

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC  
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2021

**BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....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**

Salah Farhat and Tamer Farhat, of the City of Monrovia, Liberia )  
.....Appellants )

Versus )

APPEAL )

The Republic of Liberia by and thru Tayo Motors, represented by )  
Ezzat Eid of the City of Monrovia, Liberia.....Appellee )

GROWING OUT OF THE CASE : )

The Republic of Liberia by and thru Tayo Motors, represented by )  
Ezzat Eid of the City of Monrovia, Liberia.....Plaintiff )

Versus )

) THEFT OF PROPERTY /  
) MISAPPLICATION OF  
) ENTRUSTED PROPERTY  
) CRIMINAL  
) CONSPIRACY

Salah Farhat and Tamer Farhat, of the City of Monrovia, Liberia )  
.....Defendants )

Heard: November 11, 2020

Decided: August 25, 2021

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case is on appellate review before the full bench of the Honorable Supreme Court of Liberia, as an outgrowth of the final ruling of His Honor Yamie Quiqui Gbeisay, Sr., presiding by assignment over the First Judicial Circuit, Criminal Assizes “C” for Montserrado County, Republic of Liberia, on April 6, 2020, ruled and adjudged the appellants/defendants, Salah Farhat and Tamer Farhat, guilty of the commission of the crimes of theft of property, misapplication of entrusted property and criminal conspiracy, and ordered the appellants to reconstitute the amount of One Million, Three Hundred Seventy Thousand, Three Hundred Ninety United States Dollars (US\$1,370,390.60) and Sixty Cents to the private prosecutor, Ezzat Eid, following a regular bench trial. The counsel for the defendants noted

exception and announced an appeal to the Supreme Court sitting in its October Term 2020. The court, after a pre-sentencing investigation report submitted by the Probation Services of the Ministry of Justice, sentenced the co-appellant, Salah Farhat, to five years imprisonment and Tamer Farhat, one year imprisonment on April 24, 2020. Counsels for the parties both noted exceptions to the ruling on the sentencing.

The records in this case as transcribed to this Court set forth the following facts: On February 27, 2019, the appellants were indicted by the Grand Jury of Montserrado County for allegedly committing the crimes of money laundering, theft of property, misapplication of entrusted property and criminal conspiracy. The four-count indictment alleged that the appellants conspired, received, concealed and laundered an inflow of funds in the amount of One Hundred Sixty-Three Thousand, Four Hundred Fifty-Eight United States Dollars (US\$163,458.78) and Seventy-Eight Cents for Tayo Motors, Liberia, to establish the Cedar Motors, Inc., his own company; that the appellants knowingly increased their monthly salaries from Two Thousand United States (US\$2,000.00) Dollars and One Thousand United States (US\$1,000.00) Dollars, respectively, to Five Thousand United States (US\$5,000.00) Dollars and Two Thousand United States (US\$2,000.00) Dollars, respectively, thus accruing to themselves the total amount of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Five United States (US\$127,455.00) Dollars for the period February 1, 2016 up to and including February 28, 2018; that during the same period, the appellants willfully stole and exercised unauthorized control over the amount of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars and deposited said amount into the account of co-appellant, Salah Farhat at the Ecobank; that co-appellant, Salah Farhat, in order to perpetuate theft, conspired and willfully changed the position of co-appellant, Tamer Farhat, from Assistant Manager responsible for sales to the position of Financial Manager, a new position created without the knowledge of the private prosecutor, Ezzat Eid, the majority interest owner in the partnership, and several other unauthorized business transactions carried out by the appellants to the detriment of the partnership.

The records further show that predicated upon the indictment, a writ of arrest was issued on February 27, 2019, and placed in the hands of the Sheriff of Criminal Court "C" to have the defendants arrested in respect of the averments contained in the indictment and on the selfsame day, the defendants were arrested and detained at the Monrovia Central Prison. On November 26, 2019, the prosecution filed a motion to amend the indictment drawn against the defendants on February 27, 2019. Given the reasons for the amendment of the indictment, the movant/plaintiff averred that "having carefully reviewed the facts and circumstances in the species of evidence available, especially evidence discovered subsequent to the indictment referred to above, it is prudent and juridical to amend the indictment to exclude the charge of Money Laundering; as the elements of the crime of Money Laundering are not visible and present according to the facts and circumstances available to movant/plaintiff".

The amended indictment sent forth to the Grand Jury of Montserrado County, upon oath finds the defendants, Salah Farhat, Managing Partner of Tayo Motors, and Tamer Farhat, an employee of Tayo Motors, with criminal minds, purposely, knowingly, willfully and intentionally, committed the crimes of theft of property, misapplication of entrusted property and criminal conspiracy in the following manner:

That between February 1, 2016 up to and including February 28, 2018, the defendants, Salah Farhat and Tamer Farhat, increased their monthly salaries from Two Thousand United States (US\$2,000.00) Dollars and One Thousand United States (US\$1,000.00) Dollars, respectively, to Five Thousand United States (US\$5,000.00) Dollars and Two Thousand United States (US\$2,000.00) Dollars, respectively, thus accruing to themselves and depriving Tayo Motors of the amount of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Five United States (US\$127,455.00) Dollars; that during the same period, co-appellant, Salah Farhat, exercised unauthorized control over and converted the cash amount of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars of the partnership fund and deposited same into his personal account at Ecobank, the same bank the partnership, Tayo Motors, has its account as evidenced by the Ecobank's statements of account; that Tayo Motors' records show that Salah Farhat converted funds for the partnership in the amount

of Two Hundred Seventy-Eight Thousand, Seven Hundred Sixty-Four United States Dollars (US\$278,764.58) and Fifty-Eight Cents to his personal use and charged those expenses to the account of the partnership without the knowledge of the private prosecutor, Ezzat Eid, the majority owner of the partnership; that co-appellant Salah Farhat unilaterally used Thirty-Six Thousand United States (US\$36,000.00) Dollars of Tayo Motors' funds to pay his lease on a property owned by him as an annual rent for a period of seven (7) years, totaling Two Hundred Fifty-Two Thousand United States (US\$252,000.00) Dollars without the consent of the private prosecutor, Ezzat Eid; that in addition to his lease payment from the entity's funds, Salah Farhat used Fourteen Thousand, Four Hundred United States (US\$14,400.00) Dollars of Tayo Motors' funds annually over a period of seven (7) years for two technicians in the employ of Tayo Motors for using a portion of the house used by him, Salah Farhat, and for which he already had Tayo Motors paid the rent without authorization thus depriving the partnership the total amount of Two Hundred Sixty-Six Thousand, Four Hundred United States (US\$266,400.00) Dollars.

The amended indictment furthered that when the private prosecutor, Ezzat Eid, became suspicious of the illegal operations of co-appellant Salah Farhat, managing partner and minority owner of Tayo Motors, that private prosecutor contacted ENAG Consulting and Auditing Firm on April 5, 2018, to conduct an audit on the operations of Tayo Motors but Salah Farhat refused to cooperate with the auditors; that also, on September 20, 2018, when the auditing firm contacted the co-appellant for the same purpose, for the second time, he refused to cooperate; that as a consequence of Salah Farhat's refusal to submit to audit, and in an effort to assert his rights to, and protect his 65% interest in Tayo Motors, the private prosecutor, Ezzat Eid, replaced his agent, Amer A. Assaf, caused him to sign a "Statement of Unconditional and Irrevocable Sale, Relinquishment and Transfer of Share/Partnership Interest" on March 17, 2018, in consideration of the nominal amount of One United States (US\$1.00) Dollar; that on the same date, the private prosecutor had co-appellant, Salah Farhat signed similar "Statement of Unconditional and Irrevocable Sale, Relinquishment and Transfer of Share/Partnership Interest", in consideration of Eighty-Five Thousand United States (US\$85,000.00) Dollars, thus making Ezzat Eid the sole owner of Tayo

Motors; that prior to the private prosecutor, Ezzat Eid, taking over the Tayo Motors as the sole owner, and that while co-appellant Salah Farhat was still managing partner with 35% interest, he, Salah Farhat, used inflow of funds for Tayo Motors in the amount of One Hundred Sixty-Three Thousand, Four Hundred Fifty-Eight United States Dollars (US\$163,458.78) and Seventy-Eight Cents for Tayo Motors to establish for himself and co-defendant, Tamer Farhat, another company called Cedar Motors, Inc., to engage in the importation, sale and distribution Chinese manufactured vehicles in Liberia (the exact business Tayo Motors was and is engaged in); that while Salah Farhat served as managing partner of Tayo Motors, the Liberian Senate, a credit customer, paid to Tayo Motors Sixteen Thousand United States (US\$16,000.00) Dollars as a result of court action but there is no account of said amount in the books of account of Tayo Motors.

The amended indictment also read that subsequent to the acquisition of sole ownership of the partnership of Tayo Motors, it was discovered that on September 29, 2014, a bill of sale from Tayo Motors was made out to co-defendant Salah Farhat for a double cabin pickup truck (engine #: 04062119, serial # LJ11PABC3DC086286, color: white). Subsequently, a bill of sale, dated December 24, 2015, for the same vehicle was made by co-appellant Salah Farhat to Mr. Clarence Momolu, and for which subsequent sale, the aforesaid Mr. Clarence Momolu issued a promissory note to co-appellant Salah Farhat for the amount of Twenty-Two Thousand United States (US\$22,000.00) Dollars but no funds for this transaction were accounted for in Tayo Motors' accounts, which means the proceeds of this transaction were converted to Salah Farhat's personal use; that is was also discovered that books for Tayo Motors show several self-dealings between Tayo Motors and co-appellant Salah Farhat (35% owner of Tayo Motors and managing partner of the partnership enterprise) evidenced by several bills of sale for vehicles for which no financial benefit inured to Tayo Motors as follows:

<u>Date</u>	<u>Vehicle type</u>	<u>Engine</u>	<u>Serial #</u>
04 April 2014	JAC D. Cab pickup	04062186	LH11PABC9DC086289
29 Sept. 2014	JAC D. Cab pickup	04062119	LJ11PABC3DC086286
03 Dec. 2014	JAC D. HFC1027	D4091854	LJ11PABC8EC085832
06 Jan. 2016	JAC D. HFC1027	E4605589	LJ11PABC0FC080139
03 Oct. 2016	JAC D. Cab HFC1037	G410972	LJ11PABC6GC012790
Undated	JAC Dump Truck/ HFC3072	unknown	LJ11PABC6GC013790

That subsequent to the acquisition of sole ownership of the partnership of Tayo Motors, it was also discovered that Tayo Motors obtained a judgment against Urban Builders, Inc. for non-payment of invoice and in enforcement of the aforesaid judgment an auction sale of one (1) DAF Dump Truck and two (2) JAC dump Trucks were conducted by the court. Co-defendant Salah Farhat, had S. Dargbe Sirboe, his houseboy, bid for and purchased the vehicles as the auction sale for Ten Thousand United States (US\$10,000.00) Dollars which funds were owned by Tayo Motors; and co-appellant Salah Farhat issued a receipt for the same amount and deducted from the account with Urban Builders, Inc. with Tayo Motors the aforesaid amount of Ten Thousand United States (US\$10,000.00) Dollars leaving a debit balance for Urban Builders, Inc. with Tayo Motors in the amount of Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars on December 13, 2014. Then on March 1, 2017, Urban Builders, Inc.'s account with Tayo Motors was credited with the equivalent amount of the debit balance Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars and brought to zero balance, records of the transaction removed from Tayo Motors' computer system, and there is no evidence of any funds inuring to Tayo Motors; that also subsequent to private prosecutor Ezzat Eid's acquisition of sole ownership of Tayo Motors, it was discovered that two (2) open checks were received by Tayo Motors from Land and Housing Development, Inc. on 05/01/2014 against sale invoices #SI-00234 and SI-00235. Two checks (#s: 00344378 and 2265549) in the amount of Twenty-Three Thousand United States (US\$23,000.00) Dollars; each check was issued by Land Housing Development, Inc., drawn on Guaranty Trust Bank (Liberia) Limited and First International Bank, respectively, against payment for the invoices. Also, three (3) cash payment vouchers nos. 430, 432 and 432 from Land Housing Development, Inc. dated 05/05/2014 for Six Thousand United States (US\$6,000.00) Dollars were made against sale of a pick-up truck. This total amount of Sixty-Four Thousand United States (US\$64,000.00) Dollars is not reflected on the bank statements of Tayo Motors Liberia.

That also following the acquisition of sole ownership of Tayo Motors by the private prosecutor, Ezzat Eid, it was discovered that the First International Bank check no.

2267123 as payment against MAK Group Inc.'s account for sale of vehicle pursuant to invoice no. SI-00080 in the amount of Seventeen Thousand United States (US\$17,000.00) Dollars, but the receipt is issued by co-appellant Tamer Farhat in his own name, not in the name of Tayo Motors; and there is no showing of this payment in the bank records of Tayo Motors; that also subsequent to private prosecutor Ezzat Eid's acquisition of sole ownership of Tayo Motors, it was discovered that a Global Bank (Liberia) Limited check no. 00193670 in the amount of Eighteen Thousand United States (US\$18,000.00) Dollars was paid by the West African Examination Council in the name of co-appellant Salah Farhat for vehicle purchased from Tayo Motors, but said amount is not reflected in the bank records of Tayo Motors; that also subsequent to private prosecutor Ezzat Eid's acquisition of sole ownership of Tayo Motors, it was further discovered that three (3) post-dated Ecobank Liberia Limited checks (no. 2684379 dated 28 Dec. 2013, in the amount of US\$5,000.00; no. 2684380 dated 31 Jan. 2014, in the amount of US\$5,000.00; and no. 2684381 dated 28 Feb. 2014, in the amount of US\$4,000.00) paid by Arc Investment, Inc. against sale of vehicle by Tayo Motors pursuant to invoice no. SI-00732 dated 26 Nov. 2013; but none of these checks was deposited into Tayo Motors' account at any bank; that it was discovered purchased of a used Tayo 4X4 pick-up truck (engine no. 00302206D, serial no. HFWW1199) from Chain Business Center by use of Tayo Motors' funds in its account at Ecobank Liberia Limited though the issuance of a check no. 2189566 in the amount of Twelve Thousand United States (US\$12,000.00) Dollars; but there is no other record for the said pick-up truck in the inventory of Tayo Motors.

The amended indictment continued that also subsequent to private prosecutor Ezzat Eid's acquisition of sole ownership of Tayo Motors, it was discovered that an International Bank (Liberia) Limited check no. 0425627/000258 in the amount of Twenty Thousand United States (US\$20,000.00) Dollars paid by Association of Evangelicals of Liberia for the purchase of a vehicle from Tayo Motors, but said check is issued in the name of co-defendant Tamer Farhat; and there is no evidence of the deposit of that money into Tayo Motors' bank account; that it was also discovered that an invoice no. SI-00010 in the amount of Eighteen Thousand, Eight Hundred Ninety-Six United States Dollars (US\$18,896.73) and Seventy-Three Cents, dated 06 Jan. 2016, in the name of co-appellant Salah Farhat as cash customer of

Tayo Motors, but on the accounting invoice for Tayo Motors, the invoice is edited to the amount of Sixteen Thousand, Six Hundred Seventy-Eight United States Dollars (US\$16,678.11) and Eleven Cents on 02 Feb. 2016; that also following the acquisition of sole ownership of Tayo Motors by the private prosecutor Ezzat Eid, it was discovered that evidence of the final judgment of the Commercial Court of Liberia in favor of Tayo Motors against International Construction & Engineering, Inc. in the amount of Eighty-Eight Thousand, One Hundred Seventy-One United States (US\$88,171.00) Dollars; which final judgment was executed against International Construction & Engineering, Inc. by the auction of the judgment debtor's vehicle (2012 Nissan, X-Trail SUV, engine no. 28163A, Chassis no. 251181). On 1<sup>st</sup> February 2016, Mr. Joseph Fayah, a mechanic, was used by co-appellant Salah Farhat to bid for the vehicle for Three Thousand, Five Hundred United States (US\$3,500.00) Dollars using funds owned by Tayo Motors; and on 18<sup>th</sup> February 2016, said Joseph Fayah sold the aforesaid Nissan vehicle to co-appellant Salah Farhat in his personal capacity. There is no record of the sale proceeds in Tayo Motors' bank records.

It was also discovered that after the private prosecutor Ezzat Eid acquired sole ownership of Tayo Motors, co-appellant Salah Farhat "sold" a JAC HFC1037 pick-up truck on 27/11/17 to Tayo Motors for the amount of Seventeen Thousand, Seven Hundred Twenty-One United States (US\$17,721.00) Dollars which should have been a new brand of the vehicle. Instead, co-appellant Salah Farhat later delivered to Tayo Motors' inventory a used JAC HFC1037, which he had originally "purchased" from Tayo Motors on 06/10/16 for the amount of Fourteen Thousand, Three Hundred Seven United States (US\$14,307.00) Dollars; that the aggregate sum of money and value of property which the appellants/defendants conspired to defraud, cheat, steal and deprive private prosecutor Ezzat Eid and Tayo Motors of, and have defrauded, cheated, stolen and deprived private prosecutor Ezzat Eid and Tayo Motors of and misappropriated while such funds and properties were in their custody and under their control is One Million, Six Hundred Sixty-Three Thousand, One Hundred Eighty-Six United States Dollars (US\$1,663,186.58) and Fifty-Eight Cents. All of which movant/plaintiff stands ready to prove beyond doubt.

