

**IN THE HIGH COURT OF THE GAMBIA**

**CRIMINAL CASE No: HC/323/11/CR/101/AO**

**BETWEEN:**

**THE STATE**

**COMPLAINANT**

**VS.**

**DR. AMADOU SCATTRED JANNEH  
MODOU KEITA  
EBRIMA JALLOW  
MICHEAL C. UCHE THOMAS**

**1<sup>st</sup> ACCUSED  
2<sup>nd</sup> ACCUSED  
3<sup>rd</sup> ACCUSED  
4<sup>th</sup> ACCUSED**

**TUESDAY 17<sup>th</sup> JANUARY 2012**

**BEFORE HON. JUSTICE EMMANUEL A. NKEA**

**1<sup>st</sup> ACCUSED PRESENT**

**2<sup>nd</sup> ACCUSED PRESENT**

**3<sup>rd</sup> ACCUSED PRESENT**

**4<sup>th</sup> ACCUSED PRESENT**

**MR. M. ABDOULAHY (DPP), MR. S.H BARKUN (DDPP), MRS. A. D  
BWALA (SSC) & Ms S. SANKARY (SC) FOR THE STATE  
MR. L.S. CAMARA FOR ALL ACCUSED PERSONS**

**JUDGMENT**

The accused persons stand charged with four (4) counts, pursuant to the consent of the Honourable Attorney General of The Gambia, given on the 18<sup>th</sup> of July, 2011 as required by Section 39 of the Criminal Code, Cap 10 Vol. III Revised Laws of The Gambia 2009 as follows:

**COUNT I:**

**STATEMENT OF OFFENCE**

Conspiracy to commit treason, contrary to section 35 (1) (g) of the Criminal Code, Cap 10 Vol. III Revised Laws of The Gambia, 2009

**PARTICULARS OF OFFENCE**

Dr. Amadou Scattred Janneh on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia and elsewhere, conspired with Ndey Tapha Sosseh, Mathew K. Jallow, Famara Demba and others at large to overthrow the Government of The Gambia by unlawful means and thereby committed an offence.

**COUNT II:**

**STATEMENT OF OFFENCE**

Treason contrary to section 35 (1) (a) of the Criminal Code, Cap 10 Vol. III Revised Laws of The Gambia 2009

**PARTICULARS OF OFFENCE**

Dr. Amadou Scattred Janneh, Ndey Tapha Sosseh, Mathew K. Jallow, Famara Demba and at large on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia and elsewhere prepared to overthrow the Government of The Gambia by unlawful means and thereby committed an offence.

**COUNT III:**

**STATEMENT OF OFFENCE**

Seditious act contrary to section 52 (1) (a) of the Criminal Code, Cap 10 Vol. III Revised Laws of The Gambia 2009

**PARTICULARS OF OFFENCE**

Dr. Amadou Scattred Janneh, Modou Keita, Ebrima Jallow, Micheal C. Uche Thomas and others at large on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia conspired amongst yourselves to print and distribute 100 T-shirts carrying seditious statements to wit: coalition for change The Gambia, end dictatorship now, and thereby committed an offence.

**COUNT IV:**

**STATEMENT OF OFFENCE**

Seditious act contrary to section 52 (1) (c) of the Criminal Code, Cap 10 Vol. III Revised Laws of The Gambia 2009

**PARTICULARS OF OFFENCE**

Dr. Amadou Scattred Janneh, Modou Keita, Ebrima Jallow, Micheal C. Uche Thomas and others at large on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia with intent to cause or bring into hatred, contempt or to excite disaffection against the person of the President or the Government of The Gambia printed and distributed 100 T-shirts carrying seditious statements to wit: coalition for change The Gambia, end dictatorship now, and thereby committed an offence.

On the 19<sup>th</sup> of July 2011, the accused persons all pleaded not guilty to the various counts against them.

The Prosecution called fourteen (14) witnesses in all, in an attempt to prove their case. At the close of the prosecution's case, the defence elected to rest their case on that of the prosecution. As such no evidence was led by the accused persons in their defence. I will return to this issue latter.

The case of the prosecution as elicited in the testimonies of the prosecution witnesses is that, on or about the 26<sup>th</sup> day of May 2011, whilst PW2 (Sulayman Gaye) was walking along Kairaba Avenue, and as he got to a point near the Post Office junction, a vehicle with a yellow colour and white background drove pass him in top speed and a plastic bag containing a T-Shirt was thrown out from the moving vehicle. The plastic bag was picked up by PW2 and when he opened it later, he found that the T-shirt had the words **“Coalition for Change The Gambia” End Dictatorship Now**” written on the front while the word **“Freedom”** was written on the back. These words according to PW2 are capable of inciting contempt, hatred and disaffection against the democratically elected government of The Gambia and the person of the President. The T-Shirt which was thrown out from the moving vehicle is in evidence as exhibit **“A3”**. PW2 took the T-Shirt to his office at the Police Head Quarters the next day and presented same to his seniors who found it to be offensive. A panel was instituted to investigate the matter. Unable to track down the vehicle from which the T-shirt was thrown out, the panel detailed some of its members to visit the Albert Market in Banjul with a view to identify any businessman dealing in such T-shirts. Their investigation took them to the shop of PW3 **Mohammed Idriss** who identified exhibit **“A3”** from its trade mark **‘soft comfort’** as part of the 100 T-Shirts he had sold to the 4<sup>th</sup> accused. More T-Shirts of the same colour and with the same words printed on them were later recovered from PW1, PW10 and the 1<sup>st</sup> accused. These other T-Shirts are in evidence as exhibits **“A, A1, A2, A4, A5”** and

“DE3”. More of these T-shirts were also distributed by the 1<sup>st</sup> accused to PW4, and PW5 who are both staffs of Commit Enterprises.

The 4<sup>th</sup> accused was later on arrested and he admitted having printed exhibit “A3”. His residence was searched where the films used in printing the words and the logo on the T-shirts was recovered; these two films are in evidence as exhibits “D-D1” respectively. He led the investigators to the 2<sup>nd</sup> and 3<sup>rd</sup> accused as the persons who had given him the contract to print the T-shirts. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons in turn led the police to the 1<sup>st</sup> accused as the person who contracted them to print the T-shirts.

