

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH
COURT OF JUSTICE HELD IN ACCRA AT THE LAW COURT
COMPLEX GENERAL JURISDICTION CRIMINAL COURT 5
BEFORE H/L JUSTICE HENRY A. KWOFIE (JSC) SITTING AS
ADDITIONAL HIGH COURT JUDGE ON TUESDAY THE 3RD
DAY OF DECEMBER, 2024**

CR 0540/18

THE REPUBLIC

VS

- 1. ERNEST THOMPSON**
 - 2. JOHN HAGAN MENSAH**
 - 3. JULIET HASSANA KRAMER**
 - 4. CALEB KWAKU AFAGLO**
 - 5. PETER HAYIBOR**
-

All accused persons present

Counsel: Yvonne Atakora Obuobisa (DPP) for The Republic –

Present with Richard Gyambiby (PSA), Nana Ama

Adinkra (SSA) and Jessie Tagoe Korlie (ASA)

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REGISTRAR
HIGH COURT
CRIMINAL COURT
LAW COURT COMPLEX
12/12/24

Samuel Codjoe for the 1st Accused - Present with Joshua Bowuro, Yahaya Braimah and led by Abednego Tetteh Mensah

Annis Moghtar Mohayideen for the A2 -Present

Baffour Gyawu Bonsu Ashia for the 3rd accused person - Present with Leticia Adamwaba Buntungu and Raphael Banaagmen

Paa Kwesi Abaidoo for the 4th Accused - Present

with George Bernard Shaw, Albert Odum, Sandra Osei, John Bossman and Kofi Marfo

D. K. Ameley for the 5th Accused – Present

R U L I N G

This is the ruling in respect of submissions of No case to answer filed by all 5 accused persons charged with 29 counts of various offences before this Court.

On 24th of July 2018, The Republic arraigned the 5 accused persons herein i.e. Ernest Thompson (former Director General of the Social Security and National Insurance Trust (SSNIT)); John Hagan Mensah (former Information Technology (IT) Infrastructure Manager of SSNIT); Juliet Hassana Kramer (Chief Executive Officer of Perfect Business

Services Ltd); Caleb Kwaku Afaglo (former General Manager, Management Information Systems (MIS) at SSNIT) and Peter Hayibor (former General Counsel of SSNIT). The first accused (A1) is charged with nine (9) counts of Conspiracy to commit crime, namely Wilfully causing financial loss to the Republic contrary to section 23(1) and 179A (3) of the Criminal Offences Act, 1960 (Act 29), nine (9) counts of Wilfully causing financial loss to the republic contrary to Section 179A (3) (a) of the Criminal Offences Act 1960(Act29) and two (2) counts of Contravention of the Public Procurement Act contrary to sections 18(4)(a) and 92(1) of the Public Procurement Act, 2003 (Act 663).

The second accused (A2) is charged with nine (9) counts of Conspiracy to Commit Crime, namely willfully causing financial loss to the Republic contrary to sections 23(1) and 179A (3) of the Criminal Offences Act, 1960 (Act 29), and nine (9) counts of willfully causing financial loss to the Republic contrary to section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

The third accused (A3) is charged with nine (9) counts of Conspiracy to Commit Crime, namely willfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3) of the Criminal Offences Act, 1960 (Act 29), nine (9) counts of willfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29), one count of defrauding by false pretence contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29), and Two (2) counts of Contravention of the Public

Procurement Act contrary to section 43(3), 92(1), and 92(2) (a) of the Public Procurement Act, 2003 (Act 663).

The fourth accused (A4) is charged with one count of Defrauding by false pretence contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29), three (3) counts of Possession of forged document contrary to section 166 of the Criminal Offences Act, 1960 (Act 29) and three (3) counts of Uttering forged document contrary to section 169 of the Criminal Offences Act 1960 (Act 29).

Facts of Case

The facts leading to the institution of the instant criminal action were largely captured in the narration of the Attorney-General to the Court after the plea of the accused persons was taken on 20th May 2021.

The material facts are that A1 was the Director General of SSNIT between May 2013 and January 2017. A2 was at all material times the Information Technology (IT) Infrastructure Manager of SSNIT until appointed as the Operational Business Suite (OBS) Project Manager in December 2012, A3 was at all material times the CEO of PBS. A4 was the General Manager MIS of SSNIT between October 2015 and January 2017 whilst A5 was at all material times, the General Counsel of SSNIT.

In June 2010, SSNIT developed an information and Communication Technology (ICT) Strategic Plan to reflect current changes in its operational processes and conform with new trends in the ICT industry. The plan envisioned the development and implementation

of a new software solution known as Operational Business Suite (OBS), to provide a state-of-the-art pension administration System on a turnkey basis for SSNIT. SSNIT advertised for International competitive bidding in the media for the development and implementation of the project. Although an entity described as Perfect Business Systems Limited (PBS) did not participate in the bidding on 15th November 2012, the contract was awarded jointly to Silverlake, a Malaysian Information Technology (IT) solutions provider, and PBS, purportedly as a consortium at a contract sum of \$34,011,914.21 inclusive of 14% contingency and 17% Value Added Tax. The objective of the project was to automate all the core processes in the administration of pensions and integrate all internal systems as well as external stakeholders of SSNIT. The contract which covered the head office as well as area and branch offices totaling 55 sites was to be completed within eighteen months. The project included the supply and installation of hardware and software development, data conversion, data migration and system integration of all the components and maintenance support. Contrary to the terms of the contract, 1st, 2nd and 3rd accused persons caused payments to be made by SSNIT to PBS for items which were already covered by the contract sum thereby inflating the contract sum of \$34,011,914.21 to \$66,783,148.08 through what were termed variously as "Change Orders" and "Variations". The so-called variations or change orders were carried out at the instance of the 1st to 4th accused persons and authorized by 1st accused person even

though some of the payments were above his threshold as Director General and contrary to the Public Procurement Act.

On 15th January 2016, SSNIT entered into a Service Level Agreement (SLA) with PBS/Silverlake Consortium represented by 3rd accused person in the sum of \$2,570,976.41 per annum for maintenance and warranty for three years. Although the maintenance was executed in 2016, payment started from 1st September 2014 when no services had been rendered at that time. The payments were made contrary to the terms of the OBS Contract and the advice of the Corporate Law Manager against the payments resulting in an unearned two-year payment of \$5,141,905.66 by SSNIT to the "consortium" through the 2nd accused person. The 5th accused person had concurred with the advice of the Corporate Law Manager and undertook to take up the matter with the 1st accused person but failed to do so.

Contrary to his own expressed disagreement to the intended over-payment as contained in the SLA, the 5th accused person witnessed the signature of the 1st accused person in the SLA containing the falsified term. Investigations established that though the OBS system was not performing as efficiently as contracted for, the 1st accused person gave authorization for the various payments which culminated in the losses as stated in the charge sheet.

Investigations also indicated that PBS purportedly represented by 3rd accused person is a non-existent company. Investigations further revealed that 3rd accused person had no capacity to represent Silverlake. Investigations revealed also that 4th accused person, in

applying for employment at SSNIT, submitted and relied on certificates purporting to be educational qualifications he did not possess. Based on these fake certificates, he gained employment at SSNIT as the General Manager for MIS on 1st October 2015. Investigations revealed further that the 4th accused person's certificates purported to have been obtained from the Georgia Institute of Technology and the University of Cincinnati are not genuine. On the basis of these facts the accused persons were charged with this offences before this Court

Following the decision of the Supreme Court in the case of Republic vs. Ernest Thompson of 4 others delivered on 17th March, 2021, the prosecution amended the charge sheet in accord with the orders of the Supreme Court which had affirmed the decision of the Court of Appeal. The Supreme Court held that the particulars of offences as originally set out in the Charge Sheet did not provide the details of the offences required to meet the constitutional standard required by Article 19(2(d) of the 1992 Constitution.

Specifically the 5 accused persons were charged with the following offences:

COUNT ONE

Statement of Offence

Conspiracy to commit crime namely, Wilfully Causing Financial Loss to the Republic contrary to section 23(1) and 179 A (3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between September 2013 and January 2014 in Accra in the Greater-Accra region agreed to act together with a common purpose to wilfully cause financial loss of \$28,500.00 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 1 for the supply of two servers (HP DL385P GEN8 Servers) for the Contact Centre Avaya Solution when same had already been paid to her under the Operational Business Suite Contract.

COUNT TWO

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between September 2013 and January 2014 in Accra in the Greater Accra Region, wilfully caused financial loss of \$28,500.00 to the Republic when you caused payments to be made under Change Order 1 for the supply of two servers (HP DL385P GEN8 Servers) for the Contact Centre Avaya Solution when same had already been paid under the Operational Business Suite Contract.

COUNT THREE

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between July 2013 and February 2014 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$2,292,048.23 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 2 for the upgrade of hardware for the Operational Business Suite project when same had already been paid to her under the Operational Business Suite Contract.

COUNT FOUR

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between July 2013 and February 2014 in Accra in the Greater Accra Region, wilfully caused financial loss of \$ 2,292,048.23 to the Republic when you caused payments to be made under Change Order 2 for the upgrade of hardware for the Operational Business Suite project when same had already been paid under the Operational Business suite Contract.

COUNT FIVE

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between October 2013 and April 2014 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$1,079,344.00 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 3 for the digitization of the existing member records for the Operational Business Suite project when same had already been paid to her under the Operational Business Suite Contract.

COUNT SIX

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between October 2013 and April 2014 in Accra in the Greater Accra Region, wilfully cause financial loss of \$1,079,344.00 to the Republic when you caused payments to be made under Change Order 3 for the digitization of the existing member record for the Operational Business Suite Contract project when same had already been paid to her under the Operational Business Suite Contract

COUNT SEVEN

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offence Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between January 2014 and April 2014 in Accra in the

Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$12,469.08 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 4 for the supply and installation of Avaya Headsets for the Operational Business Suite Project when same had already been paid to her under the Operational Business suite Contract.