The amended indictment concluded that, a person is guilty of theft if he: knowingly takes, misappropriates, converts or exercises unauthorized control over, makes and unauthorized transfer of an interest in, the property or another with the purpose of depriving the owner thereof, or knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof or purposely depriving another of his property by deception or by threats; 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 whose benefit the property was entrusted; and that a person is guilty of conspiracy, a crime if, with the purpose of promotion or facilitating its commission, he agrees with one or more persons to engage in or cause the performance of conduct which constitute the crime, and any one or more of such persons does an act to effect the objective of the conspiracy.

On February 27, 2020, trial commenced in earnest after all the pre-trial formalities were concluded by the court. The prosecution produced three (3) witnesses, namely: Ezzat Eid, the principal witness, Wael Hariz and Eric Nagbe. The State's first witness, the private prosecutor, Ezzat Eid, testified thus:

"I trusted Mr. Farhat and his son because of our long standing friendship. Beside the business, I served as a head of the Lebanese Community and Mr. Farhat was working with me on the standing committee for almost 12 years. We built a good relation. Even Your Honor if you can allow me to say that his home town and my home town, there is about 25 to 30 miles distance in Lebanon. Because of our strong relationship, he bought two properties from me in my home town and apartments, one for him and one for his son, Mr. Tamer Farhat in order to continue our cordial relationship.

But after almost 2 and half years, Mr. Salah Farhat and Tamer Farhat, his son, running the affairs of the Tayo Motors Liberia, they did not even account to me of my 65% partnership. So, one time I think June or July or 2013, I called Mr. Farhat and I told him, my friend, what happen to my yearly dividend of my 65% partnership because I really need some money like partial payment of my dividend for the 2 and half years you been managing you and your son. He said I do not have any money in the business because all of our money stocked in receivable; people owe us but I have some personal money; it depends on how much you need

and I said between 40 and 50 thousand then he said I will give a personal cheque of US\$45,000.00 and I will pay myself when I collect some receivables. I innocently accepted it not knowing at that time that Mr. Farhat had another personal account with Ecobank side by side with the company account – Tayo Motors and he was criminally mixing and linking the two accounts in Ecobank account but not the account he gave the US\$45,000.00 from, it was from GT Bank or other bank but not from Ecobank that what makes me not to suspect at that time that he was not doing anything wrong. But later if he had deposited the saves and the collected receivables in the account of Tayo Motors Liberia, I am quite sure that at that time lot of money should be in the Tayo Motors Ecobank account.

So, in 2017, November and December, I suspected something going on and I found out that my agent was not following the operation of the Tayo Motors and also I saw several Tayo Motors vehicles (JAC) running the streets of Monrovia and since he paid me the US\$45,000.00 and partial payment of my dividend in 2013, he never report or account to me on the operation of Tayo Motors Liberia while as a managing partner and his son sale and financial manager, I got mad and I called him I said my man, let us get together and valuate the company and see if there is a loss or profit in this business. He came to my office with his son and when I started questioning them, he pretended that he fainted and fall down and he woke up and his son held him and they walked away without any result of our meeting. Then after few days, I called him and told him we must have an audit of this business by calling an audit firm to come and audit this business. He refused completely to submit any document to us or to the auditor for any document to be audited; then, I got mad again and sent my personal auditor, using my majority share of the company, my power having 65% of the partnership as a majority shareholder and sent my son-in-law, Mr. Wall Harris, to go and see what is the outcome of the company's documents, so we know actually what is going on, He went at the beginning, the son, Tamer Farhat was opposed to him to go into the record. But later, Mr. Wall Harris forced himself into the office where he thought all the company's records will be kept. He looked over; he came back to me telling me more of the documents which should be in the company's premises are missing. He only found few documents.

The following day, I went to the Lebanese Embassy; I complained to the Lebanese Ambassador. The Lebanese Ambassador called Salah Farhat and asked him to come to his office. He gave him on the following day, at 4pm to come to the Embassy. At 2:30 of that Wednesday afternoon, the Ambassador called him and Salah Farhat called the Ambassador and cancelled the meeting. Then I told the Ambassador on the phone, because I did not go, and said Mr. Ambassador, we both Lebanese and you are responsible for us; so, please you have to try your utmost best to get us together to solve this problem. He said you are right. Let me call Mr. Salah Farhat tomorrow and I will get back to you. So, he called him on Thursday, and the Ambassador called me back saying I called Mr.

Farhat and made appointment with him to meet at 2: pm on Friday. Then on Friday, 4:pm, the Lebanese Ambassador called me and said your friend cancelled the meeting again so you do not have to come. I said Mr. Ambassador; I am coming myself, even if Sala Farhat will not come. I said to him I am not afraid of Salah Farhat but I am avoiding going to court as head of the Lebanese Community in Liberia for 12 years. I do not want to sue anybody. Then I told him on the other hand, if our foreign ministry knows that we both are fighting in court and you are silent and watching us in court, I do not think it is a good record for your person. So please try one more time and get to Salah Farhat and we should not give up; if we solve the problem it would be good for your name and my name.

Then Saturday morning, the Ambassador again called me and said I got to Mr. Farhat and I think he will come because of the way I spoke to him; then he said he will come on Monday at 4:pm. So, Monday, at 3 pm, the Ambassador called me and told me that Mr. Farhat cancelled the meeting. On Tuesday morning, I took my files in my hands with all the necessary evidence that this man defrauded me with me to the office of the Lebanese Community President, Mr. Ahmed Wazni, and I asked him to call his Standing Committee – there were 16 or 17 persons; they came immediately – all of them and I explained my problem to them and showed them piece by piece of my supporting documents, then I asked them to call Mr. Farhat on the same day while we were there; He did not come. Then the President of the Lebanese Community suggested that we all should go the following day to the Lebanese Embassy and meet the Ambassador again, and we went and I was having the file in my hands as well. So, we had a serious meeting without Farhat because the Ambassador said if we call him he, will not come. We had the meeting without Farhat and they came to the decision; selected a five-man committee from the Lebanese outstanding people – the big people of the Lebanese Community and they wrote a communication with the names of the Arbitration Committee, saying any outcome, decision or solution which will come out of the arbitration committee, I must accept. Also, Salah Farhat must accept, and my name and his name under the signatories. They put my name to sign and his name to also sign, meaning that we have accepted the outcome of the committee”.

At the close of the testimony of prosecution’s first witness, Ezzat Eid, the prosecution’s second witness, Wael Hariz, testified as follows:

“After I departed my share, I did not get involved in the management of Tayo Motors. It was the end of 2017 when Mr. Ezzat Eid started expressing concern about management practice and lack of reporting from Tayo Motors manager. Early 2018, Mr. Ezzat Eid asked me if I can go to Tayo Motors and try to get information on the operation and financial status of the company. Based on Mr. Ezzat Eid’s request, I went to the company premises; I approached Mr. Farhat and asked questions about the financial records of the company. The first relation from the

manager of Tayo Motors was avoiding of answering question and no cooperation in sharing information. It was my persistence request and the voice of my persistency allowed me to have access to the filing cabinet that had some documents in it. From the first look at these documents, I realized that there were no good keeping records for day to day transactions, receipts books vouchers. The book keeping systems practice was not existent. So I reported to Mr. Ezzat Eid saying that in order to have an understanding of the operation of the business, you need to have a professional auditing company to audit the books of Tayo Motors”.

The prosecution’s second witness continued that:

“After going several times to the premises of Tayo Motors and asking the management to have books and records of the company available for auditing, there was no response and no cooperation in providing such documents. When I asked Mr. Salah Farhat about the second document, his reply will be it is with my son, Tamer, and when we ask about the document he will say it is with the accountant. At one point, they said that the documents were with the accountant and the accountant traveled out of the country and carried the documents with him. We tried to access the computer system used when Salah Farhat and Tamer Farhat were at Tayo Motors but we were given limited access. So I came back to Mr. Eid and told him the only way you will understand exactly what the company has and to have full access to the records is, if you will become full owner of the business. This emerged in 2018 and an agreement was reached for Mr. Eid to buy Salah Farhat’s share and the transaction took place on March 17, 2018. After that date, Mr. Eid expressed the need to keep Mr. Tamer Farhat in the company to enable so as to collect all the account receivables that were reported by the previous management of Tayo Motors and the reason behind that is that Tayo Motors’ clients will be willing to pay their debts if they are dealing with Tamer. I asked Mr. Eid what will be the salary for Tamer Farhat, Mr. Eid told me that Salah Farhat was requesting a monthly salary of US\$2,500.00 for his son and Mr. Eid expressed to me that this is a high increase from the US\$1,500.00 that he used to take but he is willing to accept that for the month of April to allow the process of collection of debt and sharing of financial information to take place in a smooth manner.

When I interacted with Tamer and Salah Farhat regarding this issue, Tamer requested for his compensation for 2018 and mentioned that he needed to travel to Lebanon. I discussed his request with Mr. Eid and Mr. Eid replied that he will pay him what he was requesting but before he travels, Tamer needs to facilitate and work with the auditor to audit the books of Tayo Motors. So I prepared the document that titled: “compensation benefit for the period of January 1, 2018 up to April 2018” that will give Mr. Tamer one month equivalent of salary and two vacation with the value of what we agreed on which was his salary for April. I signed the document and left it with the accountant at Royal Grand Hotel for Tamer to stop and sign the document and take the

money. Instead, Tamer Farhat came took the picture of the document and never sign the document. I show my concern to Mr. Eid about the process leading to the audit and we requested from the auditing firm, ENAG Consultant, managed by Mr. Eric to send an official communication to the Farhat to provide records that will enable his company to conduct a full audit to Tayo Motors. That letter was sent on April 5, 2018. On April 13, 2018, Mr. Tamer Farhat left the company without any preparation or records given to Eric Nagbe and his team. From that date onward, I was assigned at Tayo Motors and started to look into any record available to us that we can find as the premises of Tayo Motors.

There was a room on the upper floor of Tayo Motors storeroom that has starker bulk files containing documents, photocopies of old cheques, some copy of receipts, all put together in the category unauthorized. We look into each paper tray that we could get our hands on; we look into the computer system that was left behind from the previous management and try to get all the records that we could get from them and as we were coming with information we were presenting this information to Mr. Eid. These records for example, are copies of opened cheques from customers, cheques of customers of Tayo Motors made in the personal name of Tamer Farhat and Salah Farhat; copy of deposit slips into Salah Farhat personal account at Ecobank as we collect that information like I said; we presented it to Mr. Eid. In order to understand most of these entries, we had to look for the accountant that put his entries together in the system and asked him to sort out what are Tayo Motors' transactions and what are personal transactions of Mr. Farhat. As the records were available to Mr. Eid, he took these records and tried to get answers on the explanation of how these records came to being. I, as witness of Mr. Eid seeking the help of the Lebanese Ambassador and the help of the World Lebanese Cultural Union Team to try to bring together Mr. Eid and Farhat to explain all his transaction. To my knowledge, there was no positive response from Mr. Salah Farhat.

To go into example of what we find, one item came to our attention; we found an entry in the computer system totaling an amount around US\$266,000.00 that was put as rent. In that entry an item was initially entered in 2016 but the record of the computer system shows that the entry was edited in January 2018. This is the time when negotiations between Mr. Eid and Mr. Salah Farhat were taking place to estimate the value of the share of each partner. This entry was for the rent of Mr. Farhat's private residence that he charged Tayo and the rent of a room in his house that he assigned to two workers in the company. Another example, we were asking questions why there is so much lack of company records in the business; staff from Tayo Motors mentioned to us that at one point Mr. Farhat instructed them to take record and burn them in the backyard of Tayo Motors; staff also mentioned that there are witnesses that Mr. Tamer Farhat took boxes containing records and bulk files from Tayo Motors premises very early in the morning before

opening hours. These are some of the examples we witnessed and there are many other records that we were able to collect from the information that we have. There was no record provided to ENAG Auditing firm as requested. During our investigation of the data entries in the computer system of Tayo Motors for the period when Salah Farhat and Tamer Farhat were managing the company, we saw entries of salaries for Salah Farhat jumping from US\$2,000.00 in one month to US\$5,000 in the next month and for Mr. Tamer Farhat, the salary entry jumped from US\$1,000.00 to US\$2,500.00. Those changes in the entry occurred in 2016 as per the computer record in the company system”.

In an effort to establish a prima facie case, the prosecution paraded an expert witness in person of Eric Nagbe who testified as follows:

“I am the co-owner of a reputable tax and accounting firm called, ENAG Consulting. I did interact with Tayo Motors for the purpose of conducting an audit and around the end of March and early April, 2018, I was asked by Mr. Ezzat Eid, the highest share holder at the time of the partnership, Tayo Motors, Inc. Later, he instructed Mr. Wael Hariz to introduce me to the management team and Mr. Tamer Farhat as the auditor to conduct the audit on the financial records of Tayo Motors during the time Mr. Farhat had been with the institution. Accordingly, Mr. Wael Hariz convened a meeting at the premises of Tayo Motors where Mr. Tamer Farhat was present. I got introduced and we exchanged greetings and pleasantries. I did a walk through with Mr. Farhat and the management team on the process we would go through in order to get the audit done which included sending him a listing of all of the required documents we would need to conduct the audit and this listing is called “prepared by client listing”. I informed Mr. Farhat that I will send him this prepared by client listing via email and give his consent by exchanging email addresses and telephone numbers with me.

On April 5, 2018, I sent Mr. Tamer Farhat an email in keeping with my promise; attached to the email was the prepared by client listing. Mr. Farhat did not acknowledge my email and so I follow up with a telephone call since he had given me his telephone number. He answered and said yes that he received the email and that he would get back to me. After few days when I did not hear from him, I called him again and he told me he had taken the documents upstairs at the premises of Tayo Motors and that I should go there and conduct the audit. I asked him to meet me there so that he could sort out the documents. He said he did not have anything to do with the company again, so he could not go there. I again informed him that he was with the company during the time of our audit scope but he said no, he was not coming. The next thing I heard, he had travelled. Prior to hearing that he had travelled, I informed Mr. Eid and Wael that Mr. Tamer Farhat was not cooperating with the audit. So, there was no way I could go there with my team to start any audit. That is how they informed me that he had travelled. After about five (5) months, Wael informed me that Tamer Farhat was back in the country. This time, we did a hard copy of the letter to Mr. Tamer Farhat since Mr.

Wael Hariz had given us his address. The letter was taken to his house by a staff of the firm and Mr. Farhat refused to be served. Again, he told my staff that the company had been sold and he had nothing to do with it again. Finally, I sent him an email; informing him that refusal to be served a communication is a constructive service and that since he served as the manager at the institution he owed a fiducial responsibility to the owner of the institution. As such, he should comply with the audit. Again, I attached a copy of the letter we attempted to serve on him and the prepared by client listing. Since then, he did not respond to any of those communications. At this time, I told Mr. Eid we could not do an audit as we could not express any opinion on the financial statements because of what we called "scope limitation" in auditing. Later, after a month, Mr. Eid and Wael called me to see some assorted documents they had gathered from the premises of Tayo Motors, the bank and some from the computer; this time not to conduct audit but to give an accounting and forensic perspective which I did but this time around not under the initial audit arrangement".

At the close of the testimonies by the witnesses of the prosecution, species of evidence adduced by the prosecution were identified, marked, confirmed and admitted into evidence to form cogent and material records of the proceedings; thereafter, the prosecution rested. Accordingly, the defendants, Salah Farhat and Tamer Farhat, filed a five-count motion for judgment of acquittal on March 7, 2020. Two days later, that is, on March 9, 2020, the defendants filed an amended motion for judgment of acquittal. The amended motion was resisted by the prosecution and on March 12, 2020, the trial court assigned it for argument and following, the judge ruled and denied the defendants' amended motion. The trial judge averred in his ruling that:

"This court is of the opinion that the evidence adduced is sufficient to cause the defendants to take the witness stand or alternative. The court says concerning the allegations named above, both in the indictment and at trial, and the testimonies of the three witnesses including 24 pieces of documentary evidence produced into evidence, it is confirmed by the defendants be given the opportunity to take the witness stand to defend or contradict these evidence or give explanation on them; in the face of the evidence before this court, for the court to enter a judgment of acquittal in favor of the defendants, will amount to me making mockery of the Judicial System.

Assuming that some of the money or all of the monies allegedly stolen or misapplied by the defendant were justifiably used in the interest of Tayo Motors Liberia, the defendants should be allowed the opportunity to take the witness stand and analyze their case but to enter the judgment; this is not in line with the administration of justice.

Wherefore, and in view of the above facts and circumstances, this court is of the considered opinion that the motion for judgment of acquittal though found in the Criminal Procedure Law is not applicable. The said motion is wanting with law, fact and substance but this court is left with no alternative to have same dismissed in its totality and call the defendants to defend for and on their own behalf. And so ordered.”