The police visited the 1<sup>st</sup> accused at his ‘Commit’ business premises located opposite the Fire Station at Kotu, where the police identified and recovered the vehicle from which the T-shirt exhibit “A3” was thrown out. The vehicle is in evidence as exhibit “C” whilst the ignition key is in evidence as “C1”. In order to determine the real owner of the vehicle, a letter was written by PW13 to the Vehicle Licensing Unit of the Gambia Police Force requesting information as to the owner of the said vehicle. In response the Vehicle Licensing Unit confirmed the vehicle to be the property of the 1<sup>st</sup> accused. The letter of request and the reply thereto are in evidence as exhibits “H5” and “H6” respectively. An external hard drive (exhibit “B”) was also recovered from the office of the 1<sup>st</sup> accused. When exhibit “B” was connected onto a computer, an audio interview with the Secretary General of Coalition for Change The Gambia (hereinafter CCTG or CCG); Ndey Tapha Sosseh and an audio press release from the CCTG were found therein. The audio interview and audio press release were downloaded

and later transcribed by PW7. The transcribed version of the audio interview and press release is in evidence as exhibit "D2". The audio interview was, according to PW7, to be sent to SUD FM, Kaolack, Senegal for broadcast.

The objectives of the CCTG, according to PW7 and PW13, were to remove President Jammeh from office by wearing the T-shirts and going on street demonstrations as it happened in some North African countries recently. The CCTG intended to carry out this plan on African Liberation Day (**25<sup>th</sup> May, 2011**), which is also the birth day of President Jammeh. The CCTG made contacts with some senior Senegalese politicians requesting for the support of Senegalese authorities to their campaign. In this regard, the 1<sup>st</sup> accused wrote and sent an email message to **Doudou Wade**, The Majority Leader of the Senegalese National Assembly, thanking him for having accorded them audience and requesting him to fix an appointment between the CCTG and other senior politicians and civil servants in Senegal. This particular email which was written in French is found at page twenty six (26) of exhibit "D3". The email was translated into English language by PW12 and the translated version admitted in evidence as exhibit "H4".

During the course of the investigations, the 1<sup>st</sup> accused was requested to open up his personal email account - [webjula@hotmail.com](mailto:webjula@hotmail.com) for inspection by PW13. When the 1<sup>st</sup> accused did, a username and password of CCTG was found therein. PW7 described the username and the password found therein as [ccgtg411@gmail.com](mailto:ccgtg411@gmail.com) and **april411** respectively. All members of

the CCTG shared and used the same username and password to log into the CCTG email account in their communication with each other. According to PW7, negative email conversations between the 1<sup>st</sup> accused and other members of the CCTG were also found in the email account of the CCTG which were extracted and printed out. The email printouts were admitted in evidence as a bundle as exhibit “D3”. The subject line of some of the email printouts includes amongst others: (a) CCTG Account Details and T-Shirt Printed in The Gambia; (b) Logo; (c) Notification of Donations; and (d) Notification of Transmitters Purchased from eBay. An email from **eBay** confirming the purchase of the transmitter listed in (d) above was sent to the 1<sup>st</sup> accused through his email account [gmcommit@aol.com](mailto:gmcommit@aol.com). This particular email is found at page four (4) of exhibit “D3”.

In the course of the investigations, the accused persons made statements to the police. The 1<sup>st</sup> accused person made two cautionary and three voluntary statements to PW8. These statements are in evidence as exhibits “E, E1, E2, E3, and E4”. The two cautionary statements were written by the 1<sup>st</sup> accused himself. On his part, the 2<sup>nd</sup> accused made one cautionary and two voluntary statements which are in evidence as exhibits “F, F1 and F2”. The cautionary and voluntary statements of the 3<sup>rd</sup> accused which were recorded by PW9 are in evidence as exhibits “G-G1” respectively. On his part the 4<sup>th</sup> accused made one cautionary and two voluntary statements. These statements are in evidence as exhibits “H, H1 and H2” and like the 1<sup>st</sup> accused, the 4<sup>th</sup> accused wrote exhibit “H”; his cautionary statement, himself. While exhibits **H7a** and **H7b** are the pictures of 1<sup>st</sup> accused

retrieving exhibit “A” from the book shelf in his office, exhibits H8a and H8b are pictures of the 1<sup>st</sup> accused at his residence with the t-shirts. Exhibit “J” on the other hand is the CDR print out from Comium on the number 6161981 ascribed to the 1<sup>st</sup>s accused.

These are the brief facts of the case.

Both sides filed and adopted written briefs before me. In his brief of argument before me, the learned DPP has formulated five (5) issues for determination as follows:

- (1) Whether the ingredients of the offence of conspiracy to commit treason contrary to section 35 (1) (g) of the Criminal Code has been made out and proved against the 1<sup>st</sup> accused as required by law.**
- (2) Whether the ingredients of the offence of treason contrary to section 35 (1) (a) of the Criminal Code has been made out and proved against the 1<sup>st</sup> accused as required by law.**
- (3) Whether there is corroboration as required by section 38 of the Criminal Code.**
- (4) Whether the ingredients of the offence of Seditious Act contrary to section 52 (1) (a) and 52 (1) (c) of the Criminal Code has been made or proved as required by law.**
- (5) Whether there is corroboration as required by section 58 of the Criminal Code.**

Although the above issues capture the thrust of the matters to be determined in this case, I have, however, chosen to formulate the issues for



determination count by count. I will return to the issues for determination when I deal with each count of the offences under charge.

I will now proceed with the evaluation of the evidence on record to determine whether the prosecution has proved its case or not. However, before doing so, and as a preliminary issue, I will like to take off sometime to dwell on a seemingly new trend in criminal trials in this Court whereby the accused persons refuse to call evidence in defence and rather choose to rest its case on that of the prosecution, and regrettably so, in capital offence cases. It happened before; in the case of *THE STATE V. LT. GEN LANGTOMBONG TAMBA & ANOR (HC/333/10)*, before Ikpala J; it happened again in *THE STATE V. EBOU LOWE & ANOR (HC/267/11)* before me, and now again in this matter. In addressing this strategy of the defence, the points, which fall for determination as far as this issue is concern, are:

- (a) What is the foundation and legal effect of the right of an accused person not to give evidence on oath?**
- (b) What is the legal implications of (a) above? Or what does it imply, when such accused rests his case on that of the prosecution?**
- (c) When is it proper for the defence to rest its case on that of the prosecution?**

I am aware of, and I recognize the right of an accused person, to remain silent throughout the trial, leaving the burden of proof of his guilt beyond reasonable doubt, to the prosecution. See *UTTEH & ANOR V. THE STATE*

(1992) 2 SCNJ (Pt.1) 183 at 194. In other words, an accused person is presumed innocent, until he is proven guilty. There is therefore, no question of his proving his innocence. This is because, for the duration of a trial, an accused person is not bound to say anything. He may not utter a word. The duty is on the prosecution, to prove the charge against him, and as I have said, beyond reasonable doubt. See the case of *UCHE WILLIAMS V. THE STATE* (1992) 10 SCNJ 74 at 80. The right of silence is founded and covered by the 1997 Constitution of The Gambia. **Section 24 (8)** of the Constitution (of The Gambia, 1997) provides that “*no person charged with a criminal offence shall be compelled to give evidence at the trial*”. It is therefore the constitutional right of the accused persons to remain silent.

