THE STATE v DURING & 6 ORS

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 13 of 1974, Hon Mr Justice C A Harding PJ, Hon Mr Justice O B R Tejan JA, Hon Mr Justice Ken E O During JA, 14 October 1974

[1] Criminal Law and Procedure – Larceny – Proof of ownership – Whether sufficient evidence to show ownership or custody of stolen goods – Meaning of "owner" – Larceny Act 1916 s 1(2)(iii)

[2] Criminal Law and Procedure – Receiving stolen goods – Whether essential for owner to be stated or proved – Circumstances may be sufficient to prove that goods stolen without identifying owner

[3] Criminal Law and Procedure – Indictment – Amendment of indictment after trial – Joinder of parties to counts with other defendants – Whether amendment was necessary to correct defect in indictment – Whether amendment caused injustice – Criminal Procedure Act 1965 s 148(1)

[4] Criminal Law and Procedure – Conspiracy – Judge's direction on ingredients of offence – Whether requirement to show intention of alleged conspirators to commit unlawful act in addition to agreement to carry out act

The first to fifth respondents were charged with larceny contrary to s2 of the Larceny Act 1916 for stealing 3 bags containing 275,000,000 CFA francs belonging to the Central Bank of West African States while they were in the custody of Union de Transport Aeriene (UTA) (count 1). They were also charged with attempted larceny of a fourth bag belonging to the bank while in the custody of UTA (count 2). The sixth and seventh respondents were charged with receiving stolen goods contrary to s 33(1) of the Larceny Act 1916 in that they received a bag containing CFA francs knowing them to be stolen (count 3). All respondents were also charged with conspiracy to steal the bags containing the money (count 4).

On 29 April 1974 the High Court acquitted each respondent on each charge, against which the State appealed on various grounds, seeking a reversal of the trial judge's decision under s 58(6) of the Courts Act 1965. The main issues on appeal were (i) whether the trial judge misdirected himself on the law of larceny by finding that ownership of the stolen francs had not been proved and (ii) whether the judge misdirected himself by holding that that it was essential on a count of receiving for the owner to be stated or proved. The State also argued, inter alia, that the trial judge was wrong to amend the indictment and join the sixth and seventh respondents in counts 1 and 2 with the other respondents after the trial commenced and in the absence of the parties without their consent, and that the trial judge misdirected himself on the law of conspiracy, arguing that there was no obligation on the prosecution to show an added intention outside the agreement to do an unlawful act.

Held, per Harding PJ, reversing the verdicts in relation to the 1st, 3rd, 4th and 5th respondents:

1. The trial judge erroneously based his decision on count 1 on the fact that no evidence of ownership of the francs alleged stolen was adduced during the whole trial. Section 1(2)(iii) of the Larceny Act 1916 provides that "the expression 'owner' includes part owner, or person having possession or custody of, or special property, in anything capable of being stolen". There was overwhelming evidence to warrant a finding at the very least

that UTA had custody of the 275,000,000 francs when they were stolen and the judge erred in law when he held to the contrary.

2. The circumstances in which property is received may in themselves be sufficient proof that it was stolen and that the defendant knew that fact. The judge was wrong in law in holding that count 3 was bad merely because it did not specify who was the owner of the goods which the 6th and 7th respondents had been charged with receiving. *R v Sbarra* (1918) 13 Cr App R 118 and *R v Fuschillo* (1939) 27 Cr App Rep 193 applied.

3. The purported joinder of the 6th and 7th respondents to the 1st and 2nd counts could not in any sense be deemed to be correcting a count in the indictment but rather it altered its substance, thereby prejudicing the 6th and 7th respondents who were the parties placed in jeopardy. While this amendment of the indictment was bad in law, no injustice was caused to the State by the indictment having been so amended and there was no miscarriage of justice so as to nullify the trial. *R v Hughes* (1927) 20 Cr App R 4, *R v Jones* (1938) 5 WACA 75 and *R v Jennings* (1949) 33 Cr App R 143 applied.

4. There was nothing incorrect in the judge's direction in relation to conspiracy, *viz* that "the law requires the prosecution to prove not only an agreement between the alleged conspirators to carry out an unlawful purpose as signified by words or other means of communication between them but also an intention in the mind of any alleged conspirator to carry out the unlawful purpose". *R v Thomson* (1966) 50 Cr App R 1 referred to.

