IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2018.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH ….....……...ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III….....….....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….…….ASSOCIATE JUSTICE

Tunde C. Fon, Romeo Clarke, Jr., James E. Potter Kerlie M. Miller, Krushchev Urey, Jr., and Johnson Diggs……Appellants	)	
Versus	)	Appeal
The Republic of Liberia by and through the Management of the United Bank of Africa-Liberia, Limited (UBA), Represented by its President ……Appellee	)	
Growing Out of the Case:	)	Misapplication of Entrusted Property, Criminal Conspiracy
The Republic of Liberia by and through the Management of the United Bank of Africa-Liberia, Limited (UBA), Represented by its President ……Plaintiff	)	Economic Sabotage, Theft of Property, Criminal Solicitation & Criminal Facilitation
Versus	)	
Tonde C. Fon, Rashi R. Chandi Romeo Clarke, Jr., James E. Potter, Kerlie M. Miller, Cheikezie Ibem Boakai Paegar, Patrick K. Manjoe, Khrushchev Urey, Edward Constance, Johnson Diggs, Gerald Wright & Edwin Yeah, Ali Enterprise, Mamawa & Sons, James Adam, Alieu & Sons, Augustine Gaye and Only God Blessings…….Defendants	)	

Heard: April 24, 2018 Decided: August 6, 2018

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The appeal before this Court is an outgrowth of a final guilty judgment rendered on May 24, 2013, by the 1st Judicial Circuit Court, Criminal Assizes "C", against the appellants herein, namely, Tunde C. Fon, Romeo Clarke, Jr., James E. Potter, Kerlie M. Miller, Krushchev Urey, Jr., and Johnson Diggs for the commission of the crimes of criminal solicitation, criminal facilitation, criminal conspiracy, misapplication of entrusted property, theft of property and economic sabotage.

The facts as culled from the certified records show that on April 28, 2011, the appellants along with other Co-Defendants, Rashi R. Chandi, Chileze Ibem, Boakai Paegar, Patrick K. Manjoe, Edward Constance, Gerald Wright, Edwin Yeah, Ali Enterprises, Mamawa & Sons, James Adam, Alieu and Sons, Augustine Gaye and Only God Blessing Business were jointly and severally indicted by the Grand Jury of Montserrado County for the crimes of criminal solicitation, criminal facilitation, criminal conspiracy, misapplication of entrusted property, theft of property and economic sabotage. The six (6) count indictment presented by the Grand Jury is quoted as follows:

“INDICTMENT

COUNT 1

The Grand Jurors for Montserrado County, Republic of Liberia upon their oath do hereby find more probably than not, that the defendants Tunde C. Fon, Freeport, Bushrod Island Branch Cash Officer, Rashi R. Candi, Freeport Branch Operation Manager, Romeo Clarke, Jr., Cash Management, Clerk, James E. Potter, Resident Auditor, Broad Street, Kerlie M. Miller, Ganta Branch Cash Officer, Chikezie Ibem, Ganta Branch Manager, Boakai Paegar, Head Auditor and Investigator, Patrick K. Manjoe, Paynesville Operation Manager, Khrushchev Urey, Freeport Branch Resident Auditor, Edward Constance, Johnson Diggs, Gerald Wright and Edwin Yeah, all of the Ganta Branch, committed the crime of “Misapplication of Trusted Property” a Misdemeanor of the first degree to wit:

1. That at intervening times during and between the period September to December of 2010 or thereabout in the City of Monrovia, Freeport Branch, Bushrod Island, Montserrado County and in the City of Ganta, Nimba County, Republic of Liberia, the defendants as a team through employee to employee relationship and in collaboration with Co-defendants Ali, Enterprise, Mamawa& Sons, James Adam, Alieu & Sons and Only God Blessing with the Republic of Liberia did criminally strategize and purposely, willfully and intentionally steal and misapply funds, principle and interest generated from loans of the United Bank of Liberia (UBA) in the amount of US$1,257,772.00 (United States Dollars One Million Two Hundred Fifty-Seven Thousand Seven Hundred and Seventy-Two), thereby depriving Defendants’ Employer of its much needed resources by conspiring, conniving, facilitating and willfully orchestrating their plan to rob their Employer and the United Bank of Africa (UBA).

2. That Co-defendant Tunde C. Fon, working in the capacity of Freeport, Bushrod Island Branch Cash Officer, of the United Bank of Africa (UBA) used his office to manipulate the system and incorporated Co-Defendants, Rashi R. Chandi, Freeport Branch Operations Manager, Romeo Clarke, Jr., Cash Management, Clerk, James E. Potter, Resident Auditor, Broad Street, Kerlie M. Miller, Ganta Branch Cash Officer, Chikezie Ibem, Ganta Branch Manager, Boakai Paegar, Head Auditor and Investigator, Patrick K. Manjoe, Paynesville Operation Manager, Khrushchev Urey, Freeport Branch Resident Auditor, Edward Constance, Johnson Diggs, Gerald Wright and Edwin Yeah, all of the Ganta Branch, given that all the positions occupied by them were all cash oriented, they began loaning money out to institutions and individuals such as Ali Enterprise, Mamawa & Sons, James Adam, Alieu& Sons and Only God Blessing that facilitated the commission of the crime and thereafter converted interest and principle to their personal use. Moreover, Co-Defendants, Rashi R. Chandi, Romeo Clarke, Jr., James E. Potter, Kerlie M. Miller, Ganta Branch Cash Officer, Chikezie Ibem, Ganta Branch Manager, Boakai Paegar, Head Auditor and Investigator, Patrick K. Manjoe, Paynesville Operation Manager, Krushchev Urey, Freeport Branch Resident Auditor, Edward Constance, Johnson Diggs, Gerald Wright and Edwin Yeah, all of the

Ganta Branch with full knowledge and with the desire to misapply and deprive the Plaintiff of its property (funds) collaborated, participated, facilitated and encouraged each other as Co-Defendants to engage in the commission of the crime of "Misapplication of Entrusted Property".

3. That the acts of the Defendants were calculated and have long existed, as Co-Defendant, Kerlie Miller admitted to being in a cohort with Co-Defendant Fon since 2008 and in some instances, in the event a particular Branch is short of cash as a result of the dubious transactions, money is transferred from another Branch to stabilize the account in an effort to conceal the criminal acts.

4. That the Defendants jointly and severally did steal, take away and misapplied property (funds) of the United Bank of Africa (UBA) in the amount of US$1,257,772.00 (United States Dollars One Million Two Hundred Fifty-Seven Thousand Seven Hundred and Seventy-Two), thereby the crime of "Misapplication of Entrusted Property" the Defendants did do and commit.

5. That a person is guilty of a misdemeanor of the first degree if he disposes of, uses or transfers any interest, in property which has been entrusted to him as a fiduciary, or in his capacity as a public servant or an officer of a financial institution, in a manner that he knows is not authorized and that he knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted. That the act of the defendants is contrary to: 4LCLR Title 26, Section 15.56, and 4LCLR Title 26, Section 2.2 (a, b& e), of the Statutory Laws of the Republic of Liberia, and the peace and dignity of the Republic of Liberia.

