determined that the soldiers' provident funds are private property; (b) that the appellants expended the funds outside the pale of law and (c) that assuming that the former President of Liberia ordered the expenditure on the funds, the order was unlawful. Private property right is constitutionally protected, and the same cannot be flouted except as the outcome of a judicial proceeding. In the instant case, it is abundantly clear that the appellants or the government of Liberia initiated no such proceeding at the time. It is unimaginable that the Government will order such invasion of private property right without the due process of law. To condone this conduct of any public official is tantamount to giving a *carte blanche* to public officials to arbitrarily invade private properties. This Court declines to go down this path of uncertainty and lawlessness.

Relative to the second issue whether the evidence adduced by the appellants established that they expended the unrelated withdrawals from the pension funds for and on behalf of the Government of Liberia, we answer in the negative. As far as the records on appeal are concerned, absolutely there is no evidence on the usage of the unrelated expenses. This Court is of the opinion that it was not sufficient for the appellants to put a defense of being authorized by the former President of Liberia standing alone without producing into evidence, the procurement of the alleged purchase of uniforms, payrolls of employees or service personnel who might have benefited from the salaries or vouchers and other accounting records to substantiate the fact that the expenses went to public use. We note that the appellants have

assigned error to the finding of the trial judge contending that all of the appellee's witnesses with the exception of Augustine Mehn testified that the expenses made by the appellants were not personal expenses. This Court says that the appellants ought to have gone beyond mere argument and produce evidence of the expenses on uniforms, salaries, operations etc. In the absence of these species of evidence, this Court is not inclined to agree with the appellants' contention.

More besides, a microscopic analysis of the unrelated expenses leaves a lot wanting. The two letters of authorization relied upon by the appellants as the basis for the unrelated withdrawals are dated March 24, 2014 and January 13, 2015. The 2014 letter required co-appellant Samukai to ensure that all withdrawals thereunder should be reflected in the succeeding budgetary appropriation; meaning that the authorization was for the fiscal year 2013/2014, considering that our budget year runs from July to June each year. This is more evident by the 2015 letter authorizing the payment related to the death benefit of the late Major General Abdulrahman. Surprisingly however, the appellants made bulk of the unrelated withdrawals in 2016 and 2017. For example, during the fiscal year 2013/2014, the appellants made one unrelated withdrawal from the subject account in the amount of US\$208,656.00. During the fiscal year 2014/2015, the appellants made one withdrawal in the amount of US\$50,000.00. During the fiscal years 2015/2016 and 2016/2017 when there was no authorization from the President, the appellants made seventeen withdrawals totaling the amount of US\$1,000,196.00. Assuming that these letters were genuine or authentic, the question then is what was the authority for the withdrawals in the fiscal years 2015/2016 and 2016/2017, when the bulk of the funds were expended? The only logical conclusion that we discern from the above is that the appellants made the withdrawals without authorization. Considering the above in light of the fact that the appellant produced no evidence to establish that the funds were expended on government's behalf, the reasonable conclusion is that the appellants apply the funds to their own use, and without authorization from the government or the service personnel.

In answering the last issue, we take recourse to the records on review before this Court. The trial judge adjudged the appellants not guilty of economic sabotage and money laundering. By operation of law and practice in this jurisdiction, this ruling of the trial judge is not on appeal. The appellants' appeal is predicated on the aspect

of the trial judge's ruling holding them guilty of theft of property, criminal conspiracy and misuse of public money. The *Penal Law:15.51* provides as follows:

"A person is guilty of theft if he:

- (a) Knowingly takes, misappropriates, converts or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with the purpose of depriving the owner thereof;
- (b) Knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof or purposely deprives another of his property by deception or by threat, or
- (c) Knowingly receives, retains or disposes of property of another which has been stolen, with the purpose of depriving the owner thereof."

The same statute at *Sections 10.4 and 15.81* also provides, respectively as follows:

A person is guilty of conspiracy to commit a crime if, with the purpose of promoting or facilitating its commission, he agrees with one or more persons to engage in or cause the performance or conduct which constitutes the crime, and any one or more of such persons does an act to effect the objective of the conspiracy.

a) If a person that one with whom he agrees or has agreed will agree with another to affect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other identity.

b) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

c) A conspiracy shall be deemed to continue until the crime which is its object is committed or the agreement that it be committed is abandoned by the defendant and by those with whom he conspired. A conspiracy shall be deemed to have been abandoned if no other act to effect its object has been committed by any conspirator during the applicable period of limitations.

