

**VENN v THE STATE**

SC

**SUPREME COURT OF SIERRA LEONE**, Supreme Court Criminal Appeal 2 of 1977, Hon Chief Justice C O E Cole PJ, Hon Mr Justice E Livesey Luke JSC, Hon Mr Justice C A Harding JSC, Hon Mr Justice K E O During JA, Hon Mr Justice F A Short JA, 14<sup>th</sup> December 1977

[1] **Constitutional Law – Whether “State” synonymous with “Government” – Meaning of “public officer” – Whether public officer employee of the State as distinct from Government – Constitution of Sierra Leone 1971 s 93(1)**

[2] **Constitutional Law – Overview of constitutional history of Sierra Leone – Time from which State of Sierra Leone existed – Whether State of Sierra Leone existed as a legal entity within municipal law – Constitution of Sierra Leone 1961, Constitution of Sierra Leone 1971**

The appellant was a clerk in Ministry of Education of the Government Service of Sierra Leone. She was convicted on 29 August 1975 on an indictment by the High Court on six counts, three of which were for falsification of accounts contrary to s 1 of the Falsification of Accounts Act 1875 and the other three for larceny contrary to s 17(1)(a) of the Larceny Act 1916. She was sentenced to various terms of imprisonment. The appellant appealed against her conviction to the Court of Appeal which on 24 September 1976 dismissed the appeal and affirmed her convictions. From this judgement the appellant appealed to the Supreme Court. The appellant argued that a public officer under s 93(1) of the Constitution of Sierra Leone Act No 6 of 1971, as amended, cannot be convicted of any offence under the Falsification of Accounts Act 1875. The main questions of law were:

- (1) whether the word “State” is synonymous with the word “Government”;
- (2) whether at the material time of the alleged offence the appellant was a public officer under s 93 of the Constitution of Sierra Leone 1971 (Act No 6 of 1971) and, if so, whether in law she could be regarded as an employee of “the State” as distinct from an employee of “the Government” of Sierra Leone;
- (3) whether it was correct to hold that the appellant was a clerk or servant of the State of Sierra Leone and whether the voucher in question, namely, exhibit G, D & E were the property of either the State of Sierra Leone or the Government of Sierra Leone; and
- (4) whether the Court of Appeal was right in holding that as from the 19<sup>th</sup> April 1971 and by virtue of the Constitution (Consequential Provisions) Act 1971 (Act No 9 of 1971) existing acts, liabilities and obligations were acts, liabilities and obligations of the State on the date of conviction.

**Held, per Cole CJ, dismissing the appeal:**

1. In law and in fact, the State of Sierra Leone existed at all times material to this appeal and all the inhabitants within Sierra Leone owed allegiance to it.
2. The State of Sierra Leone was a legal entity which in law completely became vested, as from the 19<sup>th</sup> April, 1971 with all existing rights, liabilities and obligations of Her Majesty the Queen, these rights, liabilities and obligations due to and from public officers. Taking into consideration the whole tenor and effect of the 1971 Constitution, as amended, the territory of Sierra Leone is, and had been since 27 April 1961, a State and



since 19 April 1971 had been a legal entity within the municipal law of Sierra Leone. *Town Investments Ltd v Department of Environment* (1977) 2 WLR 450 and *Attorney-General for New South Wales v Perpetual Trustees Company Ltd* (1952) 85 CLR 237 applied.

3. It followed that if any property was vested in any of the agents of the State, for example the President or the Government, that property was held by that agent for and on behalf of the State and therefore that property can properly be laid in the name of the State. Equally so, if a person is in the employment of an agent of the State for example, the Government, it followed that that person is in the employment of the State. Therefore, at all times material to this appeal the appellant was a public officer in the employment of the State of Sierra Leone and it was therefore proper for the Particulars of Offence of the indictment to describe the appellant as a clerk or servant of the State of Sierra Leone. This ingredient was clearly proved at the trial.
4. The property in the relevant personal emolument vouchers, as well as the various sums alleged to have been stolen by the appellant was properly laid in each case in the name of the State of Sierra Leone.