6. That in relation to property and services obtains means to get hold of or acquire or bring about a transfer or purported transfer of an interest in the property, whether to the Defendants or another and secure performance thereof.

7. That 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 that 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 an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or another security agreement.

8. Owner means any person, entity or Government with an interest in property such that it is property of another as far as the defendant is concerned.

9. A person engages in conduct purposely if, which he engages in the conduct, it is conscious object to engage in conduct of that nature or to cause the result of that conduct.

10. Deprive means to withhold property or cause it to be withheld either permanently or under such circumstances that a major portion of its

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

11. And the value of the property stolen was US$1,257,772.00 (United States Dollars One Million Two Hundred Fifty-Seven Thousand Seven Hundred and Seventy-Two) or over and the property was acquired or retained to commit a first or second degree Misdemeanor crime.

12. The value of the property shall be the highest value by any reasonable standard, regardless of the Defendants' knowledge of such value.

13. That the Defendants act is contrary to 4LCLR, Title 26, Section 15.51 (a & b) and 4LCLR of the Statutory Laws of the Republic of Liberia and the peace and dignity of the Republic of Liberia.

14. That the Defendants have no affirmative defense.

COUNT 2

And that the Grand Jurors aforesaid upon their oath aforesaid, do hereby say that the defendants aforesaid, conspired and being in charge of the Plaintiff's vaults in several branches in the City of Monrovia, Montserrado County and Ganta, Nimba County used their offices to give out loans and convert interest and principles to their personal use, thereby depriving Plaintiff of its much needed income and that the acts of the Defendants were carried out in concert and with the full knowledge of every defendant. That Defendants, so as to not get caught in their acts were always covering up one another by the transfer of cash from one branch to another to make up for the amount of loan disbursed in the event vault count is scheduled at one of the branches. The Co-Defendants, Employees while even on leave in conjunction with their facilitators were still carrying on their acts given that same was just a scheme that was still into full force and effect. Defendants were no longer taking customers through the regular loan routine but instead through their scheme, so as to profit them and deny the UBA Bank of its needed income in the amount of US$1,257,772.00 (United States Dollars One Million Two Hundred Fifty-Seven Thousand Seven Hundred and Seventy-Two).

15. A Person is guilty of Criminal 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 of conduct which constitutes a crime, and any one of more of such persons does an act to effect the objective of the conspiracy.

16. If a person knows that one with whom he agrees or had agreed with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows other identity.

17. That the act of the defendants is contrary to:4LCLR Title 26, Section 10.4, of the Statutory Laws of the Republic of Liberia, and the peace and dignity of the Republic of Liberia.

18. That the Defendants have no affirmative defense.

COUNT 3

And that the Grand Jurors aforesaid, upon their oath aforesaid, do hereby further say that the defendants for the purpose of effectuating their criminal intent did conspire to sabotage the economic gain of the Private Prosecutor. That the acts of the Defendants were well calculated into a scheme for the purpose of generating interest for themselves rather than their employer, United Bank of Africa (UBA) and that the diversion of Plaintiff's expected income was an attempt to strangulate it economically, amounting to an Economic Sabotage. The Defendants did cause the commission of the crime in violation of the Statute, 4LCR 15.80, Syl. (b) Tunde C. Fon, being the mastermind of the commission of the crime "ECONOMIC SABOTAGE" and with the full knowledge that he (Tunde C. Fon) was threading a dangerous path, began replacing money taken from his vault by asking custodians of other vaults who were part of the conspiracy to send cash to his vault to make up for the ones loaned out to individuals and entities.

19. A Person is guilty of Economic Sabotage if, he knowingly conspires or colludes with another to defraud the Government of Liberia or knowingly makes an opportunity for any person to defraud the Government of Liberia or another.

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

21. That the Defendants have no affirmative defense.

COUNT 4

And that the Grand Jurors aforesaid, upon their oath aforesaid, do hereby further say that the defendants for the purpose of effectuating their criminal intent did conspire to commit the crime of "Theft of Property". That the acts of the Defendants were well calculated into a scheme for the purpose of generating interest for themselves rather than their employer, United Bank of Africa (UBA) and that the diversion of Plaintiff's expected income and principle was an unauthorized conversion of Plaintiff's property into their personal use. That the Defendants did knowingly cause the commission of the crime of "Theft of Property" given that the property or money which is subject to this matter was not Defendants' but rather Plaintiff's. Tunde C. Fon, being the mastermind of the commission of the crime "THEFT OF PROPERTY" and with the full knowledge that he (Tunde C. Fon) was threading a dangerous path, began replacing money taken from his vault by asking custodians of other vaults who were part of the conspiracy to send cash to his vault to make up for the ones loaned out to individuals and entities.

22. A Person is guilty of "Theft of Property" if, he knowingly takes, misappropriate, 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;

23. If a person knows that one with whom he agrees or has agreed with another to effect the same objective, he shall be deemed to have agreed

with the other, whether or not he knows other identity. *See 4LCR, Section 15.51*

COUNT 5

And that the Grand Jurors aforesaid, upon their oath aforesaid, do hereby further say that the defendants for the purpose of effectuating their criminal intent did induce others to engage into acts which are felonious, thereby depriving the private prosecutor of its much needed income. That the Defendants, so as to ensure a complete network and coordination amongst themselves, began soliciting accomplices to obtain their desired result. That the act of persuading another for the purpose of committing a crime or attempting to commit a crime is "Criminal Solicitation" a violation of the New Penal Code of the Republic of Liberia, specifically, 4LCR, Section 10.2 (1,2&3).

24. A Person is guilty of "Criminal Solicitation" if, he commands, induces, entreats, or otherwise attempts to persuade another person to engage in conduct which if committed would be a felony, whether as principal or accomplice, with the purpose of promoting or facilitating the commission of that crime, and under circumstances strongly corroborative of that purpose;

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

COUNT 6

And that the Grand Jurors aforesaid, upon their oath aforesaid, do hereby further say that the defendants for the purpose of effectuating their criminal intent did induce others to engage into acts which are felonious, thereby depriving the private prosecutor of its much needed income. That the Defendants, so as to ensure a complete network and coordination amongst themselves, began soliciting accomplices to obtain their desired result. That the act of persuading another for the purpose of committing a crime or attempting to commit a crime is "Criminal Solicitation" a violation of the New Penal Code of the Republic of Liberia, specifically, 4LCR, Section 10.2 (1,2&3).

Offense. A person is guilty of criminal facilitation who, believing it probable that he is rendering aid to a person who intends to commits a crime, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony. This Section does not apply person who is either expressly or by implication made not accountable by the Statute defining the felony facilitated or related Statute.

It is no defense to a prosecution under this Section, that a person whose conduct the Defendant facilitated has be acquitted, has not been prosecuted, has been convicted of a different offense, is immune from prosecution or for some other reason cannot be brought to justice.

That the Defendants have no affirmative defense.