Cases referred to
Manly v R [1968-69] ALR (SL) 94
R v Fuschillo (1939) 27 Cr App Rep 193
R v Hughes (1927) 20 Cr App R 4
R v Jennings (1949) 33 Cr App R 143
R v Jones (1938) 5 WACA 75
R v Sbarra (1918) 13 Cr App R 118
R v Thomson (1966) 50 Cr App R 1

Legislation referred to
Courts Act No 31 of 1965 ss 57(2), 58(6), 65
Criminal Procedure Act No 32 of 1965 ss 136, 144(2), 148(1)
Larceny Act 1916 ss 1(2)(iii), 2, 33(1)

Other sources referred to
Archbold 36th Edition para 4051

Appeal
This was an appeal by the State under s 57(2) of the Courts Act No 31 of 1965 against the acquittal of Isaac Christian During and 6 others who were variously charged on counts of larceny, attempted larceny, receiving stolen goods and conspiracy to steal. The facts appear sufficiently in the following judgment.

Solicitor-General for the State.
Mr C V M Campbell for the first and fifth respondents.
Mr Eke Halloway for the second respondent.
Mr E J Akar for the third and fourth respondents.
Mr A L O Metzger for the sixth respondent.
Mrs S Taqi for the seventh respondent.

HARDING PJ: This appeal is by the State against a verdict of acquittal on the trial of an indictment containing four counts preferred by the State against the seven respondents and is brought pursuant to s 57(2) of the Courts Act No 31 of 1965 (as amended by s 6 of Act No 21 of 1966) which enacts as follows:

> 57(2): Any person aggrieved by the acquittal or discharge of the accused or defendant before the Supreme Court (now High Court) may appeal to the Court of Appeal against such acquittal or discharge. Provided that no such appeal shall lie except on a question of law."

The powers of the Court of Appeal on the hearing of such an appeal are spelt out in s 58(6) of the Courts Act No 31 of 1965 (as amended by s 7 of Act No 21 of 1966) which states:

> "58(6)(a) On an appeal against the acquittal or discharge of the accused or defendant the Court of Appeal may, notwithstanding that it is of opinion what the question of law raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.
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> (b) Subject and without prejudice to the provisions of paragraph (a), the Court of Appeal may:
>
> (i) affirm or alter the decision appealed against;
>
> (ii) except in cases where an accused has been acquitted of a criminal offence punishable by death, reverse the decision appealed against;
>
> (iii) order a retrial of the accused or defendant.
>
> (c) In every such case the Supreme Court may give such consequential directions as it may deem fit."

The trial was held at the Freetown High Court as a result of proceedings having been taken (i) under s 136 of the Criminal Procedure Act No 32 of 1965 (*viz*, consent in writing by a judge to the preferment of the indictment without a committal for trial consequent upon a previous preliminary investigation) and (ii) under s 144(2) of the same Act (*viz*, order for the trial to be by judge alone).

The Indictment as filed reads as follows:

1st Count

Statement of Offence: Larceny contrary to s 2 of the Larceny Act 1916.

Particulars of Offence: Isaac Christian During, Josephus Ibrahim Tucker, Roland Rogers Okoro Macaulay, Ibrahim Jalloh and Johannes Laggah, on the 18th day of September at Freetown International Airport Lungi in the Port Loko Judicial District of Sierra Leone stole 3 bags containing 275,000,000 CFA francs property of Banque Central Etats Afrique de L'ouest, Abidjan Cote d'Ivoire (Central Bank of West African States, Abidjan Ivory Coast) while in the custody of Union de Transport Aeriene (UTA).

2nd Count

Statement of Offence: Attempted Larceny

Particulars of Offence: Isaac Christian During, Josephus Ibrahim Tucker, Roland Rogers Okoro Macaulay, Ibrahim Jalloh and Johannes Laggah,, on the 18th day of September 1973 at the Freetown International Airport Lungi in the Port Loko Judicial District of Sierra Leone attempted to steal a fourth bag containing money in CFA francs property of Banque Central Etats de L'ouest while in the custody of Union de Transport Aeriene (UTA).

3rd Count

Statement of Offence: Receiving Stolen Goods contrary to s33(1) of the Larceny Act 1916.

Particulars of Offence: Alhaji Sanusi Jalloh and Adiatu Barrie on a day unknown between the 19th day of September 1973 at Masoila Village in Port Loko Judicial District did receive a bag containing 41,5000,000 CFA francs knowing the same to have been stolen.