Counsel for the defendants noted exception on the records, but took no further action. On March 19, 2020, trial resumed and the defendants produced one principal witness and several subpoenaed witnesses. The defendants’ first witness, Salah Farhat, testified in his own behalf and averred the following:

“Your Honor, after Mr. Ezzat Eid bought me off and he paid me my shares of 35% with arrangement made, settlement by Kama Hamaz and Mr. Eid in a conference with Kama Hamaz and Kamal Hamsi and I, Mr. Eid made a list by which he is going to pay me according to my share with the settlement in his own hand writing and this document after was sent to Kamal Hari by WhatsApp electronic. Mr. Hariz forwarded it to me for this settlement as Mr. Eid wrote in his own hand writing in Arabic and English and he put all the details of the settlement including the building and receivables, he deducted all the money I owed him and he paid me a cheque drawing on Lebanon Account AUGIO BANK Lebanon for US\$105,000.00 March 16, 2018. Upon settlement when he paid me the balance money, we signed a receipt release written in three paragraphs. The first paragraph, I sold the business to him for US\$257,000.00. The second paragraph was agreed and understood by both parties that the receivable is US\$819,247.00 is outstanding with receivable list of all customers dealing with Tayo Motors. The third paragraph says “this is full evidence complete discharged, by Ezzat N. Eid from any obligation of my shares of the company”. I, Salah Farhat and Ezzat Eid signed and witnessed by his son-in-law, Weal Hariz, the second witness was the accountant of Royal Grand Hotel who worked with Mr. Hariz direct; the document was notarized, Tayo Motors dissolved and there was no claim on each other. As for the building, we agreed that Tayo Motors will assign the lease to me Salah Farhat 35% and Ezzat Eid 65%. The assignment of lease agreement was signed by three of us, where Weal Hariz as general manager, Ezzat Eid 65% and Salah Farhat 35% on the settlement of Tayo Motors; propitiated by the probate court and notarized through the Sherman and Sherman Law Firm. The amount of US\$163,458.78 was transferred to Liberia from Lebanon to my account in Liberia at Ecobank in the amount of US\$166,000.00 and on the transfer it was stated to open new business in Liberia and which is being used to import cars from China. The amount was sent to me in September 2018 after was dissolved by me and Ezzat Eid. So the US\$163,000 plus Mr. Eid is talking was brought from Lebanon and I did not take money from Tayo Motors to open my business.

The judgment by the Commercial Court against the Liberian Senate, the money was not paid and the record of that issue is in Tayo Motors’ office

on the receivables listing which Tayo Motors and Mr. Eid have confirming that Liberian owes Tayo Motors. The issue concerning Clarence Momolu, I bought the pickup for myself from Tayo Motors; the document is in Tayo Motors' office. Later, it was sold to Mr. Clarence Momolu in the amount of US\$22,000.00 to be paid on January 10, 2016 but Mr. Momolu paid for the pickup on March 18, 2016 by KPUK Plaza and the money was deposited at Ecobank in the name of Tayo Motors in the amount of US\$25,000.00 and the difference was paid back to Mr. Momolu from cash on hand.

The issue of Urban Builders, the company is owned by Ignatius Clay; he bought first truck and paid for it he did not owe us. Later, he came to buy another truck from Tayo Motors and the cheque he gave was taken to the bank but bounced. He promised to pay but failed so he was sued at the Commercial Court. Later the court made an auction for the trucks which were two, one JAC and one old truck in the form of scrap, no engine and some parts missing. I cannot use Tayo Money to bid, what I did was to protect Tayo from losing so I asked Mr. Sagbe who lives with me to bid for US\$10,000.00. We took the trucks from the court through the sheriff who delivered them to Mr. Sagbe and they were taken to Randall Street, Tayo Motors' former location. The truck were repaired and sold to Channel Logistics Construction located on Mechline Street and SSF for US\$15,000.00 each. The US\$30,000.00 was put back in Tayo Motors' account with the balance of US\$23,000.00 still at the Commercial Court, the records are there. As for the DAF truck, it had no use and keeping it in the garage will mean no good but to take up space so it was given as scrap.

As to the question of US\$64,000, the first and second cheques were opened and I saw three payments vouchers but I did not see the cheques; the double pickup and one light pickup for Land and Housing Development, Inc. The first cheque was cashed and deposited in Tayo Motors' account, the second cheque was cashed but before cashing it, I went to Mr. Eid because I had a major problem in the business, people charged us, Tayo Motors, US\$30,000.00. Mr. Eid said try to solve it the best way possible so I solved it from the US\$30,000.00 so we agreed to solve Tayo Motors' problem. The three cheques that were issued US\$6,000.00 each were deposited directly into Tayo Motors' account. The US\$23,000.00 was deposited by our accountant, Joey Tabigue, in two installments; May 2, 2014, US\$3,000 and later US\$20,000. As to the US\$17,000.00 which Tamer Farhat issued receipt in his name to MAC Group, Inc., sometimes in business we put the cheque in our name to cash the cheque and make sure the cash is in our hand before we deliver the car. The cheque is cashed by Tamer Farhat and was deposited in Tayo Motors' account US\$16,500.00 and the balance US\$500.00 was paid as commission to the broker who brought the customer to buy the truck. The cheque of US\$18,000.00 paid by WAEC in my name was cashed and deposited in Tayo Motors' account for US\$14,500.00 and the balance of US\$3,500 was kept as cash on hand to be spent for Tayo Motors' operations and business. As to the three postdated cheques in the

amounts of US\$5,000, US\$5,000 and US\$4,000, respectively, paid by ARK Investment, the first cheque was cashed and the money used to pay salaries to our employees for the New Year and other expenses for the new year. The second cheque was cashed and the money deposited into Tayo Motors' account at Ecobank and the last cheque of US\$4,000.00 was cashed and used as cash on hand for the business, the records are at Tayo Motors' office. The used Tayo Motors' pickup in question was sold to CHAME Business Center, a company owned by Khalid Eid, Ezzat's nephew; it is some of the assets Mr. Eid brought to the company. The pickup was returned and US\$12,000.00 was paid by Tayo Motors but later, the pickup was purchased on account by Radar Winnings, our customer. The records are with Tayo Motors. Also, the US\$20,000 paid by Association of Evangelicals of Liberia in the name of Tamer Farhat was cashed and deposited into Tayo Motors' account at Ecobank in two installments, US\$16,000 and US\$4,000 on June 25, 2014.

The invoice that was written to me, Salah Farhat, as a cash customer in the amount of US\$18,896.73 on January 6, 2016, was edited to US\$16,678.11 because the expenses were over charged and the accountant audited it that is why it came to that amount. As to the judgment against the International Construction and Engineering Company, the company had closed down and the managers ran away so we had to seize the jeep through the commercial court and Tayo Motors could not bid for it directly so I had to use one of the employees, Joseph Fayiah, the mechanic, to bid for it for US\$3,500.00 to save Tayo Motors from losing its money, I transferred the document to me, used the jeep for few months by Tayo Motors and later sold it to Best Moon Security while they were providing security service for Tayo Motors and were paying for it through monthly service; Best Moon Security is on the listing of receivables. As to the allegation of self-dealing between Tayo Motors and me, I bought one pickup from Tayo Motors and used it and later I sold it to somebody, put the money into Tayo Motors' account and took another pickup which was done six times and the records are with Tayo Motors and Mr. Eid is aware of those transactions. As to depositing Tayo Motors' money into my account, Mr. Eid and all managing partners agreed that we open separate account in my name beside Tayo Motors' account. The first one was at Global Bank and the second was at Ecobank for Salah Farhat with the approval of Mr. Eid to be used for Tayo Motors' operational expenses. I also paid US\$15,000.00 of Tayo Motors' money from Salah Farhat's account to Mr. Samuel S. Pearson as rent for the land in Congo Town where Tayo Motors is located presently".

The defense first subpoenaed witness, Mr. Clarence Momolu, also testified as follows:

"In 2016, Kpaku Plaza, Inc. one of Liberia's major importer of cement was in need of a pickup and knowing Mr. Salah Farhat being the manager of Tayo Motors, was approached if it could receive a pickup from him, Tayo Motors, and he sold to us a used pickup which was then negotiated for the value of US\$22,000.00 but being cognizance of the

fact that money was not available at the time, a promissory note was made that this money was being paid on January 10, and which amount was paid to Tayo Motors on March 18, 2016, with a cheque from Kpaku Plaza, Inc. covering the full payment of the pickup. But notwithstanding, our accountant and chief financial person was of the view that the previous arrangement made for a new pickup did not know that second arrangement was made for new pickup, so a refund of US\$3,000.00 was returned to Kpaku Plaza, Inc. by Tayo Motors”.

The defense second witness, Beesley Amyamwu, testified thus:

“My name is Beesley, I run a company called Best Known Security. I signed a contract with Tayo Motors in late 2015, and the company was located on Randall Street until the company moved to 540, Congo Town. During that time, I needed a jeep for the company; Mr. Salah Farhat gave me a jeep through Tayo Motors. I did not pay physical cash, the business was made through the service I provided to Tayo Motors and the money was deducted for 6 months in the amount of US\$4,800.00.”

After the parties had rested with the production of both oral and documentary evidence, and arguments had, the trial judge, on April 6, 2020, ruled and adjudged the defendants guilty for the commission of the crimes of theft of property, misapplication of entrusted property and criminal conspiracy in violation of Sections 51.6(a), 15.56 and 10.4 of the Penal Law of Liberia, and ordered the defendants to retribute the amount of One Million, Three Hundred Seventy Thousand, Three Hundred Ninety United States Dollars (US\$1,370,390.60) and Sixty Cents to Tayo Motors Liberia. The trial judge also concluded that the defendants were to be sentenced to imprisonment pending the conclusion of a sentencing hearing. Making the final determination based on the facts and species of evidence which emerged from the testimonies adduced by the parties during trial, the trial judge asserted thus and the following excerpts of said ruling are quoted herein under:

1. “That from the evidence before this court, the prosecution failed to prove count five (5) of the amended indictment by itself in the amount of Two Hundred Seventy-Eight Thousand, Seven Hundred Sixty-Four United States Dollars (US\$278,764.58) and Fifty-Eight Cents as said amount is part of the amount of Six hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (682,567.00) Dollars alleged in count four (4) of the amended indictment and proved;
2. That the prosecution also failed to prove count ten (10) of the amended indictment which alleged that co-defendant Salah

Farhat used an inflow of funds in the amount of One Hundred Sixty-Three Thousand, Four Hundred Fifty-Eight United States Dollars (US\$163,458.78) and Seventy-Eight Cents for Tayo Motors to establish for himself and co-defendant Tamer Farhat another company called Cedar Motors, Inc., to engage in the importation, sale and distribution of Chinese-manufactured vehicles in Liberia (the exact business which Tayo Motors was and is still engaged in);

3. That the prosecution also failed to prove count eleven (11) of the amended indictment which alleged that a judgment in the amount of Sixteen Thousand United States (US\$16,000.00) Dollars against the Liberian Senate was paid and never accounted for by the defendants;
4. That even though prosecution proved co-defendant Salah Farhat's self-dealing with Tayo Motors through which he sold six (6) Tayo Motors' vehicles to himself and never accounted for the values of those six (6) vehicles as alleged in count thirteen (13) of the amended indictment, prosecution did not allege the values of these vehicles in said count thirteen (13) of the amended indictment and prosecution never produced evidence at the trial as to the values of any of those six (6) vehicles; and
5. That the total amount which prosecution failed and that it did not present evidence and did not prove is Four Hundred Fifty-Eight Thousand, Two Hundred Twenty-Three United States Dollars (US\$458,223.36) and Thirty-Six Cents. These are accusations or allegations contained in counts Five (5), ten (10) and eleven (11). And as stated before, no value for any of the six (6) vehicles alleged in count thirteen (13) of the amended indictment was stated in the amended indictment and no testimony on the values was proffered at trial. The court also notes that from the perusal of both the prosecution and the defendants' testimonies, there is no release issued by either party as alleged by Mr. Salah Farhat. The interpreter informed the court under oath that the document he interpreted was not a release and was not signed by either party.

Now, in proving count three (3) of the amended indictment, which alleges that the defendants increased their salaries from Two Thousand United States (US\$2,000.00) Dollars per month to Five Thousand United States (US\$5,000.00) Dollars for co-defendant Salah Farhat and One Thousand United States (US\$1,000.00) Dollars per month to Two Thousand, Five Hundred United States (US\$2,500.00) Dollars for co-defendant Tamer Farhat, the oral testimonies of private prosecutor Eid and Mr. Wael Hariz were corroborated by prosecution's exhibit 6; all of which testimonies and exhibit 6 were conceded to by co-defendant Salah Farhat in his testimony. Co-defendant Farhat however tried to justify his conduct by his testimony that there was an oral agreement between the private prosecutor Eid and co-defendant Salah Farhat for those increases in salaries but private prosecutor Eid denied ever having such oral agreement with co-defendant Salah Farhat.

This Honorable Court takes judicial notice that the defendants never kept any record of this alleged oral agreement, which they relied on to violate the partnership agreement and the law of partnership. It is a cardinal rule of partnership that the partnership shall have and maintain partnership books, which include, but are not limited to, accounting records, minutes of meetings and records of partners. *Association Law of Liberia (partnership), Section 30.21*. That alleged oral agreement cannot offset and overcome the law and explicit provision of the partnership agreement. The total amount of such increases in salaries is One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Five United States (US\$127,455.00) Dollars. The commission of the crimes of theft of property {Penal Law, Section 15.51(a)} and misapplication of entrusted property {Penal Law, Section 15.56} for this amount of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Five United States (US\$127,455.00) Dollars as alleged in count three (3) of the amended indictment is deemed proved beyond a reasonable doubt.

To prove count four (4) of the amended indictment regarding the deposit of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars of Tayo Motors' funds into co-defendant Salah Farhat's account, this Honorable Court notes that the testimony of private prosecutor Ezzat Eid was corroborated by the testimony of Mr. Wael Hariz and prosecution's exhibits 7, 8, and 9. The veracity of these exhibits was never challenged; in fact, the defense relied on the contents of these exhibits for its defense.

This Honorable Court also notes that co-defendant Salah Farhat actually conceded in his testimony at Sheet 8 of the minutes of court for March 18, 2020, to depositing Six Hundred Seventy-Three Thousand, Six Hundred Eighteen United States (US\$673,618.00) Dollars of Tayo Motors' funds into his personal account at Ecobank Liberia Limited. As already stated above, this conduct of the defendants, in their capacities as managing partner and sales manager, to deposit Tayo Motors' earnings into the personal account of co-defendant Salah Farhat as though this was his personal property was egregiously contrary to the partnership agreement and the law on partnership. More than this, co-defendant Salah Farhat could not properly and fully account for even what he conceded wrongfully diverting from Tayo Motors to his personal account. In his oral accounting, he was short by Two Hundred Thirty Thousand United States (US\$230,000.00) Dollars. And as submitted in prosecution's legal memorandum/summary of argument, co-defendant testified that One Hundred Thirty-Eight Thousand, Five Hundred United States (US\$138,500.00) Dollars of the Six Hundred Seventy-Three Thousand, Six Hundred Eighteen United States (US\$673,618.00) Dollars of Tayo Motors' funds he deposited into his personal account at Ecobank Liberia Limited was eventually deposited into Tayo Motors' account at Ecobank Liberia Limited; which testimony is inconsistent with co-defendant Salah Farhat's earlier testimony that the reason why he deposited Tayo Motors' earnings into his personal

account is that it was too difficult and time consuming to operate Tayo Motors' account – an account to which he signed and operated alone just as he alone signed and operated his personal account.

The incoherent and inconsistent testimony that co-defendant Salah Farhat gave (sheets 4 through 8 of the minutes of court for March 18, 2020) does not overcome the prosecution's cogent evidence. In his testimony, co-defendant Salah Farhat testified that many small deposits made in installments into Tayo Motors' account were equivalent to much larger sums of Tayo Motor's earnings which were deposited into his personal account. Co-defendant Salah Farhat also testified to the comingling of Tayo Motors' earnings into his personal earnings at his personal account at Ecobank Liberia Limited and used his personal account to make purchases for and discharge obligations for Tayo Motors. However, no specie of primary source document, such as receipt for Tayo Motors' earnings, which would show the separate amounts earned for the sale of vehicles, sale of spare parts, and payments for services was produced to corroborate his oral testimony. Additionally, no specie of primary source document, such as vouchers, which would show the separate amounts disbursed, the purpose for which disbursed and the benefit to Tayo Motors, was produced to corroborate his oral testimony.

In the absence of these primary source documents it is impossible for this Honorable Court to determine the purpose for any of Tayo Motors' earnings deposited into co-defendant Salah Farhat's personal account and the benefit to Tayo Motors of any disbursement from co-defendant Salah Farhat's personal account. That is an earning from the sale of a vehicle by Tayo Motors, which was misappropriated by depositing it into co-defendant Salah Farhat through the deposit of several earnings for sale of spare parts or services rendered by Tayo Motors or for any other reason. A fundamental rule of evidence in civil proceedings, as in criminal proceedings, is that the burden of proof rests on the party who alleges a 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 the other party. Civil Procedure Law, Section 25.5(1); *Davies v. Republic*, 40 LLR 659.

To the mind of this Honorable Court, co-defendant Salah Farhat's testimony on the subject of this count four (4) of the amended indictment regarding the deposit of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars of Tayo Motors' funds into his personal account is not sufficient as defense to the prosecution's cogent evidence against the defendants. Besides, even though co-defendant Tamer Farhat was in court every day of the trial, he never testified to corroborate the testimony of co-defendant Salah Farhat. The law is that uncorroborated testimony of a person accused of a crime is insufficient to rebut clear and cogent proof of the accused's guilt. *Johns v. Republic*, 13 LLR 143; *Brown v. Republic*, 21 LLR 65.

On the basis of the above, this Honorable Court adjudges that given the cogent evidence presented by the prosecution on the misapplication and theft of the amount of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars of Tayo Motors' funds by the defendants and given the admission made by co-defendant Salah Farhat that defendants violated both the partnership agreement and the basic principles of partnership law by depositing this amount of Tayo Motors' earnings into co-defendant Salah Farhat's personal account as Ecobank Liberia Limited, coupled with the inability of co-defendant Salah Farhat to properly account (by documentary evidence) for the Six Hundred Seventy-Three Thousand, Six Hundred Eighteen United States (US\$673,618.00) Dollars he actually admitted to misapplying, and also coupled with the inconsistency in his testimony as to why he deposited Tayo Motors' funds into his personal account, commission of the crimes of theft of property {Penal Law, Section 15.51(a)} and misapplication of entrusted property {Penal Law, Section 15.56 of this amount of Six Hundred Eighty-Two Thousand, Five Hundred Sixty-Seven United States (US\$682,567.00) Dollars had been proved beyond a reasonable doubt.