Generally in criminal trials three alternatives are opened to an accused person after the prosecution has closed its case. The accused may: **(a)** make an unsworn statement from the dock in which case he will not be liable to be cross-examined, or **(b)** he may give sworn evidence in the witness box and be cross-examined, or **(c)** he may elect not to say anything at all.

In the instant case the defence choosed the third alternative and they were well within their legal rights to do so. The legal effect of this is that, if in the course of the hearing, prosecution witnesses had given evidence which called for rebuttal or some explanation from the accused person (s), and that rebuttal and/or explanation was not forthcoming, then the Court would be free to accept the un-contradicted evidence of the prosecution. The defence has in effect, therefore, shut it-self out. Where an accused person opts not to testify and rests his case on that of the prosecution as in

the instant case, and the prosecution has by credible evidence of its witness or witnesses, proved its case beyond reasonable doubt, then, he will have himself to blame.

With regard to the second question posed above, what does it mean when an accused rests his case on that of the prosecution? In my view, it means no more than that the accused does not wish to place any facts before the Court other than those, which the prosecution had presented in evidence. It also signifies that the accused is satisfied with the evidence given and does not wish to explain any fact or rebut any allegations made against him. It also implies that the court will not be expected to speculate on what the accused person might have said. See the case of *ALI & ANOR V. THE STATE (1988) 1 SCNJ. 17*.

With regards to third question above; on the propriety of the defence resting its case on that of the prosecution, I will like to state that “in a criminal trial, a defence counsel would be safe in resting his case on the prosecution's case if he succeeds in discrediting the prosecution's witnesses by cross-examination to such an extent that the court would find it difficult to convict the accused persons”. See the case of *FATILEWA V. THE STATE (2007) ALL FWLR (Pt. 347) 695 at 722*.

From the above, it seems to me that it should not be a gamble to rest the defence case on that of the prosecution. It should be a well thought out plan based on the weight of evidence adduced and the nature of the offence. It is a big risk because issues of fact will have to be decided in

favour of an accused person based on the evidence adduced against him. The risk involved in taking such a stance is the type eloquently highlighted by the Privy Council in the case of *THE QUEEN V. SHARMPAL SINGH (1962) 2 WLR 238 at 243 - 245*.

Thus, in the case of *BABALOLA & ORS V. THE STATE (1989) 4 NWLR (Pt. 115) 264 at 276*; the Supreme Court of Nigeria cautioned that whereas prudence dictates that an accused person should not assist the prosecution which has failed to prove every material ingredient in the case against him, it is a reckless hazard to insist on the exercise of that right when the prosecution has made a prima facie case which calls for the accused person's explanation. I must add that, where a prima facie case has been made out in a capital offence trial such as the instant one, it may not only be alarming and suicidal, but also grossly inhuman, on the part of counsel to elect to rest the defence case on that of the prosecution.

I will now turn to the charges before this Court, and in so doing; I shall consider **Count II** first.

In Count II, the 1<sup>st</sup> accused person is charged with *preparing* to overthrow the government of The Gambia by unlawful means contrary to **Section 35 (1) (a) of the Criminal Code, Cap 10, Vol. III Revised Laws of The Gambia, 2009**, which provide that:

*“Any person who prepares or endeavours to overthrow the Government by unlawful means, commits the offence of treason, and subject to sub-section*

*(2) of this section is liable on conviction to be sentenced to death or imprisonment of life" (emphasis mine).*

The learned DPP in his address has aptly stated what the constituent elements of the offence are, and I agree with him. To secure a conviction under **Section 35 (1) (a)** of the Criminal Code, it must be established beyond reasonable doubts that:

- (a) That there was some preparation;**
- (b) That the preparation was for the purpose of overthrowing the Government of The Gambia;**
- (c) That the means relied upon were unlawful;**
- (d) That the preparation was done by the 1<sup>st</sup> accused person.**

It must be noted that, there are two operative words which are disjunctively used in **Section 35 (1) (a)** of the Criminal Code. The words are "*prepares or endeavours*". However, for the purpose of this case, that which is relevant is the word "*prepare*". While the learned DPP has eloquently dilated on this element of the offence, the learned defence counsel has focused his argument on the element of *endeavour*. The Black's Law Dictionary (Revised 4<sup>th</sup> Edition) defines the word '*prepare*' thus "*to provide with necessary means, to make ready, to provide with what is appropriate or necessary.*" On the other hand, the 20<sup>th</sup> Century Chambers Dictionary provides the definition of '*endeavour*' thus "*to strive, to attempt, an exertion of power towards some object: to attempt a trial*". These two elements therefore connote two different things or acts. Learned

defence counsel, in my view missed the point totally when he centered his arguments on the element '*endeavour*' instead of '*prepare*' as contained in **Section 35 (1) (a)** of the Criminal Code.

To prepare in this respect would therefore include acts which were meant to provide the necessary means, make ready, or provide what is appropriate or necessary for the realization of a particular goal. The particular goal in this case would be to overthrow the government of the Republic of The Gambia.

Has the prosecution proved that the 1<sup>st</sup> accused person carried out any acts aimed at providing the necessary means, making ready, or providing what was appropriate or necessary for the realization of a particular goal; the overthrow of the government of The Gambia?

The evidence of PW2, PW7 and PW13 together with exhibit 'E3', reveals that, the 1<sup>st</sup> accused ordered and paid for the production of 100 T-Shirts (exhibits "A-A5" inclusive) which all bore the literature '*Coalition for Change The Gambia, End Dictatorship Now and Freedom*'; and that the T-Shirts were distributed by the 1<sup>st</sup> accused to PW1, PW3, PW5, PW10 and other unidentified persons. While it is certain that the words themselves are not treasonable, it is perhaps crucial at this point to ask the question; what was the purpose of having the literature printed on the T-shirts and then having them distributed? The answer to this question is clearly articulated on the email printout at page 36 of exhibit "D3" thus: "... *these are to be worn when we decide to engage on street protest...*" From these

pieces of evidence, it seems to me that the T-shirts were printed in preparation for mass street protest and this I shall hold as a fact.

