

IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR

IN THE FEDERAL TERRITORY OF KUALA LUMPUR

CASE NO.: MTJ (1) WA – 45 – 7 – 11 / 2018

AND

CASE NO.: MTJ (1) WA – 45 – 8 – 11 / 2018

(In the matter of Session Court of Kuala Lumpur

Arrest cases no.: WA-61R-14-09/2018 and WA-61R-16-09/2018)

PUBLIC PROSECUTOR

V

MOHD NAJIB BIN HJ ABD RAZAK

(NRIC: 530723-06-5165)

SUMMARY OF THE KEY FINDINGS

(AT THE END OF PROSECUTION CASE)

The following account constitutes just a summary of the key findings at this stage of the trial. It does not contain all the findings on all the issues raised up to this point of the trial.

It further does not also disclose or refer to all the relevant evidence of the trial up to this stage.

It also does not comprise the full and comprehensive reasons or the full and comprehensive grounds of the decision which will be contained in the written grounds of judgement later.

A) INTRODUCTION

1. The accused is a former Prime Minister of Malaysia and stands charged with 4 offences under section 23(1) of the Malaysian Anti-Corruption Commission Act 2009 (MACC) Act and 21 offences under section 4(1) (a) Anti Money Laundering Anti-Terrorism Financing Act 2001 (AMLATFA) (Act 613).
2. The prosecution has closed its case and submissions, both written and oral have been made.
3. The duty upon the court at this stage as required by law under section 180 of the Criminal Procedure Code (CPC) is to subject the totality of the evidence of the prosecution to a positive and maximum evaluation of the credibility and reliability of all the evidence adduced in order to determine whether the elements or ingredients of the offences as framed in the charges have been established.

B) PRELIMINARY ISSUES

i. ALLEGATIONS OF DEFECTIVE CHARGES

4. The 4 charges of using office or position for gratification (abuse of power) under section 23(1) (MACC) Act and charges 1 to 9 under section 4(1) (a) AMLATFA have been assailed by the Defence for being defective, duplicitous and ambiguous and therefore bad in law and in violation of Section 163 of the Malaysian Criminal Procedure Code (CPC).

5. Upon a perusal and examination of all 4 abuse of power charges under s.23(1) MACC Act, it is clear that they contain the time and place and it stated the offence with which the accused is charged.
6. All the 4 charges therefore fulfil all the legal criteria required of a charge as provided for under sections 152, 153 and 154 of the CPC.
7. In respect of charges 1 to 9 under section 4 AMLATFA which are also alleged to be incorrect and illegal and bad for multiplicity, I find that they also contain the time and place and it stated the offence with which the accused is charged and no prejudice is thus occasioned to the accused.
8. I find all 21 charges under the AMALATFA fulfil all the legal criteria required of a charge as provided for under sections 152, 153 and 154 of the CPC.
9. Section 422 CPC provides that any irregularity in charges can be cured provided that the accused was not prejudiced in any manner and no failure of justice was occasioned.
10. I do not find that the accused has been misled or has suffered prejudice in relation to the charges proffered.
11. In any event, section 156 CPC states that any errors or omissions (which I do not find to be the case here), with respect to the charge are not to be regarded as material unless the accused was in fact misled as a result, which has not been the case here.
12. Under all the circumstances, this court finds no merit in the contention by the defence that the 4 abuse of power charges under section 23(1) MACC Act and the charges under section 4 AMLATFA were defective, duplicitous, ambiguous and in violation of Section 163 CPC.

Failure to specify the accused's supposed interest

13. The defence submitted that the nature of the Accused's supposed interests has not been specified in the four (4) s.23(1) charges under the MACC Act. The Court of Appeal decision in **PP v Dato'Sri Najib bin Hj Abd Razak** [\[2021\] MLJU 2485](#) made it clear that the interest element is not an integral part of the offence under s 23(1), it being an offending provision.
14. A perusal and examination of each of the 4 charges reveal that the interests of the accused have been clearly spelt out and also the specific action that he took.
15. This court finds thus that there is no merit to the contention that the prosecution failed to specify the accused's specific interest in the 4 charges so as to render it defective.

ii. ADMISSIBILITY OF DOCUMENTS

16. The Prosecution through the Investigating Officer Nur Aida Arifin (PW49) has adduced documents as listed in Annexure A and B to her witness statement as exhibits.
17. The defence however has raised an objection on the admission of documents on grounds inter alia, that that the documents produced by PW49 must identify the exact maker or contributor of such documents before it can be admitted in evidence. The prosecution has sought to admit these documents under Section 41A MACC Act.
18. The existence of a non-obstante clause (notwithstanding anything to the contrary in any other written law) will operate to exclude the method and mode of proof prescribed by the Evidence Act 1950. The Latin maxim *generalibus specialia derogant* means that where a special provision is

made in a special statute, that special provision excludes the operation of a general provision in the general law. As the AMLATFA and the MACC Act are special statutes, the maxim would operate to exclude the operation of the Evidence Act 1950 which is a general law.

19.If Parliament had intended to place limits on the manner in which these documents are obtained, as contended for by the defence, it would have expressly said so in no uncertain terms.

20.In the premises, I find that the documents obtained by the MACC through the (Investigating Officer) IO are admissible.

The Documents obtained pursuant to the Mutual Assistance in Criminal Matters (MACMA) (the MLA documents)

21.Section 41A MACC Act supersedes the general provision in Chapter VA of the EA in respect of the admissibility of documents from foreign jurisdictions obtained through MACMA.

22.In any event, the MLA documents may be admitted as evidence and marked as exhibits under section 8(3) of the MACMA 2002, subject to the assessment of weight under section 8(4) of the same.

Retrospectivity

23.The defence has submitted that Section 41A does not apply retrospectively. As matters relating to admissibility of documents are evidential in nature, section 41A applies retrospectively.

RULING

24.As the IO (PW49) had obtained these documents including copies of documents in the course of investigation under the MACC Act, the requirements of section 41A has been fulfilled. Accordingly, all the documents as listed in Annexure A and B to the witness statement of PW49 are admissible in evidence.

25.In the premises, all documents obtained by PW49 in the course of investigations which were previously marked as IDP (including the documents obtained under MACMA) are now converted to P exhibits.