Wherefore, the Grand Jurors aforesaid, upon their oath aforesaid, do hereby say that the defendants aforesaid, and in the form and manner

> aforesaid did criminally, recklessly and purposely commit the crime of "Misapplication of Entrusted Property", the defendants aforesaid, did do and commit, contrary to the Statutory laws of the Republic of Liberia and against the peace and dignity of the State in such cases made and provided.
>
> That the Defendants acts are contrary to 4LCR, Title 26, Section 15.56, 4LCR Title 26, Section 10.4, 4LCR, Title 26, Section 15.80, 4LCR, Title 26, Section 15.51 and 4LCR Title 26, Section 10.3 of the Statutory Laws of the Republic of Liberia and against the peace and dignity of the Republic of Liberia."

On March 14, 2013, the State entered *nolle prosequi* in favour of co-defendant Boakai Paegar who subsequently became a witness for the State. Thereafter, on March 18, 2013, the State entered a second *nolle prosequi* in favour of co-defendant Edwin Yeah but unlike Boakai Paegar, Edwin Yeah did not testify on behalf of the State. This Court will not delve or question the State's motives for entering *nolle prosequi* in favour of these two co-defendants., reason being that the Supreme Court has held that "*the State is not required to state any grounds or reason for entering a nolle prosequi in favour of any one or several accused persons and that no court can or should question the State for entering a nolle prosequi in favour of any one or several accused persons." Sirleaf v. Republic,* Supreme Court Opinion, March Term A.D. 2012. Therefore we hold that the *nolle prosequi* being a prerogative of the State and the State alone same will not be reviewed by this Court.

On March 20, 2013, upon a motion filed by co-defendant Rashi Chandi requesting for separate trial, the trial court granted same and also upon subsequent motions, granted severance in favour of Patrick K. Manjoe, Edward Constance, Ali Enterprise, Mamawa & Sons, James Adams, Alieu & Sons, Augustine Gaye, and Only God Blessings Business all of whom evoked their constitutional rights to trial by jury. The remaining appellants namely, Tunde C. Fon, Romeo Clarke, Jr., James E. Potter, Kerlie M. Miller, Krushchev Urey, Jr., and Johnson Diggs waived their rights to trial by jury, upon being arraigned, thus commencing their bench trial.

The State produced four regular and two rebuttal witnesses who substantially testified to the allegations stated in the above quoted indictment. The appellants thereafter testified making general denials to the allegations in the indictment and the testimonies rendered by the State's witnesses.

On May 24, 2013, upon attending to the testimonies and the totality of evidence adduced by both the State and the appellants, the trial court rendered a guilty judgment against the appellants ruling, *inter alia*, that the State sufficiently proved the charges in the indictment beyond all reasonable doubt and that voluntary statements of the appellants, admitting to the charges, were sufficient proof showing that they were guilty of the crimes as charged. The relevant portion of the May 24, 2013, final ruling is quoted herein below, to wit:

"<u>Final Ruling</u>

> "…From a careful analysis of the indictment against the above named defendants and after due consideration of the facts, circumstances and/or pieces of evidence adduced during trial of these proceedings, the issue that presents itself for the resolution by this Court is whether or not the State has established beyond all reasonable doubt that the afore named defendants are

guilty of the crimes as contained in the indictment? To answer this issue, we shall review some provisions of our statute. Chapter 2, Section 2.1 of the Criminal Procedure Law found on page 308 of 1LCLR provides that "a defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal". By reasonable doubt it means that doubt that prevents one from being firmly convinced of a defendant's guilt, or a belief that there is a real possibility that a defendant is not guilty" (Black's Law Dictionary Abridged 8th edition). Therefore in deciding whether guilt has been proved beyond a reasonable doubt the Court must begin with the presumption that the defendant is innocent. By entering a plea of not guilty, the defendants put into issue every element of the crime charged, and therefore the prosecution has the burden of [proving] each element of the crime beyond a reasonable doubt. To logically make a determination of the guilt or innocence of the defendants, the elements of the crimes must be identified and inquiry must be made by reviewing the evidence in order to determine whether or not the prosecution has met the test and/or duty of establishing their case beyond reasonable doubt. The indictment charges the defendants with the commission of Misapplication of entrusted Property, Criminal Conspiracy, Economic Sabotage, Criminal Solicitation, Criminal Facilitation and Theft of Property. These crimes are provided for and defined by our PENAL STATUTE at 4LCLR, Title 26: sections 15.80; 15.56; 15.51(a & b); 10.2; 10.3; and 10.4.

Our Penal Code, Chapter 15, Sec. 15.51 (a & c) define theft of property as follows: A person is guilty of theft if he/she: (a) knowingly takes, misappropriates, converts, or exercise unauthorized control over, or makes an unauthorized transfer of an interest in the property of another with the purpose of depriving the owner thereof; and (c) knowingly receives, retains, or disposes of property of another which has been stolen, with the purpose of depriving the owner thereof. The same Penal Code at 10.4, defines criminal conspiracy as: a person is guilty of criminal 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 of conduct which constitutes the crime, and any one or more of such persons does an act to effect the objective of the conspiracy.

A careful analysis of the averment contained in the indictment indicates that the defendants are alleged to have knowingly conspired and stolen the amount of US$1,257,772.00 from the coffers of the Private Prosecutor, with intent to deprive said Private Prosecutor. In committing the said act, the within named defendants developed a scheme where the normal banking practices, which allow the cash management team to take cash to various branches, were bypassed by the defendants, allotting said responsibility to themselves rather than the bank. By this means, any branch manned by these co-conspirators could take cash from their respective branches to any other branch manned by them to cover up shortages in another.

The evidence produced by the State in support of this averment was testimonies of an insider and investigators, and written statements of the defendants. More besides, some of the testimonies of some of the defendants

strongly support the averments in the indictment and statements said to be made by them during the investigations. These species of evidence produced by the Prosecution, in the mind of the Court, were not challenged and or overcome by the defendants except for raising issue of denial of Miranda rights and challenges to the competence of one of the investigating institution to investigate the species of crime charged; as such the prosecution met the test of the burden of providing its case as charged. Our law provides that: the burden of proof rests on the party who alleges that fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party." Chapter 25 of 1LCLR, Sec. 25.5,

In the instant case, when the Prosecution rested with these high grades of evidence, the defendants took the stand and said nothing to the contrary, the question therefore is, has the Prosecution proof its case?

During arguments before this court counsels for the defendants strenuously argued that the prosecution's case is based upon inadmissible evidence. They attempted to impressed upon the mind of this court that not only did the prosecution failed to acquaint the defendants of their Miranda rights which is guaranteed by law; but also that the NSA lacks the legal competence to have investigated these defendants.

The Constitution of this Republic at Chapter III Article 21(c) provides as follow: "Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel…." This Constitutional provision is re-echoed in our Criminal Procedure code. The question than is whether there is evidence that these defendants were not acquainted with these rights during their interactions with the police. According to the prosecution, all of the defendants were adequately acquainted with their rights. The defendants' position is that they were not so acquainted. The court says that no direct evidence was produced by either party in support of their respective position. The court will therefore have to rely upon circumstantial evidence in this regard.