4th Count

Statement of Offence: Conspiracy to Steal

Particulars of Offence: Isaac Christian During, Josephus Ibrahim Tucker, Roland Rogers Okoro Macaulay, Ibrahim Jalloh, Johannes Laggah,, Alhaji Sanusi Jalloh and Adiatu Barrie on divers days between the 1st day of September 1973 and the 26th day of September 1973 at Lungi in the Port Loko Judicial District of Sierra Leone conspired together and with other persons unknown to steal a quantity of bags containing money in CFA francs property of Banque Central Etats Afrique de L'ouest while in the custody of Union de Transport Aeriene (UTA).

The trial commenced on 25th February 1974, and on the 29th April 1974, the Presiding Judge Okoro–Idugu, in a very lengthy judgment recorded his verdict as follows:

Verdict

Count 1 - Each of 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th accused

Not Guilty

Order: Each acquitted and discharged

Verdict

Count 2 - Each of 1st, 2nd, 3rd, 4th, 5th, 6th and 7th accused

Not Guilty

Order: Each acquitted and discharged

Verdict

Count 3 - Sixth accused: Not Guilty

Seventh accused: Not Guilty

Order: Each acquitted and discharged

Verdict

Count 4 - Each of 1st, 2nd, 3rd, 4th, 5th, 6th and 7th accused

Not Guilty

Order: Each acquitted and discharged

First accused receiving

Verdict: Not Guilty

Order: Acquitted and discharged.

It is against this verdict of acquittal and discharge that the Solicitor-General acting on behalf of the State has appealed to this court, on questions of law, on eleven grounds of appeal (as amended) as follows:

1. The learned trial judge was wrong in law in amending the Indictment after trial and in the absence of the parties.
2. The learned trial judge was wrong in law in considering 6th and 7th accused as joined in 1 and 2 with 1st to 5th accused.
3. The leaned trial judge misdirected himself as to the law of conspiracy when he said "The offence in the 4th count ... the offence specified." *Manly v R* [1968-69] ALR (SL) 94, at page 5 lines 16 to page 6 line 24 of Vol III of the record.
4. The learned trial judge wrongly excluded admissible evidence when he said "... but Mansaray made some answer, which is inadmissible" at page 17 lines 26 of Vol III.
5. The learned trial judge misdirected himself by requiring corroboration in circumstances where this is not required in law when he said: (a) "PW18 later said ... 18th September 1973" at page 18 lines 2 to 19 of Vol III of the records. (b) "PW14 did not testify ... conversation with PW15" at page 19 lines 10 to 27 of Vol III of records. (c) "No one but PW18 saw this happen" at page 20 line 28 of Vol III of the records. (c) "At the very least ... in this connection" at page 29 line 1 of Vol III of the records.
6. The learned trial judge misdirected himself as to the law of larceny when he opined 'I hesitate to express my wonder ... the whole trial" at page 54 line 6 of Vol III of the records; "There is of course the point of ownership not having to be proved" at page 52 of Vol III of the records; "and also essential to prove ... specific felony" at page 52 lines 14 to 18 of Vol III of the records.
7. The learned trial judge omitted to direct himself adequately as to the doctrine of recent possession.
8. The verdict is unreasonable and cannot be supported having regard to the evidence.
9. The learned trial judge misdirected himself in holding at page 44 line 2 of Vol III of the records that Exhibit "J" like the evidence of PW10 is no evidence upon which to act.
10. The learned trial judge failed adequately to consider material evidence in particular the evidence of the following: (a) PW4 Francis Ngobeh at pp 152 to 274 Vol I of the records; (b) PW19 Newlove at pp 385 to 411 Vol I of the records; (c) PW22 Bambay Kamara Leclere at pp 462 to 464 Vol II of the records; (d) Exhibits (A) (E) (F) (G) (H) (Q) (R); (e) PW23 Roger Leclere at pp 452 to 462 Vol II of the records; (f) PW24 Ernest Legrandois at pp 462 to 464 Vol II of the records.
11. The learned trial judge was wrong in holding at page 54 line 9 of Vol III of the records that count 3 was bad in law."

Grounds 8 and 10

Since according to s 57(2) of the Courts Act 1965 (as amended) only points of law can be argued in this appeal we do not feel that grounds 8 and 10 merit our consideration as the questions raised therein relate only to matters of fact.