#### Cases referred to

*Attorney-General for New South Wales v Perpetual Trustees Company Ltd* (1952) 85 CLR 237  
*Hinds v The Queen* (PC) (1976) 2 WLR 366  
*Inland Revenue Commissioners v Hambrook* (1956) 2 QB 641  
*Shenton v Smith* [1895] AC 229; 72 LT 30  
*Sloman v Government of New Zealand* 1 CPD 563  
*Terrel v Secretary of State For the Colonies* (1953) 2 QB 498  
*Town Investments Ltd v Department of Environment* (1977) 2 WLR 450  
*William v Howorth* (1905) AC 551

#### Legislation referred to

47 Geo III c 44  
 Appropriation Act 1972 (Act No 25 of 1972)  
 Constitution of Sierra Leone 1961 ss 26, 27, 28, 57, 107(1)  
 Constitution of Sierra Leone 1971 (Act No 6 of 1971) ss 7, 16, 95  
 Constitution Order-in-Council 1961 (PN No 78 of 1961)  
 Criminal Procedure Act 1965 (Act No 32 of 1965) Sch 1 r 5(3)  
 Falsification of Accounts Act 1875 s 1  
 Interpretation Act 1971 (Act No 8 of 1971) ss 1, 2, 4  
 Larceny Act 1916 s 17(1)(a)  
 Laws (Adaptation) Act 1972 (Act No 29 of 1972) s 7  
 Official Oaths Act (Cap 169) as adapted by the Official Oaths (Adaptation) Order 1961 (PN No 94 of 1961)

#### Other sources referred to

*The Approach to Self-Government*, Sir Ivor Jennings 1965 Edition  
*Salmond on Jurisprudence*, 1937 9<sup>th</sup> Edition p 443

#### Appeal

This was an appeal against the judgement of the Court of Appeal (Cr App No 23/75, unreported) upholding her conviction in the High Court on six counts of offences under the Falsification of Accounts Act 1875 and the Larceny Act 1916. The facts appear in the following judgement.



*N D Tejan-Cole for the appellant.*

*Dr Bankole-Thompson for the respondent.*

**COLE CJ:** Learned counsel for the appellant in opening this appeal, submitted that the pith and marrow of this appeal rest on the answer to be given to four questions of great constitutional legal importance, namely:

- (1) whether the word "State" is synonymous with the word "Government";
- (2) whether at the material time of the alleged offence the appellant was a public officer under s 93 of the Constitution of Sierra Leone 1971 (Act No 6 of 1971) and, if so, whether in law she can be regarded as an employee of "the State" as distinct from an employee of "the Government" of Sierra Leone;
- (3) whether it is correct to hold that she was a clerk or servant of the state of Sierra Leone and whether the voucher in question, namely, exhibit G, D & E were the property of either the State of Sierra Leone or the Government of Sierra Leone; and
- (4) whether the Court of Appeal was right in holding that as from the 19<sup>th</sup> April 1971 and by virtue of the Constitution (Consequential Provisions) Act 1971 (Act No 9 of 1971) existing acts, liabilities and obligations were acts, liabilities and obligations of the State on the date of conviction.

The facts of the case are not in dispute. I will state them as succinctly as I possibly can.

The appellant was convicted on the 29<sup>th</sup> day of August 1975 on an indictment presented to the High Court on six counts, three of which were for falsification of accounts contrary to s 1 of the Falsification of Accounts Act 1875 and the other three for larceny contrary to s 17(1)(a) of the Larceny Act 1916. She was sentenced to various terms of imprisonment against which sentence she has not appealed. The appellant appealed against her conviction to the Court of Appeal which on the 24<sup>th</sup> day of September 1976 dismissed the appeal and affirmed her convictions. From this judgement the appellant has appealed to this Court on the following grounds:

- "(1) Whether a Public Officer under s 93(1) of the Constitution of Sierra Leone Act No 6 of 1971, as amended, can be convicted under the Falsification of Accounts Act 1875 if in the particulars of the offence and during the trial it is laid and proved respectively that the document or accounts belong to the state of Sierra Leone?
- (2) Whether on charges as (1) above, the Public officer can be convicted if the particulars of offence state that her employer is the state of Sierra Leone?
- (3) Whether the same officer as (1) above can be convicted of offence of larceny by servant under s 17(1)(a) of the Larceny Act if the particulars of the statement of offence allege that she is a clerk of servant or the state of Sierra Leone?
- (4) Whether she can be convicted of an offence under (3) if the particulars allege that she stole from the State of Sierra Leone?
- (5) Whether having regard to statutory provisions and case law in Sierra Leone and the term "Government", the Court of Appeal is right to hold that since April 1971 property of the Government of Sierra Leone has become the property of the state of Sierra Leone.
- (6) Whether in a criminal trial by judge alone, the defence would have been adequately considered by the trial judge when in the review of the evidence of the case for the prosecution, he indicated that he has read the statement of the accused and will



comment on it later but failed to do so and fails to consider and refer in his judgement to a possible defence arising from the evidence?"

There was another ground of appeal which was abandoned.

As I have already stated at the opening of this judgement the grounds of appeal are condensed to answering the questions already posed. Those questions also include the all-important questions whether the State of Sierra Leone is a person in law within the ambit of our municipal law.

By letter of appointment dated the 24<sup>th</sup> May, 1975, having satisfactorily completed her training in the Clerks Training school, the appellant was offered appointment as a Third Grade Clerk in the Income Tax Department of the then Government Service of Sierra Leone. The appointment was pensionable on the 31<sup>st</sup> May 1957. She accepted in writing the appointment on the conditions set out. She worked in the Income Tax Department until 1968 when she was transferred to the Technical Institute, which was a branch of the Ministry of Education, as Chief Clerk. Her duties included general administration, preparation of Imprest Books and paying of salaries of staff of the Institute. She remained a civil servant and a public officer up to the date of her conviction.

The expression "Public Officer" is defined in the Sierra Leone (Constitution) Order-in-Council 1961 (PN No 78 of 1961) (hereafter referred to as "the 1961 Constitution".) Section 107(1) reads as follows:

"public officer" means a person holding or acting in a public office".

The expression "public office" is also defined in the same Order-in-Council to mean "an office of emolument in the public service." The expression "public office" is also defined in the same Order-in-Council. It means:

"subject to the provisions of sub-sections (2) and (3) of this section, the service of the Crown in a civil capacity in respect of the government of the former Colony and Protectorate of Sierra Leone"

For the purpose of this case it is not necessary to construct sub-sections (2) and (3) of this section now quoted.

The Constitution of Sierra Leone 1971 (Act No 6 of 1971) also defines "public officer", "public office" and the "public service". It is not necessary to set out these definitions because they are in substance the same as those contained in the above quoted definitions.

The Constitution of Sierra Leone 1971 (Act No 6 of 1971) came into force on the 19<sup>th</sup> April 1971. I shall hereafter refer to it as "the 1971 Constitution". By s 95 it revoked the 1961 Constitution. There can be no doubt that the 1971 constitution preserved the legal position of all public officers within the meaning of both Constitutions, which I have already quoted, as at that date, that is 19<sup>th</sup> April 1971. Therefore, on the date of the alleged offences and throughout the whole of 1972, the appellant was a public officer and was as up to the date of her conviction.

The indictment alleged in counts (i), (iii) and (v) that she falsified in the course of her employment, certain documents contrary to s 1 of the Falsification of Accounts Act 1875. Counts (ii), (iv) and (vi) allege that she stole in her capacity as a clerk or servant certain monies, contrary to section 17(1)(a) of the Larceny Act 1916.

