

**FOFANAH v THE STATE**

CA

**COURT OF APPEAL FOR SIERRA LEONE**, Criminal Appeal 15 of 1975, Hon Mrs Justice Awunor-Renner PJ, Hon Mr Justice S B Davies JA, Hon Mr Justice During JA, 23 March 1976

**[1] Criminal Law and Procedure – Summing up – Jury entitled to assistance from judge because of type of evidence – Unsafe verdict**

The appellant, a government employee, was convicted of stealing goods from his employer. There was conflicting evidence as to what stock belonged to the government and what belonged to the appellant. The judge provided no guidance as to the evidence in his summing up.

**Held, per Beccles Davies JA, allowing the appeal:**

1. The jury was entitled to the assistance of the judge because of the type of evidence that was adduced in this case. Had they got it, they might not have arrived at the verdict which they did.

**Appeal**

This was an appeal by Ahmed James Fofanah against conviction for larceny. The facts appear sufficiently in the following judgment.

*Appellant in person.*

*Mr Bankole Thompson for the respondent.*

**BECCLES DAVIES JA:** The appellant was employed by the Sierra Leone Government as a Storekeeper at the Magburaka Government Hospital. The stock of goods under his charge was checked by a Store Verifier from the Ministry of Health Freetown on the 13<sup>th</sup> and 14<sup>th</sup> September 1973. Certain items of his stock belonging to the Sierra Leone Government were missing. In consequence of information received by the police a Search Warrant was executed in the residence of the appellant. A total of sixty-seven items of various goods including drugs were removed from the appellant's house. He was arrested and charged with larceny.

At his trial in the High Court at Makeni, the indictment charged him with stealing some twelve items of goods "and other articles". Apart from an electric fan and a refrigerator, which were tendered in evidence individually, the sixty-seven items were put in by means of a list attached to the Search Warrant, which was executed in the appellant's premises.

PW1, Police Corporal Anthony Bassie, in tendering the list in evidence said:

"As there was not sufficient space at the back of the Warrant, I typed the articles discovered in the accused's premises on a piece of paper .... He read it and admitted it to be true and correct. This is the list. Tendered and marked Exhibit "D".

Only some of the articles alleged to have been stolen were taken to court. This was obvious from the evidence of PW2 William Davidson Scott who said:

"All the articles found in the accused's premises belonging to Government were listed in Exhibit "D" were found in his premises. Most of them are in court".

As far as the refrigerator was concerned it was contended by the prosecution at the trial that it belonged to the Government of Sierra Leone. The appellant insisted that it was of the same make – 'English Electric' – although of a smaller type to that used by the Government. He further explained that he had returned the supposedly missing refrigerator to the Medical Stores



as it had been unserviceable. The appellant called DW1, Amadu Sankoh, the driver who conveyed it to Freetown. Amadu Sankoh confirmed the appellant's story. Mr Scott the Stock Verifier pointed out that the proper procedure was for a store issue voucher to have been made out on which there would have been an acknowledgement of its receipt at Medical Stores, Freetown. Nevertheless there was a voucher signed by DW1 Amadu Sankoh before conveying the fridge to Freetown. He is on record as saying:

"The police showed me the voucher which I signed before I conveyed the fridge to Freetown. I told them I signed the said voucher."

The appellant claimed the fridge, electric fan as well as the medicines recovered from his house as his property. He had however taken out the bed and mattress on loan.

There was a Stock verification. No evidence was led firstly as to the extent of the discrepancies in the stock of the appellant and consequently that the article removed from the appellant's house were part of the missing Government stock.

It is difficult to know how the trial judge put across such a badly presented case (which consequently became unduly complex) to the jury as his "Summing Up (Notes On)" ended abruptly with the following passages after explaining the ingredients of the offence of larceny:

"18. Now what is the prosecution's case? The prosecution in proving their case called three witnesses – PW1, PW2 and PW3.

19. Review of evidence of prosecution witnesses:

- (i) P.W. 1 (SOB) – Anthony Bassie
- (ii) P.W. 2 (SOB) – William Davidson Scott
- (iii) P.W. 3 (SOB) – Mary Koroma

20. Prosecution closes case and accused elects to make statement from the dock and to call witnesses."

The jury were entitled to the assistance of the judge because of the type of evidence that was adduced in this case. Had they got it, they might not have arrived at the verdict which they did. We would allow the appeal.

Reported by Anthony P Kinnear and Victoria Jamina