Before proceeding to consider the rest of grounds of appeal it is appropriate at this juncture to state that the learned Solicitor General stressed throughout the hearing of this appeal that should the court decide in his favour he was urging a reversal of the judgement of the lower court and not a retrial.

Grounds 1 and 2

Grounds 1 and 2 were argued together by the learned Solicitor General *viz*:

1. The learned trial judge was wrong in law in amending the indictment after trial and in the absence of the parties.
2. The learned trial judge was wrong in law in considering the 6th and 7th accused as joined in counts 1 and 2 with 1st to 5th accused.

The Solicitor General referred to the passage in the judgement, which reads as follows:

"On these considerations it is obscure to my intelligence why 6th and 7th accused were not joined in Counts 1 and 2 assuming of course that the indictment was considered seriously before being laid. In my view these same considerations require that I consider 6th and 7th accused as joined in Counts 1 and 2 with 1st to 5th accused, and I shall so consider them joined."

He submitted that the amendment of the indictment was made after trial in the absence of the parties without their consent, that there was no endorsement in the indictment of the amendment, that the purported amendment was to add the 6th and 7th respondents to counts 1 and 2. He argued that no judgment was delivered on the indictment as filed and tried, that the respondents were acquitted on an indictment which was not before the court, and that this affected the entire case for the prosecution.

It is not quite correct to say that the purported amendment was made after trial: it was made on the date judgment was delivered, ie, 29th April 1974, during trial and in the presence of the parties. We however have to say this much as regards the purported amendment. Section 148(1) of the Criminal Procedure Act 1965 to which our attention has been drawn provides as follows:

"When before trial upon indictment or at any stage of such trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required amendments can not be made without injustice."

We are satisfied that the purported joinder of the 6th and 7th respondents to the 1st and 2nd counts could not in any sense be deemed to be correcting a count in the indictment (which in our view seems to accord with the case as presented by the prosecution); rather it was altering its substance; and the party who was prejudiced there was not the appellant/State (which adduced no evidence throughout the trial to warrant such a joinder) but the 6th and 7th respondents who were the parties placed in jeopardy. It seems to us a most ludicrous exercise (or to quote the learned trial judge "obscure to our intelligence") for him having undertaken upon himself to amend the indictment by joining the 6th and 7th respondents to the 1st and 2nd counts presumably that justice may be done – should have, as it were, at the same breath proceeded to find them both not guilty (in addition to the first 5 respondents who were also found not guilty) and to have acquitted and discharged all of them.

We hold that the joinder of 6th and 7th respondents to the 1st and 2nd counts of the indictment was bad in law, but that no injustice was caused to the State by the indictment having been so amended and that there has been no miscarriage of justice. On the authority of (i) *R v Hughes* (1927) 20 Cr App R 4; (2) *R v Jones* (1938) 5 WACA 75 and (3) *R v Jennings* (1949) 33 Cr App R 143 which were cited before us we also hold that the purported joinder did not operate so as to nullify the trial.

Ground 3

The learned Solicitor-General submitted that the learned trial judge misdirected himself as to the law of conspiracy and cited particularly a passage in the judgement which reads as follows:

"Conspiracy – the offence in the 4th count of the indictment herein is an agreement between two or more persons to do an unlawful act. The law requires the prosecution to prove not only an agreement between the alleged conspirators to carry out an unlawful purpose as signified by words or other means of communication between them but also an intention in the mind of any alleged conspirator to carry out the unlawful purpose; *R v Thomson* (1966) 50 Cr App R 1."

He submitted that the essence of conspiracy is the bare agreement and that there is no obligation on the prosecution to show an added intention outside the agreement. He also referred to the case of *R v Thomson* (supra). The passage above quoted from the judgement is almost verbatim with what is stated at para 4051 of *Archbold* 36th Edition and the complaint that the learned trial judge misdirected himself as to the law of conspiracy seems unfounded.

The other passages in the judgement referred to would appear to be mere expositions of the law relating to the subject of conspiracy and certainly not deserving of criticism. In any case since the learned trial judge who saw and heard the witnesses give evidence came to a definite conclusion of fact after reviewing such evidence, *viz*:

"There is a definite conclusion that could be arrived at on the evidence supposedly to prove conspiracy but it is not a conclusion of guilt in the accused, any two of them or any one of them with certain other or other unknown. I have not been persuaded and certainly am not satisfied by the evidence that the offence of conspiracy has been proved" and nothing having been urged upon us that he misconstrued the evidence or misapplied the facts, this court cannot interfere with such a finding, this appeal being one on questions of law only."