COUNT EIGHT

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between January 2014 and April 2014 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$12,469.08 to the Republic when you caused payments to be made under Change Order 4 for the supply and installation of Avaya Headsets for the Operational Business Suite Project when same had already been paid under the Operational Suite Contract.

COUNT NINE

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between June 2014 and January 2015 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$100,895.70 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer for the procurement of hardware related to member registration and re-registration exercises for the Operational Business Suite Project when same had already been paid to her under the Operational Business Suite Contract.

COUNT TEN

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between June 2014 and January 2015 in Accra in the Greater Accra Region agreed to act together with a common purpose to willfully cause financial loss of \$100,895.70 to the

Republic when you caused payments to be made for the procurement of hardware related to member registration and re-registration exercise under the Operational Business suite Contract.

COUNT ELEVEN

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act 1960, (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between 2015 and March 2015 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$180,000.00 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 6 for the Supply of Edisecure XID 9330 Card printers for the Operational Business Suite Contract.

COUNT TWELVE

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between January 2015 and March 2015 in Accra in the Greater Accra Region wilfully caused financial loss of \$180,000.00 to the Republic when you caused payments to be made under Change Order 6 for the supply of Edisecure XID 9330 Card Printers for the Operational Business suite Project when same was not required to be paid to her under the Operational Business suite Contract.

COUNT THIRTEEN

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer 4) Caleb Kwaku Afaglo between December 2015 and April 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$5,465,909.14 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order 7 for the purchased of IBM advanced hardware (2 Enterprise Class IBM Power 8 E870,2 Clustered V9000 flash system, 1 V9000 system for Disaster recovery) for the

Operational Business suite Project when same had already been paid to her under the Operational Business suite Contract.

COUNT FOURTEEN

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer 4) Caleb Kwaku Afaglo between December 2015 and April 2016 in Accra in the Greater Accra Region, wilfully caused financial loss of \$5,465,909.14 to the Republic when you caused payments to be made under change 2 Order 7 for the purchase of IBM advanced hardware (2 Enterprise Class IBM Power 8 E870, 2 clustered V9000 Flash Systems, 1 V9000 System for disaster) recovery for the Operational Business Suite Project when same had already been paid under the Operational Business Suite Contract.

COUNT FIFTEEN

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between August 2015 and September 2015 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully caused financial loss of \$502,227.00 to the Republic by causing payments to be made on invoice presented by Juliet Hassana Kramer under Change Order B for the supply and Installation of 45 Fujitsu Fi-6770 & Fi-6800 scanners for the Operational Business Suite Project when same had already been paid to her under the Operational Business suite.

COUNT SIXTEEN

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Juliet Hassana Kramer between August 2015 and September 2015 in Accra in the Greater Accra Region, wilfully caused financial loss of \$502,227.00 to the Republic when you caused payments to be made under Change Order B for the supply and installation of Fujitsu Fi-6770 & Fi-6800 scanners for the Operational Business Suite Project when same had already been paid under the Operational Business Suite Contract.

COUNT SEVENTEEN

Statement of Offence

Conspiracy to commit crime namely, wilfully causing financial loss to the Republic contrary to sections 23(1) and 179A(3)(a) of the Criminal Offence Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Peter Hayibor between January 2016 and September 2016 in Accra in the Greater Accra Region agreed to act together with a common purpose to wilfully cause financial loss of \$5,141, 905 66 to the Republic by causing the Warranty and Service Level Agreement of the Operational Business Suite Project to be backdated.

COUNT EIGHTEEN

Statement of Offence

Wilfully causing financial loss to the Republic contrary to section 179A(3)(a) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

1) Ernest Thompson 2) John Hagan Mensah 3) Peter Hayibor between January 2016 and September 2016 in Accra in the Greater Accra Region wilfully caused financial loss of \$5,141,905.66 to the Republic by causing when the Warranty

and Service Level Agreement of the Operational Business Suite Project to be backdated.

COUNT NINETEEN

Statement of Offence

Defrauding by false pretence contrary to section 131(1) of the criminal offences Act, 1960 (Act 29)

Particulars of Offence

Juliet Hassana Kramer between October 2011 and May 2017 in Accra in the Greater-Accra Region with intent to defraud, obtained the consent of Social security and National Insurance Trust (SSNIT) to part with the sum of \$66,783,148.08 under a contract to Perfect Business Systems (PBS) Limited (a non-existent company) and silverlake Structured services Sdn Bhd (Silverlake) by representing that you were the Chief Executive Officer of PBS and Silverlake, authorized to sign on behalf of Silverlake, the tenderer for Operational Business Suite contract., a representation which you knew to be false at the time of making it.

COUNT TWENTY

Statement of Offence

Contravention of the Public Procurement Act contrary to section 92(2)(a) of the Public Procurement Act(663).

Particulars of Offence

1) Ernest Thompson 2) Juliet Hassana Kramer in September 2013 in Accra in the Greater-Accra Region colluded to quote the price for the supply of two servers for the Contract Center Avaya Solution at \$28,500.00, instead of the original quotation of \$50,000.00 in order to obtain unfair advantage in the award of a contract to PBS Limited.

COUNT TWENTY-ONE

Statement of Offence

Contravention of the Public Procurement Act contrary to sections 43(3), and 92(1) of the Public Procurement Act, 2003 (Act 663)

Particulars of Offence

Juliet Hassana Kramer in September 2013 in Accra in the Greater Accra Region changed the price quotation for the supply of two servers for the Contact Centre Avaya Solution, from the original quotation of \$50,000 to \$28,500.00

COUNT TWENTY-TWO

Statement of Offence

Contravention of the Public Procurement Act contrary to sections 18(4)(a) and 92(1) of the Public Procurement Act, 2003 (Act 663)

Particulars of Offence

Ernest Thompson between November 2015 and December 2016 in Accra in the Greater Accra Region approved the sum of

\$9,536,652.50, for Change Request for the Operational Business S Suite Project an amount which is above the threshold of the head of an entity.

COUNT TWENTY-THREE

Statement of Offence

Defrauding by false pretence contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kweku Afaglo between October 2015 and May 2016 in Accra in the Greater-Accra Region with intent to defraud, obtained the consent of the Board of Trustee of SSNIT to offer you employment as General Manager in charge of Management and Information Systems, by representing that you held educational qualifications from Georgia Institute of Technology and the University of Cincinnati, a representation which you knew to be false at the time of making it.

COUNT TWENTY-FOUR

Statement of Offence

Possession of forged document contrary to section 166 of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Aflago in August 2015 in Accra in the Greater Accra Region with intent to deceive SSNIT, had in your possession, a forged

Bachelor of Sciences in Computer Certificate from Georgia Institute of Technology.

COUNT TWENTY-FIVE

Statement of Offence

Possession of forged document contrary to section 166 of the Criminal Offences Act 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Afaglo in august 2015 in Accra in the Greater Accra Region with intent to deceive SSNIT, had in your possession, a forged Master in Business Management Certificate from Georgia Institute of Technology.

COUNT TWENTY-SIX

Statement of Offence

Possession of forged document contrary to section 166 of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Afaglo in August 2015 in Accra in the Greater Accra Region with intent to deceive SSNIT, had in your possession, a forged Doctor of Philosophy Certificate.

COUNT TWENTY-SEVEN

Statement of Offence

Uttering forged document contrary to section 169 of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Afaglo between July and August 2015 in Accra, in the Greater Accra Region with intent to deceive SSNIT, uttered a Bachelor of the Sciences in Computer Certificate of the Georgia Institute of Technology knowing that it was not genuine.

COUNT TWENTY-EIGHT

Statement of Offence

Uttering forged document contrary to section 169 of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Afaglo between July and August 2015 in Accra, in the Greater Accra Region, with intent to deceive SSNIT, uttered a Master of Business in Management Certificate from the Georgia Institute of Technology, knowing that it was not genuine.

COUNT TWENTY-NINE

Statement of Offence

Uttering forged document contrary to section 169 of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

Caleb Kwaku Afaglo between July and August 2015 in Accra, in the Greater Accra Region, with intent to deceive SSNIT, uttered a Doctor of Philosophy Certificate from the University of Cincinnati knowing that it was not genuine.

The prosecution in seeking to prove the charges against the accused persons called ten (10) witnesses who gave evidence through their witness statements and tendered copious exhibits totaling over eighty (80) documents. These prosecution witnesses were cross-examined extensively by counsels for all the accused persons who also tendered over one hundred (100) documents through the prosecution witnesses. At the close of the case for the prosecution counsel for all the 5 accused persons made submissions of No case to answer on the grounds that at the close of the prosecution's case, it has failed to discharge the burden of establishing a prima facie case on any of the offences for which the accused persons have been charged by failing to establish any of the ingredients of the offences for which the accused persons are standing trial.

What is the Law on a submission of No case to answer

The Law on a submission of No case to answer although well settled in criminal jurisprudence, was recently further restated by the Supreme Court in the case of the **Asamoah and Another vs. The Republic (2017-2018) 1 SCLRG (Adaare) 486** where the Supreme Court held per Adinyira JSC as follows:

“Even though the principle of ‘submission of no case to answer’ is a time-honoured practice, it is governed by statute, which is the Criminal and other Offences (Procedure) Act 1960 (Act 30), in the case of summary trials, sections 173 and 174 (1) of Act 30 provide for a submission of no case while in trials on indictment, it is provided for by section 271. In this case, the appellant was tried summarily and therefore the relevant provisions are sections 173 and 174 (1) of Act 30 which provide that:

“173. Acquittal of accused when no case to answer.

Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the court shall as to that particular charge, acquit him.