26.Therefore, the documents in the Lampiran Baru, Lampiran Tambahan and in Annexure G are rendered admissible. The admissibility of these documents however, does not determine the weight to be accorded to these documents. The weight or the probative value to be accorded to these documents is a matter for assessment by this court.

iii. HEARSAY EVIDENCE

27.During the course of the prosecution case certain witnesses, namely PW8, PW9, PW10, PW12, PW13, PW15, PW16, PW41, PW44 and PW50 testified to having verbal communication with the following individuals who were not called by the prosecution as witnesses:

- (a) Low Taek Jho (also known as Jho Low);
- (b) Datuk Azlin bin Alias;
- (c) Geh Choh Heng (Terence Geh); and
- (d) Nik Faisal Ariff Kamil.

28.The defence submitted that evidence given by these prosecution witnesses were inadmissible on grounds of offending the hearsay rule. The prosecution on the other hand submitted that these communications

may be admitted under certain well recognised exceptions to the hearsay rule.

Section 32(1)(b) of the Evidence Act 1950 EA

29. The prosecution contended that section 32(1)(b) EA can be utilised to admit these verbal communications.

30. The necessary conditions that must be fulfilled in order for these statements to be admitted are as follows:

- (i) Statements – either written or verbal;
- (ii) Must be of relevant facts;
- (iii) Made by a person who cannot be found; and
- (iv) in the ordinary course of business.

Verbal or Oral statements or communication

31. The case of **Tan Mooi & Ors v Tengku Mohd Saad & Ors [2018] Supp MLJ 492** has settled the position that statements admissible under this section can be verbal.

Relevancy

32. The matters testified to by these witnesses inter alia, were in respect of the reasons why certain action and conduct were taken by them in regard to matters concerning the running of the business of 1MDB and their belief that the instructions emanated from the accused who held an elevated position and thus were relevant to the facts in issue.

Made by persons who cannot be found

Jho Low

33.The evidence that Jho Low was not within the jurisdiction principally came from the testimony of PW50 who had been in communication with him for some time. Exhibits D949 (A-H) and D796 in respect of charges filed against Jho Low in absentia were tendered by the prosecution.

34.Evidence was also given that there was an income tax case against him and that he was no longer resident in Malaysia. The prosecution has therefore proven that Jho Low is a person that cannot be found.

35.Under all the circumstances, judicial notice can also be taken that Jho Low is someone who cannot be found.

Datuk Azlin Alias

36.The demise of Datuk Azlin in a tragic helicopter crash on 4.4.2015 was widely reported in the media.

Geh Choh Heng (Terrence Geh) and Nik Faisal Ariff Kamil

37.Both these persons were charged in absentia and also had civil suits filed against them in absentia. Under all the circumstances, the finding of this court is that the condition that these were persons who cannot be found were fulfilled.

Made in the ordinary course of business

PW8 (Datuk Amhari Effendi Nazaruddin)

38.PW8 (special officer to the accused) communicated with Jho Low, Datuk Azlin and Terrence Geh in relation to matters involving 1MDB.

PW9 (Datuk Shahrol Azral bin Ibrahim Halmi)

39. PW9 was the CEO of 1MDB from 23.3.2009 until March 2013. During that period, he communicated with Jho Low pertaining to instructions made by the accused in his capacity as the Chairman of the 1MDB's Board of Advisor and as the Minister of Finance and Prime Minister to PW9 in his capacity as the CEO of 1MDB.

40. PW9 also communicated with Datuk Azlin and Terrence Geh in relation to matters involving 1MDB. PW9 also communicated with Nik Faisal.

PW10 (Hazem Abdul Rahman)

41. PW10 was first COO of 1MDB and later its CEO.

42. Similar to the case with PW9, PW10 had communicated with Jho Low pertaining to instructions made by the accused in his capacity as the Chairman of the 1MDB's Board of Advisor and as the Minister of Finance and Prime Minister to PW10 in his capacity as the CEO of 1MDB.

PW12 (Azmi Tahir)

43. PW12 was the CFO of 1MDB between 1 June 2012 until December 2017 and was responsible for the financial matters of 1MDB during that period during which he was in constant contact with Jho Low and Datuk Azlin Alias as well as Terence Geh in matter pertaining to 1MDB.

PW13 (Tan Sri Ismee Ismail)

44. PW13 was involved in TIA and board member of 1MDB between September 2009 until 2016. PW13 had communicated with Jho Low on matters relating to TIA/1MDB and had met Jho Low in the presence of the

accused on numerous occasions. He had also received e-mails from Jho Low from time to time on 1MDB matters.

PW15 (Tan Sri Bakke bin Salleh)

45.PW15 was involved in TIA and subsequently as the Chairman of 1MDB's Board of Director (BOD) on 11 August 2009 and left on 19th October 2009.

46.PW15's evidence showed the relationship between the accused and Jho Low during the 1MDB meeting on 26th September 2009 when PW15 received the accused's instruction to proceed with the JV with PSI over Jho Low's hand phone.

PW16 (Datuk Wan Shihab Ismail bin Wan Ismail)

47.PW16 was the special officer of the accused and involved in arranging a number of vacations for the accused and his family members. Jho Low was also involved in the organisation of these vacations and there were constant communications between PW16 and Jho Low in relation thereto.

48.There was also evidence of this in the form of photographs and emails.

PW41 (Joanna Yu Ging Ping)

49.PW41 was the relationship manager (banker) in charge of the accused's bank account and testified to matters involving the accused bank accounts in AMBANK particularly the '9694' account. She had communicated with Jho Low via BBM messenger (P1479) in respect of these bank accounts.

PW44 (Kevin Swampillai)

50.PW44 was a BSI Banker in charge of various investments made by 1MDB and its subsidiaries. His evidence showed the role played by Jho Low in arranging for investments made by 1MDB and the transactions thereto.

PW50 (Jasmine Loo Ai Swan)

51.PW50 was the Legal Counsel of 1MDB between May 2011 until November 2013. She gave evidence about Jho Low's role in the affairs in 1MDB as well as Jho Low's close association with the accused.

52.Upon a consideration of all the circumstances, including the nature of the relationship that some of these witnesses had with the accused, the finding of this court is that the said communications were made in the ordinary course of business.

RULING

53.The established authorities in respect of the applicability of section 32(1) (b) EA stipulate that the words in the sub-section "in the ordinary course of business" ought to be given a broad and liberal connotation. See **Tay Choo Foo v Tengku Mohd Saad & Ors [2009] 2 CLJ 363** placing reliance upon the Indian case of **Devi Singh v Phulma AIR [1961] HP 10** where it was held that to hold otherwise would result in the shutting out of proof of facts on which on account of lapse of time direct evidence is not available.