A person is guilty of a first degree felony, if he:

(a) Knowingly steals, takes, purloins, or converts to his own use and benefit or the use of another; or without authority, sells, conveys or disposes of any record, voucher, money or thing of value of the Government of Liberia or any Ministry, or Agency thereof, or public corporation, or any property made or being made under contract for the Government of Liberia or any Ministry, Agency thereof or public corporation;

(b) Receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been stolen, purloined or converted;(c) ***Disposes of, uses or transfers any interest in property which has been entrusted to him as a fiduciary, and in his capacity as a public servant or any officer of an institution, in a manner he***

knows is not authorized and that he knows to involve risk of loss or detriment to the owner of the property or to the Government of Liberia or other person for whose benefit the property was entrusted. Emphasis ours

We hasten to recognize the fundamental principle of law which states that a criminal defendant is presumed innocent until the contrary is proved beyond a reasonable doubt. The burden of proof rests on the prosecution. *Bestman v. R. L.*, Supreme Court Opinion, October Term, A.D. 2012, *Corneh et al v. R. L.* Supreme Court Opinion, March Term, A.D. 2014, *Williams v. R. L.* Supreme Court Opinion, March Term, A.D. 2014, *Yeakula et al v. R. L.* Supreme Court Opinion, October Term, A.D. 2014, *Heirs v. R. L.* 39 LLR 50 (1990) However, when the prosecution produced evidence tending to establish the commission or omission of an act which constitutes a crime, the defendant is under obligation to produce evidence to exonerate him from the evidence adduced by the prosecution. *Gardea v. R. L.* Supreme Court Opinion, March Term, A.D. 2014, *Fallah v. R. L.* Supreme Court Opinion, March Term, A.D. 2011, *Swary v. R. L.* 15 LLR 149 (1963) In the instant case, the prosecution or appellee established, by the evidence, that the AFL Pension Account was created at the Ecobank Liberia Limited; that the funds deposited in the said account were compulsory contributions by the personnel of the AFL; and that the purpose of the account was for the benefits of retired service personnel after active duty, cater to disabled soldiers and deceased members' families; but that contrary to these stated purposes, the appellants dipped into the account and expended US\$1,147,656.35 unrelated to the purpose and without the consent and acquiescence of the contributing personnel of the AFL. On the other hand, the appellants have not denied the species of evidence adduced by the appellee, but contended that the unrelated spending from the account was authorized by the former President of Liberia for the purpose of maintaining the AFL. This Court has determined that the purported order was without the pale of the law.

The appellants also contended that the repayment of the US\$460,000.00 to the account of the soldiers by the appellee is a testament of the fact that the appellee has acknowledged that the appellants did not expend the funds for personal use. However, recourse to the records again show that appellants' subpoenaed witness, Dr. Samora P. Z. Wolokolie, Deputy Minister of Finance for Fiscal Affairs testified and we quote the following:

"Q. Mr. Witness, you identified the said documents and make specific reference to the allotment from the Ministry of Finance, I pass back to

you marked D/6 in bulk of 3 and request you to tell the court what is the import or the effect or the result of that allotment in relation to the request that was made for payment by the Ministry of Defense to the Ministry of Finance?

A. Your Honor, at the receipt of the request coming from the Ministry of National Defense, the Ministry of Finance proceeded in line with its budget execution process and with advice from the National Security [Council] of the Government of Liberia to make payments to the Ministry of National Defense in the amount of USD460,000.00. The background surrounding the authorization for this payment needs to be noted. Monies collected and deposited from soldiers of the AFL and deposited into the AFL Contributor Fund, had been used up by the Ministry of National Defense prior to our ascendency at the Ministry of Finance. Those very soldiers not having access to their funds at the time those funds were needed and due, were placing pressure on the government, insuring threat of demonstration and reminding the government been a government of continuity of its obligation to be due the payments[;] growing out of fear of potential unrest as the result of not actualizing these payment huge officers of the AFL, the Government of Liberia, on advice from the National Security Council, requested and authorized the Minister of Finance to make such payment to the Ministry of National Defense for deposits into the AFL compulsory Contributory Funds, house and resident at ECOBANK Liberia Ltd. It must also be important to note that the Public Financial Management Law (PFM Act) then of 2009, requires that before an account is open for any Government entity or for the use of any government entity, the opening of such account must have the expressed approval of the Minister of Finance and Development Planning. Such process is normally initiated from the office of the comptroller and the accountant of the Republic who first sign on such letter of authorization and it is secondly signed by the Deputy Minister of Fiscal and approved by the Minister of Finance and Development Planning. To the best of our collection, upon the [receipt] of the subpoena and reviewing the files of the Ministry of Finance and Development Planning and through the office of the Comptroller and Accountant General, no such authorization exists or existed for the opening of the AFL Pension Funds at ECOBANK Liberia Ltd."