174. The defence

(1) *At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the*

accused to give evidence personally on oath or to make a statement

The underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself if when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases, whether under a summary trial or trial by indictment, may be restated as follows:

- a) There had been no evidence to prove an essential element in the crime;*
- b) The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, and the other with innocence”*

In the famous case of **State vs. Ali Kassena (1962) 1 GLR 144** the court held at pages 148 to 149 that:

“There is in general no case to answer unless there is such evidence, that if the jury found in favour of the party for

whom it was offered, the court would not upset the judgment. In a trial on indictment, it is the duty of the trial judge, under section 271 of Act 30, to decide whether there is any evidence to be left with the jury. It is the business of a judge, as an expert who has a mind trained to make examinations of the sort, to test the chain of evidence for weak links before he sends it to the jury. Where the evidence is circumstantial, the law requires a high standard of proof"

The Court further held that:

"Section 173 is concerned with summary trials where the judge decides both questions of fact and law. It is for the judge in a summary trial to weigh the evidence and then decide whether from the facts, the guilt of the accused can be inferred. Evidence is said to be sufficient when it is of such probative value as to convince and which if uncontroverted, will justify a conviction.

- (2) The circumstances in which a submission of no case might successfully be made were*
 - a) where there had been no evidence to prove an essential element in the crime charged and*
 - b) where the evidence adduced by the prosecution had been so discredited as a result of cross-examination or was so manifestly unreliable that*

no reasonable tribunal could safely convict upon it”

Finally in the recent case of **Tsatsu Tsikata vs. The Republic (2003-2004) SCGLR 1068** in explaining what is meant by the phrase “no evidence to prove an essential element” the court held at page 1094 as follows:

*“it must be noted in fairness to the defence that the phrase “no evidence to prove an essential element” in the above formulation of Chief Justice Azu Crabbe does not mean literally no evidence by the prosecution. There could be some evidence but not enough to remit the case for a full trial. In the English case of **Ryler vs. Wombwell (1868) LR 4 Exch 32 at 39**, Wills J sought to explain this phrase in the context of trials involving juried. He stated:*

“it was formerly considered necessary in all cases to leave the question to the jury if there was any evidence, even a scintilla, in support of the case; but it was now settled that the question for the judge (subject of course to review) is not whether there is literally no evidence but whether there is none that ought reasonably to satisfy the jury that the fact sought to be proved has been established”

The question that ought to be asked when a submission of No case to answer is made is whether the evidence led by the prosecution can on its own secure the conviction of the accused person if not controverted or contradicted. Thus in **Logan & Laverick vs. The Republic (2008) SCGLR 76** it was held in determining the quality of evidence by the prosecution which would infer guilt on the part of the accused if not contradicted inter alia that:

“where therefore the evidence adduced on behalf of the prosecution, fails to take the case out of the realm of conjecture, the evidence is best described as “insufficient”. It is the type of evidence which because it cannot convince, cannot be believed, and therefore is incapable of sustaining conviction. In these circumstances, it would be wrong in a summary trial to overrule a submission of no case to answer”

The charges against the Accused Persons

The Law on conspiracy

Previously, it was provided in Section 23(1) of Act 29 as follows:

“If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be”

Pursuant to the said Section 23(1) of Act 29, the court in the case of **State vs. Otchere (1963) 2 GLR 463** interpreted this section and held as follows in holding 11:

“A person who joins or participates in the execution of a conspiracy which had been previously planned would be equally as guilty as the planners even though he did not take part in the formation of the plan or did not know when or who originated the conspiracy. So if the prosecution proved that the third, fourth and fifth accused persons joined Obetsebi Lamptey in Accra and participated in the execution of the plans agreed to at Lome, they would just be as guilty as the original planners of the conspiracy”

Under the old definition of Conspiracy the following ingredients, of the offence of conspiracy had to be established to obtain or secure a conviction. These were:

- 1) *Prior agreement to the commission of a substantive crime, to commit or abet that crime,*
- 2) *Must be found acting together in the commissioning of a crime in circumstances which show that there was a common criminal purpose*
- 3) *That there had been a previous concert even if there was evidence that there was no previous meeting to carry out the criminal conduct*

The definition of conspiracy under the old law has been revised by the Statute Law Revision Commissioner in the Law of Ghana (Revised Edition) Act (Act 562) which provides as follows:

“23(1) where two or more persons agree to act together with a common purpose for or in abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence”

The Supreme Court in the case of **Francis Yerenkyi vs. The Republic (Criminal Appeal No. J3/7/2015)** delivered on 17th February 2016 held that the new definition is the current position of the law and the court discarded the ingredients of the Conspiracy under the old formulation and held that the only ingredient that has been preserved under the new formulation

1) The agreement to act to commit a substantive crime, to commit or abet that crime.

The Court further stated that the new formulation had changed the scope and nature of the law on conspiracy in our criminal law and reinforces the view that conspiracy is an intentional conduct.

In the recent case of **George Abormegah vs. The Republic (Unreported Criminal Appeal No. J3/01/2022)** delivered on 27th April 2022 the Supreme Court held per Mensah Bonsu JSC on the crime of conspiracy in the following words:

*“In essence, criminal conspiracy is a mental crime. A thought of a criminal act begins in the mind of one person and is then communicated to the mind of another. Once the minds find agreement to undertake that common criminal purpose, the crime is complete. Thus, the mensrea for the offence is an intention to agree, and the actus reus is the agreement. There need not be any acts done in furtherance of the agreement for liability to accrue. See **State vs. Otchere**”*

The court then listed the ingredients of the offence of conspiracy as follows:

“for the offence of conspiracy to commit an offence to exist, there must be proof of

- 1) Plurality of minds- that there was more than one mind*
- 2) Intention to agree (MensRea)*
- 3) Agreement to act together for a common criminal purpose (actus reus)*

There need be no proof of previous concert or deliberation”

Wilfully causing financial loss to the Republic/State

I now proceed to examine the offence of willfully causing financial loss to the Republic.

The case of **Republic vs. Adam and others (2003-2005) 2 GLR 661** provides a more illuminating discussion of the offence of willfully causing financial loss to the Republic. In that case, five accused persons were tried before the then Fast Track Division of the High Court on charges of conspiracy to cause financial loss to the state.

Head note (2) of the Report records the holding of the court expounding the essential elements of the offence of causing financial loss to the State. It states that:

“(2) The essential elements of the offence of causing financial loss to the state under section 179(A)(3)(a) of the Criminal Code, 1960 (Act 29) as amended by the Criminal Code (Amendment) Act, 1993 (Act 458) were:

(a) A financial loss

(b) To the state

(c) Caused through the action or omission of the accused

(d) That the accused

i) Intended or desired to cause the loss: or

ii) Foresaw the loss as virtually certain and took an unjustifiable risk of it ; or

- iii) *Foresaw the loss as the probable consequence of his act and took an unreasonable risk of it; or*
- iv) *If he had used reasonable caution and observation it would have appeared to him that his act would probably cause or contribute to cause the loss”*

In his judgment Afreh JSC of blessed memory held that:

“For the prosecution to succeed it must show that the State incurred a financial loss through the action or omission of the accused person. Of the more than a dozen meanings of the word ‘through’ the most appropriate or relevant for this case are those indicating cause, reason or motive, in consequence of, by reason of, on account of, owing to, as a result of; by means of”

In other words, it must be proved that the cause of the state’s financial loss is the action or omission of the accused. There must be a direct casual link between the action or omission of the accused and the financial loss incurred by the state. It is not enough for the prosecution to show that the accused’s action or omission could have caused or contributed to the loss.

In the judgment under reference, the learned Justice referred to the case of **Republic vs. Selormey** in which Baddoo JA (as he then was) held that:

“In plain ordinary language, it means any deliberate act or omission of any person which results in a financial loss to the State constitutes an offence.

Therefore, for the prosecution to succeed in proving this charge against the accused person they must show that:

- (a) The accused person took certain action; and*
- (b) Those actions resulted in financial loss to the state”*

Public Procurement Act, 2003 (Act 663)

Section 92(2) (b) of the Public Procurement Act, 2003 (Act 663) provides as follows:

“(2) The following shall also constitute offences under this Act;

- b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract”*

Section 1(2) of the Public Property Protection Act, 1977 (SMCD 140) stipulates as follows:

“A person who intentionally misapplies or causes loss or damage to public property commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding or thousand penalty units or to both the fine and the imprisonment”

Section 8 of SMCD 140 defines “public property” in these terms:

“ includes money and any other property owned by or held in trust for the Republic, the property of any State enterprise, statutory corporation or local authority, and any other property specified by the Attorney-General by an executive instrument to be public property for the purposes of this act”

Evidence of Prosecution Witnesses and its evaluation

In seeking to prove the charges against the accused persons the prosecution called 10 witnesses. It is necessary to set out that the charges against the accused persons arise from the execution of the Operational Business Suite (OBS) project which was intended to modernize the IT Infrastructure of SSNIT. The facts are derived from a commercial transaction between SSNIT on one hand and two (2) entities that is Perfect Business Systems Ltd. (PBS) of Ghana and

Messers Silverlake, a Malaysian IT solution provider. The contract was signed after SSNIT conducted an international competitive bidding advertised in the Ghanaian and international media for the development and implementation of the OBS.

The prosecution's case basically is that the first to third accused persons conspired and caused payments to be made by SSNIT i.e. double-payments for all the items in the Change Orders and/or that it was wrongful to have effected payments for any of the Change Orders in that by the Contract, SSNIT had already paid for all the items contained in the Change Orders. This is the basis for all the charges involving Change Orders and Change Request that is Counts 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17 and 18.

It should be noted from the beginning that the OBS Contract itself Exhibit H at page 59 General Conditions of Contract (GCC) clause 33 provided for Change Orders and leaves no doubt about the fact that the Contract price is not fixed and subject to Change Orders which will necessarily lead to a change in the Contract price.

As a preliminary point, the prosecution has emphasized that SSNIT contracted for a "complete solution" for a new pension software system designed from scratch. This was emphasized by the PW1 Godson Ladzekpo the star witness for the prosecution. It has also been contended by the prosecution that this is because SSNIT would own the software and the customization of a Commercial-off-the-Shelf (COTS) System would not make it possible for SSNIT to be the owner of the OBS System.