54.Upon an examination of the evidence given by the above witnesses, this court's ruling is that communications made between the relevant prosecution witnesses and the persons who cannot be found were made relating to matters pertaining to the running of the affairs of 1MDB and related matters and thus were in fact made in the course of their ordinary

business thereby falling under the exception to the hearsay rule pursuant to section 32(1)(b) of the Evidence Act 1950.

55.I also find that these oral communications are admissible under the rule enunciated in the case of **Subramaniam v PP [1956] 1 MLJ 220** where the purpose is to establish by the evidence, not the truth of the statement, but the fact that it was made.

Talking Points, Emails and other documents by Jho Low

56.Based upon the reasoning above, this court also finds that the related documents listed in Annexure E are also admissible.

Other documents in Annexure E

57.This court also finds all the other documents listed in Annexure E are also admissible upon similar reasoning.

iv. CREDIBILITY OF PROSECUTION WITNESSES

58.The thrust of the defence submission in respect of the credibility of certain prosecution witnesses is premised inter alia, upon the accused being an unwitting victim and scapegoat of the scheme formulated by these witnesses to defraud 1MDB behind the back of the accused and because of their self-serving and vested interests, are unworthy of belief.

59.Amhari Effendi, (PW8) admitted that he received monies from Jho Low. Jasmine Loo (PW50) also admitted that she was given cash and gifts by Jho Low and that Jho Low gave her RM100 million between 2011 and 2014 as part of their joint venture to make investments.

60.Shahrol Azral (PW9) only received salary and bonuses for his position in the company.

61. Tan Sri Zeti Aziz (PW43), former Bank Negara Governor, was alleged to have had an ulterior motive to serve as her family members were also implicated.
62. Despite the allegations levelled against them, these witnesses were not accomplices and were candid about their acceptance of certain favours and gifts. In this regard, there is no legal presumption that an interested witness should not be believed.
63. I find the testimonies of these witnesses in relation to the role of the accused with regard to the charges proffered were consistent and it further constituted a common thread of evidence which was not coincidental with regard to the involvement of the accused and his relationship with Jho Low and other persons who were not called.
64. In the overall scheme of things, this court also finds that there ultimately would be no motive for these witnesses to testify and to frame up the accused who was at the time wielding enormous powers as Prime Minister and Finance Minister.
65. Considering the evidence as a whole including the provisions of Articles 68, 93 and 117 of the company's M&A, the accused stood at the apex of the decision-making process.
66. It would be tantamount to suicide for these witnesses to deliberately give evidence against the accused given the latter's position at the time.
67. It is important to bear in mind that at the end of the day, these witnesses were not the ones on trial and notwithstanding the allegations against them, I find that their evidence in respect of the main facts in issue in the trial, are capable of belief.
68. Therefore, upon a perusal and analysis of the evidence and based upon the demeanor of these witnesses, this court finds that despite the

accusations levelled, the credibility of these witnesses remains intact with regard to the main facts in issue in this case.

69. The finding of this court in respect of the rest of the prosecution witnesses is that their credibility is also intact and capable of belief.

v. SECTION 114 (g) EVIDENCE ACT 1950 (ADVERSE INFERENCE)

Non-calling of Ashvin Jethanand Valiram, Tan Sri Lodin Wok Kamaruddin and Tan Sri Nor Mohamed Yakcop

70. The prosecution has already called the Directors of 1MDB to testify to the relevant facts in issue as was essential to unfold the narrative of the prosecution case.

71. There was therefore no necessity to call all the other BOD members to testify.

vi. SHODDY AND BIASED INVESTIGATION

72. The Defence has alleged biased and shoddy investigation on the part of the prosecution.

73. This court however finds no merit in this contention as the investigations in respect of 1MDB were commenced in 2014 when the accused was still the PM and resumed thereafter in 2018.

74. With regard to the allegation that DSN was asked certain questions when his statement under section 53(3) MACC Act was taken, I find that this has not caused prejudice to the accused in light of the nature of the cross examination of the prosecution witnesses, in particular PW49.

C) THE CHARGES

75.The accused is charged for 4 offences under Section 23(1) of the MACC Act

The necessary ingredients

76.First, that the accused was an officer of a public body at the material time. Second, that he used his position in the manner described in each of the charges for the gratification specified in the respective charges for himself.

“THE ACCUSED IS AN OFFICER OF A PUBLIC BODY”

77.In respect of this ingredient which is common to all the 4 charges, reference is made inter alia to exhibits P1, P3, P4, P5, P7 and P10. The evidence inter alia of PW1, PW2, and PW3 is also referred to.

78.It is evident that the accused received remuneration from both Parliament and the Prime Minister’s Department.

79.The accused is also an officer of a public body by virtue of his position as the Chairman of the Board of Advisers of 1MDB (refer to Article 93(2)(a) of 1MDB’s M&A - exhibits P329) and to (section 3 MACC Act; Article 160 Federal Constitution; section 66 Interpretation Acts; Article 43 Federal Constitution; section 57(1)(h) and section 56 Evidence Act).

80.There was no serious challenge to the accused’s position as the Prime Minister, Minister of Finance of Malaysia as well as the Chairman of the Board of Advisers of 1MDB and that the accused was an officer of a public body at the material time.

81.Based upon the above, I find that the ingredient that the accused is an officer of a public body has been proven in respect of all the 4 charges of use of office or position for any gratification (abuse of power) charges under s.23(1) MACC Act.

“THE ACCUSED USED HIS POSITION FOR GRATIFICATION FOR HIMSELF”

82.The second element of Section 23(1) that must be established is that the accused had used his position for gratification for himself.

83.Subsection 23(2) MACC Act provides that when an officer of a public body makes any decision, or takes any action, in relation to any matter in which he has an interest, whether directly or indirectly, he shall be presumed to have used his office or position for gratification, unless the contrary is proved.

CHARGE NO.1 SECTION 23(1) Malaysian Anti-Corruption Act 2009 (“MACC Act”)

First action

84.The evidence to show that the accused took the first action inter alia came from the evidence of PW11 (Tan Sri Mazidah) who was the Deputy Head Secretary (Cabinet) in the Prime Minister’s Department which proved that the accused did on 1 April 2009:

- i. attend the Cabinet Meeting;
- ii. presented a Memorandum of the Ministry of Finance No. 216/2639/2009 (exh. **P242A**);
- iii. obtained the consent of the Cabinet for the provision of a guarantee by the Government of Malaysia to Terengganu Investment Authority Berhad (TIA) to enable TIA to obtain domestic and foreign market loans of up to RM5 Billion by way of Islamic Medium-Term Notes (IMTN) Programme.