With respect to the evidence adduced at the trial to prove or disprove count six (6) of the amended indictment, which alleged that co-defendant Salah Farhat paid himself rents for the use of his own house for his residence and for the residence of two employees of Tayo Motors for a period of seven (7) years for the total amount of Two Hundred Sixty-Six Thousand, Four Hundred United States (US\$266,400.00) Dollars, this Honorable Court notes that private prosecutor, Ezzat Eid and Mr. Wael Hariz testified in substantiation of this allegation, corroborated by prosecution's exhibit 10, which is the statement of account for Tayo Motors as obtained from the hard drive of the company's computer. In an attempt to rebut this cogent evidence of the unauthorized and unapproved payment of Two Hundred Sixty-Six Thousand, Four Hundred United States (US\$266,400.00) Dollars as rents for his own house in which he lived, co-defendant Salah Farhat merely gave a general denial even after prosecution's exhibit 10 was given to him to look at.

This Honorable Court notes that the rebuttal given by co-defendant Salah Farhat (sheet 1, minutes of court for March 19, 2020) is insufficient to overcome the cogent evidence that he paid himself the aforesaid Two Hundred Sixty-Six Thousand, Four Hundred United States (US\$266,400.00) Dollars as rents for his own house for him to live in and for a room in that house for two technicians in the employ of Tayo Motors. Accordingly, this Honorable Court has no alternative but to conclude that the crimes of theft of property {Penal Law, Section 15.51(a)} and misapplication of entrusted property {Penal Law, Section 15.56} for the amount of Two Hundred Sixty-Six Thousand, Four Hundred United States (US\$266,400.00) Dollars was committed.

In proving count twelve (12) of the amended indictment, which alleged that Tayo Motors sold a vehicle for the amount of Twenty-Two Thousand United States (US\$22,000.00) Dollars to Mr. Clarence Momolu, this Honorable Court takes judicial notice of the circuitous manner in which this transaction took place. According to the oral testimonies of private prosecutor Ezzat Eid, corroborated by Mr. Wael Hariz and documents, the initial bill of sale of the vehicle was to co-defendant Salah Farhat; which was a self-dealing between the partnership and its managing partner for which Tayo Motors got no benefit. Within less than a year the same vehicle was sold by co-defendant Salah Farhat to Mr. Clarence Momolu for Twenty-Two Thousand United States (US\$22,000.00) Dollars for which Mr. Clarence Momolu issued a promissory note to co-defendant Salah Farhat.

The evidence adduced at the trial is that for the actual payment of the Twenty-Two Thousand United States (US\$22,000.00) Dollars instead of Mr. Clarence Momolu himself making the payment, a company called KPUK Plaza paid the amount of Twenty-Five Thousand United States (US\$25,000.00) Dollars by a check to Tayo Motors, which check, according to co-defendant Salah Farhat's testimony was deposited into Tayo Motors' account at Ecobank Liberia Limited. But the question that bugs the mind of this Honorable Court is why was the check made payable to Tayo Motors, not Salah Farhat, if the vehicle had already been paid for by co-defendant Salah Farhat several months ago? The second question is why was the difference of Three Thousand United States (US\$3,000.00) Dollars paid to Mr. Clarence Momolu from Tayo Motors' funds? And if co-defendant Salah Farhat was telling the truth, how was he paid his Twenty-Two Thousand United States (US\$22,000.00) Dollars by Tayo Motors? This Honorable Court is convinced that the evidence revealed that this was a transaction in which co-defendant Salah Farhat sold property of the partnership enterprise to himself without making any payment to the partnership enterprise, resold the property to Mr. Clarence Momolu and converted the proceeds of the transaction to his personal use. Such management of the partnership's assets is simply theft and misapplication of property in violation of Sections 15.51(a) and 15.56 of the Penal Law.

Count thirteen of the amended indictment basically alleged that as per various bills of sale dated April 4, 2014, September 29, 2014, December 3, 2014, January 6, 2015, and an undated one, co-defendant Salah Farhat, as managing partner, sold a vehicle on each date to himself as buyer. These various bills of sale for these vehicles are prosecution's exhibit 13, testified to, marked and confirmed. No evidence was adduced at the trial by the defense to explain these transactions and what happened to the earnings which should have accrued to Tayo Motors from these bills of sale. See sheets 5 and 6 of the minutes of court for March 19, 2020 which revealed the defense counsel asked no question with respect to this evidence against co-defendant Salah Farhat to rebut prosecution's evidence on count twelve (12) of the amended indictment, jumped over count thirteen (13) of the amended

indictment, instead proceeded to adduce evidence in rebuttal of count fourteen (14) of the amended indictment. It is at sheet 9 of the minutes of court for March 9, 2020, that the defense repeated the question as to the accusations contained in count thirteen (13) of the amended indictment. And this time, co-defendant Salah Farhat testified as follows:

“Your Honor, I buy one pickup from Tayo Motors and use it and if somebody wants it, I sold it to the (sic) put the money in Tayo Motors’ account and take another pickup, I did that 6 times which the records are with Tayo Motors and also Mr. Eid is aware of those transactions”.

First, this Honorable Court takes judicial notice that under Liberian law, the failure of an accused on the witness stand to deny a material fact within his knowledge previously testified to against him, warrants the inference that it is true. Republic v. Eid, 37 LLR 761. Next, the self-dealings which co-defendant Salah Farhat had with Tayo Motors were all rebutted by private prosecutor, Ezzat Eid, to the effect that he was unaware of these self-dealings and that co-defendant Salah Farhat was allowed only one vehicle for his personal use but not to sell to the public. More than that, the vague, yet contradictory defense that these vehicles were “purchased” by co-defendant Salah Farhat, used by him, sold to a member of the public, and the proceeds of the sales deposited into Tayo Motors’ account can’t possibly be true. That is, if co-defendant Salah Farhat had initially purchased the vehicles, then the proceeds from the sale of those vehicles to anybody should have been his, not Tayo Motors’ property.

Now, given the cogent nature of the evidence, especially the bills of sale in support of count thirteen (13) of the amended indictment and considering the cogent evidence in support of another self-dealing transaction (count twelve of the amended indictment), this Honorable Court is convinced in the absence of any credible denial or credible rebuttal evidence, that these six (6) bills of sale constitute self-dealing transactions carried out by co-defendant Salah Farhat without any benefit accruing to Tayo Motors from the disposition of its vehicles. Such conduct is simply theft of property in violation of Section 15.51(a) of the Penal Law. This Honorable Court, however, takes judicial notice that no evidence was adduced by the prosecution on the values of the vehicles which co-defendant Salah Farhat “sold” to himself without any earnings accruing to Tayo Motors.

Evidence in proof of count fourteen (14) of the amended indictment was through the testimonies of private prosecutor Ezzat Eid and Mr. Wael Hariz, supported by prosecution’s exhibit 14; which includes the writ of execution for the Commercial Court’s judgment against Urban Builders, Inc., which owed Tayo Motors in the amount of Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars which Mr. S. Dargbe Sirboe (an employee of Tayo Motors) paid at the

auction sale of one (1) DAF Dump Truck and two (2) JAC Dump Trucks owned by Urban Builders, Inc., the judgment debtor. Another document is the receipt issued by co-defendant Salah Farhat on behalf of Tayo Motors to the Commercial Court for the Ten Thousand United States (US\$10,000.00) Dollars.

The oral testimony is that the Ten Thousand United States (US\$10,000.00) Dollars which Tayo Motors' employee paid at the auction sale was Tayo Motors' money and this was not denied by the defense. In addition, the Honorable Court takes judicial notice from the testimony of co-defendant Salah Farhat that two (2) of the trucks purchased at the auction sale were sold for Fifteen Thousand United States (US\$15,000.00) Dollars each to Channel Logistics Construction and SSF; which is a total of Thirty Thousand United States (US\$30,000.00) Dollars. No proper account was given by co-defendant Salah Farhat for the said Thirty Thousand United States (US\$30,000.00) Dollars; he only maintained that since the judgment debt was Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars and only Ten Thousand United States (US\$10,000.00) Dollars – Tayo Motors' money – was received from the Commercial Court, therefore the Commercial Court still has for Tayo Motors the amount of Twenty-Three Thousand United States (US\$23,000.00) Dollars.

This Honorable Court says that since the Ten Thousand United States (US\$10,000.00) Dollars that Mr. S. Dargbe Sirboe (an employee of Tayo Motors) paid at the auction sale was undeniably Tayo Motor's funds, the delivery of that Ten Thousand United States (US\$10,000.00) Dollars by the Commercial Court was actually a "reimbursement" of Tayo Motors' funds. The question therefore is what happened to the proceeds from the disposition of one (1) DAF Dump Truck and two (2) JAC Dump Trucks purchased at the auction sale? All that co-defendant Salah Farhat said is that they were sold for Thirty Thousand United States (US\$30,000.00) Dollars but he gave no credible evidence as to the disposition of said Thirty Thousand United States (US\$30,000.00) Dollars. Therefore, at the minimum, co-defendant Salah Farhat is responsible for the amount of Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars which he failed to give any account for, except to credit Urban Builders, Inc.'s account on March 1, 2017 with the aforesaid amount of Twenty-Three Thousand, One Hundred Sixty-Five United States (US\$23,165.00) Dollars. Obviously, this is theft of property in violation of Section 15.51(a) of the Penal Law.

Count fifteen (15) of the amended indictment alleged that Tayo Motors sold some vehicles to a company by the name of Land and Housing Development, Inc., payment for which was made by two (2) open checks; which means no name was inserted as payee of the checks in the amount of Twenty-Three Thousand United States (US\$23,000.00) Dollars each, were issued by Land and Housing Development, Inc., drawn on Guaranty Trust Bank (Liberia) Limited and First International Bank. The evidence adduced at the trial also revealed three (3) cash

payment vouchers nos. 430, 431 and 432 from the same Land and Housing Development, Inc., dated 05/05/2014 for Six Thousand United States (US\$6,000.00) Dollars was made against sale of a pickup truck. The total amount of the transactions between Tayo Motors and LHDI is Sixty-Four Thousand United States (US\$64,000.00) Dollars which was not entered into Tayo Motors' bank account at Ecobank Liberia Limited. To prove count fifteen (15) of the amended indictment, again the prosecution paraded private prosecutor Ezzat Eid and Mr. Wael Hariz, who testified to the transaction between Tayo Motors and Land and Housing Development, Inc. (LHDI) by which LHDI issued two (2) open checks in the amount of Twenty-Three Thousand United States (US\$23,000.00) Dollars each, drawn on Guaranty Trust Bank (Liberia) Limited and First International Bank and three (3) cash vouchers in the amount of Six Thousand United States (US\$6,000.00) Dollars. In addition to the oral testimonies, the documentary evidence is prosecution's exhibit 15.

In his testimony, co-defendant Salah Farhat did not deny the allegations of count fifteen (15) of the amended indictment. The first question therefore, is, why did defendants accept two open checks (checks with no payee's name inserted on the checks) in the total amount of Forty-Six Thousand United States (US\$46,000.00) Dollars? The checks could have and should have been written in the name of Tayo Motors. The next question is, why did the defendants accept three (3) cash payments in the aggregate amount of Eighteen Thousand United States (US\$18,000.00) Dollars as evidenced by LHDI's cash vouchers? These two (2) questions clearly reveal that defendants had nefarious intent to defraud Tayo Motors of the total amount of Sixty-Four Thousand United States (US\$64,000.00) Dollars.

In attempting to account for the two (2) open checks in the amount of Twenty-Three Thousand United States (US\$23,000.00) Dollars each, co-defendant Salah Farhat acknowledged that he cashed the checks and used Thirty Thousand United States (US\$30,000.00) Dollars to solve a "major problem". He never disclosed the nature of the "major problem"; he only said that private prosecutor Ezzat Eid agreed for the use of the money in that way, but private prosecutor Ezzat Eid denied that alleged agreement. As to the disposition of the three (3) amounts of Six Thousand United States (US\$6,000.00) Dollars each, co-defendant Salah Farhat gave inconsistent testimony as to when and in which account (his personal account or Tayo Motors' account) each amount of Six Thousand United States (US\$6,000.00) Dollars was deposited. See sheets 6 and 7 of the minutes of court for March 19, 2020. This Honorable Court says that Tayo Motors' business was not a "cash and carry" business; there was an account at Ecobank Liberia Limited in the name of Tayo Motors into which all its earnings should have been deposited in compliance with best business practice and the partnership agreement. The inexplicable acceptance of open checks and cash for sale of vehicles and the inability of co-defendant to convincingly show that the total amount of Sixty-Four Thousand United States

(US\$64,000.00) Dollars from these transactions was deposited in Tayo Motors' account clearly support the conclusion that the crime of theft of property in violation of Section 15.51(a) of the Penal Law was committed.

Count sixteen (16) of the amended indictment alleged that MAK Group, Inc. issued a check drawn on First International Bank for the sale of a vehicle to it by Tayo Motors for the amount of Seventeen Thousand United States (US\$17,000.00) Dollars, but the receipt for the amount was issued by co-defendant Tamer Farhat in his own name, not in the name of Tayo Motors. It is also alleged that there is no showing of this payment in the bank records of Tayo Motors. The same MAK Group issued two (2) other checks to co-defendant Tamer Farhat in the amounts of Three Thousand United States (US\$3,000.00) Dollars, dated March 17, 2014 and Two Thousand United States (US\$2,000.00) Dollars, dated April 17, 2014. The proof of these payments was given through the testimonies of private prosecutor Ezzat Eid and Mr. Wael Hariz, supported by prosecution's exhibit 16, testified to, identified, marked and confirmed. Why were these payments of Seventeen Thousand United States (US\$17,000.00) Dollars, Three Thousand United States (US\$3,000.00) Dollars and Two Thousand United States (US\$2,000.00) Dollars made by checks to co-defendant Tamer Farhat, not to Tayo Motors? Co-defendant Tamer Farhat never testified and so he personally did not answer this question. It is co-defendant Salah Farhat who testified at sheets 7 and 8 of the minutes of court for March 19, 2020 on these questionable transactions.

Co-defendant Salah Farhat did not answer the question; he only testified that the check for the Seventeen Thousand United States (US\$17,000.00) Dollars was cashed by co-defendant Tamer Farhat; Sixteen Thousand, Five Hundred United States (US\$16,500.00) Dollars was deposited into Tayo Motors' account on February 18, 2014; and the balance of Five Hundred United States (US\$500.00) Dollars was paid as commission to a broker. But it is the same co-defendant Salah Farhat who had earlier testified that the reason why he deposited Tayo Motors' funds into his personal account is that it was difficult and time consuming to operate Tayo Motors' account. Now, he testified that the amount of Sixteen Thousand, Five Hundred United States (US\$16,500.00) Dollars was deposited into Tayo Motors' account on February 18, 2014. This Honorable Court disposes of count sixteen (16) of the amended indictment in the same way as it disposed of count fifteen (15) of the amended indictment. There was no legally justifiable reason for payments to Tayo Motors to be made in the name of co-defendant Tamer Farhat personally and a credit of Sixteen Thousand, Five Hundred United States (US\$16,500.00) Dollars to Tayo Motors' account could have been earnings for a completely different transaction, not the transaction with MAK Group. The defense did not present any primary source document, which would connect the aforesaid Sixteen Thousand, Five Hundred United States (US\$16,500.00) Dollars to MAK Group's transaction with Tayo Motors and there was no business reason

for depositing only Sixteen Thousand, Five Hundred United States (US\$16,500.00) Dollars of the Seventeen Thousand United States (US\$17,000.00) Dollars. This Honorable Court holds that the evidence adduced at the trial proves the nefarious intent of the defendants to commit the crime of theft of property and they did commit the crime of theft of property in violation of Section 15.51(a) of the Penal Law.

Count seventeen (17) of the amended indictment accused the defendants of failing to account for a check issued by the West African Examination Council in the amount of Eighteen Thousand United States (US\$18,000.00) Dollars for a vehicle purchased from Tayo Motors. Well, lie other transactions already passed upon before, this check was issued to co-defendant Salah Farhat, not to Tayo Motors, as should have been done in keeping with standard business norm and practices and count seventeen (17) alleged that the aforesaid amount of Eighteen Thousand United States (US\$18,000.00) Dollars was not accounted for in the books and bank account of Tayo Motors. To prove these allegations, private prosecutor Ezzat Eid and Mr. Wael Hariz testified, supported by prosecution's exhibit 17, which is the check drawn by the West African Examination Council and paid to the order of co-defendant Salah Farhat.

In his testimony (sheet 8 of the minutes of court for March 19, 2020), co-defendant Salah Farhat did not deny the transaction and the issuance of the check for the Eighteen Thousand United States (US\$18,000.00) Dollars in his name instead of Tayo Motors' name. He however said that he cashed the check and deposited Fourteen Thousand, Five Hundred United States (US\$14,500.00) Dollars of the amount in cash in Tayo Motors' account on the same April 15, 2014 and retained the balance Three Thousand, Five Hundred United States (US\$3,500.00) Dollars in cash for operational purposes of Tayo Motors. The veracity of the disposition of this testimony is questioned by co-defendant Salah Farhat's own earlier testimony that he deposited Tayo Motors' earnings into his personal account because it was more difficult to operate Tayo Motors' account. The veracity of this testimony is also questioned by the fact that co-defendant Salah Farhat never give any specific account of how the balance of Three Thousand, Five Hundred United States (US\$3,500.00) Dollars was eventually disposed of.