But, what were the objectives of the CCTG, if I may ask? Mr. Camara of learned counsel for the defence strenuously argued that the objectives of the CCTG as itemized in exhibit "D2", does not include the overthrow of the government of The Gambia, but rather states that, the group plans to end dictatorship and advance basic freedoms by means of a nonviolent campaign. In my view, the objectives of the CCTG cannot be deciphered by resorting only to this limited part of exhibit "D2". Exhibit "D2" cannot be construed in part only; it must be construed as whole by reading and giving meaning to the entire document. I have carefully read through the entire exhibit "D2", and found that one of the objectives of the CCTG as stated at page 2, from line 17 goes thus *"we are calling on all groups and individuals from every sector of the community, whether here in The Gambia, or in abroad, to join us in our struggle to dislodge the dictator from the helm..."* The Oxford Advanced Learner's Dictionary (6<sup>th</sup> Edition), provides the definition of dislodge thus *"to force somebody to leave a place, position or job"*. I have also gleaned through the email at page 17 of exhibit "D3" and it states thus *"After our SG is done with the intros and as we get all our stuffs ready ... we should ... select a date for street action ... engage in mass protest demanding reform ... ultimately demand regime change ..."*

It is an inveterate and hallowed principle of interpretation that the intention as conveyed by the words used must be gathered from the

document itself. See the Gambia Supreme Court case of *GREENGOLD LTD V. KOMBO POULTRY FARM LTD, (2002-2008) 1, GLR, 308*. My understanding of the words “... *to join us in our struggle to dislodge the dictator from the helm...*” as used in exhibit “D2”, and “...*ultimately demand regime change ...*” as used in exhibit “D3”, is that, the CCTG had plans to engage in a struggle to force the President of The Republic to leave power, and by so doing, to have his government overthrown. This I shall further hold as a fact.

There is also unchallenged evidence from PW13 that the 1<sup>st</sup> accused purchased a 500 Watt radio transmitter from eBay which was meant to be stationed in Kaolack, Senegal to disseminate CCTG propaganda and incite his audience. This piece of evidence is buttressed by the email printout on page 4 of exhibit “D3”. I have carefully read through this particular email and find as a fact that the email was sent from the email account [ebay@ebay.com](mailto:ebay@ebay.com) to the email account [gmcommit@aol.com](mailto:gmcommit@aol.com). The receiving email account according to the evidence of PW7, and as stated on the email itself belongs to Amadou Janneh (Hakilimah); the 1<sup>st</sup> accused herein. I am prompted at this point to ask the question; what did the 1<sup>st</sup> accused need this radio transmitter for? Having carefully read through page 57 of exhibit “D3”, I have found as a fact that the idea to purchase the radio transmitter only came up following the refusal by the authorities of Walf Radio Station, Senegal to broadcast messages from the CCTG over their network. In the request at page 57 of exhibit “D3” sent to Walf Radio, it is clear that the CCTG needed a Radio network to broadcast their messages which would



culminate with the launch of street protest. This street protest was initially billed for April 9, 2011. It was as a result of this refusal that, the CCTG saw the urgent need, according to the first email on page 57 of exhibit "D3", to set up a "**pirate radio**" station. In view of the foregoing, I find as a fact that the essence of the radio transmitter was to further the agenda and propaganda of the CCTG; to incite mass demonstration and protests with a view to regime change.

There is also evidence from PW7 and PW13 that the 1<sup>st</sup> accused held meetings with some top Senegalese politicians such as **Doudou Wade**, the Majority Leader of the Senegalese National Assembly, to seek for foreign assistance in support of the CCTG campaign. At page 2 of exhibit "D3", the 1<sup>st</sup> accused writes thus *"I had a very fruitful meeting with Doudou Wade this evening. It seems the Senegalese have been waiting for the opportunity to assist a reliable Gambian dissident group to bring about change. Other than spelling out their frustration with Jammeh, he promised to get us all the necessary support. Mr. Wade will schedule an appointment for us to meet several Ministers and Pres Wade. He also suggested that the Sen govt. issue a radio broadcast license to any of our friends or members with Sen nationality. Then we can broadcast openly from their territory. They will help with banners, t-shirts, flyers, and intelligence. Wade asked us to work diligently but to be patient. Finally, he asked me to contact Raddho's Alieum Tine, a close friend of his, for assistance. He promised to call Tine first. What do you think?"*

Being impatient, the 1<sup>st</sup> accused again wrote another email, this time to Doudou Wade thanking him for having granted them audience and urging him to fix an appointment for them to meet the Senegalese authorities on their campaign. This particular email which is found at page 26 of exhibit "D3" is sent from the email account [coalitionforchangethegambia@gmail.com](mailto:coalitionforchangethegambia@gmail.com) is circulated by the 1<sup>st</sup> accused. Mr. L.S Camara of learned counsel for the defence, contended that there is a contradiction in the evidence of the prosecution witnesses in this regard in that whilst PW13 testified that the 1<sup>st</sup> accused used the email account [coalitionforchangethegambia@gmail.com](mailto:coalitionforchangethegambia@gmail.com) to circulate his messages, PW2 and PW7 testified that the 1<sup>st</sup> accused and the other members of the CCTG used a common email account [ccgtg411@gmail.com](mailto:ccgtg411@gmail.com). I agree entirely with the learned defence counsel on this point. However, the law is settled as held in a long line of cases that contradictions in the evidence of the prosecution can only be of assistance to the defence if they are materially substantial. Where contradictions are immaterial and are regarded as mere discrepancies, they cannot exculpate the accused from criminal responsibility. See the case of *DIBBIE V. THE STATE (2007) 29 (2) NSCQR 1436*. I have meticulously read through the email at page 26 of exhibit "D3" is sent from the email account [coalitionforchangethegambia@gmail.com](mailto:coalitionforchangethegambia@gmail.com). I have found as a fact that the email was electronically signed by the 1<sup>st</sup> accused with his name, rank in the CCG, and telephone number as follows:

**Dr. Amadou S. Janneh;**  
**Coordinator, CCG**  
**+220 6161 981**

It is for this reason that I will find as a fact that, all the emails emanating from the above email account were written by the 1<sup>st</sup> accused, albeit with different identities, such as Kemo Conteh and Hakilimah. These contradictions are in my view immaterial as they do not go to the root of the offences under charge. The submissions of learned defence counsel therefore goes to no issue.

In view of the foregoing, I am satisfied that the 1<sup>st</sup> accused carried out acts aimed at providing the necessary means, making ready, or providing what was appropriate or necessary for the realization of mass demonstrations and street protest with a view to effect regime change by the CCTG. This, I shall also hold as a fact. The first ingredient has therefore been established by the prosecution with the certainty required by law. I shall resolve same in their favour.

With regards to the second element of the offence, the question I now ask is, has the prosecution proved that the above acts were done in preparation to overthrow the government of The Gambia?

I have already held that the CCTG had as one of its main objective, the organization of mass street protest. But, what were the aims of these anticipated street protests, if I may ask? The answer to this question is not farfetched and can be readily found in exhibits "D2" and "D3". The email at page 17 of exhibit "D3" states thus *"as we get all our stuffs ready ...select a date for street action ...engage in mass protest demanding reform ...ultimately demand regime change ...."* This view is made stronger

by the request at page 2, of exhibit “D2” from the CCTG to Gambians both at home and abroad, to join the CCTG in their “... *struggle to dislodge the dictator from the helm...*”. From the foregoing, it seems to me that, the intended mass protests were meant to force the President of The Republic to leave power and in so doing to have his government overthrown. This I shall further hold as a fact. The second element has therefore, in my view, been firmly established beyond reasonable doubt. It is accordingly resolved in favour of the prosecution.