Ground 4 – Wrongful exclusion of evidence

Two instances of this were brought up by the Solicitor-General for the consideration of this court. The rule is that "where evidence has been wrongly excluded this court will have to consider what effect it would have had on minds of the jury (in this instance on the mind of the judge) had it been allowed to be given and unless the verdict would in all probability have been the same, the conviction would be quashed."

The first instance concerned that passage in the judgement which reads as follows:

"He (ie, PW18) did not hear what 5th accused said but Mansaray made some answer which is inadmissible."

The passage relates to the evidence, concerning the conspiracy charge, of PW18 Sam Joe Thomas who had deposed as follows:

"I saw Kombrabai Mansaray the UTA representative. He went to the Freight Shed to hand over the cargo documents to us. I saw 5th accused talking to him and showing him the same Telex massage. I did not hear what they were talking about. When they came out, I heard Mansaray say "oona carry on; me hand nor day inside."

The very fact that the learned trial judge recorded down what Kombrabai Mansaray was alleged to have said negates the suggestion that he "wrongly excluded admissible evidence." It is perhaps unfortunate that he did use the word "inadmissible." What I think he really was trying to say was that whatever Mansaray was alleged to have said was prejudicial and of no probative value especially so as Mansaray was never called to testify before the court. In any case it is our view that the rejection of this piece of evidence would not in any way have affected the verdict on the conspiracy count had it been received.

The second instance related to the refusal of the learned trial judge to allow PW17 Alpha Mansaray to identify a bundle which he alleged he had been requested to carry at the instance of

the 6th and 7th respondents and which he alleged he could recognise if he saw again and which was subsequently tendered before the Court as Exhibit 'T'. Here the witness (PW17) had given positive evidence that at the request of 6th and 7th respondents he carried a bundle, the contents of which he alleged he saw and could identify. As far as I understand the prosecution's case it is for the possession of this bundle and contents unlawfully that the 6th and 7th respondents have been charged. The question whether or not the witness can testify to the fact that the bundle which he stated he carried is the same bundle the subject of the charge is one pertaining to his credibility and affects not the admissibility of such a piece of evidence but what weight is to be attached to it. We feel that the refusal to receive such evidence was wrongful and has greatly prejudiced the prosecution's case against 6th and 7th respondents; but we certainly are not disposed to invoke the provisions of s65 of the Courts Act No 31 of 1965; ie, to impose upon this court the task of receiving further evidence on the matter as we would then be thereby abrogating to ourselves the duty of adjudicating upon an issue which is purely factual.

Ground 5

The complaint here that the learned trial judge misdirected himself by requiring corroboration in circumstances where this is not required by law is ill-founded for in all the four instances cited by the learned Solicitor-General the trial judge was reviewing the evidence and merely commenting on shortcomings on the prosecution's case to enable him come to his conclusion. Nowhere did he say he required corroboration of any piece of evidence.

Ground 6 - Misdirection by the learned trial judge as to the law of larceny

This is the most important of all the grounds of appeal. Count 1 charges the 1st – 5th respondents with the larceny of "275,000,000 CFA Francs property of the Central Bank of West African States Abidjan, Ivory Coast while in the custody of UTA", contrary to s2 of the Larceny Act 1916. The trial judge properly referred to s1(2)(iii) of the Larceny Act 1916 which provides that "the expression 'owner' includes part owner, or person having possession or custody of, or special property, in anything capable of being stolen." He however, erroneously based his decision on the fact that no evidence of ownership of the francs alleged stolen was adduced during the whole trial. This was how he disposed of the matter:

> "On the point of ownership of the CFA francs, PW23 testified to the Bank of France sending consignments of money on demand made to banks in French-Speaking West African countries but did not say whether the Bank of France owned such money or whether the money was owned by the Central Bank of West African States, or whether and at what stage property in the money passed from one to the other. PW21 – the Head of the Administrative Service, Central Bank of West African States, Abidjan on the matter of ownership merely said, "I was at the airport, Abidjan, to receive 31 valuable parcels on Flight UT821. I was there to take charge of the funds CFA, which were coming from the Central Bank, Paris ... I had received advice by telegram from the Bank of France in Paris about the 31 valuable parcels." PW1, the UTA representative in Freetown, testified to receiving a message telling only about "valuables." He did not see them. The fact that the 275,000,000 CFA francs were in custody of Union de Transport Aerieue (UTA) has not been evidenced. Section 1(2)(iii) of the Larceny Act 1916 provides that "the expression 'owner' includes part owner, or person having possession or custody of, or a special property in, anything capable of being stolen." At the very least the Pilot/Captain of Flight UT821 who must have known what he was supposed to be carrying could have been called as a witness in this connection."