Under cross-examination PW1 was asked:

Q. *Now would you agree with me that you knew what Commercial Off the Shelf Software is from paragraph 70*

A. *Yes I knew what Commercial Off the Shelf Software is*

Q. *Infact it has never been the intention of SSNIT as contained in the tender for the OBS to acquire any software being developed freshly from scratch apart from an existing software*

A. *I am not aware of that intention.*

Q. *Infact you know very well about this, i.e. that SSNIT requested for a Commercial Off the Shelf existing Software for the OBS project because you reviewed the tender, and continued to mislead people at SSNIT who were not part of the tender including the present DG*

A. *No my Lord. As indicated earlier, I am not aware of SSNIT intention.*

This evidence of the PW1 that SSNIT contracted for a software Solution to be developed from scratch flies in the face of his own documents Exhibit A the tender document which stated at page 93 that SSNIT is adopting a strategy of designing systems to use Commercial Off the Shelf (COTS) Solution component with minimum customization. Indeed the contracts Exhibit H and H1 are also inconsistent with the evidence of PW1. The contract emphasise that

the solution is an existing software for which an indemnity is provided for any breach of copyright and further states by clause 30 that the contract price is not fixed and can change based on the request of SSNIT .

The evidence of the PW1 that SSNIT contracted for a solution developed from scratch was debunked by the PW2 Theophilus Afenya the head of the User Acceptance Team (UAT) whose obligation was to test the readiness of the system developed for use. He stated clearly that there were some defects in the OBS but the greater part of these defects were rectified during the testing of the OBS system and tendered the User Acceptance Test (UAT) Report as Exhibit AA.

Under cross-examination, this witness in my view contradicted the evidence of the PW1 and admitted that the Solution contracted was not from the scratch. He was asked:

Q. The UAT of which were the head of the team is as a result of the Solution Development Phase of the contract.

A. Yes

Q. Being the head, you are aware that the first stage of the implementation approach of the vendor which was accepted by SSNIT and which is part of the contract is a functional walkthrough of the base software to identify the requirements that are not met by the base software is that not it

A. it is

Q. In the last paragraph of page 5 of H1 it states that the key activity during the functional walkthrough is to identify requirements that are not met by the base package which is the base software

A. Yes my lord

Further on the witness PW2 was asked:

Q. Then the third box under the heading Development requirement document on the fourth bullet point it says you will update and assemble the FSD is that not it

A. It is

Q. On the same page 6 of H1, under the Solution development, it says in the last paragraph that the Solution Development Stage involves customization, modification, amongst others together with extension of the base software, is that not it

A. Yes my Lord.

The solution developed involves customization to meet the requirements of SSNIT. The PW2 further admitted that Functional Specification Document (FSD) and Functional Change Document (FCD) were the same and the 2 terms were used interchangeably. More importantly, this witness stated emphatically that the OBS had very rich functionalities and addressed most of the Trust's business

needs. On 10/03/2023 he was asked under cross-examination as follows:

Q. *You also stated in your conclusion in the UAT report that “it was noted that the system offered rich functionalities that addresses most of the Trust’s business needs. Is that not so*

A. *It is*

Q. *In common language, what is the meaning when you state that the System offered rich functionalities that addresses most of the Trust’s business needs?*

A. *If you refer to page 8, we identified 1740 defects and we raised this to the vendors and 1509 were fixed which amounts to about 87% of the total number of defects leaving about 13% to be fixed. That was what informed our conclusion that the functionalities of the system as we expected was met”*

This means that out of the 1740 defects, all were corrected or fixed leaving 231 defects to be fixed. He also admitted after the defence had tendered the minutes of OBS Steering Committee meeting of 14th April 2016 (which the witness attended) that by that date, the number of defects had reduced from 231 to about 160 which is about 10.37% of the total defects. To conclude this part of the ruling I find that contrary to the prosecution’s assertion that the OBS solution failed to deliver, the OBS Solution in the words of PW2 Theophilus

Afenya the head of the User Acceptance Test Team “offered rich functionalities that addressed most of the Trust’s business needs”

With respect to the Functional Specification Document (FSD) and the Functional Change Document (FCD) which from the evidence of PW2 were used interchangeably, this is what the prosecution stated in their written Submissions filed on 04-10-2024 to show that a sufficient case to answer has been made against the accused persons. At pages 23 of 118 and 24 of 118 the prosecution submitted as follows:

“Similarly, on page 18 of 42 of the same Exhibit P, the vendors listed the preparation of the FCD as step 40 and the sign-off of the FCD as step 48. Notably, the vendors did not include the preparation of the FSD at the time, because SSNIT’s requirements were the definitive requirements for the project. The FCD was intended to document the necessary changes to be made to the vendors S3 system to meet SSNIT’s requirements. However, as detailed in PW1’s evidence, instead of submitting FCD’s, the Vendors presented Functional Specification Documents (FSD) that outlined the functionality of the system they intended to implement from start to finish. These FSDs differed from SSNIT’s original requirements. Some SSNIT staff raised concerns about this discrepancy. Rather than rectifying the solution, the vendors

included a statement equating the FSD to the FCD. Under normal circumstances, such a misrepresentation would not have been accepted, but it proceeded, indicating the vendors influence. In paragraphs 87 and 89 of PW1's witness statement, he described how the then General Manager of MIS, who was also the chairman of the Steering Committee, at the first Steering Committee meeting on May 16, 2013, declared that the FSD (which had been equated to FCD) would serve as the basis for customization and the primary requirement document for the project. As PW1 noted in paragraph 91 of his evidence in court, this declaration exposed SSNIT to the risk of altering the original requirements authored in the signed contract. It was therefore, not surprising that the delivered system ultimately failed to meet SSNIT's needs and the project objectives. PW1 testified that this led to disagreements with the vendors as they tried to establish from the vendors what they sought to do with the OBS. This enabled the vendor to set about customizing the S3 they had established in Malaysia for the use of SSNIT"

This submission by the prosecution bears all the hallmarks of the PW1 Godson Ladzekpo. He was the ICT Project Co-ordinator of SSNIT and a member of the OBS Steering Committee which was charged with the responsibility of supervising the implementation of the OBS

Project. This Committee chaired by the General Manager, MIS (who was far senior to him) and which consisted mostly of all the IT and MIS specialists of SSNIT extensively discussed and resolved all the major issues that arose during the implementation of the OBS project including the requests for variations, upgrades and additional hardware's which culminated in the Change Orders and yet in court, he sought to disown and in some instances condemn the members and work of the Steering Committee of which he was a member. He seemed to have a self-righteous and holier-than-thou attitude pointing fingers at everyone on the committee. No wonder he stated that at one of the Steering Committee meetings he was reprimanded by the General Manager, MIS. How could he say that the OBS project failed to meet SSNIT's needs and the project objectives, when Theophilus Afenya, the Head of the SSNIT User Acceptance Test (UAT) Team that issued the UAT Report Exhibit AA said that the OBS Solution offered rich functionalities that addressed most of the Trust's business needs?

After having listened to all the prosecution witnesses and the cross-examination and read all the copious documents (over 300 in all), tendered by both the prosecution and the defence (through the prosecution witnesses) I am tempted to believe that the PW1 Godson Ladzekpo who was a member of the OBS Steering Committee which approved the variations, upgrades and additional hardwares for the OBS Project and which resulted in the Change Orders and Requests the subject of a substantial part of the charges against the accused persons, was one of the anonymous Concerned Staff of SSNIT who

according to the investigator PW10 lodged the complaint culminating in the charges against the accused persons. PW1 in my view is a very dangerous and treacherous character!

Charges against Accused Persons resulting from Change Orders

Most of the charges against the 1st, 2nd and 3rd accused persons arise from Change Requests and/or Change Orders. Specifically, counts 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, and 18 dealing with various Change Orders.

The Change Orders which have culminated in the charges

The fact that the OBS Contract provided for variations to be made to the contract in the course of its implementation was not disputed and was indeed to be expected given the size, magnitude and complexity of the OBS project. Some of the prosecution witnesses particularly PW4 Sampson Kojo Owusu who was the Procurement Manager of SSNIT up to about 2015 and who issued most of the letters for the Change Orders admitted that the correct procedures and processes were followed before each Change Order was issued or undertaken. He also said that:

- b) That the requisite approvals were obtained for the various Change Orders*
- c) That indeed there were variations to the OBS Contract.*
- d) That all the Change Orders made were duly acknowledged and approved by SSNIT's internal processes and procedures eg.*

- i) *In Change Orders 2 for the supply and installation of specific software evidenced by Exhibits 41, 41^A and 41^B*
- ii) *In respect of Change Order 3 for digitalization of Critical Legacy documents Exhibits 37 and 38*
- iii) *Exhibits 39 and 40 in respect of Change Order 5 for the supply and printing of 1,500,000 cards*
- iv) *That SSNIT's Procurement Unit played a key role in respect of the very payments the subject of the Charges in this Court as evidenced by copious exhibits tendered through the PW4 including exhibits 37, 38, 39, 40, 41, 41A, 43, 44, 45, 46, 47, and 47A, Exhibits 50 and 50A, 51, 51A, 52 and 53.*

I also wish to make the finding that:

"The members of the special audit Task Force which carried out the Special Audit into the OBS Project and issued the Audit Report Exhibit MM did not have access to a lot of relevant documents in respect of the OBS Project including the IBM Technical Report and the various minutes of the OBS Steering Committee which extensively discussed and approved most of the Change Orders. This led to the team making findings and recommendations which did not reflect the true state of affairs in connection with the OBS Project.

With this as a background I now proceed to look briefly at the various charges against the accused persons. I say briefly, because given the

sheer volume of exhibits tendered by both the prosecution and the accused persons which as I indicated earlier are over 300 documents. I can only summarise why I have arrived at the decision in the case at this stage.