In this connection it is relevant to note that by the 1972/73 Appropriation Act 1972 (Act No 25 of 1972) which came into force on the 1<sup>st</sup> July 1972 Parliament provided certain monies for the services of Sierra Leone for the year 1972/73. In the Schedule to this Act it will be seen that Parliament provided certain sums for the Ministry of Education and allied services. The



appellant, who was then a First grade Clerk in the Ministry of Education and attached to the Technical Institute, performed the duties of Finance Clerk. Her duties entailed the preparation of Personal Emolument Voucher, Cheque Order Forms and other pertinent financial documents necessary for the payment of salaries. These documents were prepared in quintuplicate and checked by the appellant. After such preparation and checking the documents were referred to the Principal, the Vice-Principal or Senior Commercial Teacher, as the case may be, for counter-signature. Four copies of the vouchers were then sent to the Ministry of Education where they were checked and passed by the Vote Controller and entered into the Vote service Ledger. They were then certified as correct by the Senior Assistant Secretary (Finance) or the Senior Accountant in the Ministry of Education. These vouchers were then returned to the appellant who would then prepare the Cheque Order Forms bearing the names of the persons authorised to collect cheque from the Treasury. When the cheques were collected after the Personal Emolument Vouchers and the Cheque Order Forms had been left in the treasury, they were then taken to the Principal, Vice-Principal or senior Commercial Teacher for endorsement. The appellant would then take the cheque to the Bank of Sierra Leone for encashment, and she would then return to the Institute to pay the salaries so collected to the staff.

Three vouchers are involved in this appeal. They concerned payment of salaries for the months of August, September and October 1972. The case for the Prosecution in this regard, which has not been challenged before us was that the Personal Emolument Voucher for these months in questions were inflated by the appellant by the sum of Le1000.00 in respect of each of these months after they had been signed as correct at the Ministry of Education, and further that she stole the respective inflated amounts. She was convicted on each of these counts and sentenced.

In the particulars of the counts relating to the offence of falsification of accounts the appellant was alleged to be a clerk or servant of the state of Sierra Leone. The accounts falsified were also said to be the property of the State of Sierra Leone. As regards the counts relating to larceny as a clerk or servant, again she was alleged to be a clerk or servant of the State of Sierra Leone and in that capacity she stole the various sums mentioned in those counts which monies were alleged to be the property of the state of Sierra Leone.

Let me first and foremost deal with the question whether the State of Sierra Leone is a concept known to our municipal law and if so whether it is a legal person within the ambit of our municipal law capable of acquiring rights, liabilities and obligations arising out of contract or other arrangements, in relation for the purposes of this appeal, to employment and property. I lay emphasis on the expression "contract or other arrangement".

I must straightaway make this point quite clear. Whilst the expression "Government" is not only clearly defined in our laws and given legal personality by Parliament – I refer to section 4 of the Interpretation Act 1971 (Act No 8 of 1971) nowhere in our legislation is the expression "the State of Sierra Leone" either defined or expressly given legal personality. There can be no doubt, however, that the concept of "the state of Sierra Leone" is well embodied in our Constitution as well as other legislation.

It cannot be denied that this territory of Sierra Leone has through the years progressively moved from the status of a Colony and Protectorate on the 27<sup>th</sup> April 1961 when she achieved independence from Her Majesty the Queen of England. But that independence on a close study of the then Constitution was monarchical in its operation. I shall only refer to sections 26, 27, 28 and 57 of the 1961 Constitution.

"Establishment of office of Governor-General



- 26 There shall be a Governor-General and Commander-in-Chief of Sierra Leone, who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Sierra Leone. Oaths to be taken By Governor-General.
- 27 A person appointed to the office of Governor-General shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and such Oath for the due execution of his office as maybe prescribed by Parliament.
- 28 Whenever the office of Governor-General is vacant or the holder of the office is absent from Sierra Leone or is for any reason unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by such person as Her Majesty may appoint or, if there is no person in Sierra Leone so appointed and able to perform those functions, by the Chief Justice of Sierra Leone."

57(1)The executive authority of Sierra Leone is vested in Her Majesty.

- (2) Subject to the provisions of this Constitution, the executive authority of Sierra Leone may be exercised on behalf of Her Majesty by the Governor-General, either directly or through officers subordinate to him.
- (3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General."