The veracity of this testimony is further questioned by the fact that the Fourteen Thousand, Five Hundred United States (US\$14,500.00) Dollars deposited on April 25, 2014, could have been Tayo Motors' earnings from any number of other transactions (sale of another vehicle, sale of spare parts or payments for services) as there was no rule or standard to determine which Tayo Motors' earnings would defendants deposit in Tayo Motors' account and which would be deposited in co-defendant Salah Farhat's personal account. Moreover, the mere fact that co-defendant Salah Farhat had the check for a payment to Tayo Motors made in his name clearly established a nefarious intent to divert the proceeds of the check to his personal use, which constitutes theft of property in violation of Section 15.51(a) of the Penal Law.

According to count eighteen (18) of the amended indictment, three postdated checks in separate amounts of Five Thousand United States (US\$5,000.00) Dollars, Five Thousand United States (US\$5,000.00) Dollars and Four Thousand United States (US\$4,000.00) Dollars drawn on Ecobank Liberia Limited by Arc Investment, Inc. as payment for the purchase of a vehicle from Tayo Motors pursuant to invoice no. SI-00732 dated November 26, 2013, was never accounted for in Tayo Motors' account. Oral testimonies in support of this accusation were given by private prosecutor Ezzat Eid, corroborated by Mr. Wael Hariz and substantiated by prosecution's exhibit 18, testified to, identified, marked and confirmed. No name of payee was inserted on any of these three (3) checks. In addition to this, prosecution's exhibit 18 has another check in the amount of Ten Thousand United States (US\$10,000.00) Dollars drawn by the same Arc Investment, Inc. and payable to Tayo Motors for which no account was given in the books of Tayo Motors. In his testimony (sheet 8 of the minutes of court for March 19, 2020), co-defendant Salah Farhat did not deny the transaction. Instead, he testified that for one of the Five Thousand United States (US\$5,000.00) Dollars check, it was cashed to "pay salaries and expense", for the second Five Thousand United States (US\$5,000.00) Dollars check, it was cashed and put into Tayo Motors' account, and for the Four Thousand United States (US\$4,000.00) Dollars check, it was cashed and kept as "cash on hand for the business".

This Honorable Court reiterates that Tayo Motors was not a "cash and carry" business; Tayo Motors had its own account at Ecobank Liberia Limited. Why was co-defendant Salah Farhat habitually receiving open checks (no payee's name thereon) as payments made for vehicles purchased from Tayo Motors and why was co-defendant Salah Farhat cashing these checks and disposing of the proceeds thereof in the manner he deemed without any approval of private prosecutor Ezzat Eid, owner of sixty-five percent (65%) of the partnership if it were not for nefarious criminal reason? And as stated earlier, identification of any deposit into Tayo Motors' account of any amount in the absence of primary source document which states the nature and purpose of the earning, cannot be attributed by oral evidence to any specific transaction as Tayo Motors' earnings came from three sources – sale of vehicles, sale of spare parts and sale of services. So, the oral testimony of co-defendant Salah Farhat, without any corroboration, cannot overcome the damning evidence that this transaction, like other transactions, violated Section Five of the partnership agreement and basic principles of partnership law. As to the check for Ten Thousand United States (US\$10,000.00) Dollars, no account was given of that amount by the defense even though it is part of prosecution's exhibit 18. This Honorable Court therefore adjudges that insofar as transactions with Arc Investment, Inc. are concerned, the crimes of theft of property (Section 15.51(a) of the Penal Law) and misapplication of entrusted property (Section 15.56 of the Penal Law) were committed.

Count nineteen (19) of the amended indictment accused the defendants in engaging in another dubious transaction with Chain Business Center, which caused a loss of Twelve Thousand United States (US\$12,000.00) Dollars. According to oral testimonies, supported by prosecution's exhibit 19, a silver-colored double cabin pickup was sold by Tayo Motors to Chain Business Center by "hand to hand bill of sale" dated February 2, 2012. On May 21, 2013, (a little over a year thereafter), a check in the amount of Twelve Thousand United States (US\$12,000.00) Dollars was issued by Tayo Motors (under the signature of defendant Salah Farhat) to Chain Business Center for the re-purchase of the same vehicle. The "hand to hand bill of sale" from Chain Business Center to Tayo Motors is dated the same May 21, 2013. The accusation is that there is no record in Tayo Motors' inventory or otherwise for this pickup. Like other previous transactions, co-defendant Salah Farhat did not deny the transaction (sheet 8 of the minutes of court for March 19, 2020). The defense interposed that after Tayo Motors bought the pickup truck from Chain Business Center for Twelve Thousand United States (US\$12,000.00) Dollars, Bother Winnings or Rader Winning (another customer of Tayo Motors) bought the pickup truck from Tayo Motors and the customer's account was "credited."

Co-defendant Salah Farhat never informed this Honorable Court the amount that this other customer paid for the pickup truck and whether that payment was made in case or check, and what disposition was made of that payment. Instead, co-defendant Salah Farhat testified that the customer's account was "credited". Assuming that this customer did not pay cash or check for the pickup but it was agreed that it would pay by installments or in one lump sum subsequent to delivery of the pickup to him, co-defendant Salah Farhat should have testified specifically to that effect and that would have been a "debit" to the customer's account, not a "credit" to the customer's account. As a businessman of more than 20 years of experience in business, clearly co-defendant Salah Farhat knows the difference between a "debit" and a "credit" to his customer's account with him. Based on the above, it is clear that the Twelve Thousand United States (US\$12,000.00) Dollars which was paid out by Tayo Motors for the re-purchase of the silver-colored double cabin pickup, in the absence of an account for the physical presence of the said vehicle, constitutes a loss to Tayo Motors through the conduct of co-defendant Salah Farhat. This is simply theft of property in violation of Section 15.51(a) of the Penal Law.

Count twenty (20) of the amended indictment alleged that for the purchase of a vehicle from Tayo Motors, the Association of Evangelicals of Liberia issued a check drawn on International Bank (Liberia) Limited in the amount of Twenty Thousand United States (US\$20,000.00) Dollars. The check was issued in the name of co-defendant Tamer Farhat, not Tayo Motors. The oral evidence is supported by documentary evidence (prosecution's exhibit 20 which consists of Tayo Motors "hand to hand bill of sale" to the Association of Evangelicals of Liberia, dated June 25, 2014, signed by co-defendant Tamer Farhat) and the check dated June

24, 2014. Count twenty (20) alleged that there is no evidence of this Twenty Thousand United States (US\$20,000.00) Dollars in the books of Tayo Motors.

Interestingly, it is not co-defendant Tamer Farhat who testified to explain and defend against this accusation; instead, it was only co-defendant Salah Farhat who testified (sheets 8 and 9 of the minutes of court for March 19, 2020) on this transaction. And like every other transaction for which the amended indictment was obtained, co-defendant Salah Farhat did not deny this transaction, the only defense is that the check was cashed and deposited into Tayo Motors' account at Ecobank Liberia Limited. But this is the same co-defendant Salah Farhat who testified that Tayo Motors' earnings were deposited into his personal account because it was more difficult to operate Tayo Motors' account than his personal account. And to show how the Twenty Thousand United States (US\$20,000.00) Dollars was deposited into Tayo Motors' account in cash, co-defendant Salah Farhat testified that the amount of Sixteen Thousand United States (US\$16,000.00) Dollars was deposited in cash on June 25, 2014 (a day after the date of the check) and on the same June 25, 2014, another amount of Four Thousand United States (US\$4,000.00) Dollars was deposited. Why wasn't the entire amount of Twenty Thousand United States (US\$20,000.00) Dollars deposited in cash? Why is it that it was deposited in installments of Sixteen Thousand United States (US\$16,000.00) Dollars and Four Thousand United States (US\$4,000.00) Dollars on the same day? The explanation for the disposition of this money only amplifies this Honorable Court's conclusion that when the defendants stole or misappropriated Tayo Motors' earning for one transaction, they tried to use earnings from other Tayo Motors' transactions to account for what had been illegally disposed of. The account given by co-defendant Salah Farhat for this amount of Twenty Thousand United States (US\$20,000.00) Dollars has no probative value. Based on the foregoing, this Honorable Court adjudges that the crime of theft of property (Section 15.51(a) of the Penal Law) in respect of this amount of Twenty Thousand United States (US\$20,000.00) Dollars was committed.

Count twenty-one (21) of the amended indictment and count twenty-three (23) of the amended indictment are similar to the extent that the amounts involved are so small. Count twenty-one of the amended indictment accused the defendants of creating on February 2, 2016 an accounting invoice in the amount of Sixteen Thousand, Six Hundred Seventy-Eight United States Dollars (US\$16,678.11) and Eleven Cents for a sale invoice no. SI-00010, dated January 6, 2016, in the amount of Eighteen Thousand, Eight Hundred Ninety-Six United States Dollars (US\$18,896.73) and Seventy-Three Cents. The difference is a mere Two Thousand, Two Hundred Eighteen United States Dollars (US\$2,218.62) and Sixty-Two Cents. As to count twenty-three (23) of the amended indictment, the accusation is that co-defendant Salah Farhat "sold" a JAC HFC1037 pickup truck on 27/11/17 to Tayo Motors for the amount of Seventeen Thousand, Seven Hundred Twenty-One United States

(US\$17,721.00) Dollars which should have been a new brand of the vehicle. Instead, co-defendant Salah Farhat later delivered to Tayo Motors' inventory a used JAC HFC1037, which he had originally "purchased" on 06/10/16 for the amount of Fourteen Thousand, Three Hundred Seven United States (US\$14,307.00) Dollars. The difference is a mere Three Thousand, Four Hundred Fourteen United States (US\$3,414.00) Dollars.

The explanation (sheet 9 of the minutes of court for March 19, 2020) given by co-defendant Salah Farhat on the witness stand in defense to the accusation of count twenty-one (21) of the amended indictment is "because they over charged the expenses". Who is the "they" who "overcharged the expenses" for the managing partner's "account" with Tayo Motors when the sale invoice clearly stated Eighteen Thousand, Eight Hundred Ninety-Six United States Dollars (US\$18,896.73) and Seventy-Three Cents? And what "expenses" was co-defendant Salah Farhat referring to? As to the accusation of count twenty-three (23) of the amended indictment, no question asked of co-defendant Salah Farhat on the witness stand and no explanation was given by him. Sheet 9 of the minutes of court for March 19, 2020.

This Honorable Court says that a person need not be a legal luminary to discern that the flimsy explanation given by do-defendant Salah Farhat for the changing of the records for the transaction described in count twenty-one of the amended indictment does not justify the conduct. Even though the amount of Two Thousand, Two Hundred Eighteen United States Dollars (US\$2,218.62) and Sixty-Two Cents is not substantial, nevertheless, the change of the records must have been for a nefarious illegal reason which caused a loss, and therefore constitutes the commission of the crime of theft of property (Section 15.51(a) of the Penal Law). And as to failure of the defense to specifically address the accusation of count twenty-three (23) of the amended indictment, that accusation is deemed true and correct. *Republic v. Eid*, 37 LLR 761. This Honorable Court therefore has no alternative but to adjudge the commission of the crime of theft of property (Section 15.51(a) of the Penal Law) as to the difference of Three Thousand, Four Hundred Fourteen United States (US\$3,414.00) Dollars derived from the transaction identified in county twenty-three (23) of the amended indictment.

The evidence adduced at the trial to prove the accusations of count twenty-two (22) of the amended indictment consists of oral testimonies and documents (prosecution's exhibit 22), which proved that: (1) the Commercial Court rendered a judgment in favor of Tayo Motors against International Construction & Engineering, Inc. ("ICE") in the amount of Eighty-Eight Thousand, One Hundred Seventy-One United States (US\$88,171.00) Dollars; (2) the judgment was executed by the auction sale of a 2012 Nissan X-Trial SUV, engine no. 281653A, chassis no. 251181 (a luxurious and expensive vehicle), purchased by Mr. Joseph Fayah, a Tayo Motors' mechanic by the use of Tayo Motors' funds for

the amount of Three Thousand, Five Hundred United States (US\$3,500.00) Dollars; and (3) the auctioned vehicle was resold by Joseph Fayah to co-defendant Salah Farhat, not Tayo Motors. There is no denial of this transaction by co-defendant Salah Farhat; he, however, testified that he used the vehicle for a few months and sold it to Best Moon (Known) Security, which is paying for the vehicle through its monthly security services to Tayo Motors. Sheet 9 of the minutes of court for March 20, 2020.

According to the "hand to hand bill of sale" (part of prosecution's exhibit 22), Mr. Joseph Fayah sold the 2012 Nissan X-Trial SUV to co-defendant Salah Farhat on February 19, 2016. Mr. Beesley Amyamwu, who appeared as a subpoenaed witness and testified for the defense (sheets 6 and 7 of the minutes of court for March 23, 2020), said that he runs a company called Best Known Security and he provided security services for Tayo Motors under a contract that he entered into with Tayo Motors in late 2015. He also testified that he needed a jeep for his business and co-defendant Salah Farhat gave him a jeep for the price of Four Thousand, Eight Hundred United States (US\$4,800.00) Dollars, payable by deduction from the contract fee for 6 months; which would be Eight Hundred United States (US\$800.00) Dollars per month.

The sale of a 2012 Nissan X-Trial SUV, which is ordinarily an expensive, luxurious vehicle, for the price of Four Thousand, Eight Hundred United States (US\$4,800.00) Dollars is unbelievable. No account was given for this sale of such a vehicle for payment based on installment through contract fee deduction to a person who had not even spent a full year of service with Tayo Motors is also unbelievable. The suspicious manner in which the witness answered the questions caused this Honorable Court to inquire about the instrument of sale which the witness said was a direct sale from co-defendant Salah Farhat, not from Tayo Motors. In short, this Honorable Court does not believe that an arm's length transaction for the sale of a 2012 Nissan X-Trial SUV for Four Thousand, Eight Hundred United States (US\$4,800.00) Dollars ever took place between co-defendant Salah Farhat and Best Known Security. Based on the foregoing and given the history of manipulation of Tayo Motors' earnings by co-defendant Salah Farhat, this Honorable Court has no alternative but to adjudge that as to his amount of Eighty-Eight Thousand, One Hundred Seventy-One United States (US\$88,171.00) Dollars, the crime of theft of property (Section 15.51(a) of the Penal Law) was committed.

As stated earlier, this case is about the responsibilities and obligations of a partner in a partnership business to his co-partners and to the partnership itself. From the questions advanced by the defense on cross examination of prosecution's witness and the direct examination of defense's own witnesses, it would seem that one of the angles of the defense is that private prosecutor Ezzat Eid should have proceeded by a civil suit for proper accounting by his co-partner, co-defendant Salah Farhat. But while it is true that a civil remedy was available to private

prosecutor Ezzat Eid, the unrebutted evidence is that private prosecutor Ezzat Eid tried to get an amicable settlement of the dispute between him and co-defendant Salah Farhat through the intervention of the Lebanese Ambassador and the Lebanese World Cultural Union of Liberia but co-defendant Salah Farhat admittedly refused to submit to any intervention. More important is that private prosecutor Ezzat Eid's right to a civil claim in proper accounting against co-defendant Salah Farhat does not obviate the right of the State to institute criminal proceedings against a partner who commits theft of property and misapplication of entrusted property during the course of his management of the partnership. It is well known that the initiation of a criminal proceeding in a matter against a person does not ipso facto obliterate that person's civil liberty. So, the defense's posture that private prosecutor should have sought a civil liability case instead of reporting the matter to the County Attorney for Montserrado County growing out of which report the amended indictment was preferred against the defendants, is without merit.

This Honorable Court takes judicial notice that in his attempt to explain the whereabouts and /or dispositions of Tayo Motors' earnings, co-defendant Salah Farhat testified that he paid dividends in the amounts of Fifty Thousand United States (US\$50,000.00) Dollars and Fifty-Five Thousand United States (US\$55,000.00) Dollars to private prosecutor Ezzat Eid. Not only did private prosecutor deny these alleged payments of dividends, but co-defendant Salah Farhat presented no documentary evidence to substantiate the payments. For example, had dividend of Fifty Thousand United States (US\$50,000.00) Dollars been paid to private prosecutor Ezzat Eid for his sixty-five percent (65%) ownership of Tayo Motors, then dividend of Twenty-Six Thousand, Nine Hundred Twenty-Three United States (US\$26,923.00) Dollars should have been paid to or taken by co-defendant Salah Farhat for his thirty-five percent (35%) ownership of Tayo Motors. Also, had dividend of Fifty-Five Thousand United States (US\$55,000.00) Dollars been paid to private prosecutor Ezzat Eid for his sixty-five percent (65%) ownership of Tayo Motors, then dividend of Twenty-Nine Thousand, Six Hundred Fifteen United States (US\$29,615.00) Dollars should have been paid to or taken by co-defendant Salah Farhat for his thirty-five percent (35%) ownership of Tayo Motors. What is clear from the financial statements for Tayo Motors introduced into evidence by the defense is that nowhere are these alleged dividends accounted for; which makes the allegation of payment of dividends and the aforesaid financial statements a complete nullity.