The third ingredient is whether the preparations were lawful.

Under the 1997 Constitution of The Gambia, the President may be removed from office through elections in accordance with **Section 46** or by a process initiated by the National Assembly pursuant to **Section 66**. Street protest is certainly not one of the ways envisaged by the Constitution for the removal of the President from office. I do not know of any other law in this country which sanctions the removal of the President from office by way of street protests. It is lawful for a President to be removed from office; if only the processes used in achieving that goal are themselves lawful. Therefore, while the citizens of this country all have the right to say who their President must be, this right can only be lawfully exercised by recourse to constitutional processes. The CCTG did not intend to achieve their goals through this process. This view is fortified by the message posted by Mathew Jallow on the face book page of Coalition for Change The Gambia, part of which reads thus “*we need put pressure on the political establishment to shove the idea of elections they will never win ....*”

In addition, by co-founding the CCTG; a clandestine entity, not registered in The Gambia or elsewhere, the 1<sup>st</sup> accused was again engaged in an unlawful act. The clandestine status of the CCTG is captured more aptly by Mathew Jallow when he writes at page 50 of exhibit D3 thus *“Hi Guys; I woke up to the news of our colleague’s shocking arrest. I am not sure how we should handle this matter, but I think we have two alternatives: (1) deny he is a member of CCG; (2) Admit it, then out the organization as a legitimate dissenting opposition with constitutional right to political dissent. This will help us mobilize public support and involve the US Embassy since he is a US citizen. I am leaning towards the second. This will send the message that we are not operating a clandestine organization, but an organization protected by our civil right to dissent. I don’t know if Freedom Newspaper has a hand in this, but I am suspicious.”*

My understanding of this is that, prior to the arrest of the 1<sup>st</sup> accused, the CCG was not a legal entity or a legitimate dissenting opposition formation. In view of the above, I hold that, the use of an illegal entity; an illegitimate political formation, as a means of effecting political change is unlawful. In the same breath, I hold that to resort to street protest and mass demonstrations as a tool to effect regime change is unconstitutional and therefore unlawful. The submissions of the learned DPP are therefore properly articulated in this regard.

The 1<sup>st</sup> accused and his co-conspirators had also resolved to set up a pirate radio station. In furtherance of this, a 500 Watt radio transmitter was bought. The Oxford Advanced Learners Dictionary (6<sup>th</sup> Edition) defines a

pirate radio station as *“a person or organization that broadcasts illegally”*. The purchase of transmitters for the setting up of a *‘pirate radio’* station is therefore an unlawful act. It is for the foregoing reasons that I am satisfied that the prosecution has established the third ingredient beyond reasonable doubts.

As to the fourth ingredient, that is, that the preparatory acts were those of the 1<sup>st</sup> accused, I have already held that the emails emanating from the email account [coalitionforchangethegambia@gmail.com](mailto:coalitionforchangethegambia@gmail.com) were all authored by the 1<sup>st</sup> accused. There is also unchallenged evidence that, the 1<sup>st</sup> accused is a co-founding member of the CCTG. Apart from stating so himself in exhibit *“E3”*, the 1<sup>st</sup> accused also refers to himself as the Coordinator of CCG in his email to Doudou Wade in exhibit *“D3”*. The 1<sup>st</sup> accused was therefore central in the formation and the activities of this illegal entity which had as one of its main objectives, the use of street protests to dislodge the President of the Republic from power. The fourth ingredient of the offence has, in my view, been established with the certainty required by law. It is accordingly resolved in favour of the prosecution.

It is now left for the prosecution to prove that there was corroboration as required by **Section 38** of the **Criminal Code**. I will return to this issue later on in this judgment.

I now turn to Count I.

Under Count I, the accused person is charged pursuant to **Section 35 (1) (g)** of the Criminal Code, for having conspired with Ndey Tapha Sosseh,

Mathew K. Jallow, Famara Demba and others at large to overthrow the Government of The Gambia by unlawful means.

Suffice to state that for the offence of conspiracy to be committed the prosecution must establish beyond reasonable that:

- (a) There was an agreement between two or more persons to prosecute a common purpose;**
- (b) That the common purpose was unlawful;**
- (c) That the persons commenced or joined the prosecution of the common purpose;**
- (d) The agreement was by the accused and others.**

Our criminal law is settled on what constitutes the offence of conspiracy. A leading case law authority on this point is the Gambian Court of Appeal case of *BALLO KANTEH (ALIAS FABAKARY KANTEH) & ORS V. THE STATE (GCA Crim. App. No. 12-15/97)* in which the Court held inter alia that conspiracy implies that two or more persons must agree to prosecute a common purpose, which should be an unlawful purpose.

I must say from the outset that the crucial ingredient which is germane to a conspiracy charge is the element of an agreement between the co-conspirators. The Courts have held that even a bare agreement to commit an offence is sufficient, without more, to constitute the offence of conspiracy. See the case of *USMAN V. THE STATE (2008) 33 PART II*.

The law allows for the above ingredients to be established or proved by either circumstantial or direct evidence. See the cases of *OMOTOLA V. THE STATE (2009) 4 NCC, 97; and SULE V. THE STATE (2009) 4 NCC, 460*. It is usually rare to find direct evidence in support of the first element stated here above. However, in the instant case, there is abundant direct evidence that there was an agreement between the 1<sup>st</sup> accused; Dr. Amadou Scattered Janneh, Ndey Tapha Sosseh and Famara Demba and others to dislodge the President from power, not by election but through street protest and mass demonstrations. This view is fortified by the evidence on page 2 of exhibit "D2" where it states thus *"we are calling on all groups and individuals from every sector of the community, whether here in The Gambia, or in abroad, to join us in our struggle to dislodge the dictator from the helm...."* At page 43 of exhibit "D3", Ndey Tapha Sosseh did not only support the printing of the t-shirts but, also made a financial contribution of D5000 towards it. The bundle of emails constituting exhibit "D3" has also established firmly that the 1<sup>st</sup> accused, Ndey Tapha Sosseh, Mathew Jallow and others acting together in common purpose, purchased a radio transmitter with plans to set up a pirate radio station to further the activities of CCTG; printed 100 t-shirts in preparation for mass demonstrations; and solicited intelligence and other support from Senegalese politicians to realized these goals. I am therefore satisfied from the foregoing that there was an agreement between the 1<sup>st</sup> accused; Dr. Amadou Scattered Janneh, Ndey Tapha Sosseh and Famara Demba and others to dislodge the President from power, not by election but through street protest and mass demonstrations. The first element of this Count has



therefore been established beyond reasonable doubts. I shall resolve same in favour of the prosecution.