Allegiance by the Governor-General and all others was sworn or affirmed to Her Majesty the Queen, Her Heirs and successors in her capacity as the Queen of Sierra Leone. The schedules to the Official Oaths Act (Cap 169) as adapted by the Official Oaths (Adaptation) Order 1961 (PN No 94 of 1961). In spite of this limitation the concept of the State was emolument in our municipal law as evidenced by the definition of the expression "Government" in section 2 of the Interpretation Act 1961 (Act No 46 of 1961). That definition reads:

"Government" means the Government of Sierra Leone and includes, where appropriate, any authority by which the executive power of the state is duly exercised in a particular case."

On the 19<sup>th</sup> April, 1971, the territory of Sierra Leone was declared a Republic by virtue of the 1971 Constitution. The Interpretation Act 1971 (Act No 8 of 1971) by s 4 defines the following expressions – "Republic" to mean – "the state of sierra Leone as constituted by the Constitution"; and "Government" to mean – "the Government of Sierra Leone (which shall be deemed to be a person) and includes, where appropriate any authority by which the executive power of the state is duly exercised in a particular case."

Here it will be seen that the word "State" also appears in the definition of "Government" in the Interpretation Act 1971.

The 1971 Constitution as amended makes provision for the appointment of a President of the State of Sierra Leone. I refer to s 16 as amended by the Constitution of Sierra Leone (Amendment) Acts of 1971 and 1973 (Act No 7 of 1971 and Act No 28 of 1973). I think it is but pertinent to set out that portion of s 16(1) of the 1971 Constitution, as amended, which is of relevance to the question now being considered it says:

"There shall be a supreme Head of State and Commander-in-Chief of the Armed Forces and Grand Commander of the Republic who shall be known as The President of Sierra Leone, and who is referred to in this Constitution as the President. He shall embody the national unity and ensure the continuance of the State..."



I shall not at this state go further into other legislation subordinate to the 1971 Constitution on this question of the existence of the state of Sierra Leone. Suffice it to say that I am satisfied that in law and in fact the state of Sierra Leone existed at all times material to this appeal and all the inhabitants of the territory of Sierra Leone owe allegiance to it.

The next question is whether the state of Sierra Leone has a legal personality within our municipal law.

I have already stated that the offences in question were alleged to have been committed in 1972 when the 1971 Constitution was in force. I have already quoted the relevant portions of s 16(1) of the 1971 Constitution which makes it part and parcel of the duties of the President of the State. Let me say straightaway that in my considered view "State" in this context means the State of Sierra Leone. I shall hereafter briefly set out the constitutional progressive development of this territory of Sierra Leone from colonial to republican status. I have also pointed out that although the 1971 Constitution expressly referred to the concept of State it did not expressly define it nor did it expressly give it legal personality.

Let me now briefly delve into history. In this regard I have given due consideration to the salutary warning of Lord Goddard, CJ in the case of *Terrel v Secretary of State For the Colonies* (1953) 2 QB at p 498 where he said, inter alia:

"In my opinion, once a doctrine has become a rule of law ... the Court is bound to apply it without inquiring into its origin."

Sir W Ivor Jennings, however, quite rightly reminds us that every Constitution is the product of the manner in which the territory concerned emerged as an independent sovereign state (see *Sir Ivor Jennings – The Approach to Self-Government* 1965 Edition). See also *Hinds v The Queen* (PC) (1976) 2 WLR 366, particularly the judgement of Lord Diplock who delivered the majority judgement of the Board.