This Honorable Court also takes judicial notice that three (3) certified accountants testified in this case. The first to testify was Mr. Eric Nagbe, who said he assisted private prosecutor Ezzat Eid in compiling and analyzing the records (hard copies and computer copies) which formed the basis of the amended indictment. He also testified that co-defendant Salah Farhat's management of Tayo Motors, especially the co-mingling of Tayo Motors' earning with his personal funds in his

personal account at Ecobank Liberia Limited was illegal and improper, made it impossible to properly account for Tayo Motors' operations, and to file annual income tax returns to the Liberia Revenue Authority. Testifying for the defense was Mr. Orlando Boyce, also a certified public accountant, who testified his interpretation of the bank statements (prosecution's exhibits 7, 8 and 9) and attributed entries therein to legitimate business expenses made by co-defendant Salah Farhat from his personal account on behalf of Tayo Motors. He even testified that those statements show that One Hundred Fifty Thousand United States (US\$150,000.00) Dollars was paid as dividends to private prosecutor Ezzat Eid for his sixty-five percent (65%) ownership of Tayo Motors but he did not testify that any amount was paid to co-defendant Salah Farhat for his thirty-five percent (35%) ownership of Tayo Motors; which if paid, would have been Eighty Thousand, Seven Hundred Sixty-Nine United States (US\$80,769.00) Dollars. He who ever conceded that he did not conduct an audit, never saw any primary source documents, such as receipts for earnings made by Tayo Motors and vouchers for disbursements made by Tayo Motors. He testified that he only conducted a "desk audit" under a "review engagement"; and on that basis he presented a written report marked by court as defense's exhibit DF/9.

In rebuttal of the testimony of Mr. Orlando Boyce, prosecution paraded Mr. Hector Wuo, another certified public accountant, who debunked the work performed by Mr. Orlando Boyce by saying that co-defendant Salah Farhat's operation and management of Tayo Motors did not comply with the basic business concept-rule that the personal finances of the manager or owner of the enterprise should not be mixed with the finances of the enterprise. He also testified: (1) one cannot rely on bank statements to tell the source or purpose for a credit or debit to the bank account; (2) only the primary source documents can be relied upon to determine whether the purpose for income and expenses; (3) that it is the primary source documents which explain the entries on the bank statement; and (4) in the absence of the primary source documents, it was impossible to determine the purpose of any debit or credit to a bank statement.

This Honorable Court is convinced that as eloquent as Mr. Orlando Boyce was in giving his testimony, he was attempting to mislead this Honorable Court. From an ordinary inspection of prosecution's exhibits 7, 8 and 9, it was impossible to prepare the report which Mr. Boyce submitted to this Honorable Court and to testify that any amount was paid to private prosecutor Ezzat Eid as dividends for his sixty-five percent (65%) ownership of Tayo Motors, especially when Mr. Boyce did not testify to the amount that was paid to co-defendant Salah Farhat as dividends for his thirty-five percent (35%) ownership of Tayo Motors. This Honorable Court disregards Mr. Boyce's testimony and the report he submitted.

Another important testimony was that of prosecution’s rebuttal witness in person of Mr. Thomas Renjan. Co-defendant Salah Farhat testified that he gave a check in the value of Forty-Five Thousand United States (US\$45,000.00) Dollars to this Mr. Renjan, an employee of private prosecutor Ezzat Eid, to cash and deliver to private prosecutor Ezzat Eid as dividend payment. Mr. Renjan testified that even though the check was written in his name for that amount, the proceeds were not for private prosecutor Ezzat Eid. Instead, the proceeds of that check in the amount of Forty-Five Thousand United States (US\$45,000.00) Dollars was for co-defendant Salah Farhat; that the check was cashed by him and the proceeds delivered to co-defendant Salah Farhat. Several other witnesses testified for both the prosecution and the defense but the evidence, as summarized herein, and the applicable laws, constitute the totality of the case”.

Based on the evidence adduced at this trial and the controlling laws cited herein, this Honorable Court finds and adjudges that the prosecution proved its case beyond a reasonable doubt that the defendants jointly and severally committed the crimes of: (1) Criminal Conspiracy in violation of Section 10.4 of the Penal Law; (2) Theft of property in violation of Section 51.6(a) of the Penal Law; and (3) Misapplication of entrusted property in violation of Section 15.56 of the Penal Law. The total amount which Tayo Motors (the partnership enterprise) was deprived of through the commission of these crimes is One Million, Three Hundred Seventy Thousand, Three Hundred Ninety United States Dollars (US\$1,370,390.60) and Sixty Cents enumerated as follows:

<u>Amended Indictment</u>	<u>Transaction Description</u>	<u>Amount</u>
Count three (3)	Illegal increase in salaries	US\$127,455.00
Count four (4)	Diversions of Tayo Motors’ earnings to co-defendant Salah Farhat’s account	US\$682,567.00
Count six (6)	payment of rents for co-defendant Salah Farhat’s own house	US\$266,400.00
Count twelve (12)	Clarence Momolu’s trans.	US\$ 22,000.00
Count thirteen (13)	Self-dealing transaction involving six (6) vehicles	(No values)
Count fourteen (14)	Urban Builders, Inc. trans.	US\$ 23,165.00
Count fifteen (15)	Land and Housing Development, Inc. trans.	US\$ 64,000.00
Count sixteen (16)	MAK Group, Inc. trans.	US\$ 17,000.00
Count seventeen (17)	West African Examination Council transaction	US\$ 18,000.00
Count eighteen (18)	Arc Investment, Inc. trans.	US\$ 24,000.00
Count nineteen (19)	Chain Business Center trans.	US\$ 12,000.00
Count twenty (20)	Association of Evangelicals of Liberia transaction	US\$ 20,000.00
Count twenty-one (21)	Self-dealing transaction -	

	padding of account	US\$	2,218.62
Count twenty-two (22)	International Construction and Engineering transaction	US\$	88,171.00
Count twenty-three (23)	Self-dealing transaction - padding of account	<u>US\$</u>	<u>3,414.00</u>
	Total	<u>US\$</u>	<u>1,370,390.62</u>

From the manner and form in which the records of the business was kept and the business money expanded, one does not have to be a rocket scientist to know that the managing partner had a nefarious motive or separate agenda in running the business to the detriment of the majority partner, Ezzat Eid.

Wherefore and in view of the foregoing, defendants are adjudged guilty of the crimes of criminal conspiracy, in violation of Section 10.4 of the Penal Law, theft of property in violation of Section 51.6(a) of the Penal Law and misapplication of entrusted property in violation of Section 15.56 of the Penal Law and the defendants are hereby ordered to retribute the amount of One Million, Three Hundred Seventy Thousand, Three Hundred Ninety United States Dollars (US\$1,370,390.60) and Sixty Cents to Tayo Motors of Liberia. The defendants shall be sentenced to an imprisonment following sentence hearing. The clerk of this court is hereby ordered to communicate with the probation division of Montserrado County to conduct an investigation of the defendants records and file report to this court in fourteen days based upon which the court shall conduct a sentence hearing and appropriately sentence the criminal defendants. And it is hereby so adjudged.”

Following the rendition of the final ruling by the trial judge, the defendants noted exception on the records and announced an appeal to the Honorable Supreme Court of Liberia sitting in its October Term, A. D. 2020. On April 15, 2020, the defendants filed a thirty-four (34) count bill of exceptions after same was approved by the trial judge on April 14, 2020. The bill of exceptions is quoted in its entirety in this Opinion to aid this Court in making a determination.

DEFENDANTS’ BILL OF EXCEPTIONS

“And now come defendants/appellants in the above entitled cause of action praying Your Honor to approve this bill of exceptions so that the case can be moved to the appellate court for review and final determination:

1. That as to Your Honor’s ruling on count three (3) of the amended indictment, Your Honor reversibly erred when you held in your final judgment that count 3 of the amended indictment was proved beyond a reasonable doubt, even though co-defendant Salah Farhat testified that both he and

co-defendant Tamer Farhat's salaries were increased in 2016, from US\$2,000.00 and US\$1,000.00, respectively, to US\$5,000.00 and US\$2,500.00, respectively, with the knowledge and acquiescence of his co-partner, Mr. Ezzat Eid, because of their increased work load particularly their supervision of a building construction project that the company was undertaking, and because the company had started to do well. And even though there was no written agreement evidencing the increment, by the course of dealings between the partners, not every and all decision made by the partners was in writing, as evidenced by the fact that even the initial agreement to pay him and co-defendant, Tamer Farhat, US\$2,000.00 and US\$1,000.00, respectively, was not in writing. Your Honor erred when you ruled that there was no record of this oral agreement when the word oral itself means it was not in writing. Your Honor ignored the evidence, that increased salaries of the defendants were paid to them for two consecutive years without objection, from the shrewd business Guru Mr. Ezzat Eid and which was reflected in the records of Tayo Motors. Your Honor also ignored the testimony of co-defendant Salah Farhat that Ezzat Eid himself proposed to continue paying Tamer Farhat US\$2,500.00 when he took over the partnership and Ezzat Eid did not deny that their initial agreement to be paid US\$2,000.00 and US\$1,000.00, respectively, was also oral. Salah Farhat also testified without rebuttal that he submitted financial statement on which the salaries are spelt out of Tayo Motors to Mr. Eid every year without any rebuttal. See sheet 3, 28<sup>th</sup> day jury sitting, March 18, 2020. Also, see sheet 10, 29<sup>th</sup> day jury sitting, March 19, 2020 as reversible error on your part to have agreed with the prosecution that the defendants stole and misapplied US\$127,455.00 from Tayo Motors when said salaries figure is also within the US\$682,567.00 said to have been deposited into the personal account of Salah Farhat at Ecobank in count 4 of the indictment.

2. That as to Your Honor's ruling on count four (4) of the amended indictment, defendants say Your Honor reversibly erred when you held in your final judgment that the defendants committed the crimes of theft of property and misapplication of entrusted property in the amount of US\$682,567.00 of Tayo Motor's money ignoring co-defendant Salah Farhat's testimony that of the US\$673,618.00 deposited into his account when in fact and indeed co-defendant Salah Farhat testified without rebuttal that of the US\$673,618.00 he agreed depositing into his account for Tayo Motors, he deposited US\$138,500.00 to Tayo account, he paid US\$70,000.00 for Food Construction, Mustapha for the Congo Town building, US\$100,000.00 to Eid as dividend (paid

US\$55,000.00 on April 23, 2015, and US\$45,000.00 on May 27, 2015), US\$50,000.00 as Salah Farhat's own dividend that he paid to Eid for money he owed Eid for apartments in Lebanon, US\$106,240.00 for land lease and US\$48,000 as his salary and said that he did not bring the break down with him to trial even though the accountant will verify. See sheet 9, 28<sup>th</sup> day jury sitting, March 18, 2020. That when the witness, Salah Farhat resumed the stand on the direct on the 19<sup>th</sup> of March, 2020, at 11 a.m., 29<sup>th</sup> day jury sitting, March 19, 2020, the witness was directed to say to the court how he used the balance of US\$160,818.00 for the benefit of Tayo, your honor sustained prosecution's objection to the said question as being cross examining one won witness, thereby avoiding the witness from explaining how he used the balance money for the benefit of Tayo Motors and to which ruling defense excepted.

However, when the accountant who was special witness for the defense, after checking all of the deposits, took the witness stand, verified that the total amount deposited into Salah Farhat's account for Tayo Motors was US\$651,699.80 from which US\$150,160.00 was transferred to Eid, US\$138,500.00 deposited to Tayo Motors' account, US\$59,300.00 given to Counsellor Samuel Pearson for lease, US\$70,000.00 given to Food Construction for construction, US\$30,000.00 was the value for the returned cheques, US\$48,005.00 and US\$16,570.00 for salary for Salah Farhat and US\$138,214.00 for other expenditure Tayo Motors as spelt out on the analysis and prosecution's exhibit p/7 and US\$950.00 as bank charges. That Your Honor ignored these unrebutted testimonies and yet held that the defendants stole from Tayo Motors US\$682,567.00 contrary to the facts as adduced at trial and to which defense excepted.

3. That as to your Honor's ruling on count six (6) of the indictment, your Honor also reversibly erred when you held that the defendant did commit the crimes of theft or property of Tayo Motor in the sum of US\$266,400.00 representing rental payment to Salah Farhat for the use of his personal property, when your honor ignored the testimony of co-defendant Salah Farhat to the effect that the sum of US\$266,400.00 was never paid to him. See sheet 1, 29<sup>th</sup> day jury sitting, March 19, 2020. Also, on sheet 11, 30<sup>th</sup> day jury sitting, March 20, 2020. Salah Farhat while on the cross testified that because the US\$266,400.00 rental due was not paid, they all including Eid agreed and Eid wrote in his own hand writing that he would pay him for only 20 months at US\$3,000.00. Your Honor also erred when you ignored even the prosecution's own testimony placed on the record by its witness Mr. Ezzat Eid, that, "this amount was inflicted in his

share; so, if you did not take payment from this amount from the bank, which means he took that directly from me by inflicting his 35% share in Tayo Motors. See sheet 10, 17<sup>th</sup> day jury sitting, Tuesday, March 3, 2020. This testimony by Mr. Eid is quite contrary to the allegation contained in the indictment that “during the aforementioned period, co-defendant Salah Farhat purposely, knowingly, and willfully stole, took, carried away, and exercised unauthorized control over funds belonging to Tayo Motors, the partnership by unilaterally using said amount to pay his lease of a property owned by him at an annual rent of US\$34,000.00 for a period of seven years...” More to that, prosecution exhibit p/10 relied on by its witness does not show that the amount of US\$266,400.00 representing rent was ever paid to Salah Farhat. Your Honor was therefore in error when you held that count six (6) of the indictment was proved and for which reason your final judgment should be reversed.

4. That as to your Honor’s final ruling on count twelve (12) of the indictment, your honor reversibly erred when you held in your final judgment that the defendants resold the property of Tayo Motors to Mr. Clarence Momolu for US\$22,000.00 and converted the proceeds to his personal use. Your Honor forgot and overlooked the corroborated and uncontroverted testimony of Mr. Salah Farhat and Mr. Clarence Momolu. Salah Farhat testified that the pickup with engine no. 04062119 for which a bill of sale was issued to him was later sold to Mr. Clarence Momolu, the owner of Kpaku Plaza for US\$22,000.00, but Kpaku Plaza paid US\$25,000.00 deposited on the 18<sup>th</sup> of March, 2020, and the balance of US\$3,000.00 was returned to Mr. Clarence Momolu. See sheet 5, 29<sup>th</sup> day jury sitting, March 19, 2020. When Mr. Clarence Momolu took the witness stand, he testified that he had discussed with Tayo Motors for the purchase of a new pickup for US\$25,000 but when the second arrangement for the used pickup was made, the accountant who did not know of the new arrangement for a used pickup paid to Tayo US\$25,000.00 under the previous arrangement and he was later reimbursed US\$ 3,000.00. See sheet 4, 32<sup>nd</sup> day jury sitting, March 23, 2020; also, sheets 5 & 9, 29<sup>th</sup> day jury sitting, March 19, 2020. Your Honor overlooked these uncontroverted testimonies of Salah Farhat and Clarence Momolu that US\$22,000.00 of the US\$25,000.00 paid by Clarence Momolu was retained in the account of Tayo Motors after the reimbursement of US\$3,000.00 to Clarence Momolu/Kpaku Enterprise. For this reason, defendants except.
5. That as to your Honor’s ruling on count thirteen (13) of the indictment, Your Honor reversibly erred when you held in your final judgment that Salah Farhat did not deny or produce

any credible rebuttal evidence about the allegation contained in count 13 of the indictment. On sheet 9, 29<sup>th</sup> day jury sitting, Thursday, March 19, 2020, Salah Farhat clearly stated un rebutted that he bought one pickup from Tayo Motors, used it and if somebody wanted it, he sold to that person, and he took another one, and did it like this six times, and that the records of these transactions were with Tayo Motors and that Eid was aware. On the same sheet, when the witness was asked to state the names of those he sold the said pickups to, your honor disallowed the question. The records of the transactions were subpoenaed and without saying whether or not you ever reviewed those records, you concluded that co-defendant Salah Farhat did not deny nor produce any credible rebuttal evidence. Remarkably, the prosecution failed to establish the value of the theft that they alleged to have occurred. For this reason, defendants except.

6. That as to Your Honor's ruling on count fourteen (14) of the indictment, Your Honor also reversibly erred when you held defendants guilty for theft and misapplication of US\$23,165.00 representing balance to be paid by Urban Builders to Tayo Motors from a judgment obtained against the said Urban Builders in the commercial court, when in fact and indeed, the prosecution presented no evidence that the said sum was ever paid to the commercial court and collected by Salah Farhat. On sheet 6, 29<sup>th</sup> day jury sitting, March 19, 2020, Salah testified that the US\$23,000.00 is yet to be collected by the commercial court, Without bringing anyone from the commercial court to rebut this testimony of co-defendant Salah Farhat that the said US\$23,000.00 is still to be collected by the commercial court, you held the defendants guilty for misapplying the said sum, for which you committed a reversible error. For this reason, defendants except.
7. That as to Your Honor's ruling on count fifteen (15) of the indictment, Your Honor also reversibly erred when you held the defendants guilty for theft and misapplication of US\$64,000.00 paid by Land and Housing Development, Inc. through open cheques of US\$23,000.00 and US\$23,000.00 and payment vouchers of US\$6,000.00, US\$6,000.00 and US\$46,000.00, respectively when indeed and in fact Mr. Salah Farhat uncontrovertibly testified without any rebuttal that the first US\$23,000.00 cheque was cashed and deposited into Tayo Motors' account on May 2, 2014, as US\$20,000.00 and US\$3,000.00 by Joey Tabigue, the accountant of Tayo Motors, the second US\$23,000.00 cheque was cashed and with the consent of the private prosecutor, Ezzat Eid, used for the business of Tayo Motors, that the three cheques of US\$6,000.00 each, were deposited into Tayo's account on

June 5, 2014, July 9, 2014, and August 8, 2014, respectively. Indeed Tayo's Ecobank statements are reflective of these deposits. It is therefore a reversible error on Your Honor's part to hold the defendants guilty for theft of property and misapplication of entrusted property in the amount of US\$64,000.00. See sheet 7, 29<sup>th</sup> day jury sitting, March 19, 2020.