To the second ingredient, I say this, setting up of a pirate radio station; the printing of t-shirts for mass demonstrations; and soliciting foreign intelligence support from Senegal to achieve these goals are all unlawful acts. Mr. L.S Camara has painstakingly argued that from the entire exhibits tendered by the prosecution, there is nowhere on the exhibits where the 1<sup>st</sup> accused and the co-conspirators; Mathew K. Jallow, Ndey Tapha Sosseh and Famara Demba agreed to endeavor to overthrow the government of The Gambia. He contended that although exhibit “D2” begins and ends with the Gambian National Anthem, there is nothing thereon which is indicative of any common intention or purpose to engage in any subversive activities.

Contrary to the above contention by the defence, there is abundant evidence available on record which has debunked and rubbished these assertions. For example, the evidence on page 2 of exhibit “D3” conveys the clear message that, the Senegalese authorities had been scouting for a reliable dissident group to bring about change in The Gambia. This particular exhibit also firmly established the fact that Doudou Wade was willing, and made promises to link up the CCTG team with other senior Senegalese political and civil authorities, including President Wade. My understanding of these pieces of evidence is that the Senegalese authorities (through Doudou Wade) found in the CCTG a reliable Gambian dissident group, which they were willing to assist to bring about change in The

Gambia. It is most unfortunate that such disclosures came from an influential politician; the Majority Leader in the National Assembly of Senegal. The willingness of the CCTG to work as a dissident group with the Senegalese authorities to bring about change in the Gambia, is captured on the second email at page 2 of exhibit "D3" which states thus *"Wow, this sounds very very cool ... this is a very promising lead and I hope it helps us realize our goal of getting rid of that mad man...."* Another email at page 3 of exhibit "D3" reads thus *"congratulations, you have surpassed my dreams... the issue of intelligence and other support are interesting. VERY"*. The request for foreign assistance in my view is one of the most subversive acts of hostility, which can be engaged upon by citizens of any country against its leadership. In addition, these overt acts of hostility also firmly established the strong resolve of the CCTG to dislodge the President from power. These acts, I must say, are most unlawful.

Even if it were to be accepted, which is not, that it was the 1<sup>st</sup> accused alone who visited Doudou Wade, purchased the radio transmitter and caused the 100 t-shirts to be printed; these acts would still support the establishment of a conspiracy by virtue of the *BALLO KANTEH CASE (supra)*. In this case, the Gambia Court of Appeal held inter alia that *"...in a conspiracy it is not necessary that every conspirator should actually participate in prosecuting the common design. In other words, every overt act committed by one or more of them in furtherance of the common design is an act by them all. In this sense every conspirator is the agent of every other*

*conspirator as regards the doing of acts necessary for the furtherance of their common design."*

Having already held that the only lawful means of effecting regime change in The Gambia is by resort to constitutional processes, I therefore agree with the learned DPP that the agreement of the 1<sup>st</sup> accused, Ndey Tapha Sosseh, Mathew K. Jallow and other members of the CCTG to remove the President from power through street protest and mass demonstrations is both unlawful and unconstitutional. This I shall also hold as a fact. The second ingredient of Count One (I) has therefore been firmly established with the certainty required by law.

With regards to the third ingredient under Count I, there is unchallenged evidence on record that the 1<sup>st</sup> accused purchased a 500 Watt transmitter with the view to setting up of a pirate radio station; that 100 t-shirts were printed for mass demonstrations; and that contacts were made to solicit for foreign intelligence and other support from Senegal with a view to achieving the goals of the CCTG. A Court has no option than to admit as established, facts which remain unchallenged and uncontroverted. See the Supreme Court of Nigeria case of *ADESINA V. THE COMMISSIONER (1996) 4SCNJ, 17*. It is for the above reason that I am satisfied that the 1<sup>st</sup> accused, Ndey Tapha Sosseh, Mathew K. Jallow, Famara Demba and others did actually commence the prosecution of the common purpose; to overthrow the President of the Republic through mass demonstrations. The third ingredient under Count I has therefore been established with the

certainty required by law. It is accordingly resolved in favour of the prosecution.

With regards to the fourth ingredient, I am persuaded by the position taken by the Court in the case of *NJOVENS & ORS V. THE STATE (1973) ALL NLR 371, 404* wherein it was held inter alia that to determine whether there is an agreement by one or more person to effect an unlawful purpose, regards must be had to the actions or inactions of the conspirators towards achieving their common goal. I now say this; the preparations to set up a pirate radio station, and the purchase of a 500 Watt transmitter for that purpose; the printing of 100 t-shirts for mass demonstrations; and the holding of meetings with top politicians in Senegal to solicit foreign intelligence and other support from Senegal are all copious actions of the 1<sup>st</sup> accused which leads to the irresistible conclusion that he was not only in agreement with the other conspirators to achieve the goals of the CCTG, but that he was a central figure in that joint enterprise. It is for these reasons that I am satisfied that the prosecution has established the fourth element with the certainty required by law. I therefore resolve this issue in favour of the prosecution.

I now return to the issue of corroboration.

Suffice to state that by virtue of **Section 38** of the Criminal Code, corroboration is required for all **Section 35** offences. It is thus settled law that in cases of a treasonable character it is eminently desirable that the evidence of crucial witnesses be strengthened by other evidence

implicating the accused person in some material particular. I now pause, to ask the question; has the evidence adduced by the prosecution in support of Counts I and II been corroborated in anyway? Perhaps it may be helpful if I proceed to ask a further question; what is corroboration? It is trite that corroboration is any evidence tending to confirm, support and/or strengthen other evidence sought to be corroborated. See the case of *D.P.P V. KILBOURNE (1973) A.C. 729 @ 758*. Also settled, is the fact that corroboration need not consist of direct evidence that the accused person committed the offence, nor need it amount to a confirmation of the whole account given by the witness sought to be corroborated. What is germane is that, the evidence should corroborate the evidence sought to be corroborated in some respects material to the charge. See the case of *R. V. GOLDSTEIN (1914) 11 CAR 27*. The corroborative evidence could therefore, either be oral, documentary or real depending on the facts and circumstances of the particular case. See the Gambia Court of Appeal case of *AMADOU BADJIE V. THE STATE (GCA Crim. App. No 5-7/88)*.