Counts 1 and 2

These 2 charges arise from the supply and purchase of two servers (HP DL 385 P, GENS Servers) for the Contact Center Avaya Solution at a cost of \$28500 which the prosecution contends had already been paid for under the OBS contract. This purchase arose from Change Order 1. The case of the prosecution given through PW1 Godson Ladzekpo was that these 2 servers supplied and paid for under Change Order 1 were part and parcel of the OBS Contract and SSNIT should not have paid for this a second time. In effect, this payment of \$28500 amounted to a double payment for the same servers. In the Special Audit Report Exhibit MM, it was stated that the Change Order 1 was utilized to procure Specified hardware designated to be used for the Contact Centre project which had already been paid for by the Trust in the main contract sum.

The evidence shows that under the OBS Contract, the vendors were to supply 2 units HP Proliant DL 360 G7 servers i.e. Media Servers. The evidence shows that the 2 servers contracted to be supplied under the OBS Contract were supplied by PBS/Silverlake and received by SSNIT on 5th March 2013 as provided by Exhibit 7 which is a Goods Delivery Note confirming receipt of the 2 Media Servers by one Matthew Kyei Mensah of SSNIT. Subsequently per a letter dated

24th September 2013 Exhibit TI with the heading “Re; Operational Business Suite (OBS) for social Security Pension Administration (Design Supply and Service) SLA Change Order” SSNIT requested the vendor to supply 2 additional servers. Exhibit TI was signed by the Procurement Manager and requested PBS/Silverlake to supply 2 additional servers per Change Order 1 (Exhibit 16) which was not part of the OBS Contract. Indeed a fact finding Committee set up to investigate whether there was any wrongdoing in respect of Change Order I found no wrongdoing whatsoever in its Report Exhibit T. The fact finding committee chairman who signed Exhibit T is the same person who signed the special Audit Report Exhibit MM alleging financial loss by the issuance of Change Oder 1.

He cannot approbate and reprobate. I find that no financial loss was caused by the issuance of Change Order 1 and I therefore find counts 1 and 2 of the charges baseless.

Counts 3 and 4

These 2 conspiracy and substantive charges relate to Change Order 2 which allegedly caused a loss of \$2, 292,048.23 for the upgrade of hardware for the Operational Business Suite. The substance of the prosecution’s case is that the items purchased under Change Order 2 (Exhibit 17) were already covered under the OBS Contract executed on 15th November 2012. The Audit Report Exhibit MM which forms the basis of the prosecution case stated that Exhibit H the contract made provision for hardware for the OBS Project. PW1 Godson Ladzekpo also stated that the purchase of this additional hardware

under Change Order 2 was not backed by Exhibit H which had stated the hardware to be used for the project. PW1 however admitted that the amount quoted in Exhibit H for hardware did not include upgrades. This Change Order 2 was said to have caused a financial loss of \$2,292,048.23 the basis of counts 3 and 4.

Change Order 2 (Exhibit 17) includes

- i) The supply and installation of one (1) unit IBM Power 720 i series at a cost of \$529,694.00*
- ii) Supply and installation of 15 units of information kiosks at a cost of \$216,800.85*
- iii) Supply and installation of 50 units of A4 Professional document Scanners (HP Scanjet) 8270 unit 50 sheets ADF at a cost of \$75,000*
- iv) Supply and Installation of 36 units of Blade servers and 4 Blade Chassis at a cost of \$780,000*
- v) Upgrade of V7000 Unified with Additional 10TB (storage) at a cost of \$157,391.30*
- vi) Upgrade of existing blade servers with 24 8-core processors and 320 GB memory at a cost of \$451,000.00*

In seeking to prove the charges against the 1st, 2nd and 3rd accused persons, the prosecution through PW1 Godson Ladzekpo tendered exhibit N series. The evidence showed that after the signing of the OBS Project, SSNIT requested PBS/Silverlake to carry out an assessment of the hardware at the SSNIT Data Center to determine

their adequacy and suitability for the implementation of the OBS Solution. This is reflected in the Minutes Sheet dated 14th August 2013 (Exhibit N) from the General Manager, MIS J.K. Inkoom to the Director General (AI) in which the GM MIS endorsed the recommendation that Messrs PBS/Silverlake submit proposals for the items later set out in Change Order 2. This according to the GM MIS in exhibit N was to enable SSNIT “obtain” the requisite hardware to ensure smooth implementation of the OBS Project.

On completion of the assessment requested by SSNIT, PBS/Silverlake submitted a letter dated 8th July 2013 contained in Exhibit N of N series pages 2,3 and 4 to the General Manager MIS (J.K. Inkoom) who in turn forwarded same to the 2nd accused the Project Manager for his comments as contained in Exhibit N1. The evidence showed that per exhibit N, the OBS Project Manager responded that after the assessment by PBS/Silverlake a meeting was held between SSNIT represented by Data Centre Manager/Project Manager (A2), IT Manger, IT Systems and Operations (Harold Brookman Amissah) and IT Manager Communications and Network (Erasmus Akyeampong Mensah). This meeting between these representatives of SSNIT and PBS/Silverlake agreed on the inadequacy of the base infrastructure at the SSNIT Data Center to implement the OBS Solution. This meeting agreed on the need for additional hardware for the implementation of the OBS Solution See Exhibit N1 of N series page 2 Bullet point 2. This meeting also agreed on the need to upgrade the existing servers at the SSNIT Data Centre. See Exhibit N1 of N series Bullet point 3 at

page 2. The evidence of the prosecution shows that these 2 accredited representatives of SSNIT Harold Brookman Amissah, Manager IT System & Operations and Erasmus Akyeampong Mensah Manager IT Network and Communications were well qualified to make the assessment as the evidence of PW10 Emmanuel Nkonu shows that the 2 officers were among those who designed the OBS Contract and were competent to meet and engage Silverlake/PBS on the request for additional hardware and the upgrade of existing hardware and arrived at these decisions on behalf of SSNIT. The evidence of the prosecution shows that at the OBS Project Committee meeting held on 21st August 2013 whose minutes was tendered by PW1 as Exhibit M (at which meeting the PW1 Godson Ladzekpo was present) the Steering Committee discussed the report or request for additional hardware and upgrade of existing hardware and concluded that the additional hardware and upgrade of the existing hardware is a “must” and there was the need to speed up the approval process. See Exhibit M page 8.

Under cross-examination Godson Ladzekpo (PW1) was asked on 19/5/2022 as follows:

Q. Infact under paragraph 7.0 on page 5 (of exhibit M) under the heading hardware assessment can you read it

A. witness reads

Q. *So from what you have just read the directive from the then Director General (A1) that the recommendations for upgrade and supply of additional equipment including the i-servers was followed as this request was put before the Steering Committee. Is that not it*

A. *That is it my lord*

Q. *And from what you have just read from the minutes that this request for upgrade of some equipment and provision of new stated equipment as is contained in the minutes and which is the same as the recommended equipment by the General Manager MIS was discussed and deliberated upon at the meeting of the Steering Committee in Exhibit M; is that not it*

A. *That is it my lord*

The evidence further shows (per Exhibit 6 tendered through the PW1) that this request for additional hardware and upgrade was further discussed at the OBS Steering Committee at another meeting on 2nd October 2013.

Following concerns raised and discussions at the OBS Steering Committee at its meeting on 2nd October 2013, the Director General (A1) directed the MIS Management Team to further deliberate on the request and advise the SSNIT Management. Indeed the records show that PW1 Godson Ladzekpo was at this meeting on 2nd October 2013

where the Director General (AI) gave this directive to the MIS Management Team.

Following the directive of the Director General (A1) the MIS Management Team chaired by the Head of MIS George Odum and including the PW1 Godson Ladzekpo who was the ICT Projects Co-ordinator met on 3rd October 2013. The minutes of that MIS Management Team was tendered as Exhibit N10 i.e. part of Exhibit N series. The minutes Exhibit N10 show clearly that the MIS Management Team including the PW1 agreed on the need to vary the OBS Contract to procure the additional hardware and upgrade the existing servers. PW1 admitted under cross-examination that the Exhibit N10 was submitted.

With the OBS Project Steering Committee and MIS Management Team having agreed to vary the OBS Contract to accommodate additional hardware and upgrade the existing servers as listed in Exhibit 17 that is Change Order 2. Change Order 2 was issued by PW4 Sampson Owusu Procurement Manager of SSNIT for the installation of specified Hardware and Upgrade of servers listed therein for the sum of \$2,541,369.21 inclusive of VAT/NHIL was therefore not covered by the OBS Contract but additional hardware and upgrade. This did not cause any financial loss and accordingly counts 3 & 4 have no basis.

Counts 5 and 6

The charges under count 5 and 6 arise from Change Order 3 under which a financial loss of \$1,079,344 is alleged to have been caused by the A1, A2, and A3 by causing payments to be made under Change Order 3 when payment had already been made for the digitization of the existing member records for Operational Business Suite when same had already been paid for under the Operational Business Suite Contract.

The prosecution relied on the Special Audit into the OBS Project Exhibit MM which observed as follows:

Observation

“The solution for the document imaging by Pericom was replaced with IBM FileNet Solution by Submerge Software Solution. The replacement should have carried out the exact solution agreed in the Contract for document imaging including all existing member records. However this was not done but however the digitization of the existing member records was awarded as a separate contract to the same vendors (PBS/Submerge). The digitization project gave rise to Change Order 3 which cost the Trust \$1,203,420.95.”

Exhibit MM further stated that many of the items procured by the use of the Change Order 3 were all in scope of the OBS Contract except some of the consumables. The prosecution contends that Exhibit H at page 2 Contract Form provided for Document Imaging

in the sum of \$1,000,000 which was paid but the vendor proposed Pericom Solution for the Document Imaging Solution of the OBS Project.