It is universally accepted that states are of two kinds being either "independent" or "dependent". The expressions "independent" and "dependent" are both descriptive. The proper usage of the term "independent" is to denote the status of a state which controls its own external relations without dictation from other states. This state of affairs turns on the question of sovereignty. All the authorities appear to agree on this proposition. The territory of Sierra Leone up to 27<sup>th</sup> April 1961 was a Colony and Protectorate – a dependent state and was therefore not itself a legal person. It was part of His or Her Majesty the King or Queen's possessions and so the territory of Sierra Leone of itself has no separate and distinct legal personality. The King or Queen, as the case may be, or the Crown represented not only the British Empire including the Colonies as a whole but each of its component parts of which the territory of Sierra Leone was a part – I refer to the case of *Sloman v Government of New Zealand* 1 CPD 563 which was an action brought in England against "the Governor and Government of the Colony of New Zealand". It failed because there was no such person or body corporate known as "the Governor and Government of the colony of New Zealand", known to the law. There is also the case of *William v Howorth* (1905) AC 551 where it was held that where a Colonial Government had entered into a contract with the respondent for military services in South Africa at a certain rate of pay the Colonial Government did so on behalf of the crown. Our public properties, rights, liabilities obligations were in law those of His or Her Majesty the King or Queen of England. Our national debts were owing by no other person known to our municipal law save his or Her Majesty the King or Queen. The public service was that of His or Her Majesty. His or Her Majesty held all the rights, powers and obligations of not only England but also those of the Colonies including the territory of Sierra Leone. Public property anywhere in the Colonies was in the eye of the law the property of His or Her Majesty. Equally so, public liabilities were those of the King or Queen. The executive governments were His or Hers. His or Her Majesty was in the eyes of the law a corporation



sole, a body politic. Colonial Governments stood on the same footing as that of the Crown of England in relation to the employment and dismissal of public servants. Those servants, in the absence of any special contract, held their offices at the pleasure of His or Her Majesty – *Shenton v Smith* [1895] AC 229; 72 LT 30

Lord Hobhouse who delivered the unanimous judgement of the Court in that case, said, *inter alia*, at p 32 of the LT Reports:

“Unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown – not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service.”

In this connection we have been reminded in the recent House of Lords case of *Town Investments Ltd v Department of Environment* (1977) 2 WLR 450 that the effect of the expressions “His or Her Majesty the King or Queen” and “the Crown” were more or less synonymous. Lord Simon of Glaisdale puts it this way at pages 471-472:

“The Crown as an object is a piece or jewelled headgear under guard at the Tower of London. But it symbolises the powers of Government which were formerly wielded by the wearer of the Crown; so that by the 13<sup>th</sup> century crimes were committed not only against the King’s peace but also against “his crown and dignity”; *Pollock and Maitland, History of England Law, 2<sup>nd</sup> Edition* (1911) Vol 1, p 523. The term “the Crown” is therefore used in constitutional law to denote the collection of such of those powers as remain extant (the royal prerogative), together with such other powers as have been expressly conferred by Statute on “the Crown”. So too “The Queen” indicates the person who by right to succession is entitled to wear the Crown, as “His Holiness” “His Beatitude” or “Mr Justice” are descriptive of the power so entitled. “Her Majesty” in constitutional legal usage thus generally personifies the powers of “the Crown” – powers the nucleus of which legally and historically are those of the Queen, but which by constitutional convention (ie, in political reality) are exercised in the name of The Queen by those who are nominally and legally her servants or agents”.

Lord Morris of Borth-y-Guest also said at pages 467-468 of the same Report:

“The expression “the Crown” may sometimes be used to designate Her Majesty in a purely personal capacity. It may sometimes be used to designate Her Majesty in her Capacity as Head of the Commonwealth. It may sometimes be used to designate Her Majesty in her capacity as the constitutional Monarch of the United Kingdom. Thus laws are enacted by Her Majesty in Parliament. They are so enacted by Her Majesty by and with the advice and consent of the Lords and Commons assembled in Parliament and by the authority of the same. The expression may sometimes be used in somewhat a broad sense in reference to the functions of Government and the public administration. It may sometimes be used in reference to the rule of law. The prosecution of a citizen alleging that he has committed an offence may be at the instance of and in the name of Her Majesty. The case for the prosecution is the case for “the crown”. Every citizen is a subject of Her Majesty and as such owes loyalty to “the Crown”. The government of the day is Her Majesty’s government. A minister of “the Crown” is and is constantly referred to as a servant of the Crown.”