I now turn to the records to see if the evidence of the key witnesses has been corroborated in anyway. From a detail study of the evidence on record, I have found as a fact that the evidence of the prosecution witnesses have been corroborated as follows: PW1 is corroborated by the evidence PW4, PW5 and PW10 as well as exhibits "A-A4" and "D3"; PW2 has been corroborated by the evidence of PW6, PW7, PW13 as well as exhibits "A-A4", "B", "D2" and "C"; PW3 has been corroborated by exhibits "A-A4" and "H"; PW4 is corroborated by PW5, PW10 as well as exhibits "A-A4"

and “D3”. I am therefore satisfied that the evidence of the prosecution with regards to Counts I and II have been adequately corroborated with the certainty required by **Section 38** of the Criminal Code. The issue of corroboration is therefore resolved in favour of the prosecution.

As a result of the foregoing, I find as a fact that the prosecution has proved their case on Count I and Count II, each beyond reasonable doubts. The 1<sup>st</sup> accused person **Dr. AMADOU SCATTRED JANNEH** is as accordingly convicted as charged on both Counts I and II.

I now turn to the seditious charges pressed under Counts III and IV. I will begin with Count IV.

The four (4) accused persons herein are jointly charged under Count IV with seditious acts contrary to **Section 52 (1) (c)** of the Criminal Code. The prosecution has alleged that Dr. Amadou Scattred Janneh, Modou Keita, Ebrima Jallow, Micheal C. Uche Thomas and others at large on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia with intent to cause or bring into hatred, contempt or to excite disaffection against the person of the President or the Government of The Gambia printed and distributed 100 T-shirts carrying seditious statements to wit: *coalition for change The Gambia, end dictatorship now.*

In *THE STATE V. LAMIN WAA JUWARA (Crim. Case No 7/03)* the Court (**Per Paul J**) extensively and sufficiently dealt with the issue of sedition. Although that Court is a Court of co-ordinate jurisdiction, I am however persuaded by the detailed manner in which the Court handled the issue. In

that case, the Court took the view that sedition is a comprehensive term which embraces all those practices, whether by words, deed or writing, which are calculated to disturb the tranquility of the state and lead ignorant people to endeavour to subvert the government and the laws of the country, and the objects being generally to induce discontent and stir up opposition to the government. Drawing from *BURNS V. RANSLEY (1949) 79 CLR 101*, the Court in *LAMIN WAA JUWARA (Supra)* went further to state that, before a person may be convicted for sedition it must be shown that it was his immediate and predominant purpose to excite in his audience disaffection towards the government.

From the foregoing, I am of the view that to succeed, the prosecution must establish the following beyond reasonable doubts:

**(a) That the accused persons uttered words, deed, or writing.**

**(b) That the words, deed, or writing were calculated to excite disaffection towards the government.**

It is evident from exhibit "A-A5" that the literature '*coalition for change The Gambia, end dictatorship now*' was printed on 100 t-shirts. It has also been firmly established by exhibits "E, F, G and H" that all the accused persons each took an active part in the printing of the literature on the t-shirts.

Learned defence counsel has submitted that the literature on exhibits "A-A5" does not impute the commission of any offence but was rather done in exercise of the 1<sup>st</sup> accused person's constitutional right to freedom of

speech as encapsulated in **Section 25 (1) (a)** of the 1997 Constitution of The Gambia. The Oxford Advanced Learner's Dictionary (6<sup>th</sup> Edition), defines dictatorship as a “**government by a dictator**”. Perhaps a better understanding of this noun can be hard when recourse is made to the adjective – dictatorial which connotes the use of power in an unreasonable way. My understanding of the literature on the t-shirt is that, The Gambia is ruled by a dictatorial regime which must be brought to an end now. I must say that this literature is not only offensive, but also that it's immediate and predominant purpose was to excite in the CCTG audience disaffection towards the government.

It must be said and boldly too, that no right in the Constitution is absolute. All fundamental rights are subject to certain limitations. For example, the execution of the death penalty, which is aggressively practiced by Western democracies such as the USA, is a restriction on the right to life. It is for this reason that **Section 25 (4)** of the Constitution places certain restriction on the right protected under sub-section (1). Even if it were to be accepted, which is not, that the literature on the t-shirts are within the **Section 25 (1)** rights of the 1<sup>st</sup> accused, then the point must also be made that a constitutional right cannot be exercised in furtherance of an unconstitutional purpose.

In exhibit “E”, the 1<sup>st</sup> accused admits that he distributed the 100 t-shirts at random. Because the 1<sup>st</sup> accused elected to stay mute, no explanation was advanced on his behalf why he decided to distribute the 100 t-shirts at



randomly. However, what is obvious from these actions of the 1<sup>st</sup> accused is the fact that the literature was disseminated to the public.

Although the 2<sup>nd</sup> to 4<sup>th</sup> accused did not participate in the distribution of the t-shirts, they did not lead any evidence in rebuttal of their knowledge of the offensive nature of the literature on the t-shirts, or that they had genuine believes that the t-shirts were to be used for a lawful purpose. It is strange to note that the 2<sup>nd</sup> accused accepted the contract without asking or knowing what the t-shirts were to be used for. As a Grade 9 leaver, I am satisfied that the 2<sup>nd</sup> accused ought to properly appreciate the literature he was required to be printed on the t-shirts. On his part, the 3<sup>rd</sup> accused denied in exhibit “G2” any knowledge that the t-shirts were meant for the particular purpose, but not explain what he thought they were to be used for. He could have provided this explanation in his sworn evidence in defence, but like the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, he too elected not to lead evidence. The position of the 4<sup>th</sup> accused is no different. He stated in exhibit “H1” that he believed the t-shirts were to be used for campaign purposes. What kind of campaign, if I may ask? Was it the CCTG campaign or some other campaign? These issues certainly needed explanations from the 4<sup>th</sup> accused but as he choosed not to utter a word, the Court cannot conjecture what he had in mind. Again, I have seen on exhibit “H” that the 4<sup>th</sup> accused was a teacher before. This gives me the impression that he is knowledgeable enough, to know that the literature printed on the t-shirts was offensive and meant to excite disaffection for the government.

It is for the above reasons that I will resolve the two elements of this offence in favour of the prosecution.

I will return to the issue of corroboration as required by **Section 54** of the Criminal Code after dealing with Count III.

Under Count III, the four (4) accused persons are charged with seditious acts contrary to section **52 (1) (a)** of the Criminal Code. It is alleged by the prosecution that Dr. Amadou Scattred Janneh, Modou Keita, Ebrima Jallow, Micheal C. Uche Thomas and others at large on or about the 26<sup>th</sup> day of May 2011 in diverse places in the Republic of The Gambia conspired amongst themselves to print and distribute 100 t-shirts carrying seditious statements to wit: *coalition for change The Gambia, end dictatorship now*.