Second action

85. For the second action in the First Charge, PW11's evidence inter alia is referred which shows that the accused did on 29th July 2009:

- i. attended and chaired the Cabinet Meeting;
- ii. presented Nota Jemaah Menteri No. H553/2009 entitled "Nota daripada Menteri Kewangan: Penubuhan Malaysia Investment Berhad" (exh. **P857**) signed by the accused in his capacity as the Minister of Finance; and
- iii. approve the acquisition of TIA by the Government of Malaysia and further caused TIA's name to be changed to 1 Malaysia Development Berhad (1MDB).

Third action

86. To prove the third action in the First Charge, reference is made to the evidence inter alia of PW15 (Tan Sri Bakke Salleh) who referred to the Minutes of the Special Meeting of the BOD of 1MDB dated 26th September 2009 (exh. **P361**).

87. In re-examination, PW15 also testified as to the impact of the phone call he had with the accused on his mind *vis-a-vis* the JV with Petro Saudi.

88. The evidence showed that the accused did on 26th September 2009:

- i. have a tele-conversation with PW15 who was about to chair the 1MDB BOD meeting; and
- ii. directed the BOD of 1MDB during a special meeting at The Royale Bintang Damansara to pass a resolution authorising 1MDB to participate in a joint venture with PetroSaudi International Limited.

Fourth action

89. To show that the accused took the fourth action in the First Charge, the evidence inter alia of PW9 (Datuk Shahrol Azral), PW13 (Tan Sri Ismee) and PW50 (Jasmine Loo) is referred to, which show that the accused had:
- i. signed the Minutes by Representatives of Holding Company (MR) with regard to Investment of an additional RM 1 Billion under the Murabaha Financing Agreement with 1MDB Petrosaudi Limited (exh. **P418**) and Special Rights Redeemable Preference Shareholder Resolution in Writing (SRRPS) with regard to Investment of an additional RM 1 Billion under Murabaha Financing Agreement with 1MDB Petrosaudi Limited (exh. **P419**); and thereby
 - ii. caused the Board of Directors of 1MDB to pass a Circular Resolution (exh. **P417**) authorising an investment of an additional RM 1 Billion (or equivalent in USD) under the Murabaha Financing Agreement dated 31st March 2010 with 1MDB PetroSaudi Limited.

90. PW9, PW13 and PW50 testified that exh (P418) and (P419) (the MR and the SRRPS) respectively were signed by the accused on 16th May 2011.

91. The evidence led by the prosecution revealed that the accused displayed interest in TIA Bhd from the inception and played a central role in the taking over of TIA by the government and in subsequently changing the name to 1MDB.

92. The accused also was instrumental in causing the Cabinet to consent to the provision of a guarantee by the government to enable TIA to obtain the RM5 Billion IMTN loan.

93. The evidence adduced show that without the involvement of the accused in his role as Minister of Finance and as Prime Minister in certain key actions, the JV would not have taken off.
94. In addition to his role as the PM, MOF, Sole Shareholder and Chairman of the Board of Advisors, the accused had a definite interest in the events leading up to the formation of the JV and beyond.
95. Without the accused signing the SRRP and Minutes by Representatives (MR), it would not have been possible for 1MDB to release the further USD 330 million loan.
96. An examination and evaluation of the evidence showed that DSN had taken such actions in matters in which he had an interest which were the basic facts necessary to raise the rebuttable presumption that the accused had used his office or position for gratification under section 23(2) MACC Act in respect of the First Charge.

Receipt of gratification

97. Although this element need not be proved at the end of the prosecution case (see COA decision in SRC), for the sake of completeness and in order to complement the undertaking of the maximum evaluation of the prosecution case, the testimony by PW47 and the Money Trial Report showed that between 23rd February 2011 and 14th June 2011, a total sum of approximately USD 20 million equivalent to RM60,629,839.43 of the proceeds that were credited into the accused's account at AmIslamic Bank, specifically AmPrivate Banking – MR (account no. 211-202-200969-4) from an account at Riyadh Bank, Saudi Arabia were found to be traceable to the issuance of the IMTN bond in 2009 and the Syndicated Term Loan in 2010.

CHARGE NO.2 (AMENDED) SECTION 23(1) Malaysian Anti-Corruption Act 2009 (“MACC Act”)

98. The Second Amended Charge relates to the acquisition of two (2) Independent Power Producers (IPPs) namely, Tanjong Energy Holdings Sdn Bhd and Mastika Lagenda Sdn Bhd.
99. The prosecution led evidence to show that the accused took certain action and caused 1MDB to enter into these 2 transactions.
100. In respect of the first acquisition, the accused approved the acquisition through Minutes of Representatives (MR) in his capacity as the Finance Minister pursuant to section 147(6) of the Companies Act 1956 on 9th February 2012.
101. The accused had also issued SRRP minutes in his capacity as a holder of Special Rights of the Company on the same date approving the said acquisition for a bid price amounting to RM 10.6 Billion.
102. PW9 testified as to the fact that the accused was aware of the fund-raising structure for the acquisition of Tanjong Energy IPP and that the said acquisition could not have materialised without the action of the accused in signing the MR (P456) and the SRRP (P457).
103. In respect of the second action, the evidence adduced showed that 1MDB embarked for the acquisition of Genting Sanyen’s IPP (Mastika Lagenda). The purchase price for that acquisition was RM 2.75 billion.
104. The action taken by the accused showed that he issued the MR and SRRP minutes in his capacity as a holder of Special Rights i.e. MOF on 10th August 2012 approving the said acquisition at an aggregate purchase price amounting to RM 2.75 billion.

105. PW9 testified that this acquisition could not have materialised without the issuance of the MR and the SRRP.
106. The accused also signed a letter in his capacity as the MOF dated 3rd August 2012 which allowed 1MDB to incur further indebtedness pursuant to section 6 of the Loan Guarantee Act (Bodies Corporate) 1965.
107. For the acquisition of Genting Sanyen / Mastika Lagenda IPP, another USD 1.75 billion bond was issued by the Bank of New York Mellon as a result of which USD 1,640,000,000.00 was paid into 1 Malaysia Energy (Langat) Limited (1MELL) bank account on 19th October 2012.
108. A consideration of all the evidence showed that the accused had taken such actions in matters in which he had an interest which were the basic facts necessary to trigger the presumption under section 23(2) MACC Act in respect of the Second Charge.