As we all know, Sierra Leone was originally a settled Colony in 1787. By Act of the then British Parliament 47 Geo III c 44 the Colony of Sierra Leone became vested in the Crown. Subsequently certain territories adjacent to the Colony of Sierra Leone became known as the Colony and Protectorate of Sierra Leone. The Colony and the Protectorate of Sierra Leone remained possessions of the British Crown until 27<sup>th</sup> April, 1961, when she achieved



independence as a sovereign state with Her Majesty the Queen as Queen of Sierra Leone and Head of the State of Sierra Leone. As Queen of the State of Sierra Leone she had a legal personality within the state of Sierra Leone. She ruled through Her agents - the Governor-General, the Prime Minister, Ministers, other officials, public servants and others. This, of course, was done by way of Orders-in-Council, Letters Patent and Royal Instructions.

I need hardly add that before 1961 the first taste this territory had of some kind of constitutional authority was in 1951. This autonomy was further strengthened by the 1958 Constitution by which some measure of self-government was granted to the Colony and Protectorate of Sierra Leone.

Up to 27th April, 1961, allegiance continued to be owed to His or Her Majesty the King or Queen of England. Thereafter allegiance was owed to Her Majesty the Queen in her capacity as Queen of Sierra Leone. I have earlier set out the provisions of sections 26, 27, 28 and 57 of the 1961 Constitution to that effect. The Governor-General and Government were still, after the 27th April, 1961, responsible to Her Majesty the Queen in Her capacity as Queen of Sierra Leone.

As previously stated, the State of Sierra Leone was established on the 27th April 1961. It is a well established rule of law that a state acts through agents or other organs. In my considered opinion the Queen as Head of the State of Sierra Leone, the Government of Sierra Leone, the Governor-general, the Prime Minister, Ministers, public servants, Government Departments and others were as from 27th April 1961, all agents of the State of Sierra Leone.

It is, in my view, for this very reason that as late as 1965 rule 5(3) of the first Schedule to the Criminal Procedure Act 1965 (Act No 32 of 1965) provided that:

“property belonging to or provided for the use of any government establishment, service, or department, may be laid as the property of Her Majesty the Queen.”

I have earlier on drawn attention to the definition of the expressions “public office”, “public officer” and “the public service” both on and after 27th April 1961 and also on and after the 19th April 1971. It is my considered view that public officers of whom the appellant was one, were up to 19th April 1971 officers in the service of the Crown meaning of course Her Majesty the Queen of the State of Sierra Leone - in a civil capacity.

It is beyond argument that His or Her Majesty the King or Queen, as the case may be, has up to 19th April 1971 been a person in law, a corporate body politic within the State of Sierra Leone with Sovereign rights, powers, obligations and other arrangements over and within the territory over which She ruled which powers include that of employment in the public service.

With regard to the broad question of employment by the Crown, Sir Owen Dixon, Chief Justice of Australia in the case of *Attorney-General for New South Wales v Perpetual Trustees Company Ltd* (1952) 85 CLR 237 at p 249 puts that matter this way:

“There always have been employments under the Crown where the commanded direction of the Crown given immediately or immediately is the sole measure of duty of the servant. When the right of control exists in the Crown and extends to the manner in which the employment is carried out, that is, to the doing of the work, the test of the relation of master and servant is satisfied”.

This passage was quoted with approval by Denning LJ, as he then was, in the case of *Inland Revenue Commissioners v Hambrook* (1956) 2 QB 641 at p 666.

Learned counsel for the appellant contended for the proposition that although the State of Sierra Leone is a legal person for the purposes of international law, it is not a legal person for the purposes of our municipal law. In my opinion this proposition cannot be sustained.



With regard to the question of the legal personality of the State Sir John Salmond in his classical work on *Jurisprudence* (1937 9<sup>th</sup> Edition) at page 443 summed it up this way:

“Of all forms of human society the greatest is the State. It owns immense wealth and performs functions which in number and importance are beyond those of all other associations. Is it, then recognised by the law as a person? Is the commonwealth a body politic and corporate, endowed with legal personality, and having as its members all those who owe allegiance to it and are entitled to its protection? This is the conclusion to which a developed system of law might be expected to attain. But the Law of England has chosen another way. The community of the realm is an organised society, but it is no person or body corporate. It owns no property, is capable of no acts and has no rights nor any liabilities imputed to it by the law. Whatever is said to the contrary is figure of speech, and not the literal language of our law. How, then, are we to account for this failure of the law to make so obvious and useful an application of the conception of incorporation and legal personality? Why has it failed to recognise and express in this way the unity and permanence of the State? The explanation is to be found in the existence of Monarchical government. The real personality of the King, who is the Head of the State, has rendered superfluous any attribution of fictitious personality to the State itself.”