The prosecution further contended that in Exhibit H1 under “Scope of Work” the project scope was stated to be that the “project will be implemented concurrently as in Capture and Imaging (Existing Documents). The prosecution further refer to Exhibit MM where the details of the Solution proposal by the Vendor was stated as follows:

“PIM offers integrated solution, Pericom Solution a complete Document capturing, Integrated Enterprise Content Management, and Imaging Workflow (BPM) Solution to help (SSNIT) achieve goals of efficient business operation. The solution offered for this project comprises software package and hardware required to support the software packages. The hardware offered as part of this solution is document scanner”

According to the prosecution, this was the proposal that won A3 the OBS Project Contract for which she was paid \$1,000,000 for Document Imaging It is therefore curious, according to the Prosecution why the Document Imaging Solution was set up as a new project and additional money paid to the Vendor under Change Order 3.

Counsel for the Republic in his written submission submitted that the Document Imaging Solution was for existing Documents which he submitted included documents in the Records Department of SSNIT Counsel referred to the Cambridge Dictionary meaning of the word “exist” and submitted that whatever documents were to be imaged must necessarily include archival records or documents at the Record Department of SSNIT.

In a criminal trial in which about 300 documents have been tendered by both the prosecution and the 5 accused persons through the prosecution witness, it is not difficult to understand why counsel for the Republic rather than refer to any of the documents tendered, resorts to the dictionary to determine whether the contract covers a particular item. It is important to note that in the discussion of the OBS Contract and the issues arising, it is not difficult to see that there is a difference between Document Imaging Solution under the OBS Contract and the Digitization of the Critical Legacy Documents at the Records Department.

The Minutes of the OBS Steering Committee meeting held on 21st August 2013 (Exhibit N11) chaired by J.K. Inkoom General Manger MIS which was attended by 12 members including PW1 Godson Ladzekpo discussed Implementation of Digitization at page 5 Bullet Point 8.0.

At that meeting the chairman (J.K. Inkoom) informed the committee that SSNIT ICT Strategy and Initiative include the implementation of a document Management Solution which involves the scanning

indexing and storing of the critical paper based legacy documents at the records Department. He stated at page 5 8.0 clause 2 that a Tender was floated to that effect but unfortunately the tender was unsuccessful. Additionally, the OBS project includes a component of forms processing and document imaging In view of that it has become necessary to take advantage of the document imaging component of the OBS Solution for the conversion of the legacy documents into digital images. As a result the document imaging component of the OBS Solution will be upgraded for that activity.

The Chairman explained the various options available to SSNIT for the digitisation project which includes the following:

Option I

Option II.....

Option III SSNIT will contract the OBS vendor to convert the legacy records into digital images for a fee.

The Chairman further explained that the digitization will help with business continuity and is a “must”.

Again at another meeting of the OBS Steering Committee held on 24th October 2013 the minutes exhibit 10A which was tendered through PW1 Godson Ladzekpo by counsel for A2, (which meeting was attended by PW1 ICT Project Coordinator at the time) at page 6; clause 9.10 Options for the Digitization of Critical Legacy Systems was discussed extensively:

Option I - Complete out sourcing

Option II - Complete In-House Project Including Human Resource

Option III - In-house Project with Human Project including Human Resource

Option IV – Complete In-House Project including Human Resource with Implementation Management Services outsourced

At page 10 clause 9.10.2.5.1 of Exhibit 10A dealing with Resources Requirement for the digitization project set out the Hardware requirement and 9.10.2.5.2 set out the Software requirement for the Digitization project. The Human Resources Requirement for the Digitization Project was also set out at Page 11 of Exhibit 10A.

At page 11 of Exhibit 10A the meeting discussed how the Digitization of the Legacy Document will be financed. It was stated that the project will be financed through a budget provision of \$4million in the 2013 SSNIT Budget for the provision of Software, hardware (servers, storage, computers, bar code, printers, UPS) scanners and the actual conversion of the critical paper Legacy records into digital images including personnel cost.

The minutes of the MIS Divisional meeting of October 3, 2013 (Exhibit N10) and the minutes of the OBS Steering Committee meeting of 24th October 2013 (Exhibit 10A) which I have set out at length leave no room for any doubt that the Digitization of the Critical Legacy Document was not part of the OBS Contract signed on 15th November 2012 It also shows clearly that the Document Imaging

Solution part of the OBS Contract was entirely different from the digitization of the Critical Legacy document which was a separate project from the OBS Solution. Clearly therefore Change Order 3 issued by Sampson Owusu (PW4) on November 14, 2013 for Hardware requirement for the digitalization of the Critical Legacy document in the sum of \$1,203,420.95 inclusive of VAT of NHIL could not have been paid for under the OBS Contract. The digitization of the Legacy document was a separate and distinct project from the OBS Contract. Accordingly no financial loss could have occurred under Change Order 3.

Also the Minutes Sheet Exhibit HHH titled OBS Contract Hardware Requirements for the Digitization of the Critical Legacy Document dated 12/11/2013 from the Head of MIS Division George Odum to the Director General (Ai) seeking approval for variation of the OBS Contract. This Minute Sheet made reference to the decision of the OBS Steering Committee held on 24th October 2013 which discussed and agreed on the implementation of the Digitization of the Critical Legacy Documents at the Records Department.

PW1 Godson Ladzekpo was at these meetings which discussed the options available for the implementation of the digitization of the Critical Legacy documents. He knew clearly that the digitization of the Legacy documents was distinct from the Document Imaging Solution of the OBS Project and yet he stood in the witness box looked at the court in the eye and lied through his teeth that the digitization of the Legacy Documents was part of the Document

Imaging solution of the OBS Contract. It is baffling how anybody could lie on oath as the PW1 did! In my view no financial loss was occasioned by Change Order 3 and I find that counts 5 and 6 have no basis.

Count 7 and 8

Change Order 4

The 2 charges of Conspiracy and the substantive offence of causing financial loss of \$12,469.08 under Change Order 4 for the supply and installation of Avaya Headsets under Change Order 4 under the OBS Project when same had already been paid for under the Operational Business Suite Contract.

Change Order 4 was tendered by the A3 through the PW1 as Exhibit 19 and it involves the supply and installation of 35 headsets for the SSNIT Contact Center. What was the evidence led by the prosecution in support of these 2 charges?

The Audit Report Exhibit MM observed that the purchase of the Avaya Headsets was not necessary as the contract sum covered Avaya Headsets.

In Exhibit H page 2 Contract Form at Row 10 Call Center Software and Hardware provides an amount of \$1,342,747 for implementation of the SSNIT Contact Center Solution. In Exhibit 75 page 56 to 60 the cost of items to be supplied by Silverlake/PBS under the contact center solution, did not include headsets. The prosecution in my view did not lead credible evidence to show that the 35 headsets under

Change Order 4 which is Exhibit 19 issued by the Procurement Manager Sampson Owusu PW5 on 27th January 2014 were already paid for under the OBS Contract. By Exhibit 51 E Processing/Approval Form dated 2nd April 2014 for the sum of \$12,469.80 in respect of Change Order 4 processed the invoice and same was audited by SSNIT internal audit conducted a pre-audit and recommended for payment of Change Order 4. The evidence further shows that these 35 Avaya Headsets were indeed supplied for use at the Contact Center. The prosecutions evidence in support of Counts 7 and 8 are speculative.

Counts 9 and 10

Change Order 5 for the loss of \$100, 895.75 for the procurement of hardware related to member registration and re-registrations. The Audit Report Exhibit MM referred to a letter dated 30/05/2014 Exhibit JJJ written by A2 which gave rise to Change Order 5 to purchase 50 more mobile Biometric Units (MBU's) See page 37 of Exhibit MM the Audit Report.

The Audit Report also stated that the letter of 30 May 2014 said that:

“some of the hardware being purchased will be used for backup for resolving maintenance-related issues. The extra purchase cost the Trust \$100,895.70”.

The Audit Report further stated that:

“All OBS equipment are covered under 3 year manufacturing warranty”

The prosecutions case was that the procurement of the items in Change Order 5 was tendered as Exhibit 20 and was issued on June 10, 2014 by Sampson Owusu and tendered through the PW1; It consists of various items totaling \$10,223,638. The items included 1,300,000 biometric cards, and consumables (registration kits, printer accessories etc.) Under the OBS Contract, SSNIT requested for supplier’s warranty and not manufacture’s warranty. The Audit Report Exhibit MM does not provide the basis of the extra purchases that the Report alleges cost \$100,895. Exhibit JJJ which the Audit Team used as the basis for their observation at page 37 of Exhibit MM does not provide any list of items that are extra purchases and amounted to \$100,895.70 the basis of the charges in Count 9 and 10 I find that counts 9 and 10 are without basis.

Count 11 and 12

Change Order 6

Conspiracy and Financial loss of \$180,000 being payment made on invoice presented by Juliet Hassana Kramer under Change Order 6 for the supply of Edisecure XID 9330 Card Printers for the Operational Business Suite when same had already been paid to her under the Operational Business Suite Contract. The prosecution’s case under this count is based on the fact that the OBS Contract Exhibit. H at page 2 on the Contract Form made provision for Card printers at a cost of \$180,000. On page 3 from the back of Exhibit

H1 on the Imported Products Price Schedule, A3 proposed 3 Card printers at a Unit cost of \$60,000 to arrive at \$180,000 which was paid to her under the contract. Also in her tender proposal at page part 3-48 under Clause 3.2.2 on Card Personalisation, A3 proposed 3 sets of high end CX 7000 printer and laminator retransfer card printer for SSNIT usage. Having determined the “high end printers” required to execute the OBS, A3 won the OBS Project Contract based on the representation that high end printers were sufficient. According to the prosecution, it was therefore not open to A1, A2, and A3 to purchase new Card Printers and pay additional money leading to financial loss as the decision to purchase the additional printers was not justified.

The prosecution failed to tender Change Order 6 in evidence but same was tendered in evidence by the defence as Exhibit 21. This Exhibit 21 is a letter dated 19/1/2015 from Emmanuel Kofi Sackey Procurement Manager of SSNIT to the A3 issuing Change Order 6 for the supply of Edisecure XID 9330 card Printers.