Assuming then that these statements were extracted from these defendants outside the pale of the law, when was the appropriate time to have raised objection to them. Certainly, to the mind of this court the appropriate time would have been as soon as practically possible. The court observed that according to the testimony of the defendants these investigations were conducted since November of 2010 and the indictment that brought the defendants before the court was filed with the court since April 28, 2011. More besides according to the defendants own testimonies one of the counsels currently representing the defendants temporarily appeared at one of the investigation venue. The question than is why did the defendants not raised this issue until now during the trial? Persuasive in this regard is Chapter 11; Section 11.10 of the Criminal Procedure Law captioned Motion for Return of Property and to suppress evidence. It is provided thereunder at

sub-paragraph 3 as follows: *Time limitations on making of motion.* The motion shall be made before the trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial. In the instant case it is not the position of the defendants that "opportunity" to move for the suppression of the evidence did not exist before trial, or that the defendants were "not aware of the grounds for the motion" since they were represented by counsel. The court says therefore that it will be an abuse of discretion for the court to now entertain the objection of the defendants at this time.

On the issue of the competence of the NSA to conduct investigation in this matter, the court says that the evidence relied upon by the Prosecution is not limited to that of the NSA. The Evidence from the NSA was in addition to other evidence. More besides as stated hereinabove this objection is not timely interposed.

The answer is a resounding yes that the Prosecution has established a prima facie case that the defendants conspired to commit the crime as charged as contained in the indictment. This Court is therefore reluctant in the wake of the species of evidence produced by the Prosecution, to allow the defendants to be acquitted.

To the mind of this court the case at bar involves Economic concerns that would have a grave effect on national security as the bank, in this case UBA or other banks funds could be completely depleted and depositors who are citizens and foreigners would obstruct normal functions until and unless appropriate redress is given. The illegal entry into the bank's vault and taking funds therefrom has grave economic and security concerns for the nation. In the mind of the Court and coupled with the fact that the report was forwarded to the Minister of Justice, the National Security Agency acted within its statutory authorities, limits and therefore the statements of admission by the defendants are an integral part of the case. Additionally, the Liberia National Police interrogated and investigated some of the defendants and their testimonies complimented statements made at the NSA.

The prosecution produced besides the investigators and an insider (Boakai Paegar), the head of audit who succinctly narrated what transpired in addition to the statements of the defendants where one co-defendant made statement the involvement of the other. There is no doubt, the State established its case beyond reasonable doubt.

Wherefore and view of the above this court hereby adjudge the defendants Tunde C. Fon, Romeo Clarke, Jr., James E. Potter, Kerlie Miller, Krushchev Urey, Jr., and Johnson Diggs individually GUILTY of the commission of the Crimes of Misapplication of Entrusted Property, Theft of Property, Criminal Conspiracy, Economic Sabotage, Criminal Conspiracy, Criminal Solicitation and Criminal Facilitation. In view of the above, the above named defendants are hereby individually sentenced to five (5) years imprisonment in the common jail of the Republic to commence immediately. They are further ordered to restitute the full amount of (US$1,257,772.00) and (L$230,000.00) being amounts stolen from the vault and misapplied, within the period of six (6) months as of the date of this JUDGMENT. The Clerk

is also ordered to issue the appropriate precept committing the defendants to prison consistent with law. AND IT IS HEREBY SO ORDERED."

The appellants excepted to the above quoted ruling, announced an appeal therefrom and on June 3, 2013, filed a four (4) count bill of exceptions which was approved by trial judge. On June 17, 2013, the appellants perfected their appeal by filing and serving a notice of completion of the appeal thus according the Supreme Court the requisite jurisdiction to review the appeal. The four (4) count bill of exceptions which contains the appellants' objections and challenges to the entire trial proceedings that culminated into a guilty judgment against them is quoted herein below as follow:

"BILL OF EXCEPTIONS

Defendants being dissatisfied with Your Honor's final judgment rendered on the 24th day of May, A.D. 2013 against them hereby tendered the followings as their Bill of Exceptions and respectfully requests Your Honor to approve same to enable the Honorable Supreme Court of the Republic of Liberia sitting in its October Term, A.D. 2013 to hear and review the final judgment rendered by Your Honor for the followings reasons to wit:-

1. That Your Honor erred when at the call of the trial on March 20, 2013, the defense counsels spread a motion on the minutes of court to dismiss the charges levied against the defendants contending they were invited to the National Security Agency's Office in Mamba Point and were not acquainted with their rights as provided by Article 21 Subsection (c) of the Liberian Constitution of January 6, 1986. The statements made by the defendants were hand written and void of acquainting them of their rights but said motion was denied, with Your Honor contending that the proper remedy available to the defendant or the accused in that instance was a motion to suppress the evidence obtained, and not a motion to dismiss the indictment based on the same. The court says therefore the co-defendants have not stated any legal grounds based upon which this court can proceed to order the indictment dismissed. The court further observes that the indictment, subject of the motion was drawn, served on the defendant and the defendants were thereby brought under the jurisdiction of this court. The court says that from the service of the indictment on the defendants up to the point at which the defendants pleaded thereto, the defendants did not raise the issue as to the manner which these statements were obtained from them. The court therefore says that joining issue with the state by entry of the plea to the indictment, the issue of whether or not the statements were obtained without the defendants being advised of their constitutional rights becomes an issue of the trial; since in fact and indeed this matter has already been assigned for trial on today's date. The court therefore says that the application of the co-defendants being unmeritorious, the same is hereby ordered denied and this matter ordered proceeded with consistent with the notice of assignment. And it is hereby ordered. See sheets 5-10 of 28th day jury sitting, March 20, 2013.

2. Your Honor also erred when the defendants testified to the effect that while at the Government of the Republic of Liberia's security apparatus, they were not acquainted with their constitutional rights but were asked to make statements. Co-defendant Khrushehve B. Urey, Jr., while on stand testifying on his own behalf said he would not make any statement in the absence of his counsel and security officers told him it was minor and he did not make any statement on the 22nd. He remained in the custody of the police at the Freeport Police Station and left the following day at 1:00 P.M. The police still insisted he needed no lawyer because they wanted to do the investigation in the absence of lawyers and if they refused, they will remain in jail and they were forced to write the statement. The prosecution never rebutted the allegations made against the Freeport Police Deport. Contrary to principles when a party fails to rebut an allegation made against him, it is deem admitted and Your Honor in your ruling give credence to the prosecution's when you said "The evidence produced by the state in support of these averments were testimonies of an insider and investigators, and written statements of the defendants. More besides, some of the testimonies of some of the defendants strongly support the averments in the indictment and the statements said to be made by them during the investigations. These species of evidence produced by the prosecution in the mind of the court were not challenged and or overcome by the defendants except for raising issue of denial of Miranda rights and challenges to the competence of one of the investigating institutions to investigate the species of crime charged; as such the prosecution met the test of burden of proving its case as charged. Our law provides that: the burden of proof rests on the party who alleges that fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disapproved by that party.