8. That as to Your Honor's ruling on count sixteen (16) of the indictment, Your Honor erred when you ignored the uncontroverted testimony of co-defendant Salah Farhat which is supported by the Ecobank records of Tayo Motors, to the effect that, though MAK Group did make a payment of US\$17,000.00 in the name of Tamer Farhat, Tamer Farhat deposited US\$16,500 out of the US\$17,000.00 into Tayo Motors' account on February 18, 2014, after he had cashed the check and the remaining US\$500.00 was paid as commission to the broker who brought the customer; notwithstanding this testimony, you prejudicially concluded that the deposit of US\$16,500.00 into Tayo Motors' account by Tamer Farhat 'could have been earnings for a completely different transaction and not the MAK Group'. Your Honor's conclusion is not only prejudicial but it amounts to nothing but mere presumption unsupported by any evidence. See sheet 7, 29<sup>th</sup> day jury sitting, March 19, 2020. Beside this testimony of Salah Farhat, the prosecution did not produce any evidence to indicate that the US\$16,500.00 deposited in Tayo Motors' account was from a different source. Your Honor also exhibited extreme prejudice when you unilaterally introduced some unsubstantiated information about MAK Group paying US\$3,000.00 and US\$2,000.00 cheques to Tamer Farhat when no such allegation was made in the indictment. For these reasons, defendants except.
9. That as to Your Honor's ruling on count seventeen (17) of the indictment, Your Honor reversibly erred when in your final judgment, you held the defendants guilty for theft of property and misapplication of entrusted property in the amount of US\$18,000.00 paid by West African Examination Council (WAEC) in the name of co-defendant Salah Farhat and held or assumed that the deposit of US\$14,500.00 would have been Tayo Motors' earnings from a different transaction without any testimony to the effect. Salah Farhat uncontrovertibly without any rebuttal said that the US\$18,000.00 was cashed, US\$14,500.00 deposited into Tayo Motors' account on April 5, 2014 and the balance US\$3,500.00 used for Tayo operations and business. See sheet 8, 29<sup>th</sup> day jury sitting, March 19, 2020. Your Honor also ignored the fact that Salah had said all of the records were with Tayo Motors and all of which

records were subpoenaed and handed over to the court. For these reasons, defendants except.

10. That as to Your Honor's ruling on count eighteen (18) of the indictment, Your Honor erred when in your final judgment you overlooked the uncontroverted testimony of co-defendant Salah Farhat and held the defendants guilty for the theft and misapplication of US\$5,000.00, US\$5,000.00 and US\$4,000.00 transactions with Arc Investment, Inc. which monies were payment for vehicle purchased from Tayo Motors. Salah Farhat uncontrovertibly testified that the first US\$5,000.00 cheque was cashed and used to pay salaries and expenses, the second US\$5,000.00 cheque was cashed and deposited into Tayo Motors account on February 4, 2014 and the US\$4,000.00 cheque was cashed and used for Tayo Motors' business and the records were with Tayo Motors. See sheet 8, 29<sup>th</sup> day jury sitting, March 19, 2020. The prosecution did not cross examine the witness as the referenced testimony; neither did the prosecution place on the record any testimony to rebut the testimony Salah Farhat. Your Honor's judgment is also prejudicial and Your Honor erred, when you proffered your own charge against the defendants for an additional US\$10,000.00 and found them guilty of that charge, even though the prosecution amended its indictment, and did not proffer any charge of US\$10,000.00 in count eighteen of the amended indictment for which you found the defendants guilty. For these reasons, defendants except.
  
11. That as to Your Honor's ruling on count nineteen (19) of the indictment, Your Honor erred when in your final judgment held the defendants guilty for the theft and misapplication of US\$12,000.00 involving transaction with Chain Business Center in respect of a silver colored vehicle double cabin pickup. Mr. Salah Farhat uncontrovertibly testified that Khalid Eid, a nephew of Ezzat Eid had paid for and used the pickup and when it was getting rusty, he returned it and requested for reimbursement of US\$12,000.00; that he sold the pickup to Rader Winning, a customer of Tayo Motors on credit. See sheet 8, 29<sup>th</sup> day jury sitting, March 19, 2020. Also, Rader Winning came to court and testified that he traded a dump truck that he had purchased from Tayo Motors for the said pickup. See sheet 8, 32<sup>nd</sup> day jury sitting, March 23, 2020. The prosecution did not cross-examine the witness in respect of this testimony, did not give any notice to rebut, did not place any rebuttal testimony on the record and therefore co-defendant Salah Farhat's testimony not having been refuted, rebutted or denied, is deemed admitted. Hence, Your Honor committed a reversible error when you held defendants guilty for theft and misapplication of US\$12,000.00. For these reasons, defendants except.

12. That as to Your Honor's ruling on count twenty (20) of the indictment, Your Honor also erred when you held the defendants guilty for the theft and misapplication of US\$20,000 paid by Association of Evangelical of Liberia for the purchase of vehicle from Tayo Motors overlooking and ignoring the uncontroverted and unrebutted testimony of Salah Farhat that the said US\$20,000.00 cheque was cashed and deposited into Tayo Motors' account on the 25<sup>th</sup> of June 2014 in two different segments of US\$16,000.00 and US\$4,000.00, respectively, but your honor without any testimony rebutting that testimony of Salah Farhat, assumed that the deposits were from a different transaction of Tayo Motors and that the defendants stole the US\$20,000.00 and tried to do cover-up. See sheet 9, 29<sup>th</sup> day jury sitting, March 19, 2020. On cross-examination, though prosecution gave notice that it would rebut the testimony of the co-defendant, prosecution failed to place on the record any rebuttal evidence, See sheet 10, 30<sup>th</sup> day jury sitting, Friday, March 30, 2020. Notwithstanding, your honor compromised your cool neutrality and in your final judgment holding defendants guilty, exclaimed: "why wasn't the entire amount of US\$20,000.00 deposited in cash? Why was it deposited in installments of US\$16,000.00 and US\$4,000.00?" It is for these reasons, defendants except.
13. That as to Your Honor's ruling on count twenty-one (21) of the indictment, Your Honor also erred when you held the defendants guilty of the theft and misapplication of US\$2,218.62 in the face of the unrebutted testimony of co-defendant Salah Farhat, that there was over charge and so the accountant edited the figure to reflect the actual figure. See sheet 9, 29<sup>th</sup> day jury sitting, March 29, 2020.
14. That as to Your Honor's ruling on count twenty-two (22) of the indictment, Your Honor reversibly erred when you held the defendants guilty of theft and misapplication of US\$88,171.00 representing judgment obtained by Tayo Motors against International Construction and Engineering Inc. in the commercial court forgetting to know that the Indictment at count 22 only charge the defendant for stealing and misapplying US\$3,500.00 of the US\$88,171.00 from an auction of ICE Nissan X-trial and not the US\$88,171.00 as a whole. Your Honor also overlooked the fact that the unrebutted and corroborated testimony of Mr. Salah Farhat and Best Moon Security agent, Mr. Beesley about the US\$3,500.00 that the said Nissan X-trial was traded for security service, you yet held the defendants guilty without even taking recourse to the indictment and the testimonies before you. This is an error.

15. That as to Your Honor's ruling on count twenty-three (23) of the indictment, Your Honor reversibly erred when you held the defendants guilty of theft and misapplication of US\$3,414.00 when you ignored the testimony of Salah Farhat when he said he used Tayo Motors vehicle for promotional purpose and for Tayo Motors operations and that whenever a customer expresses interest in same, he sells it, put the money in Tayo Motors' account and take another vehicle, That in the instant case, the vehicle in question was used by Salah Farhat, returned to Tayo Motors and is on the inventory list of Tayo Motors as it was not sold. The prosecution did not product any evidence that USS\$3,414.00 was paid to Salah Farhat for the subject vehicle. Hence, it is error to hold the defendants guilty for theft and misapplication of this amount for which you must be reversed.
16. That as to the entire final judgment Your Honor erred when you held both defendants liable for the US\$1,370,390.62 because even if there is a conspiracy, you must the role each person played and prove it in the particular transaction and then render judgment accordingly. That prosecution failed to establish or lead evidence to prove Tamer Farhat's complicity in every transaction for which allegations were made. You must be reversed for this reversible error, Your Honor.
17. Your Honor erred when, knowing that leading questions are questions that put words in the mouth of the witness and it was the private prosecutor on the witness stand and upon whose complaint the indictment was drawn, you over ruled defense objection to the prosecution's question "Mr. witness, the amended indictment also captured the business transaction between Tayo Motors and the Liberian Senate in the amount of US\$16,000.00 transaction between the Senate and Tayo Motors?", which question was intended to lead the witness to talk about a US\$16,000.00 transaction that existed between the Liberian Senate and Tayo Motors instead of the witness speaking about the US\$16,000.00 from his certain knowledge. See sheet 8, February 27, 2020, 13<sup>th</sup> day jury sitting.
18. That Your Honor erred when knowing that leading questions are questions that put words in the mouth of the witness and it was the private prosecutor on the witness stand and upon whose complaint the indictment was drawn, you over ruled defense objection to the prosecution question "also Mr. witness, count 13 of the indictment talks about the books of Tayo Motors and the accounting records which shows that there were several dealing between Tayo Motors and Salah Farhat in respect of several bill of sales of vehicles without financial benefit to Tayo Motors Liberia, what do you know

regarding said self-dealing which question was intended to put the issue of self-dealing and the books of Tayo Motors into the mouth of the witness instead of the witness speaking from his certain knowledge. See sheet 8, February 27, 2020, 13<sup>th</sup> day jury sitting.

19. That Your Honor erred when knowing that leading questions are questions that put words in the mouth of the witness and it was the private prosecutor on the witness stand and upon whose complaint the indictment was drawn, you over ruled defense objection to the prosecution question “Mr. witness, also count 15 alleges that Mark Group of Company, Inc. did a transaction with Tayo Motors and Mark Group issued an FIB cheque to co-defendant Tamer Farhat and not in the name of Tayo Motors. Also, count 17 of the indictment also alleges that WAEC also transacted with Tayo Motors for a vehicle purchased from Tayo Motors. WAEC also issued a Global Bank cheque in the amount of US\$18,000.00 in the name of co-defendant Salah Farhat for the said vehicle. Also count 18 also said postdated Ecobank cheques in the amount of US\$5,000.00 cheque dated December 31, 2014, and a US\$4,000.00 cheque dated February 28, 2014 were payments made by Arts Investment, Inc. against sale of vehicle sold by Tayo Motors to said Art Investment, Inc. My question to you is Mr. witness, what do you know regarding circumstances of which transaction named in the indictment? which question was compounded and intended to lead the witness who is the private prosecutor to talk about the issues of US\$18,000.00 cheque with WAEC, US\$4,000.00 and US\$5,000.00 with Art Investment, Inc. See sheet 2, February 28, 2020, 14<sup>th</sup> day jury sitting.
20. That Your Honor erred when knowing that leading questions are questions that put words in the mouth of the witness and it was the private prosecutor on the witness stand and upon whose complaint the indictment was drawn, you over ruled defense objection to the prosecution question “Mr. witness, the indictment specifically count 19, alleges that the used Tayo 4X4 pickup truck from Chain Business Center, Tayo Motors’s fund was used by the issuance of Ecobank cheques in the amount of US\$12,000.00 but there is no other record for the said pickup truck in the inventory of Tayo Motors. Also count 20 of the indictment also alleges that the Association of Evangelicals of Liberia purchased a vehicle from Tayo Motors in the amount of US\$20,000.00 by the issuance of an International Bank cheque no. 0405627 or 000258 in the name of co-defendant Tamer Farhat. Also count 21 of the indictment also alleges that an invoice number s-1/00010 in the amount of US\$18,896.73 dated Hanuary 6, 2016 in the name of co-defendant Salah Farhat as cash customer of Tayo

Motors, but on the accounting invoice of Tayo Motors, the invoice is edited to the amount of US\$16,678.11 on February 2, 2016. My question to you is what do you know about the transactions or circumstances leading to those transactions leading in the indictment? This question was intended to lead the witness who is the private prosecutor to talk about US\$12,000.00 and the editing of US\$18,896.73 to US\$16,678.11. See sheet 3, 14<sup>th</sup> day jury sitting, February 28, 2020.

21. That Your Honor reversibly erred when you sustained prosecution's objection to defense question to prosecution's first witness and private prosecutor in person of Ezzat Eid on the cross and which question reads "Mr. witness, you will agree with me that monies belonging to Tayo deposited by Tayo into Salah Farhat's account were subsequently debited to Tayo Motors' account for the operation – that is to say for the purchase of vehicles, payment of rent and the operations of Tayo Motors. Do you agree? Which question was intended to have the witness agree with the defense that the monies deposited into Salah Farhat's account for Tayo were subsequently deposited to Tayo's account and used for Tayo. Your Honor sustained the objection of prosecution on ground that the question being argumentative when indeed the question is not argumentative and when you remarked that prosecution's witness cannot be asked question as though it is intended for him to disprove or testify for what the defendant will do when he takes the witness stand, when you know that the defendant is innocent until the guilt is proved beyond a reasonable doubt and that the burden of proof remains with the prosecution up to the end of the trial. See sheet 6, 17<sup>th</sup> day jury sitting, March 3, 2020.

22. Your Honor reversibly erred when you sustained prosecution's objection to defense question on the cross of prosecution's first witness and private prosecutor on ground that the question is argumentative, which question reads "Mr. witness your refusal to compel accounting for the operation of Tayo by Mr. Salah Farhat for which you did not understand the financial operation of Tayo Motors conducted by Mr. Salah Farhat, said operation cannot amount to theft of property, misapplication of entrusted property and criminal conspiracy, it cannot, you know that. Do you agree with me?" This question was intended for the witness to agree that it was better to request for or compel accounting by Mr. Salah Farhat for the operation of Tayo Motors as opposed to pressing criminal charges against him to account before the criminal court "C". See sheet 13, 17<sup>th</sup> day jury sitting, March 3, 2020.

23. That Your Honor reversibly erred when you sustained prosecution's objection to defense question which was intended to have the witness show to the court on the bank statement of Tayo Motors marked by court as exhibit 9 at April 25, 2014, and at May 2, 2014, the deposit of US\$23,000.00, US\$6,000.00, US\$6,000.00 and another US\$6,000.00 for which it is alleged in count 15 of the indictment that there is no record of any such deposits into Tayo Motors' account at Ecobank, The question reads "Mr. witness, you caused the court to mark exhibit 9 confirmed. I pass it over to you please look at it at April 25, 2014, and May 2, 2014, and tell the court what you see there at? If the witness had answered the question, you would have known that the charges leveled against the defendants are based on assumptions, which cannot be established.
24. Your Honor also reversibly erred when you sustained prosecution's objection to defense question intended to have the witness to say that the records of the US\$18,000.00, US\$5,000.00 and the US\$4,000.00 which are alleged in counts 17 & 18 of the indictment are indeed in the records of the bank statement of Tayo Motors. The question reads "Mr. witness, you also in your testimony alleged that US\$18,000.00 cheque was issued to Mr. Salah Farhat by Mark Group and another US\$45,000.00 cheque issued by ARC Investment along with another US\$4,000.00 cheque and that there is no trace of same in the records of Tayo Motors. You will agree Mr. Witness that the accounting record of Tayo Motors is reflective of the US\$18,000.00, the US\$5,000 and the US\$4,000.00 cheques, respectively? Your Honor sustained the objection on ground that the prosecution witness cannot testify for the defendants when you know that this witness had testified to the same US\$18,000.00, US\$5,000.00 and US\$4,000.00 in his testimony on the direct as not being reflected in the bank statement of Tayo Motors with Ecobank. See sheet 2, 18<sup>th</sup> day jury sitting, March 4, 2020.
25. Your honor reversibly erred when you sustained prosecution's objection on grounds of irrelevancy to defense question to prosecution's first witness and private prosecutor in person of Ezzat Eid on the cross intended to have the witness to say that the money for the lease for the land on which Tayo Motors building is situated and the salaries for the employees of Tayo were paid out of the income of Tayo Motors when you know that the indictment charges for misapplication of Tayo Motors' money by the defendants. The questions read "Mr. witness, the money for the lease of this land on which the building is situated was paid out of Tayo Motors' account. Do you agree with me? And the other is, Mr. witness, the salaries of the workers of Tayo Motors were paid from Tayo Motors' account.

Do you agree with me”? See sheet 3, 18<sup>th</sup> day jury sitting, March 4, 2020.

26. That Your Honor erred when, knowing that leading questions are questions that put words in the mouth of the witness, over ruled defense objection to prosecution’s question to its 2<sup>nd</sup> witness and which question reads “Mr. witness, count three of the indictment alleges that it was agreed by and between the private prosecutor, Mr. Ezzat Eid, and co-defendant, Salah Farhat that the monthly remuneration of salaries for the service as managing partner of Tayo Motors, he, Salah Farhat, was to be paid US\$2,000.00 and his son, Tamer Farhat, be paid US\$1,000.00 and that the salary of co-defendant was increased from 2016 up to and including February, 2018, from US\$2,000.00 to US\$5,000.00 while his son Tamer Farhat increased from US\$1,000.00 to US\$2,500.00. During the combination of the documents by you and the new management of Tayo Motors, what did you observe surrounding the issue of the salary payment to co-defendant Tamer Farhat and Salah Farhat”? This question was intended to lead the witness to talk specifically about the salaries of Salah Farhat and Tamer Farhat whereby the witness should have spoken from his certain knowledge about the salaries of Salah Farhat and Tamer Farhat. See sheet 8, 18<sup>th</sup> day jury sitting, March 4, 2020.
27. That Your Honor also reversibly erred when you sustained prosecution’s objection to defense question on the cross of prosecution’s 3<sup>rd</sup> witness as abrogation of the parole evidence rule and others. The question reads “Mr. witness, you identified court’s marked p/10 confirmed when you spoke of a US\$180,000.00 rental payment to Salah Farhat and the exhibit p/10 shows an account statement of Tayo Motors. You are an experienced auditor and well-schooled in account. I pass to you the said court’s marked p/10. Please look at it and say whether the US\$180,000.00 as you have identified to be the rent of Mr. Salah Farhat was indeed paid to Salah Farhat?” This question was intended to have the witness who has claimed that he sorted and conducted a review of the documents and saw a jige debot pf US\$180,000.00 as rent for Mr. Salah Farhat to say whether Tayo did pay that amount to Salah Farhat as rent according to his review of the records. See sheet 2, 20<sup>th</sup> day jury sitting, March 6, 2020.
28. Your Honor also reversibly erred when you sustained prosecution’s objection to defense question on the cross of prosecution’s 3<sup>rd</sup> witness as abrogation of the parole evidence rule, entrapment and others. the question reads “let us come to court’s marked p/10 again, Mr. witness, the exhibit 10 you have clarified was one of the documents given to you by Mr.