Under cross-examination PW6 confirmed that under the contract PBS/Silverlake proposed to Supply three (3) Card Printers. He was asked on 26/10/2023 as follows:

Q. With respect to your findings of the supply of 3 extra Edisecure Card Printers which is the subject of Change Order 6 as contained in counts 11 and 12. The first 3 printers were supplied on the 27th June 2013

and received by Salawu Kabiru of SSNIT. Are you aware of that

- A. *I may not be specifically aware of the supply but I know that the vendor proposed to supply (3) three high-end card Printers and my Lord this is captured under Exhibit H1 under Part III page 48 of the vendor's proposal (witness reads out) My Lord if you go to the next page the quantity is there that is at page 49 of Part III. And so the quantity is there.*

PW10 the investigator confirmed that Silverlake/PBS supplied the 3 original printers stated in the contract by a Goods Delivery note Exhibit III. The defence (A1) tendered the minutes of the SSNIT Executive Committee meeting held on 12th January 2015 as Exhibit 81. On page 3 of Exhibit 81, the Executive Committee discussed the possibility of acquiring 3 additional printers. The defence also tendered Exhibit 82 which is the Minute Sheet of the MIS Division dated 13th January 2015 in which Harold Brookman Amissah on behalf of the General Manager, MIS Division sought approval to purchase three (3) additional Edisecure Printers. From the Minute Sheet (exhibit 82), Harold Brookman Amissah is explicit that the initial (3) three Edisecure XID Card printers were supplied earlier and sought approval to purchase these three (3) additional Edisecure Printers.

Under cross-examination of PW6 on 26th October, 2023 he was asked:

Q. *Please what you have in your hand is the Minutes dated 12th January 2015 and it was attended by the then Chief Internal Auditor Rebecca Lomo*

A. *My Lord I was not at the meeting*

Q. *On page 3 of Exhibit 81 as can be seen there was a deliberation to explore the possibility of getting three (3) additional printers to clear the backlog which had arisen and this is the basis for the purchase of the additional three (3) printers*

A. *My Lord, what I can read from the document, from the top is (witness reads)*

Q. *I have also shown you a minutes sheet from the MIS Division dated 13th January, 2015 from Harold Brookman Amissah on behalf of the General Manager MIS.*

A. *This is what it is*

Obviously from Exhibit 81 and 82 and the cross-examination of PW6, there is no evidence of any crime or financial loss suffered by SSNIT. Clearly PW6 did not see or review Exhibits 81 and 82 before issuing his report in Exhibit MM in respect of Change Order 6. No wrongdoing occurred with respect to Change Order 6 and thus counts 11 and 12 have no basis.

Count 13 and 14

Change Order 7

Financial loss of \$5,465,909.14 for payments made under Change Order 7 for the purchase of IBM advanced hardware (2) enterprise Class IBM Power 8 E870, 2 clustered V9000 Flash Systems, 1 V9000 System for Disaster recovery for the Operational Business Suite when same had already been paid under the Operational Business suite Contract. The prosecution's case is founded on the Audit Report Exhibit MM at page 39 which stated as follows:

“When the 2nd phase of the OBS Solution went into live production, the system was very slow and affected significantly the operations of the Trust especially, the validation of contribution report. An evaluation of the entire System was done by the SSNIT Technical Team and it came to light that the hardware that the vendors had committed SSNIT to buy and which the system was running on was the cause and need to be replaced per a letter dated 11th November 2015 for approval of the Change Order. Due to this, a request was initiated by the Project Manager for the purchase of IBM Advanced Software (2 Enterprise Class IBM power 8 E870, 2 clustered V9000 Flash Systems, 1 V9000 System for Disaster recovery) to address the problem, hence Change Order 7. This Change Order 7 cost the Trust \$5,465,900.14”

The Audit Report further stated by way of Comment that:

“Since the OBS solution at that time was covered under SLA with conditions such as:

“the Service Provider (OBS Vendor) shall undertake replacement of worn out unserviceable/defective part of the solution or hardware or the entire system throughout the warranty period at the various SSNIT offices at no further cost to SSSNIT, once the system had this challenge and was affecting the Trust’s operation, the vendors were required to resolve the problems at no cost to the Trust per the SLA statement in bold and italicized in this paragraph, the vendor is requested to replace even the entire system when necessary not to talk of hardware”

According to the prosecution, the vendors should have corrected this problem as it was covered by the Warranty but rather resorted to Chang Order 7 for SSNIT to pay for the correction of the problem. The prosecution further submitted that from the outset, the A3 and her consortium won a contract to supply a complete turnkey solution to automate the operations of SSNIT. After the system had gone live, it was found to be not fit for purpose and this means that A3 failed to fulfil the objectives of the OBS project. Despite this A1, A2 and A3 opted to issue Change Order 7 to rectify the defective system instead of fixing the defective system A3 had implemented for SSNIT costing an additional sum of \$5,465,909.14 which the prosecution considers a financial loss.

It should be noted that Exhibit MM the Audit Report page 5 paragraph 2 stated that Change Order 7 was a total replacement of the hardware infrastructure procured earlier under Change Order 2. The documentary evidence does not support the Auditor's Report in Exhibit MM that Change Order 7 purchased hardware to replace the hardware purchased under Change Order 2. PW6 one of the Auditors was asked in cross-examination on 23rd February 2024 as follows:

Q. what happened was that when the second phase was cut off, SSNIT realized that the System was very slow and therefore SSNIT contracted the vendor and it was agreed that they get IBM to investigate as to why the system was slow, is that not so

A. My Lord, that is so

Upon investigating the cause of the slowness, IBM (the manufacturers) submitted a report to Silverlake/PBS who in turn submitted the IBM Report to SSNIT. This IBM Report is part of Exhibit 92 (which is a letter from PBS to SSNIT on Report on Performance Review with attachments dated 9th November 2016). It is obvious that the date on the letter should be 9th November 2015 instead of 9th November 2016.

Under cross-examination PW7 confirmed the submission of IBM Report to SSNIT through PBS/Silverlake as he was asked:

Q. And you see this letter i.e. Exhibit 92 had attached to it the invoice which formed the basis of Change Order 7 as it has

all the individual items together with their prices, the SLA fees and the Data migration fee all attached is that not so

A. *That is so*

The IBM Report provided short-term and long-term solution on how the slowness could be resolved and this was confirmed by PW7 during cross-examination

Q. *From the IBM Executive Summary, it provides short-term and long-term solution on how you could fix the slowness in the OBS System*

A. *Yes*

Asked during cross-examination whether as the Auditors who did the audit on Change Order 7 he saw the IBM Report he said:

Q. *As the auditor who did the audit on Change Order 7, you definitely would have seen the Report (IBM Report) on how to rectify the slowness. Is that not so*

A. *That is not so*

Q. *It means when you were doing the Audit, you the auditors never saw this letter i.e. Exhibit 92 together with this attachments. Is that what you want to tell the Court?*

A. *My Lord yes and no. Yes because we saw the invoice attached to the letter and no because we did not see the technical report and this is the first time I am seeing that report.*

Clearly, the SSNIT Internal Audit team did not see or review the technical Report issued by IBM through Silverlake/PBS on the slowness of the OBS System before making their assertion and conclusion as contained in Exhibit MM pages 5 and 6. In addition the IBM report identified the cause of the slowness as the result of large volumes of data as confirmed by the PW7 under cross-examination on 23/02/2024 thus:

- Q. *And being an auditor who has knowledge in IT, you perfectly understand that the slowness resulted as a result of the volume of data*
- A. *That is not so*
- Q. *The report says very clearly on page 6 that the ASP 33 had large volume of read oriented work load. Is that no so.*
- A. *Yes*

The documentary evidence shows that based on the IBM Technical Report on the cause of the slowness in the OBS, attributing the slowness to a large volume of data which was not anticipated and not as a result of faulty or worn out or unserviceable hardware, SSNIT wrote a letter to Central Tender Review Board of the PPA requesting for approval for Change Order 7. The letter to CTRB was tendered by the defence as Exhibit 93. PW7 was cross-examined on Exhibit 93 as follows:

- Q. *On page 2 of this letter that is Exhibit 93 which is the SSNIT letter to the Central Tender Review Board (CTR) it gave a history of the OBS project and in the second paragraph*

(counsel reads out). Then they state in the third paragraph that the “technical team concluded that a technology refresh would improve the total cost of ownership and will provide new features that are available on the new technology and proposed the following: Is that not what is there

A. Yes according to the document that I have

Q. Then the letter list the items which form the basis of Change Order 7. Is that not so.

A. Yes

Q. Infact you were untruthful when in your report you stated that Change Order 7 came about, as a replacement when indeed there was no replacement of any item but a technology refresh which is additional equipment. I am putting it to you

A. That is not so. And the reason is that when you say a technology refresh, it could mean an upgrade or a replacement for example if you go to the IBM report it talks about the old server that the OBS was running on is Power 720 IBM server. Now to resolve the problem in the CTRB letter, IBM Power 8E870 servers replaced Power 720 so my lord this is a replacement

Further, the PW7 was asked

Q. I am putting it to you that this IBM Power 8E870 servers did not replace the i720 series servers but was an addition and

this server was not taken away but was still with SSNIT and as we speak, it is still with SSNIT

- A. *My Lord I cannot confirm that. However, our main issue here is that if a problem has happened to the system and they need to change, refresh or upgrade the existing hardware, the cost should not have been borne by the Trust. But it could be true that the old Power 720 Servers are there, but that is not our issue*

These answer from PW7 further confirm that the servers procured under Change Order 2 were not replaced with the servers purchased under Change Order 7 contrary to the observations of the SSNIT Internal Audit Team as contained in Exhibit MM page 5 item 1.5.

Clearly the evidence particularly the cross-examination of PW7 and the IBM Report shows clearly that Change Order 7 which is Exhibit 22 was not part of the items to be supplied by the Vendor in the OBS Contract and there is no evidence that any server purchased under Change Order 2 was faulty or worn out or unserviceable which would have required replacement through the OBS SLA. I find that no financial loss was occasioned by Change Order 7. Count 13 and 14 have no basis.