Receipt of gratification

109. Although this element need not be proved at the end of the prosecution case, (see COA decision in SRC) for the sake of completeness and in order to complement the undertaking of the maximum evaluation of the prosecution case, the money trail done by PW47, shows that the money that ended up in the accused's 9694 account (RM 90,899,927.28) originated from the bond issuance meant for acquisitions of Tanjong Energy's IPP (1MEL) and Mastika Lagenda's IPP (1MELL).

CHARGE NO.3 (AMENDED) SECTION 23(1) Malaysian Anti-Corruption Act 2009 ("MACC Act")

110. This phase was in relation to a joint venture between 1MDB and Aabar(ADMIC) which the accused, as Minister of Finance, approved where IPIC was to guarantee Aabar's investment.
111. As Minister of Finance, the accused had approved the two sets of internal memos approving the fundraising by the government. The first internal memo dated 18th February 2013 shows approval by accused as MOF for the government to issue a letter of support for the fundraising of USD 6 billion.
112. On the same day, a 'Memorandum Jemaah Menteri daripada Menteri Kewangan' was sent to the Cabinet to be tabled. The memo was presented and approved by the Cabinet on 20th February 2013.
113. Sometime in March, there was another internal memo that was prepared to supercede the earlier one where the fundraising amount has been reduced to USD 3 Billion and certain terms was altered.
114. In March 2013, the accused agreed to all terms and conditions proposed by Goldman Sachs. Another 'Memorandum Jemaah Menteri daripada Menteri Kewangan' was sent to the Cabinet to be tabled which the Cabinet approved on 13.3.2013.
115. PW9 and PW13 testified that when they were shown by PW50 the Directors' Circular Resolution in Writing (exh. **P529**) to be signed, the DCR was attached together with exh. **P530** Minutes by Representatives (MR) signed by the accused in his capacity as MOF Inc and **P531** the Special Rights Redeemable Preference Shareholder's Resolution (SSRP) signed by the accused in his capacity as sole shareholder of 1MDB.
116. Thereafter, the Directors' Circular Resolution (DCR) (exb. **P529**) was signed by the BOD.

117. Evidence was led thus that the accused had approved the execution of a Joint Venture Agreement between 1MDB and Aabar.
118. On 12th March 2013, accused attended the signing ceremony of the joint venture between 1MDB and Aabar Investment PJS amounting 6 billion that was held at the Prime Minister's office.
119. The prosecution evidence shows that on 14th March 2013 the accused signed a letter of support (LOS) to raise a loan through the issuance of bonds by 1MDB in the sum of USD 3 billion.
120. On the 19th of March 2013 the disbursement was made immediately by Bank of New York Mellon Group to the 1MDBGIL's account.
121. The evidence on the speed of the fundraising transaction was given by PW26, PW42, PW9 and PW10.
122. Despite the defence allegations of the involvement of others with regard to the decision-making process, it was the accused who had taken action in various capacities, namely, at the 1MDB stage as sole shareholder, the MOF stage and at the Cabinet stage.
123. The accused was therefore the ultimate decision maker. He had also not seen fit to lodge any police reports in respect of the alleged involvement of others.
124. A consideration of all the evidence above showed that the accused had taken such actions in matters in which he had an interest which were the basic facts necessary to raise the presumption under section 23(2) MACC Act in respect of the Third Charge.

Receipt of gratification

125. The evidence of PW47 had showed the flow of money from the USD 3 Billion bond issuance purportedly for the development of TRX had ultimately been diverted into the accused's bank account.

CHARGE NO.4 (SECOND AMENDED CHARGE) SECTION 23(1) Malaysian Anti-Corruption Act 2009 ("MACC Act")

126. The fourth charge or phase relates to the purchase of the Aabar options by 1MDB given to Aabar in 2012 as alleged part consideration for IPIC's guarantee for the notes that raised USD 3.5 billion. This phase is also known as the "*option buy back*".

127. In 2014, 1MDB through its subsidiary company undertook an Initial Public Offering (IPO) on its Energy Division. In order to successfully undertake the IPO, the company must ensure that it was free from any financial or minority interest or risk being rejected for listing on the Bursa.

128. The Option Buy Back phase involved the redeeming of Aabar's 49% stake in 1MDB Energy Sdn Bhd under 1MDB Energy Limited (1MEL) and also 49% in 1MDB Energy (Langat) Sdn Bhd under 1MDB Energy (Langat) Limited (1MELL), which was executed in Phase 2.

129. In order to redeem the option held by Aabar, 1MDB had to seek financial sources to finance the termination option payment to Aabar.

130. The evidence to show that the accused had taken action in respect of this charge came from PW9, PW10, PW12 and PW13 respectively.

131. The accused approved the 2 loans to buy back the shares from Aabar. 1MEHL entered into two term loan agreements with Deutsche Bank Hong Kong, the first of which was a USD 250,000,000.00 first loan which constituted the first action in this charge.

132. On May 22nd, 2014, the BOD approved DCR. In the DCR, the approval of the 1MDB Board of Directors was given to terminate the Aabar Option agreement and also approval for 1MDB Energy Holdings Limited to obtain a loan not exceeding USD 300 million from Deutsche Bank AG.
133. According to PW9, the DCR was received together with the SRRP and Minutes of Representative attached which had been approved by the accused.
134. PW10 also testified that it was the practice in 1MDB that when the BOD receives the DCR, the Shareholder's Resolution and Minutes By Representative signed by the accused were attached together and originally, undated.
135. Although there was no SRPP and MR tendered by the prosecution in respect of this transaction, the evidence of the prosecution witnesses was sufficient to establish that the DCR for the USD 250 million was accompanied by the SRPP and the MR duly approved by the accused.
136. Evidence was led to show that the first loan taken by 1MDB amounting to USD 250 million would not have materialized without the approval by the accused.
137. The purpose of the second loan of USD 975 million was to refinance the USD 250 million and also to pay the remaining outstanding payment to Aabar.
138. PW10 confirmed that the BOD signed the DCR for the USD 975 million loan. When this DCR was received by the directors, the Shareholders Resolution and Minutes by Representative were already signed by the accused.