Eid and Wheal, please look at it and say what does the debit, the credit and the balances thereon represent?” This question was intended for the witness to clarify whether the column captioned balance and debit represent payment or what those columns really represent which answer would clarify to the court payment or none payment of the rental to Salah Farhat. See sheet 2, 20<sup>th</sup> day jury sitting, March 6, 2020.

29. Your Honor also reversibly erred when you sustained prosecution’s objection to defense question on the cross of prosecution’s 3<sup>rd</sup> witness as invading the province of the court and which question reads “Mr. witness, at count 10 of the amended indictment, it is alleged that US\$20,000.00 cheque issued by Evangelicals of Liberia in the name of Tamer Farhat is not reflective or that there is no evidence of the deposit of same into the account of Tayo Motors. Mr. Witness, do you after seeing the said deposit into the account of Tayo Motors by Tamer Farhat, agree with this averment in the indictment”? This question was intended to have the witness to confirm that indeed even though the cheque was written in the name of Tamer Farhat, the money was deposited into the account of Tayo Motors against count 10 of the indictment, See sheet 4, 20<sup>th</sup> day jury sitting, March 6, 2020.

30. Your Honor also reversibly erred when you sustained prosecution’s objection to defense question to defense first witness on the direct on grounds of being irrelevant and immaterial which question reads “Mr. witness, you made reference to the work that was conducted on the building under your supervision for which the increment in your salary was agreed. If you see these photos will you be able to recognize them?” This question was intended to show to the court that indeed Salah did supervise the construction work even at night and that the business was making profit for which he and the private prosecutor agreed that Salah Farhat’s salary will go up to US\$5,000.00. See sheet 3, 28<sup>th</sup> day jury sitting, March 18, 2020.

31. Your Honor also reversibly erred when you disallowed defense’s question to its first witness who is also the prime defendant in the case from answering a question which would have named the persons that he sold pickups that he had taken, used, sold and put the money into Tayo Motors’ account. See sheet 9, 29<sup>th</sup> day jury sitting, March 19, 2020.

32. Your Honor also reversibly erred when you sustained prosecution’s objection to defense question to defense first witness on the direct on ground of cross examining one own witness which question reads “Mr. witness, when you were testifying, you testified as using the sum of US\$540,740.00 as

part of US\$673,000.00 plus. Please say and explain to the court how did you use the balance of US\$160,818.00 for Tayo Motors". This question was intended for the witness to account for the balance of US\$160,818.00 to clarify the minds of the court that the witness/defendant did not use Tayo's money personally for himself. See sheet 11, 29<sup>th</sup> day jury sitting, March 19, 2020.

33. Your Honor also reversibly erred when you sustained prosecution's objection to defense question to prosecution's 5<sup>th</sup> rebuttal witness who is also the private prosecutor on the cross on grounds that the question was argumentative which question reads "Mr. witness, you also said in your answer all you know is that the account was open in his personal name because of criminal motive. My question is, it was not criminal when money placed into the said account of Mr. Salah Farhat was correspondingly deposited into Tayo Motors' account was not criminal and no intent whatsoever to convert the said amount into Mr. Farhat's personal use. Am I correct?" This question was intended to have the witness to say that it was not criminal when money for Tayo Motors deposited in Salah's personal account was correspondingly sent to Tayo Motors' account for use by Tayo Motors. See sheet 13, 35<sup>th</sup> day jury sitting, March 26, 2020.

34. Your Honor also reversibly erred when you sustained prosecution's objection to defense question to prosecution's 5<sup>th</sup> rebuttal witness who is also the private prosecutor on the cross on grounds that the question was argumentative which question reads "Mr. witness, you impressed the court that indeed from 2011 – 2018, the period for which Tayo was operated by co-defendant Salah Farhat, there was no report whatsoever. You want this court to believe that there was no report actually and that you sat down waited for seven years, bought Mr. Salah Farhat out, paid him receivable, take over the records of Tayo Motors and still come to court and put frivolous claim which you do not substantiate. Do you want this court to believe that you did care about Tayo Motors?" This question was intended to show that the witness who is the private prosecutor was nonfeasance. See sheet 14, 35<sup>th</sup> day jury sitting, March 26, 2020.

Wherefore, and in view of the foregoing, defendants respectfully pray Your Honor and this Honorable Court to approve this bill of exceptions for review of this matter in the appellate court in accordance with law, practice and procedure in this jurisdiction".

This Court, having carefully examined the facts in this case, listened to arguments proffered by the counsels representing the parties and the law citations contained

in their respective briefs, the essential issue for the determination of this case is: Whether or not the final ruling of the trial court conforms to the facts and evidence adduced during trial in this case and that said ruling be affirmed by this Court? We answer in the affirmative.

The undeniable facts in this case show that the private prosecutor, Ezzat Eid, and the co-appellant, Salah Farhat, entered a partnership agreement and established in 2011 the enterprise known as the Tayo Motors (Liberia), Inc., an entity engaged in the importation and sale of Chinese manufactured vehicles on the Liberian market. Initially, four persons established the partnership, namely: Ezzat Eid (45%), Salah Farhat (25%), Wall Harris (20%) and Kama Hanson (10%), respectively. Later, Ezzat Eid bought Wall Harris' share thus raising his share to (65%) and Salah Farhat also bought Kama Hanson's share which raised his share to (45%), respectively; that because of the business knowledge of co-appellant, Salah Farhat, coupled with their long standing cordial relationship, the private prosecutor, Ezzat Eid, had the co-appellant, Salah Farhat, managed the partnership unconditionally. However, because the trust was betrayed by the appellants, Salah Farhat and his son, Tamer Farhat, a criminal action was instituted against them by the majority partnership interest, Ezzat Eid. Following the trial and having been adjudged guilty for theft of property, criminal conspiracy and misapplication of entrusted property, the appellants noted exception on the records, announced an appeal and thereafter, filed their bill of exceptions.

In their bill of exceptions, the appellants argued that the trial judge committed reversible error when he adjudged the defendants guilty of the crimes charged. However, to ascertain the truthfulness of these allegations, this Court takes further look at the certified records before it. In the testimony of the private prosecutor, Ezzat Eid, he averred that because of his trust and confidence in co-appellant, Mr. Salah Farhat, coupled with their relationship, and in light of that, the private prosecutor sold two real estate property, including apartments for him and his son, co-appellant Tamer Farhat. But after almost two and half years of the running of the affairs of the Tayo Motors, Liberia, the private prosecutor maintained that the co-appellant, Salah Farhat failed to account for his sixty-five (65%) percent shares in the partnership; that he has not received his share of dividend for the period mentioned and that upon request from co-appellant Salah

Farhat, he was paid US\$45,000.00 from the personal account of Salah Farhat under the impression that all of the money for the partnership was stocked up in receivables, when in fact and in truth, Salah Farhat maintains a parallel account at the Ecobank where he was depositing money belonging to the partnership unknown to the private prosecutor.

In contrast to this grave allegation, co-appellant, Salah Farhat, asserted that he opened an account at Ecobank in his own name because it was difficult to process checks issued in the name of the partnership and deposited same in his personal account at Ecobank from which he made withdrawals without the knowledge of the private prosecutor.

The records further revealed that the co-appellant, Salah Farhat, exercised unauthorized control and converted the amount of US\$682,567.00 of the partnership funds and transferred same into his personal account at Ecobank while the partnership had maintained an account at said bank; and in so doing, he converted the funds of the partnership to his personal expenses and charged same to the partnership's account at Ecobank in the amount of US\$278,764.58 without the knowledge of the private prosecutor, the majority shareholder of the partnership. The comingling of partnership funds by the co-appellant, Salah Farhat, was abundantly established during the trial as also shown in his unauthorized spending of funds belonging to the partnership by unilaterally expanding US\$36,000.00 per year for seven years at the total of US\$252,000.00 for the sole purpose to pay for the lease of his own property without making full disclosure to the private prosecutor, the appellee herein.

This Court notes the justification provided by co-appellant, Salah Farhat, that due to the difficulty to withdraw funds from the partnership account at the Ecobank formed the basis for his decision to act alone in depositing funds for the partnership into his personal account also at Ecobank is without legal soundness and an avenue created by him to syphon the partnership funds into his personal use; hence, this justification cannot be countenanced by this Court. We also note that the co-appellant relied on Section seven (7) of the partnership agreement which provides that "a firm will be governed and managed by one of the partners who will be appointed by the other partners to manage and govern the

partnership with the express sole authority to manage all of the other partners”. In reliance thereof, the co-appellant asserted in his brief before this Court that he had the sole express authority to manage the partnership and all of the other partners did not have equal right to its management. This assertion by the co-appellant runs contrary to Section 30.20(e) of Chapter 30 of the Association Law of Liberia, which states unequivocally “that subject to any agreement between the partners, all partners have equal right in the management and conduct in the partnership business”. Influenced by his false belief that the sole management of the partnership rested on him alone, the co-appellant, Salah Farhat, executed several transactions of the partnership, Tayo Motor Liberia, Inc. to his personal benefit, viz: The payment of rent by the partnership for his own house; the unilateral increment of salaries for him and his son, Tamer Farhat; the persistent writing of checks intended for the partnership in the names of the appellants (Salah Farhat and Tamer Farhat) by customers; self-dealing of the assets of the partnership to third parties to the disadvantage of the partnership and the majority owner, private prosecutor herein. All these acts combined constitute gross impropriety carried out by the co-appellant Salah Farhat for which a guilty verdict will lie. Besides, where the act of the accused is deliberate and unlawful, criminality is presumed or inferred as to the motive of the accused to undertake such unlawful act as done in this case by co-appellant, Salah Farhat.

Moreover, this Court is yet to understand that for two and a half years of the running of the partnership by co-appellants, Salah Farhat and Tamer Farhat ( his son), could not pay the dividend of 65% share of the profit of the partnership to the private prosecutor, Ezzat Eid, for reason that “all the money was piled in receivables” which made the co-appellant, Salah Farhat, to issue a check of US\$45,000.00 from his personal account and not the account of the partnership at Ecobank; whereas, the records established that he kept a personal account at Ecobank where he was depositing money realized from sale of vehicles of the partnership, Tayo Motors (Liberia), Inc. while the partnership had its account with said bank. This act by the co-appellant is a clear violation of the partnership agreement and commingling in business transaction speaks of unfair business practice and also amounts to a calculated attempt to cheat partners of the partnership which finds no support in the law. The Black’s Law Dictionary, Tenth

Edition, page 327 defines commingling as “to mix personal funds with those of a beneficiary or client, usually in an improper or illegal manner” as is done in this case. What motivated the co-appellant Salah Farhat, manager of the partnership, is totally wanting and could be inferred from the fact that it was intended for him to divert and convert unto himself the funds from the partnership for his personal use. In light thereof, this Court understands the reason why he objected to an audit of the partnership under his management as indicated in the ruling of the trial judge His Honor Yamie Quiqui Gbeisay, culled from the unrebutted testimonies of the private prosecutor and his witnesses that one of the witnesses recommended an audit of the books of Tayo Motors, Liberia, but complained that he did not get the cooperation of the management team headed by co-appellant Salah Farhat and therefore advised the private prosecutor to buy the share of the co-appellant Salah Farhat to enable him have access to the records of the partnership; hence, the private prosecutor bought the co-appellant Salah Farhat out of the partnership on March 17, 2018.

The ruling of the trial judge further revealed that the private prosecutor having taken over the partnership, discovered several irregularities in the transaction records of the partnership under the management of co-appellant Salah Farhat and his son, Tamer Farhat; consequently, the private prosecutor hired the services of the ENAG Consultancy to audit the books of the partnership but the appellants refused to submit to audit and the records in this case established that this assertion by the private prosecutor was never rebutted. The law extant provides “that the failure of the person to reply to an oral statement made and introduced into evidence against him, where he had the opportunity to act (or to speak, emphasis ours) is an implied admission of the facts stated”, *Dwe Wlo Flo v. Republic*, 29 LLR 3 (1981).

This Court further observes that throughout the course of the business, there was no business meeting held by the partners necessary to keep track, minutes or records of how the partnership enterprise was being managed by co-appellant Salah Farhat. For two and a half years of active business activities no document to show progress made by the business for the period, contrary to Section 30.21.1(a) of the Association Law of Liberia under Partnership, which states that “every

partnership shall keep reliable and complete accounting records, to include correct and complete books and records of account...the partnership shall keep underlying documentation for account records maintained, such as but not limited to invoices and contracts, which reflect all sums of money received and expended and the matters in respect of which the receipts and expenditures take place; all sales, purchases and other transactions; and the assets and liabilities of the partnership”.

We also take judicial cognizance of the contention of the co-appellant, Salah Farhat, that in light of a release executed and well signed by the private prosecutor, relieving him of any and all liabilities because he has sold his shares to the private prosecutor in the total sum of Two Hundred Fifty-Seven Thousand United States (US\$257,000.00) Dollars and whereas the co-appellant submitted a list of receivables in the amount of Eight Hundred Nineteen Thousand, Two Hundred Forty-Seven United States (US\$819,247.00) of all customers that dealt with Tayo Motors to the private prosecutor, he is forever relieved of liabilities to the private prosecutor. That, the “release” has confirmed that the co-appellant, Salah Farhat, was bought out of the partnership and therefore had no more obligation or claim in the shares of Tayo Motors, Inc. This Court notes that the language of the “release” is self-explanatory and cannot or should not be understood otherwise, so much so to impute meaning not contemplated by the parties. In his testimony before the trial court, the co-appellant contended that “...upon settlement when he paid me the balance money, we signed a receipt release written in three paragraphs. The first paragraph, I sold the business to him for US\$257,000.00. The second paragraph was agreed and understood by both parties that the receivable is US\$819,247.00 is outstanding with receivable list of all customers dealing with Tayo Motors. The third paragraph says “this is full evidence of complete discharge, by Ezzat N. Eid from any obligation of my shares of the company”.

The undisputed fact is that the co-appellant became a managing partner of Tayo Motors, Inc. and conducted business transaction on behalf of the partnership, for which period he must account. The certified records further revealed that the private prosecutor made several attempts to get the co-appellant, Salah Farhat, submit to an audit of all the financial transactions carried out by them during the

period. But in the testimonies of the private prosecutor and the prosecutor's witness, Eric Nagbe, the person hired to audit the account of the partnership, they told the court below that co-appellant, Salah Farhat, refused to submit to audit; that the failure of the Ambassador of Lebanon accredited near this Capital, coupled with the failure of the co-appellant Salah Farhat to work with the board of arbitrators set up by the World Lebanese Cultural Union to reconcile the accounts of the partnership cast doubt on the management of the partnership by co-appellant and his son. That the co-appellant was not precluded or immune from answering to calls to account for the financial management of the partnership. It is our holding therefore, that the "receipt/release" mentioned in the testimony of the co-appellant, Salah Farhat, did not release him of liability to the partnership.

Having thus said, we hold that the prosecution did establish the guilt of the appellants beyond a reasonable doubt and therefore conclude that the trial judge was not in error when he adjudged the appellants guilty of the crimes theft of property, misapplication of entrusted property and criminal conspiracy.

As to the contention of the appellee that the trial judge should have upheld the doctrine of "double the gain" against the appellants, we are not inclined to support this contention as the alleged gain is not stated with specificity by the appellee to claim support of this Court. Therefore, in the absence of a clear definition of the alleged gain realized by the appellants during the conduct of the business activities, we find it difficult to grant.

Wherefore, and in view of the foregoing facts and circumstances, the final ruling of the trial court, adjudging the appellants guilty of the crimes of theft of property, misapplication of entrusted property and criminal conspiracy, is affirmed with modification and the appeal accordingly denied. The restitution ordered by the trial court in the amount of One Million, Three Hundred Seventy Thousand, Three Hundred Ninety United States Dollars (US\$1,370,390.60) and Sixty Cents is also affirmed and the prison term reduced to six (6) months for co-appellant Salah Farhat and three (3) months for co-appellant Tamer Farhat. Should the appellants fail or refuse to retribute said amount, they shall remain in the common jail until the full amount is paid or liquidated. The Clerk of this Court is ordered to send a Mandate to the court below commanding the Judge presiding therein to resume

jurisdiction over this case and give effect to this Opinion. AND IT IS HEREBY SO ORDERED.

**When this case was called for hearing, Counsellors Gloria M. M. Scott and David Woah appeared for the Appellants. Counsellors Wesseh A. Wesseh and Jerry D. K. Garlawulo of the Ministry of Justice, in association with Counsellors G. Moses Paegar, Golda M. Bonah Elliott and Albert S. Sims of the Sherman & Sherman, Inc. appeared for the Appellee.**