Counts 15 and 16

Change Order B

Causing financial loss of \$502,227.00 when they caused payment to be made under Change Order B for Fujitsu Fi-6770 & Fi-6800 Scanners for the OBS project when the vendor had already been paid under the OBS Contracts.

The prosecutions charge under counts 15 and 16 arise from the Audit Report Exhibit MM which states that:

“The Pericom Solution evaluated and accepted by the Trust included document scanner. The entire document imaging solution and forms processing and workflow cost the Trust \$1,500,000.00 in the main contract. The Solution was to be both hardware and software as indicated in page 5 of section 3.2.4 of Vol. 11 of the contract document

Observation

- *The Trust procured 4 scanners (Fi-6880 & Fi-6770) for the project at a cost of \$502,227.*
- *The reason the Procurement Department/OBS Project Office stated for the procurement of these scanners in a letter dated 10th August 2015 with reference No. PN/SSA/036 to PPA was that “the project has successfully taken off, however the old IT equipment (scanners) in use at its offices are impeding smooth implementation of the Special project as they are not compatible with the new OBS. Workflow has therefore been affected and*

progress has retarded. They would therefore have to replace such obsolete equipment

- These 45 scanners bought under Change Order B are running in a different SLA with a fee of \$130,889.98 for three years beginning 16th September 2015*
- The equipment tagged as obsolete were also running on SLA and were within the manufacturing warranty period of three years*

Audit Comment

The Pericom Solution was to deliver scanners, however when this was replaced by the IBM Filenet Solution, the hardware component was not delivered under the contract, rather a Change Order 2 and 3 were initiated to buy among others 77 Fujitsu Scanners towards the document imaging solution. At the time the above Change Order B was initiated, the only scanners available were the 27 bought under Change Order 3 per records available and so if the letter to PPA for approval for single sole sourcing to purchase the items under Change Order B states that old equipment were incompatible with the OBS Solution and therefore obsolete of the 77 scanners bought earlier

The equipment tagged as obsolete are already covered by the SLA fees in the main OBS SLA and so once they

were not working and tagged unusable, the Trust should have identified such equipment and worked out a formula to deduct the cost of maintaining these equipment under SLA. Since that has not been done, the Trust is paying double SLA fees for the obsolete equipment and the new ones that have been bought under another SLA”

Change Order B was tendered in evidence by the defence through prosecution witness as Exhibit 84. Exhibit 84 is a letter from SSNIT notifying the vendor (PBS) of the award of a contract for the supply and installation of scanners for the OBS Project. From the cross-examination of PW6 on 27-10-2023, it was obvious that the 30 units of Fujitsu Fi-6770 Scanners procured under Change Order B which is Exhibit 84 were to support the workload at the branches of SSNIT and not to replace any obsolete scanners. It is also obvious from the cross-examination that 10 units of Fujitsu Scanners procured under Change Order B were to support the record digitalization which were taking place at the Record Department. In further cross-examination, PW6 referred to the document imaging solution cost of \$1 million and the workflow and work processing cost of \$500,000 that is seen on page 2 of Exhibit H are unrelated to the Change Order B. The prosecution’s contention that the Fujitsu Scanners bought was Change Order B were to replace Change Order 2 scanners is false given the available documents tendered. It appears that the auditors did not seem to know the purpose of the document imaging solution

in the OBS Contract (exhibit H) and erroneously asserted that every scanner bought under any of the Change Orders was double payment and should have been covered under the document imaging solution of the OBS Contract. It was clear therefore that no loss was occasioned by Change Order B and accordingly counts 15 and 16 have no basis.

Count 17 and 18

Conspiracy to commit crime namely willfully Causing financial loss and causing financial loss of \$5,141,905.66 by backdating the Warranty and Service Level agreement (SLA) of the OBS Contract. The OBS requires the provision of maintenance and that "Maintenance" refers to Mandatory Service Level Agreement which is full warranty and maintenance.

In Exhibit H page 63 GCC1.1 the OBS Contract also provides definition of "maintenance period or warranty period" as "commencing after the operational acceptance of the entire OBS Solution (hardware, software and related services" Exhibit H also defines at page 65 GCC8.2 Service Level Agreement (SLA) as a Supplementary Agreement with respect of hardware and software maintenance Exhibit H further state that the SLA shall have its own provisions and shall be read as a full contract but in relation to the OBS Contract, that the SLA is mandatory under the OBS Contract and it will be for a period of three years (3). It should be noted that this maintenance period or warranty period commences after the

operational acceptance of the entire OBS Solution. What is the meaning of “commences after the operational acceptance of the entire OBS Solution?”

SSNIT entered into a final Warranty and Service Level Agreement with the vendor on 15th January 2016 but took effect retroactivity from 1st September 2014 and as a result of this a total amount of \$5,141,952.82 was paid to the vendor. Without going into much further details, I find that the prosecution have established a prima facie case against A1, A2 and A5 on these counts 17 and 18 relating to the backdating of the SLA and have to open their defence.

Count 19

This Count accused A3 of defrauding SSNIT to this tune of \$66,783,148.08 by representing that she was the CEO of PBS (a non-existent company) and Silverlake and was authorized to sign on behalf of Silverlake, the tender for the Operational Business Suite Contract, a representation which she knew to be false at the time of making it. This Charge is brought under Section 131 and 132 of the Criminal Offences Act (Act 29). Without wasting much time on this charge, I will only say that of all the charges against the accused persons, this is the most bizarre! How could the prosecution in the face of the dealings SSNIT as an entity and its officials had with the 3rd accused and Perfect Business Services turn around and make an allegation of defrauding by false pretences against the 3rd accused?

I daresay SSNIT in all their dealings in respect of the Operational Business Suite Contract/Project knew who they were dealing with and it is strange and a mark of irresponsibility if SSNIT can make this bizarre allegation against A3. I find that count 19 is baseless.

Counts 20, 21 and 22

Having considered the evidence and the provisions of the Public Procurement Act, 2003 Act 663, I find that no prima facie case has been established against the accused persons therein and I accordingly do not call upon them to open their defence. I acquit and discharge A1 and A3 of those offences.

Counts 23, 24, 25, 26, 27, 28 and 29

These counts relate to educational qualifications and certificates in the possession of the 4th accused and which he used to secure employment at SSNIT. Those certificates and academic qualifications include Bachelor of Science in Computer Science Exhibit QQ4 but the Certificate of which states "Bachelor of Science in Computer" from Georgia Institute of Technology. The 4th accused also allegedly holds a Masters in Business Administration but whose Certificate allegedly from Georgia Institute of Technology states "Masters of Business in Management"

The 4th accused also allegedly holds a PHD from University of Cincinnati. The Certificate itself Exhibit QQ16 is dated 2007 whilst the accused claims in his CV that it was obtained in 2009. Curiously,

the 4th accused had applied for employment previously at Scancom Ltd and had indicated in Exhibit SS that his PHD was from 2004. The 4th accused had stated earlier in 2008 that he was at Kennedy West University. The prosecution have stated that in an effort to verify the authenticity of the A4's Certificates from the University of Cincinnati, the A4 himself sent an email: info@alumnus.org to the PW9 indicating that the University of Cincinnati had received a package from her. It is the case of the prosecution that the University of Cincinnati sent a letter dated 25th July 2017 attached to Exhibit ZZZ in which the University stated as follows:

"The University of Cincinnati does not maintain an academic record for Caleb Kweku Afaglo and has no records indicating an enrolment history or degree award for Mr. Afaglo"

In the light of the evidence on record of PW9 Mary Nargetey of the Human Resource Department of SSNIT and PW10 the investigator. I find that the prosecution has established a prima facie case in respect of the charges i.e. count 23, 24, 25, 26, 27, 28 and 29 and I call on the A4 to open his defence.

In conclusion I find that the prosecution has not been able to establish a prima facie case against the accused persons in respect of the following charges and I accordingly acquit and discharge the accused persons as follows:

Count 1 – A1, A2 and A3 acquitted and discharged

Count 2 – A1, A2 and A3 acquitted and discharged

Count 3 – A1, A2 and A3 acquitted and discharged

Count 4 – A1, A2 and A3 acquitted and discharged

Count 5 – A1, A2 and A3 acquitted and discharged

Count 6 – A1, A2 and A3 acquitted and discharged

Count 7 – A1, A2 and A3 acquitted and discharged

Count 8- A1, A2 and A3 acquitted and discharged

Count 9- A1, A2 and A3 acquitted and discharged

Count 10- A1, A2 and A3 acquitted and discharged

In respect of Counts, 11, 12, 13, 14, 15 and 16, I also find that no prima facie case has been established against the 1st, 2nd and 3rd accused persons by the prosecution and I accordingly acquit and discharge them.

In respect of count 19 dealing with defrauding by false pretence, I acquit and discharge the 3rd accused as no prima facie case has been established against her.

In respect of count 20, I acquit and discharge the A1 and A3.

In respect of count 21, I acquit and discharge the 3rd accused.

In respect of count 22, I acquit and discharge the 1st accused.

In respect of counts 17 and 18, I find that the prosecution has been able to establish a prima facie case against the 1st, 2nd and 5th accused persons and I accordingly call upon them to open their defence in respect of those charges.

In respect of counts 23, 24, 25, 26, 27, 28 and 29, I find that the prosecution has been able to establish a prima facie case against the A4 and I accordingly call upon him to open his defence in respect of those charges. Full ruling to be filed at the Registry on 09-12-2024.

DPP says we are grateful and want further Directions

By Court

Case adjourned to 19-12-2024 at 12:30 for the 1st, 2nd, 4th and 5th accused persons to open their defence

SGD

.....
JUSTICE HENRY A. KWOFIE (JSC)
(SITTING AS ADDITIONAL HIGH COURT JUDGE)

CERTIFIED TRUE COPY


..... REGISTRAR
HIGH COURT
CRIMINAL COURT
LAW COURT COMPLEX 11/12/24