139. The accused also signed the Letter of Approval and Support which also evidenced that the accused was aware of the existing USD 250 million obtained by 1MEHL.
140. From the evidence led, the loan amounting to USD 975 million would not have materialized without the accused's approval.
141. A consideration of all the evidence above showed that the accused had taken such action in matters in which he had an interest which were the basic facts necessary to trigger the presumption under section 23(2) MACC Act in respect of the Fourth Charge.

Receipt of gratification

142. Although this element need not be proved at the end of the prosecution case, (see COA decision in SRC), for the sake of completeness and in order to complement the undertaking of the maximum evaluation of the prosecution case, the evidence showed that the sum of RM44,570,920.70 credited into the accused's account at AmIslamic Bank AmPrivate Banking were found to be traceable to the USD 250 million and the USD 975 million loan proceeds of 1MEHL in 2014.

Other action taken by the accused in relation to matters in which he has an interest

143. TIA's conversion to 1MDB and Articles 117, 68 and 93 M&A.
 - a. The accused was instrumental in changing TIA's name to 1MDB. Evidence shows that the accused caused amendments to be made to Articles 117, 68 and 93 to place himself in sole control of

important matters concerning the business and affairs of the company.

- b. PW26 in her testimony also confirmed that Articles 68, 93 and 117 in 1MDB's M&A are not present in any other M&As of other companies under MoF Inc.

144. The Public Accounts Committee (PAC) hearing

- a. PW15 testified that two weeks ahead of testifying before the Public Accounts Committee (PAC) in 2016 about the affairs of 1MDB, PAC's then Chairman Datuk Seri Hasan Ariffin (Hasan) met him twice to brief him on what to say at the hearing, with the objective being to safeguard the name of the accused and Jho Low.
- b. PW15 testified that this was on the instructions of the accused.

145. Relationship with certain influential Arabs while on holiday

- a. Evidence was led by PW16 that the accused and his family had met with Arab royalty, namely, from Kuwait, Saudi Arabia and Abu Dhabi while on holidays in Europe.
- b. Most notably, PW16 said that on one such occasion, the accused had met with Mohamed Badawy Al-Husseiny, who was a director of Aabar Investments PJS.
- c. PW16 further said that Jho Low was also present.

146. The bailout in China

- a. PW8 who was the accused former special officer testified that he was instructed personally by the accused to go to China on a secret

mission and offer infrastructure projects in return for money to bail out 1MDB and SRC.

147. Secret mission to Abu Dhabi

- a. PW8 testified that the accused had in 2016 assigned him to meet Mubadala Investment Co. group CEO Khaldoon Khalifa Al Mubarak to settle the 1MDB – International Petroleum Investment Co (IPIC) dispute outside the International Court of Arbitration.

148. Termination of KPMG

- a. The investment in Brazen Sky became the major scrutiny by the auditors (KPMG) in 2013 and KPMG refused to sign off the accounts because 1MDB failed to produce documents that was required by the auditors to sign off 1MDB's account.
- b. The Accused instructed KPMG to complete and sign off on its audit of 1MDB's 2013 financial statements within two weeks although KPMG had yet to receive crucial documents and information on a US\$2.318 billion purported investment by 1MDB. PW14 described the instruction by the accused to the audit firm as a form of intimidation. Notwithstanding, KPMG was still unable to sign off the accounts as they were still lacking documents from 1MDB.
- c. As a result, on December 31, 2013, the accused terminated KPMG as the auditor for 1MDB with immediate effect, and replaced it with Deloitte KassimChan.

149. The ousting of Finance Minister II

- a. PW20, Dato'Seri Husni who was the Second Finance Minister testified that he attempted to caution and raise certain concerns of his with the accused in relation to the establishment of 1MDB and the Petro Saudi -1MDB Joint Venture but was told in no uncertain terms to stay away from matters involving 1MDB.

150. Fast tracking of Government Guarantee for 1MDB's USD3 Billion Bond

- a. PW26 testified that in 2013, the Malaysian Government fast-tracked the issuance of a government guarantee for a new US\$3 billion borrowing in 2013 by a 1MDB subsidiary without following proper procedure.

151. No reports lodged with the authorities and banks

- a. Despite the fact that by 2015, the publicity about the financial scandal involving 1MDB surfaced, PW8 said that he received no instructions from the accused to lodge any reports with the authorities.

152. Edge Media Group Chairman attempts at clarification went unheeded

- a. The Edge Media Group Chairman PW43, Tan Sri Tong Kooi Ong testified, on 6 March 2015, he went to the accused's house in Langgak Duta to seek clarification regarding the problems arising regarding the affairs of 1MDB.
- b. PW43 told the accused during this meeting that Jho Low should be held accountable for the diversion of USD 700 million to Good Star and should face prosecution but as a response, the accused went to the door and opened it for him to leave.

153. Certain other action taken by the accused

- a. A special task force led by the then Attorney General, Tan Sri Abdul Gani Patail comprising several authorities was formed for the purpose to facilitate and investigate the allegations against 1MDB as well as the transactions of monies deposited into the accused's account.
- b. The task force however was disbanded upon the instructions of the accused on 27th July 2015.
- c. Further, there was evidence led that the accused had taken steps to cause the removal of the MACC's Chief Commissioner while the AG who replaced Tan Sri Gani had closed the case.
- d. In 2016, the accused caused the removal of paragraphs containing two versions in the 2014 1MDB Audit Report among others the removal of Jho Low's name from the Minutes of the Special Board of Directors Meeting dated 26 September 2009.
- e. Sometime in July 2015, the accused instructed the then BNM Governor (PW46) to release a statement stating there were no wrongdoings involving the monies that were credited in his accounts. However, this was refused by PW46.

154. Top-Down approach

- a. PW9, PW10, PW12 and PW13 testified that it was a common practice in 1MDB to prepare DCR, Shareholder's Resolution (SRRP) and Minutes By Representative (MR) regarding a decision to be made by 1MDB, even if it was not discussed in any meetings.

- b. This method was described as involving a “Top-Down “approach where 1MDB's management will execute these projects only after receiving approval from the accused. The BOD would then follow and agree with the accused’s decisions and subsequently sign the DCR.
- c. The approach adopted in 1MDB constituted cogent evidence of the top-down approach as testified to by the prosecution witnesses.

155. The Chairman of the Board of Advisors (CBOA meetings)

- a. The prosecution referred to exh. P331, P396 and P414 being the Minutes of CBOA meetings as evidence that the accused had acted in his capacity as the Chairman of the Board of Advisors of 1MDB notwithstanding that the meetings were held between the accused and PW9.
- b. This evidence supported the fact that the position of CBOA had existed in 1MDB as stipulated in Article 92 of the M&A and that the accused had exercised his powers in his capacity as Chairman of the CBOA.