3. That Your Honor also erred, when you failed to give judicial cognizance to a copy of the Honorable Supreme Court of the Republic of Liberia's opinion during the March Term, A.D. 2009 in the case: CeceNetty-Blanquett of Banjor Versus The Government of the Republic of Liberia through the Ministry of Justice, Circuit Judge J. Boima Kontoe, Assigned Circuit Judge, Criminal Court "C", First Judicial Circuit for Montserrado and Milton Taylor, Stipendiary Magistrate, Monrovia City Court was given you since the issue was raised during the trial, the aforesaid opinion is not yet published. The said opinion stated that the National Security Agency's functions are to develop plans, collect, analyze and disseminate overt political, economic, culture and sociological intelligence for the Republic of Liberia, provide all possible adequate protection of the Government and the people of the Republic of Liberia against subversion, espionage, sedition, adverse propaganda and sabotage and not clothed with authority to investigate theft related matter. You refused to give credence to the said opinion in your ruling and said "To the mind of this court the case at bar involves economic concerns that would have a grave effect on national security as the Bank, in this case UBA or other bank's funds could be completely depleted and depositors who are citizens and foreigners would obstruct normal functions until and unless appropriate redress is given. The illegal entry of the bank's vault and taking funds therefrom has grave

economic and security concerns for the nation. In the mind of the court and coupled with the fact that the report was forwarded to the Minister of Justice, the National Security Agency acted within its statutory authority, limits and therefore the statement of admission by the defendants are an integral part of the case. Additionally, the Liberia National Police interrogated and investigated some of the defendants and their testimonies complimented statements made at the NSA."

4. That the entire judgment of His Honor is contrary to the weight of evidence adduced at the trial primarily because the prosecution did not present any audit report rather the audit report presented by the appellant/defendant did not show any misconduct, shortage or otherwise, therefore the judgment was in error for which a review is sought to correct same.

WHEREFORE AND IN VIEW OF THE FOREGOING, Defendants prayed Your Honor to approve their Bill of Exceptions to enable the Honorable Supreme Court of the Republic of Liberia review the final judgment rendered by you during the February Term, A.D. 2013 of said correct."

A review of the entire bill of exceptions quoted *supra*, shows that the appellants raised four (4) major contentions to have the final judgment of the trial court reversed. In count one (1) of the bill of exceptions the appellants contend that the trial judge erred when he denied their motion to dismiss the indictment or the charges levied against them. The reasons provided by the appellants for their motion to have the indictment dismissed was premised on the allegation that they were not accorded their constitutional rights when they appeared at the National Security agency (NSA) and that the judge erred by ignoring this fact when he denied their motion to dismiss the indictment. In count two (2) of the bill of exceptions, the appellants asserted that they were not acquainted with their constitutional right to remain silent; their constitutional right not to produce incriminating evidence against themselves and their constitutional right to counsel at every stage of a criminal investigation. The appellants alleged that in violation of these rights, agents of the National Security Agency (NSA) and the Liberia National Police coerced them to make statements without their lawyer being present and that all the voluntary statements were illegal evidence and should not have been allowed to be placed into evidence. In count three (3) of the bill of exceptions, the appellants assigned as error the fact that the NSA lacks the authority to investigate crimes of misapplication of entrusted property and other theft related offenses. In count four (4) of the bill of exceptions the appellants basically contend that the final judgment of the trial court does not conform to the weight of the evidence as the State did not produce any audit report incriminating them, but that that they the appellants presented an audit report which show no misconduct or shortage.

These contentions raised by the appellants in their four (4) count bill of exceptions present only one issue for the disposition of this appeal which is whether or not the State established the appellants' guilt beyond all reasonable doubt.

The Court in answering this lone issue shall proceed by addressing the appellants' contentions raised in the bill of exceptions in the order of their presentment. As to count one (1) of the bill of exceptions the appellants contend that the trial judge erred when he denied their motion to dismiss the indictment or the charges levied against

them. The reasons provided by the appellant for the dismissal of the indictment was premised on the allegation that they were not accorded their constitutional rights when they appeared at the National Security agency (NSA) and that the judge erred by ignoring this fact when he denied their motion to dismiss the indictment.

We take recourse to the applicable statute and case laws regarding an indictment and the dismissal thereof.

Our Criminal Procedure Law Rev Code, 2:18.1 provides that:

> "the prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal."

Also, section 18.2 of the same Law, states that:

> "unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense. Unless good cause is shown, a court shall dismiss an indictment if the defendant is not tried during the next succeeding term after the finding of the indictment. A court shall dismiss a complaint charging a defendant with an offense triable by a magistrate or justice of the peace if trial is not commenced in court in response to a summons or notice to appear.

The Supreme Court has held that "the prosecution may request the dismissal of an indictment if there is no evidence or insufficient evidence to convict the defendant, or if material defect in the prosecution of the indictment is discovered." *Republic v. Baily*, 31 LLR 443, 449 (1983).

The records show that the indictment charging the appellants for the commission of the crimes of criminal solicitation, criminal facilitation, criminal conspiracy, misapplication of entrusted property, theft of property and economic sabotage, specifically alleged that the crimes were committed; that the indictment was presented to the grand jury for Montserrado County and that a true bill was issued and signed by the foreman of the grand jury for Montserrado County. The indictment charging the present appellants is in conformity with section 14.3 of the Criminal Procedure Law and the Opinions of the Supreme Court.

The Criminal Procedure Law, Rev Code 14.3 provides thus:

> **"Form of indictment.**
> *1. Requirement of writing; content; sufficiency.* An indictment shall be in writing and shall:
> (a) Specify the name of the court in which the action is triable and the names of the parties;
> (b) Contain in each count a statement that the defendant has committed a crime therein specified
> by the number of the title and section of the statute alleged to have been violated, and described by name or by stating so much of the definition of

the crime in terms of the statutory definition as is sufficient to give the defendant and the court notice of the violation charged;
(c) Contain in each count a plain, concise and definite statement of the facts essential to give the defendant fair notice of the offense charged in that count, including a statement, if possible, of the time and place of the commission of the offense, and of the person, if any, against whom, and the thing, if any, in respect to which, the offense, was committed. An indictment shall not be held insufficient because it contains any defect or imperfection of form which does not prejudice a substantial right of the defendant upon the merits.

2. Signing. An indictment shall be signed by the foreman of the grand jury and by the prosecuting attorney. No objection to an indictment on the ground that it was not signed as herein required may be made after a motion to dismiss or a plea to the merits has been filed.

3. Method of designating the defendant. The defendant shall be designated by his true name, if known, and if not, he may be designated by any name by which he can be identified with reasonable certainty. If in the course of the proceedings the true name of the defendant designated otherwise than by his true name becomes known to the court, the court shall cause it to be inserted in the indictment and in the record, if any, and the proceedings shall be continued against him in his true name.

4. Incorporated by reference. Allegations made in one count may be incorporated by reference in another count.

5. Allegations in the alternative. Facts which are not essential to give the accused fair notice of the offense charged may be alleged in the alternative.