Having already dealt with the issue of conspiracy above, I find it an unnecessary repetition to reproduce the arguments and analyses here. There is evidence that the 1<sup>st</sup> accused had an agreement with the 2<sup>nd</sup> accused to print the offensive literature on the 100 t-shirts. The 2<sup>nd</sup> accused discussed the matter with the 3<sup>rd</sup> accused and together they agreed with the 4<sup>th</sup> accused to have the hostile literature printed on the 100 t-shirts. Because the printing of this offensive literature on the 100 t-shirts is unlawful, I arrive at the conclusion that the count is established. My view in this direction is fortified by the decision in *OMOTOLA V. THE STATE (supra)* wherein the Court held that in order to get a conviction for the offence of conspiracy; the prosecution must establish the element of agreement to do something which is unlawful.

I now return to the issue of corroboration required by **Section 54** of the Criminal Code, and to this, I say simply that the evidence in exhibits “**A-A4**” and “**D3**” corroborates the evidence of PW2, PW7 and PW13 as required by **Section 54** of the Criminal Code. It is for the reason that I hold that the prosecution has established its case beyond reasonable doubts on both Counts III and IV.

In view of the above, I find each of the four accused persons Dr. Amadou Scattered Janneh, Modou Keita, Ebrima Jallow, and Micheal C. Uche Thomas guilty, each on Counts III and IV, and they are each convicted as charged under these counts.

**COURT:** Any Previous Conviction against any of the convicts?

**DPP:** My Lord we do not have any record of previous conviction against any of the convicts.

**ALLOCUTUS:** Dr. Amadou Scattered Janneh, Modou Keita, Ebrima Jallow, and Micheal C. Uche Thomas this Court has now found you all guilty as charged. Before sentence is passed on you, the Court would like to know if you or Counsel on your behalf will like to say anything in mitigation.

**Mr. L.S Camara:** My lord the 1<sup>st</sup> convict Dr. Amadou Scattered Janneh is 49 years old. He is an intellectual par excellence and is married with four (4) children. He has worked as a Minister and he served the country diligently in that capacity. He is a first time offender. He is the sole bread winner of his large extended family and provides a means of livelihood to many

other Gambians. This is evident by the number of people he employs in his private business.

The 2<sup>nd</sup> convict MODOU KEITA is 28 years old today. He is at the prime of the youth of his life and is unmarried. He has an unparalleled sense of responsibility as he is responsible for the maintenance of his entire family. Like the 1<sup>st</sup> convict he has never had any brush with the law.

The 3<sup>rd</sup> convict is 26 years old. He is not married like the 2<sup>nd</sup> convict, but he is the only child of his parents who are all old and living in the provinces. He has an enormous responsibility to maintain his aged parents which he has been doing in the best of his ability. He has never been found wanting by the law.

The 4<sup>th</sup> convict has been in The Gambia for over 10 years and has always been engaged in one form of legitimate business or another. He is married to a local lad and is 47 years old.

My Lord collectively, the convicts are remorseful and are all first time offenders. It is human to err but divine to forgive. I urge your lordship to temper justice with mercy. By virtue of Section 52, Sedition is a misdemeanor. The 1<sup>st</sup> convict is not entitled to the death penalty pursuant to section 18 (2) of the Constitution as he has not used any violence or administered any toxic substance leading to the death of another. In view of the foregoing, we accordingly urge your lordship to invoke the provisions of section 29 (2) & (3) of the Criminal Code to impose a non-custodial sentence on the convicts. As your lordship pleases!

## SENTENCE

I have carefully listened to the passionate plea for leniency, on behalf of the convicts. Whilst I am particularly touched by the young ages of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> convicts, I must say straight away that, it is my view that some offences are becoming very rampant, very rampant indeed and this includes the offence of Treason with which **Dr. AMADOU SCATTRED JANNEH** has been convicted for. The offence of treason has huge potential to destabilize the country with far reaching consequences on human life and property, not only for this peaceful Gambia, but for the sub region as well.

I am condemned in the face of these to act responsibly by passing a sentence that will serve as deterrence, but also commensurate with the severity of the offences charged. It is important to note that **Section 35** of the Criminal Code provides for both the death penalty and life imprisonment for treason. The death penalty would have been the proper sentence for this offence.

However, **Section 18 (2) of the 1997 Constitution** provides that;

*“As from the coming into force of this Constitution, no Court in The Gambia will be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person”.*

This position is fortified by **Section 16** of the Transitional and Consequential provisions of the Constitution which has effect by virtue of **Section 232** of the Constitution. The said **Section 16** reads;

*“Where any law makes provision for a sentence of death in any case other than that provided for in Section 18 (2), the law shall have effect as if imprisonment for life were substituted for that Sentence”.*

My understanding of the above is that for a court to be competent to impose a death sentence, it must be shown that the offence committed by the convict involved violence or the administration of toxic substance which in any case results in the death another.

These constitutional limitations warrant this Court to spare the 1<sup>st</sup> convict his life; I have no option than to follow the Constitution.

In view of the above, I now proceed to pass the sentences. In doing so, I will temper justice with mercy whenever possible. From the foregoing;

**EMMANUEL A. NKEA**      **THE CONVICTS ARE SENTENCED AS FOLLOWS:**  
**JUDGE**

1. 1<sup>st</sup> Convict **Dr. AMADOU SCATTRED JANNEH** is sentenced to life imprisonment on Count I, and life imprisonment on Count II.
2. On Count III, 1<sup>st</sup> Convict **Dr. AMADOU SCATTRED JANNEH** is sentenced to 3

years imprisonment with hard labour and 3 years imprisonment with hard labour on Count IV.

3. The sentences in (2) above to run concurrently.
4. 2<sup>nd</sup> Convict **MODOU KEITA** is sentenced to 3 years imprisonment with hard labour on Count III and 3 years imprisonment with hard labour on Count IV.
5. The sentences in (4) above to run concurrently with effect from the date the 2<sup>nd</sup> convict was first taken into custody.
6. 3<sup>rd</sup> Convict **EBRIMA JALLOW** is sentenced to 3 years imprisonment with hard labour on Count III and 3 years with hard labour on Count IV.
7. The sentences in (6) above to run concurrently with effect from the date he was first taken into custody.
8. 4<sup>th</sup> Convict **MICHEAL C. UCHE THOMAS** is sentenced to 3 years imprisonment with hard labour on

Count III and 3 years with hard labour on Count IV.

9. The sentences in (8) above to run concurrently with effect from the date he was first taken into custody.

10. The vehicle **exhibit "C"** being an object used in furtherance of the commission of a crime is to be forfeited to the State upon the expiration of the statutory period of appeal.

11. There shall be no further Order.

**ISSUED AT BANJUL, UNDER THE SEAL OF THE COURT AND THE HAND OF THE PRESIDING JUDGE THIS 17<sup>th</sup> DAY OF JANUARY 2012**

.....  
**REGISTRAR**