156. The 9 Audio Recordings

- a. PW49 referred to 9 audio recordings she obtained in the course of her investigations which showed that there were attempts to cover-up the 1MDB issues by the accused with the help of a number of individuals.

157. The Statement of the accused given under section 53 of the MACC Act

- a. In his statement, the accused admitted to receiving the monies into his accounts as stated in the 4 corruption charges. He also admitted at pages 6 to 7 of D1801 with respect to these monies having been sent and that cheques were issued personally to various parties, which constituted part of the 21 AMLA charges.
- b. The accused admitted that had full control and authority over the spending of his bank accounts at AmBank and not Nik Faisal, Datuk Azlin or Jho Low.
- c. The accused also stated at page 23 that pursuant to an event dubbed as "*peristiwa 916*" (on 16th September 2008), there was a need for him to find political funding to avoid any Members of Parliament from Barisan Nasional from jumping ship to another party and thus causing him to lose political power.
- d. This admission by the accused lent credence to the evidence of PW19 (Tan Sri Sidek Hassan) who testified that 1MDB was initiated as a political fund for Barisan Nasional.
- e. Amhari's (PW8) evidence also reiterated the fact that 1MDB was used as a fund for the accused's political purposes.
- f. The evidence has shown that the accused could not have obtained the funds were it not for his positive action with regard to 1MDB in which he had vested interests.
- g. The accused further in his statement alluded to the role played by Jho Low in relation to all fund-raising exercises mentioned in the 4 MACC charges.
- h. An examination and consideration of all the evidence and circumstances as stated above, and viewed as a whole, also amounted to cogent evidence that the accused had taken action in

relation to matters in which he had vested interests constituting sufficient basis for the raising of the rebuttable legal presumption under section 23(2) MACC Act.

- i. The various courses of action taken above also constituted conduct that is relevant (see section 8 Evidence Act 1950).
- j. Based upon the evidence adduced by the prosecution, this court finds that the accused has not rebutted the presumption under section 23(2) in respect of all the 4 abuse of power charges on a balance of probabilities.

The Section 23(4) Defence

158. There were no benefits that the actions of the accused had brought to the government of Malaysia and no interest or advantage had accrued to the government.
159. Under all the circumstances therefore, this court finds no merit in the contention by the defence that the accused was entitled to the defence under section 24(4).

The Arab Donation

160. PW50 testified that that sometime in 2015 when she was in London, she met Jho Low and also saw Kee Kok Thiam, Dato' Shamsul and Dennis See.
161. According to PW50, she heard Jho Low instruct Kee Kok Thiam to prepare a letter from Prince Saud to confirm that the monies deposited was a donation from Saudi Arabia.
162. This was in response, according to PW50, to the inquiry by Dato' Shamsul to Jho Low as to certain allegations that the monies that had

- been deposited into the accounts of the accused were monies from 1MDB.
163. PW50 said that she then left the room and when she returned, she saw Kee Kok Thiam preparing the said letter namely, (D1451) (IDP1478) date 1.6.2014.
164. This piece of evidence supports the case for the prosecution that the funds received by the accused were not in fact donations from the Arabs but as a result of the actions and vested interests of the accused as stated in the charges proffered.
165. This further raises the reasonable inference that the other letters in respect of the Arab donations were of questionable origin.

DECISION (END OF PROSECUTION CASE)

166. Based upon a maximum evaluation of the evidence by the prosecution at the end of the prosecution case, this court finds that all the ingredients of all the four (4) charges under section 23(1) MACC Act 2009 have been successfully made out which if unrebutted would warrant a conviction.
167. This court therefore finds that a prima facie case has been made out against the accused in respect of all the four (4) charges and calls upon the accused to make his defence on all the 4 charges.

MONEY LAUNDERING UNDER SECTION 4(1)(a) of the ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING ACT 2001

168. The Accused is charged with 21 charges of money laundering amounting to RM 2,081,476,926.00 under s. 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613]

(hereinafter refer to as AMLATFA) over a period from 22-3-2013 until 30-8-2013.

The Accused engaged in an act of money laundering (*actus reus*)

169. The respective 21 acts of money laundering which constitute the charges can be conveniently categorised as follows:

- a) 9 charges of receiving proceeds of unlawful activity
- b) 5 charges of using proceeds of an unlawful activity; and
- c) 7 charges of transferring proceeds of an unlawful activity

a) 9 charges of receiving proceeds of unlawful activity

- i. The following were led in evidence inter alia, by the prosecution.
- ii. Prosecution witnesses Uma Devi (PW37), Joanna Yu (PW41) and Cheah Tek Kuang (PW39) testified that the accused had opened a bank account number 2112022009694 with AmIslamic Bank Berhad, Cawangan Raja Chulan, No. 55, Jalan Raja Chulan, Bukit Ceylon, Wilayah Persekutuan Kuala Lumpur, on 13.01.2011 which was designated as AmPrivate Banking-MR. (Account 9694).
- iii. Documentary evidence was also tendered to show the opening statement of Account 9694, AmIslamic Bank Bhd payment slip for RM500 for opening of the said account.
- iv. Evidence was also led to show that the sum of USD681,000,000.00 which originated from bank account number 8550299001 registered under the name of Tanore Finance Corporation, at Falcon Private Bank, Singapore was transferred to accused's Account 9694.

- v. The total sum in Malaysian Ringgit equivalent was RM2,081,476,926.00

b) 5 charges of using proceeds of an unlawful activity

- i. Evidence was led by the prosecution to show that from the funds derived from illegal activities, the accused did by way of several cheques from Account no.9694 make payment to several entities and persons.
- ii. On 2.8.2013, a cheque no. 571854 amounting to RM20,000, 000.00 was issued to UMNO.
- iii. On 7.8.2013, a cheque no.571857 amounting to RM100,000.00 was issued to UMNO Bahagian Batu Kawan.
- iv. On 7.8.2013, a cheques no.571858 amounting to RM246,000.00 was issued to Lim Soon Peng.
- v. On 12.8.2013, a cheque no. 571859 amounting to RM2,000,000.00 was issued to ORB Solutions Sdn Bhd.
- vi. On 14.8.2013, a cheque no. 571856 amounting to RM303,000.00 was issued to Semarak Konsortium Satu Sdn Bhd.
- vii. All the witnesses called from the abovesaid entities including Wong Nai Chee (PW5) in respect of the payment made to Lim Soon Peng, testified to receiving the cheques.
- viii. They were also other documentary evidence tendered which showed the cheques being issued, received and honoured.

c) 7 charges of transferring proceeds of an unlawful activity

- i. The prosecution led evidence to show that the Accused had transferred funds from Account 9694 to the Tanore Account and his

newly opened AmIslamic Bank No 211-202-201188-0 AmPrivate Banking-1MY (Account 1880).