6. Surplusage. Unnecessary allegations may be disregarded as surplusage. On motion of either party such allegations may be stricken from the indictment."

The Supreme Court Opinion states that:

> "the indictment must be presented to some court having jurisdiction of the offense stated therein and that it alleges specifically that the crime was committed within the jurisdiction of that court; second, that it appears to have been found by the grand jury of the proper county or district; third that the indictment be founded on a true bill and signed by the foreman of the grand jury; fourth, that it be framed with sufficient certainty, for which purpose the charge must contain a certain description of the crime or misdemeanour of which the defendant is accused, as well as a statement of the facts which constituted it." *Republic v. Brown,* 15LLR 199 (1963); *Saye et al., v. Republic,* Supreme Court Opinion March Term, A.D. 2016; *Gardea v. Republic, Supreme Court Opinion, March Term, A.D. 2014.*

This Court says that the indictment being in conformity with the relevant Statute and case laws cited *supra,* and the appellants not having included in the motion any challenge as to the validity of the indictment or addressed the charges contained therein, but moved for its dismissal only on the basis that they were not accorded their constitutional rights when they appeared at the National Security agency (NSA) is not ground for the dismissal of an indictment as provided for by law. The quoted Statute and case laws clearly specify the form and the grounds for the dismissal of the indictment or charges, and the reason advanced by the appellants for the dismissal of the indictment, being inapplicable, we hold that the trial judge

committed no error in denying the motion to dismiss the indictment or the charges against the appellants. Moreover, a dismissal of the indictment against the appellants in this case on one or all of the grounds provided in the Statute would have been procedurally ineffectual as same would not have constituted a bar to subsequent prosecution pursuant to Section 18.3 of the Criminal Procedure Law which allows for the dismissal of an indictment or a complaint and that such a dismissal is not a bar to subsequent prosecution for the offenses set forth in the indictment, when a jury has not been impanelled and sworn and before the trial court in a bench trial begins to hear evidence. Also, in such instance, double jeopardy will not attach. Thus, there are no legal or factual grounds for the dismissal of the indictment against the appellants, and we so hold.

We shall now attend to the second contention of the bill of exceptions, wherein the appellants asserted that they were not acquainted with their constitutional right to remain silent; their constitutional right not to produce incriminating evidence against themselves and their constitutional right to counsel at every stage of a criminal investigation; that in violation of these rights, agents of the National Security Agency (NSA) and the Liberia National Police coerced them to make statements without their lawyer being present and that all the voluntary statements were illegal evidence and that the trial judge should have denied them being admitted into evidence by the State.

The State for its part denied these allegations, contending that agents of the police and the NSA did accord the appellants their rights to counsel throughout the entire investigation and that the appellants waived said rights and decided to make voluntary statements.

The records show that at the commencement of the investigation into this case, all the defendants including the appellants appeared at the NSA for interrogations. The appellants alleged that while before the NSA they were threatened with incarceration for refusal to make statements. There is no evidence in the records showing that the appellants were detained at the NSA. The records show that all the defendants inclusive of the appellants appeared at the NSA at several intervals; that Counsellor Nyenati Tuan, represented co-appellant Tunde C. Fon at the NSA, but the co-appellant Tunde C. Fon alleged that Counsellor Tuan was allegedly told to leave by agents of the NSA. We wonder why Counsellor Nyenati Tuan, a member of the Supreme Court Bar, a seasoned legal practitioner, would consent to such illegal directive from agents of the NSA and neglect to pursue the appropriate legal redress to have his client fully represented. It is incomprehensible to note that Counsellor Nyenati Tuan who also represented the appellants in the court below would raise this issue in the bill of exceptions knowing fully well that he did not produce any evidence to prove his alleged eviction at the NSA, neither did he take the witness stand to testify to corroborate and substantiate this allegation by his client who even included same in his testimony.

The records show that thereafter, the Liberia National Police also conducted a separate investigation into this case before us wherein three (3) of the defendants, co-appellant Tunde C. Fon, co-appellant Khrushchev Urey and Rashi C. Chandi were cited for investigation. The Police interrogative form annexed to the charge sheet show that these (3) co-defendants in responding to questions indicated in their

individual form expressly waived their rights to a lawyer; that there was no evidence of coercion or threats and that they voluntarily made their statements. The voluntary statements made at the police station being relevant to this appeal are quoted herein below to wit:

"TUNDE C. FON VOLUNTARY STATEMENT

I am Tunde C. Fon, a resident of ELWA, Robertsfield highway. I am a banker by profession, who got employed with the United Bank of Africa (UBA, Liberia) in July 2008. I once taught at the Polytechnic and also worked with the National Elections Commission (NEC).

Presently, I work as Cash Officer at the Bushrod Island Branch. My responsibilities include cash control and tellers. In cash control, I bring out cash and have same distributed among the tellers. At the end of the day, they (tellers) balance their books and report to me cash in their possession and I remit same back to the vault.

The vault has two (2) keys and they are controlled by two (2) persons, namely – the Cash Officer and the Branch's Operation Manager. The keys are kept with the consent of two (2) alternative tellers. This is done just in case one of the two (2) persons in custody of the keys falls sick, he or she would designate someone form amongst the tellers in order to keep the job going.

The branch keys are kept with me and our present Operation Manager, Rashi Chandi. Rashi Chandi, Operation Manager, UBA Bushrod Island Branch was transferred some two months ago to our branch.

On Monday, November 22, 2010, our Internal Auditors or audit team headed by Julius Peagar went in my absence and conducted a spot check at my Branch. As a result of the spot check, they reported that there was a shortage USD908, 000.00 (Nine Hundred Eight Thousand United States Dollars.

I have made a listing of individuals who I gave out loan to on my own without the bank's authorization and same is filed with my boss, Mr. Anthony Wilson, the fourth person in command at UBA, Liberia. I have decided to collect these loans given out in order to have the bank's cash remitted. I personally gave out these monies alone without the input of any teller at the bank.

SIGNED: Tonde C. Fon
DATE: November 25, 2010"

"RASHI R. CHANDI VOLUNTARY STATEMENT

Being the Branch Operation Manager, I am charged with the responsibility of operating the second combination of the vault. However, during the morning meetings or when I am sick or need to rush somewhere urgently I designate Elijah, the Teller at the Branch, to perform my role in opening the second combination of the vault. As such, many days he [Elijah] and the cash officer (Tunde Fon) normally open the vault. On November 22 as I approach the Branch I saw that my cash officer was being rush to the hospital because of high pressure…On that same day I also received auditors from the Head Office who came to check my vault along with the resident auditor. Due to the cash officer absence I designated another Teller called Kwamie Arthurs to go along with me and the auditors. During the money check [vault count] and after the last count, we noticed that there was shortage of US $908,000.00

for which I know of only US $50,000.00 which was given to Mr. Losseni Lomar to be returned December 3, 2010. The remaining US $858,000.00, I know nothing of and it can be attached to my cash officer Tunde Fon.