Essentially, the appellants' subpoenaed witness testified that the payment of the US\$460,000.00 to the AFL Pension Account was borne out of fear that the soldiers' threatened demonstration could lead to unrest. Therefore, on the advice of the National Security Council, the amount was remitted to the account. In other words, the payment of US\$460,000.00 was not an acknowledgement by the appellee that the expenses made against the soldiers' provident funds were made to defray government's obligations. It is important to note that this testimony of the appellants' witness stands unchallenged, un-rebutted and un-refuted. Certainly, in the face of this witness's denial that the government acknowledged the unrelated withdrawals from the soldiers established provident account, and the witness being a government

agent principally responsible for the fiscal affairs of government that the appellants subpoenaed, and in the absence of a declaration of the witness as a hostile witness by the appellants so as to refute his testimony, or the production of rebuttal evidence by the appellants to controvert this denial by the witness and the appellee, reason dictates that such testimony by this government's agent be deemed as a true reflection of the occurrences. Damning testimony against a party by his witness ought to operate against that party. The Liberian evidence law provides as follows:

“Except as to a hostile witness or as otherwise provided by law, a party may not impeach the credibility of his own witness although he may contradict him by the testimony of other witnesses or by documentary evidence. However, a party may request the court to declare his own witness hostile if his testimony is contrary to his earlier statements, inherently impossible, irresponsible, or hostile, or shows that he is biased against such party; if the court grants his request, he may then interrogate such witness as if he had been called as a witness for the other party.” *Civil Procedure Law Revised Code:1:25.19(3)*

Considering the undisputed evidence in this matter coupled with the controlling laws, and considering the ruling of the trial judge after the close of evidence by the parties, we find no justification to disturb the final judgment of the trial court.

The Court notes that the trial judge, in his sentencing of the appellants, sentenced co-appellant J. Brownie Samukai and Joseph P. Johnson to two years imprisonment in the common jail, however, suspending such sentence provided that the named co-appellants elect to retribute the whole or substantial amount of the judgment sum within six months and the balance stipulated to be restituted within twelve months as of this ruling; failure of which they shall serve the full two-year sentence. The Court also notes that the trial judge sentenced J. Nyumah Dorkor to six months imprisonment, which sentence was also suspended provided he restitutes his share of the judgment sum in whole or in substantial part within six months and file a stipulation to pay the balance in the twelve months, failure of which he shall serve the full six months in common prison and make restitution.

The Court says from a review of the records from the court below, the appellants were jointly charged with the commission of the crimes for which they were brought down guilty. In the absence of a showing that the parties' contributions to the commission of the crimes are separable, this Court does not see how the trial judge could determine a higher sentence for some of the appellants and lower sentence for the other. This Court also says that restitution is a part of a sentence and therefore

the appellants are duty bound to retribute the amount withdrawn from the AFL Pension Account without the permission or authorization of the soldiers.

The sentencing as ordered by the trial judge is therefore hereby modified as follows: that the appellants are all hereby sentenced to serve a term of two years each in a common jail. However, the sentences shall be suspended provided the said appellants shall retribute the full amount of US\$1,147.656.35 or fifty percent thereof within the period of six months and thereafter enter appropriate arrangements to pay the remaining portion in one calendar year. Shall the appellants fail or refuse to retribute as stated above, then and in that case, they shall be incarcerated in the common jail and remain therein until the full amount is paid or liquidated at the rate US\$25.00 per month as provided for by law.

WHEREFORE and in view of the foregoing, the final judgment of the trial court is affirmed with modification. The appellants are all hereby sentenced to serve a term of two years each in a common jail. However, the sentences shall be suspended provided the said appellants shall retribute the full amount of US\$1,147.656.35 (One Million One Hundred Forty-Seven Thousand Six Hundred Fifty-Six 35/100 United States Dollars) or fifty percent thereof within the period of six months and thereafter enter appropriate arrangements to pay the remaining portion in one calendar year. Shall the appellants fail or refuse to retribute as stated above, then and in that case, they shall be incarcerated in the common jail and remain therein until the full amount is paid or liquidated at the rate US\$25.00 per month as provided for by law. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor M. Wilkins Wright of Wright and Associates Law Firm and Augustine C. Fayiah of the Galaxy and Associates Law Firm appeared for the appellants. Counsellor Sayma Syrenius Cephus, Solicitor General, Republic of Liberia and Jerry D. K. Garlawolu of the Ministry of Justice appeared for the appellee.