- ii. The Accused transferred a total of RM2,034,350,000.00 to Tanore through 5 tranches commencing on 2-8-2013 and ending on 23-8-2013.
- iii. In respect of charges 20 and 21 (amendment), evidence was led to show that a total of RM161,411,646.34 was transferred by the accused from Account 9694 to Account 1880 through 2 transactions.
- iv. The evidence also revealed that there was a letter of instruction from the accused dated 26.8.2013 to close his account 9694 and his savings account of 211-002-009048-1 and had given instructions in respect of the balance amount in account 9694.

The identified amounts (monies) were proceeds of an unlawful activity

170. The charges against the accused in respect of money laundering comprised the money deposited in the Accused's bank Account 9694 amounting to RM 2,081,476,926.00.
171. Based on the definition of "property" above stated, the monies in the said bank account falls under paragraph (a) i.e. assets of every kind, and the bank cheques are encapsulated in paragraph (b).
172. Thus, the said money and bank cheques are "property" as defined under AMLATFA.

Was the said property directly or indirectly, a result of an unlawful activity?

173. The definition of unlawful activity means any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence.

174. The definition of a serious offence means inter alia, any of the offences specified in the Second Schedule.
175. A charge under section 23 of MACC Act is listed as one of the offences in the Second Schedule.
176. In light of my finding in respect of the third charge under section 23(1) MACC Act, the prosecution has thus sufficiently proven that the said property was as a result of an unlawful activity.

Money Trail

177. The prosecution had also adduced evidence through Adam (PW47) who tendered a Money Trail Report (P155) and Phase 3 Chart (P805) in order to show that the monies received in account 9694 belonging to the accused were as a result of the action he took with respect to charge no.3 under section 23(1) MACC Act.
178. The time frame between the acts of the accused and the receipt of the funds was also proximate.

First In First Out (FIFO)

179. This method of demonstrating that the funds deposited into the account of the accused 9694 totalling USD 680,999,988.00 were from Tanore was explained by ACP Foo (PW48).
180. PW48 explained that this method was used in order to differentiate between clean monies and illegal monies when the funds were comingled as was the case here. This led to the amendment of some of the charges.
181. Based upon the available evidence, this court finds that the said properties were as a result of the unlawful activity.

The presence of knowledge of the Accused as to the source of the proceeds
(mens rea)

182. The definition of money laundering in section 3 of AMLATFA stipulates the knowledge or mens rea element of the offence as follows:

“Where-

(aa) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;”

183. The prosecution has led evidence to show that these objective factual circumstances as stipulated in paragraph aa) and in bb) can be reasonably inferred from the following conduct by the accused:

184. The Accused maintained 3 current accounts at the same bank which was opened on the same day i.e. on 31-7-2013 immediately after Account 9694 that received proceeds from Tanore was closed on the instructions of the Accused.

185. There were code names assigned for all the Accused’s personal accounts at the bank such as Account 9694 as AmPrivate Banking-MR and Account 1880 as AmPrivate Banking-1MY.

186. Evidence was led that the accused was very much in control and in charge of the accounts at Amlslamic bank, despite appointing a mandate holder such as Nik Faisal. According to the accused’s

statement, he had the knowledge as to the transactions that took place and the purposes for which it was intended.

187. Tan Sri Zeti (PW48) said that the Accused had asked her to declare that he had not committed any wrongdoing.
188. Joanna Yu (PW41) testified as to the role played by Jho Low with respect of the Accused's Account 9694 in ensuring sufficiency of funds and said that this was with the knowledge of the Accused although Nik Faisal was the mandate holder.
189. Evidence was led that Akademi Kewartawanan dan Informasi Taima was engaged for the publication of a Chinese weekly, and AD Network was paid as the administrator of Facebook page. This was done according PW5, to counter negative perceptions from the Chinese community regarding the government of the day. Payments for these services were made to Tan Sri Lim Soon Peng with the intention of facilitating back-to-back payments to both entities and to avoid linking the Accused.
190. PW8 testified that ORB Solution Sdn Bhd was established to carry out branding promotion for 1Malaysia and to manage the Accused's social media which incidentally was the only client of the company.
191. PW45 said that Semarak Konsortium Satu Sdn. Bhd. (Semarak) was appointed verbally to provide international media team services and English speechwriting for the Accused from March 2011 to April 2014 and received a total of RM22,981,688.00 out of which RM303,000.00 were proceeds of unlawful activities.
192. In light of the enormous sums of funds deposited namely, USD681,000,000.00 and the sums returned of USD620,000,000.00 into the Accused's account, it was incumbent upon him to take reasonable

steps to ascertain whether or not the property were proceeds from unlawful activity.

193. The above instances of conduct as well as the respective acts of receiving, using and transferring the proceeds by the Accused were also relevant under section 8 of the Evidence Act 1950 and therefore admissible to reasonably and justifiably infer knowledge on the part of the Accused with respect to the charges in respect of all the 21 charges of money laundering under section 4(1) (a) of AMLATFA.
194. Under all the circumstances, I find that the accused was also “wilfully blind” with regard to his failure to inquire into the origin of these funds when the circumstances were such that he ought to have done so.
195. Under the circumstances and based upon the evidence, I find that the prosecution had also proven the mens rea in respect of all the AMLA charges.
196. The issue in relation to the Arab donations have been addressed earlier.

DECISION (END OF PROSECUTION CASE)

197. In all the circumstances of the case and based upon the available evidence, and upon conducting a maximum evaluation of the prosecution case, this court finds that the prosecution has successfully proven each ingredient of all the offences under section 4(1) (a) of AMLATFA which if unrebutted would warrant a conviction.
198. This court therefore finds that a prima facie case has been made out against the accused in respect of all the 21 charges under section 4(1) (a) of AMLATFA.
199. This court accordingly calls upon the accused to make his defence in respect of all 21 charges under section 4(1) (a) of AMALATFA.