Signed: Rashi R. Chandi
Date: November 24, 2010

KHRUSHCHEV UREY VOLUNTARY STATEMENT

I only know that on November 22, 2010 at about 11:30a.m, I went to the vault along with the Head of Audit and the Branch Operating Manager (Rashi Chandi) to do spot-check in the vault at which time the amount of cash present was less than the actual amount in the system. The amount short was US $908,666.00 and LD $230,900.00. From this point at about 7:45p.m to 8:00pm three staff were asked to come to the Police Headquarter at which time we were asked to remain until today for this Statement.

Additional Statement

On November 16, 2010, mid-month cash count was done and same agreed with the system. Also at the end of the day, November 19, 2010, an end of day movement to the vault was done and it agreed with the system but the cash book was not updated.

Signed: Khrushchev Urey
Date :November 23, 2010

The above quoted voluntary statements were subsequently admitted into evidence after Alieu M. Bility and Emmanuel Jlikon, investigators/detectives of the Crime Service Section of the Liberia National Police had rendered testimony to same. Thereafter, the appellants denied the validity of their statements by merely alleging that they were intimidated by the police and coerced to make these voluntary statements. Co-appellant Khrushchev Urey who was investigated by the police testified as follow:

> "…I got at the police station at 7:00 am and they [the police] asked us to make statement but I told them that I could not make any statement in the absence of my lawyer. They [the police] said that the [case] was minor. [But], I did not make any statement on the 22nd and I slept in jail at the Freeport police station. I later left the police station at 1:00pm the next day. They [the police] still insisted that we needed no lawyer because they wanted to do the investigation in the absence of our lawyer, and that we should make statement. We insisted on not making [any] statement but they [the police] said if we refuse, we will remain in jail and that they will keep us underground. So we were forced to do what we did at the police station…"

In addition to the above, co-appellant Tunde C. Fon, who was also investigated by the police, provided similar narration as co-appellant Khrushchev Urey by testifying as follows:

> "…I was not given my legal rights. My counsellor came to the police station but he was told to leave by State securities and bank officials [on the basis] that the bank was going to conduct its own investigation and amicably resolve the situation. I was intimidated at the police station where I was not

> acquainted with my rights; I did not write because I did not have a lawyer, rather the police officer wrote my statement but I did not sign same."

These testimonies of the appellants quoted *supra,* show that the appellants were fully knowledgeable about their constitutional rights to a lawyer given the fact that they requested to have a lawyer present; that they, the appellants, had the opportunity to contact their lawyer or ensure the presence of their lawyer, as they were allowed to leave the police premises, some of them even returning to work at the private prosecutrix Bank. The appellants testimonies that they were allegedly threatened and compelled to make statements is interesting, as we wonder why they would incriminate themselves in said statements. It is one thing to be threatened but another where one would include such intimate and confidential information regarding themselves and that are only knowledgeble to the one making the statement.

Further, this Court says if the appellants' allegations were true and authentic then it was the responsibility of the appellants' lawyers, especially Counsellor Nyenati Tuan, who was fully aware of these alleged violations to have prevented the appellants' voluntary statements from being admitted into evidence by availing himself of the applicable remedy available to him. If the appellants or their lawyer were convinced that indeed the appellants' rights were violated, or that they, the appellants were coerced in making statements, the lawyer representing the appellants should have moved to suppress the State's evidence on the basis that same were illegally obtained. The appellants' lawyer should also have ensured that the trial court conduct a hearing to investigate the legality or illegality of the State's evidence and then have the said evidence expunged or excluded from the trial proceedings by filing the requisite motion, if there were sufficient reasons to believe that the State had illegally obtained their confession.
A Motion to suppress evidence is a request made to the trial court to prohibit the introduction of illegally obtained evidence at a criminal trial and it is made by setting forth allegations of relevant factual issues with clarity and specificity. A motion to suppress evidence is generally filed prior to trial, and failure to do so will constitute a waiver of the right to make such a request, although the court, for cause shown may grant relief from the waiver. A defendant who is aware, before the commencement of trial, that the State is in possession of questionable evidence that it intends to introduce at trial and fails to have the said evidence suppressed before the commencement of trial will be deemed to have waived his right to suppression of evidence. 29 Am Jurd 2d, Evidence, § 653-654, Black's Law Dictionary 9th Edition.

We hold that because the appellants failed to pursue this course for relief articulated herein above this Court cannot accept the appellants' mere allegations that the voluntary statements were obtained by means of coercions. We also hold that given the fact the appellants had sufficient knowledge of the State's evidence, that is, the voluntary statements which they were aware existed, and then neglected to have the said evidence traversed and suppressed by the trial court, such wilful and deliberate neglect is tantamount to a waiver.

We shall now address count three (3) of the bill of exceptions which the appellants assigned as error to their conviction the fact that the NSA lacks the authority to investigate crimes of misapplication of entrusted property and other theft related offenses and have relied on and cited the case *Netty-Blanquett v. Republic,* Supreme Court Opinion, March Term, A.D. 2009. This Court observed that in the *Netty-*

Blanquett case, the Supreme Court warned the NSA to engage only in conduct expressly defined and authorized by law. The Supreme Court held:

> "Nowhere in the establishing statute is the National Security Agency authorized to be in the business of going after stolen properties which, as in the instant case. This is more so where there is no showing that property (ies) being searched for bear on matters of intelligence and national security. Nor was there any evidence that NSA was requested by the Minister of Justice to apply for this warrant of search and seizure as a special assignment, allowed under the statute. The Act creating NSA is its full and complete authority. As any national security and law enforcement agency of the state, the legal competence and authority of NSA and its conduct are strictly limited by the statute creating it. As in the case at bar, where a law enforcement entity, or security agency engages in conduct not expressly its authorized function by law, such conduct, whenever properly questioned, risks being declared by this Court, without hesitations, as *ultra vires*."

We affirm and confirm the above Opinion of the Supreme Court on the statutory scope of the NSA authority but hold that this principle of law enounced in the *Netty-Blanquett case* is inapplicable to the present case because unlike the *Netty-Banquett* case where the NSA was investigating stolen lab-tabs and jewels confiscated from one Cece Netty-Banquett, this present case presents a more distinct characteristics in that one of the crimes for which the appellants were convicted is economic sabotage, a crime that has serious ravaging effect on the nation's revenue and the financial stability of the country. This conclusion is premised on the fact and we take judicial notice thereof, that the Government of Liberia receives and disburse revenue through all commercial banks licensed by the Central Bank of Liberia and that these commercial banks are stake-holders or partners with the Central Bank of Liberia in ensuring the nation's financial stability and fiscal operations and as such financial crimes orchestrated on a commercial bank form which revenue is received and disbursed is a grave threat to the Government's monetary and fiscal stability. Given the peculiar nature of the crime of economic sabotage which could have devastating financial and political effect at the detriment of the Liberian Government, we hold that pursuant to Section 2.52 of the Executive Law, which provides that the NSA "*shall collect analyse and disseminate overt political, economic, cultural and sociological intelligence for the Republic of Liberia,"* the NSA did have the authority in the instant case to investigate the alleged crime of economic sabotage perpetuated at the UBA as same if left unchecked would have an adverse effect on the banking sector and the economy.