There is overwhelming evidence (from PW1, PW20, PW23 and PW24) to at least warrant a finding that UTA had custody of the 275,000,000 francs when they were stolen and the learned trial judge erred gravely in law when he held to the contrary.

Grounds 7 &11

The learned Solicitor-General argued these two grounds together *viz* that the learned trial judge omitted to direct himself adequately as to the doctrine of recent possession and was wrong in law in holding that count 3 was bad in law. He submitted that it was not essential on a count of receiving for the owner to be stated or proved even and that it was wrong in law for the trial judge to have held that the omission of those particulars was fatal. In *R v Sbarra* (1918) 13 Cr App R 118 (followed by *R v Fuschillo* (1939) 27 Cr App Rep 193) it was laid down that "the circumstances in which property is received may in themselves be sufficient proof that it was stolen and that defendant knew that fact."

We accept this as a correct statement of the law and accordingly hold that learned trial judge was wrong in law in holding that count 3 was bad merely because it did not specify who was the owner of the goods which the 6th and 7th respondents had been charged with receiving.

On the question of failure to adequately direct himself as to doctrine of recent possession the learned trial judge having found as he did that possession was not proved in the 6th and 7th respondents (or for that matter in any of the other 5 respondents) it would seem that he was under no obligation to dwell specifically on the doctrine of recent possession.

Ground 9

This was a complaint that the learned trial judge omitted to consider evidence (Exhibit 'J') upon which he ought to have acted. Exhibit 'J' was alleged to have been proceeds of the exchange of part of the francs that the 1st respondent was alleged by Sgt Ngobeh (PW4) to have received and it was quite wrong for the trial judge, without saying whether or not he believed such evidence to have rejected it outright.

Having thus dealt with all the points, which were raised, in this appeal we now have to consider whether the verdict of the court below on each the four counts ought to stand.

1st Count: There is abundant evidence from PW8, PW9, PW13, PW19, PW20, PW21, PW23 and PW24 taken in conjunction with the statements of the 1st and 3rd respondents to warrant us reversing the verdict as far as the 1st, 3rd, 4th and 5th respondents are concerned; we find each of them guilty of the offence of larceny for which they have been charged. As far as the 2nd respondent is concerned there is not sufficient evidence before us to warrant us altering the decision of the lower court and we affirm his acquittal. As far as the 6th and 7th respondents are concerned we would order that the verdict of not guilty and order of acquittal and discharge made in their favour be expunged from the record.

2nd Count: We are not satisfied on the evidence before us that the prosecution had established a case of attempted larceny of a fourth bag containing CFA francs against any of five respondents who were indicted and we accordingly affirm the verdict of acquittal. It is also ordered that the verdict of not guilty and order of acquittal and discharge made in favour of the 6th and 7th respondents be expunged from the record.

3rd Count: Having held that the prosecution's case was prejudiced by the refusal of the trial judge to admit material evidence, to wit the identification of Exhibit "T", we feel, taking all the circumstances into consideration that the interests of justice will best be served if a retrial of the 6th and 7th respondents is ordered in this case and we so order.

4th Count: The decision of the court below as far as this count is concerned is affirmed.

Messrs Eke Halloway and EJ Akar pleas in mitigation of sentence in respect of the 1st, 3rd, 4th and 5th respondents.

Allocutus:

1st respondent:

I am pleading for mercy; I am married man with two kids.

3rd respondent:

I am asking for mercy; I am a married man with 6 children, an aged mother and a pregnant wife.

4th respondent:

I am asking for justice to be tempered with mercy; I have been in custody with my mother and father, I am a married man with two children.

5th respondent:

I am asking that justice be tempered with mercy; I have a wife and children.

Sentence: 1st, 3rd, 4th and 5th respondents are each sentenced to 5 years imprisonment on count 1.

Consequential orders made by the trial judge re restitution of Exhibit 'J' to 1st respondent and for exhibits 'S' and 'J' to be held as found property set aside and restitution order in favour of the UTA in respect of Exhibits J, S, and T substituted therefore.

Reported by Anthony P Kinnear and Victoria Jamina