We shall now address the fourth and last contention of the bill of exceptions. As earlier stated, the appellants in count four (4) of the bill of exceptions basically contend that the final judgment of the trial court does not conform to the weight of the evidence adduced by the State and as the State did not produce any audit report incriminating them, and that they, the appellants presented an audit report which show no misconduct or shortage at the private prosecutrix Bank.

A review of the records in light of this contention shows that the State produced its *nolle prosequi* witness, Mr. Boakai Paegar, the Head of Audit and Investigation at the UBA who testified that on November 21, 2010, he, proceeded to the Bushrod Island branch and conducted a vault-count at the said branch, and during said

exercise, discovered that the amount of US $900,000.00 (Nine Hundred Thousand United States Dollars) was missing from that branch's vault; that he prepared an internal audit report to this effect and submitted same to his boss who immediately notified the NSA and the Liberia National Police. We observed that although witness Paegar testified to the internal audit report showing shortages in the bank's vault, this Court having done due diligence to the certified records have been unable to find the internal audit report which witness Paegar testified to have prepared and submitted to his boss showing the alleged shortage in the amount of US $900,000.00 (Nine Hundred Thousand United States Dollars).

This Court says that the internal audit report which derived from a vault-count at the UBA sub-branch being significant, would have afforded this Court of last resort the clarity on the alleged financial shortages, the bank's financial balances prior to and after the alleged shortages and the policy relative to the auditing of the bank's vault. Absent this internal audit report for this Court's perusal, it is deprived of a clear appraisal on the method of the amount of cash kept in the vault at all times and is also unable to verify or authenticate the assertions regarding shortages in the amount of US $900,000 (Nine Hundred Thousand United States Dollars) at the UBA sub-branch. In view of afore stated, this Court cannot provide any definitive analysis on the events from the bank that give rise to these proceedings neither, can we say with absolute certainty that the State met the burden of proof when the internal audit report is absent from the records.

Notwithstanding the above, our analysis stated *supra,* should not be misconstrued that there was no internal audit exercise conducted on the bank's vault at Bushrod Island or the non-existence of the said internal audit report. To the contrary, we believe that such an internal audit does exist as the appellants themselves acknowledged that an internal audit exercise was conducted at the UBA sub-branch when they testified that the vault count conducted by Witness Boakai Paegar was irregular. The testimonies by the appellants leave no doubt in our minds that indeed an internal audit was conducted; that an internal audit report was prepared thereafter.

Still addressing count four of the bill of exceptions, the appellants have also alleged that an independent auditing firm, VOSCON Inc., conducted an audit on the bank and that the said audit show no misconduct or shortages. This Court having perused the certified records discovered that the audit report being alluded to by the appellants was prepared by an independent audit company called VOSCON Inc. In fact, the said audit report was hastily submitted into evidence without the appellants providing testimony as to same or obtaining the testimony of authorities from VOSCON Inc., the authors and whom are properly situated to provide the best evidence to said report.

This Court says that the admission into evidence of the VOSCON Inc., audit report was a reversible error committed by the trial court in that the audit report was admitted into evidence without the testimony from VOSCON Inc., the competent witness to provide the best testimony, explaining the contents of the said report. The Civil Procedure Law Rev Code 1:25.6 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. In addition, the fact that the appellants only identified the report by its cover but failed to provide detailed explanation on the contents of the said report shows that the appellants did not fully appreciate the said document and as such they were not qualified to testify to same and that said report should not have been admitted into evidence without the requisite testimony. Black's Law Dictionary 9th Edition defines testimony as "evidence that a *competent witness* under oath or affirmation gives at trial or in an affidavit or deposition; it is the process by which a competent witness under oath give evidence or bear witness."

The Supreme Court has held that:

> " a trial court should not pass on documentary evidence not testified to by witnesses marked by the court, confirmed and admitted into evidence and that a judge cannot base his ruling on documents not formally admitted into evidence. *The Heirs of the Late Jesse R. Cooper et al., v. The Augustus W. Cooper Estate et al.,* 39LLR 750(1999)" [Citations]

In consonance with the above cited Supreme Court Opinion(s), we hold that given the fact the appellants only identified the report by its cover page, plus the fact that they failed to demonstrate knowledge of the content of said report, which would have qualified them as competent witnesses, this Court cannot give credence to the appellant's testimony regarding the audit report and the admission of same into evidence.

The VOSCON audit report, like the internal audit report, is cardinal to the final determination of this case. But as stated herein regarding the absence of the internal audit report, also, the absence of the testimony of the appropriate authority, the authors of the VOSCON report providing comprehensive insight into the contents, findings and conclusions reached therein, this Court cannot definitively make a determination of the appeal, especially noting that both audit reports cover the period during which the alleged crime is said to have been exposed.

The Supreme Court has held that all criminal cases tried in our courts are governed by the rules of best evidence and burden of proof, enounced in chapter 25 of the Civil Procedure Law. As provided for therein, no evidence is sufficient which supposes the existence of a better and superior evidence; that the best evidence which the case admits of must always be produced, with the caveat that the burden of proof rests on the party who alleges a fact and in criminal cases, it is the State which carries the burden of proof. *Civil Procedure Law,* Rev. Code 1:25.5; Id. 25.6; *Davies v. Republic, 40 LLR 659 (2001); Okrasi v. Republic,* Supreme Court Opinion, March Term, A. D. 2009; Sirleaf v. Republic, Supreme Court Opinion, March Term, A. D. 2012; *Bestman v Republic of Liberia,* Supreme Court Opinion, October Term, A. D. 2013.

In applying the law on the production of the best evidence to the present appeal, the records show that the evidence adduced by all the parties is inadequate to allow for a just determination thereon. The State failed to produce the internal audit report testified to by one of its witness, which report derived from a vault-count revealing that there were shortages of cash at the UBA sub-branch on the Bushrod Island. On the other hand, the appellants in their attempt to rebut the evidence by the State also failed in their testimonies to allow for the VOSCON audit report to be admitted into

evidence, both audit reports which we deem crucial to a final determination of the appeal.

Given that the production of evidence is cardinal in the determination of a cause, the Supreme Court will not affirm a judgment from a lower court or tribunal in the absence of said necessary evidence. *Taylor v. Worrel et al.*, 3LLR 14, 18 (1928).

Wherefore and in view of the foregoing, the judgment of the trial court is reversed and this case is remanded with mandate to allow the parties present proper and adequate evidence necessary to enable this Court make a fair and just determination in the event of a subsequent appeal. The Clerk of this Court is hereby ordered to send a Mandate to the court below to resume jurisdiction over this case and give effect to this Opinion. Costs to abide final determination. It is hereby so ordered.

Judgment reversed, case remanded

When this case was called for hearing, Counsellor Charles W. Abdullai of the Watch Law Chambers, Inc., appeared for respondent/appellant. The Solicitor General, Counsellor J. Darku Mulbah, and Counsellors Cornelius F. Wennah and Jerry D.K. Galawulo of the Ministry of Justice appeared for the movant/appellee.