I concede at once that Sir John Salmond was applying the Fictional theory. There are other theories relating to this question of the personality of the State like the Real and the Concession theories. I shall not attempt to enter in this judgement into these purely metaphysical doctrines.

The same work I have just quoted went on to say at page 470 that:

“The present position of English law as regards groups as seen in the action of Courts is that there is no definite theory of group-existence, that technical incorporation under statute or by royal grant usually leads the Courts to treat the group as a “person”. With rights, duties and obligations distinct from the actual human-beings who may control it, for whose benefit it exists, or who maybe its agents, but that neither the fact of technical incorporation nor its absence will altogether prevent the Courts from recognising social realities and, in appropriate cases, recognising that what is technically a separate legal and fictitious person may be really a mere disguise for a particular human individual, or group of individuals, or that associated human being may have as a group powers, interests, and wishes peculiar to the “group” and distinct from those of the individual members, although no formal incorporation has taken place and that these real facts must be different devices be dealt with as of significance for the law as material facts with which it has to deal in pursuit of justice, and do not owe their existence to any legal fiction or concession.”

Authorities agree on certain essential attributes of a State – population, territory, a government clothed with a monopoly of force for the preservation of peace and order and having a plenitude of authority within its territory independent of external control. This must of necessity be the case because the State must first and foremost be a legal entity within its own territory either expressly or otherwise before it can give effect to such legal personality outside that territory for and on behalf of that territory.

I shall now consider the question, namely, what is the whole tenor and effect of the 1971 Constitution, as amended, on this whole state of affairs? I postulate the following propositions:

1. It creates on a proper construction a Republican State which, as I have already pointed out, is “the State of Sierra Leone.”



2. That such a State of Sierra Leone has all the attributes of a sovereign state in our municipal law.

For example, it has under its Constitution, on a proper construction, full and complete legislative, judicial and executive power. It has a separate and distinct government, which as I have already pointed out, has now been personified. It has coercive authority legally supreme over any individual or group within its territory. This is the power called sovereignty. The 1971 Constitution provides for the fundamental purpose and end of any political Society - which the territory of Sierra Leone is - amongst which are the defence against external force and the maintenance of law and order within its territory. In this regard, let me say without the slightest hesitation, that I share the jurisprudential view that as a general principle of law there is a distinction between the State and Government. The purpose of the distinction, in my considered opinion, is to emphasise this limitation of the State upon the Government, namely, that the Government in the execution of the duties assigned to it must pay proper regard to the ends for which the State exists. I also share the view that once the idea of the State as Sovereign is accepted, which I considered to be the position here, our municipal law which include the 1971 Constitution as amended, can be no other thing than the will of the State. It follows therefore, in my considered opinion, that the state of the Republic of Sierra Leone had, and has always had, the legal personality to impose that will within the context of our municipal law on every inhabitant of the territory of Sierra Leone.

3. That the State of Sierra Leone in the execution of these duties must of necessity act through agents.

Such agents include the President and the Government. Hence the legal personification of Government under section 4 of the Interpretation Act 1971. Such personification does not in my view detract from the fact that the State of Sierra Leone is a legal entity which in law completely became vested, as from the 19<sup>th</sup> April, 1971 with all existing rights, liabilities and obligations of Her Majesty the Queen, these rights, liabilities and obligations due to and from public officers. Section 16 of the Constitution (Consequential Provisions) Act 1971 clearly says so. It states:

- (1) All rights, liabilities and obligations of
  - (a) Her Majesty the Queen or the Governor-General, in respect, or in right of the Government of Sierra Leone, and
  - (b) the Government of Sierra Leone and public officers on behalf of the Government of Sierra Leone, shall on and after the commencement of the Constitution be the rights, liabilities and obligations of the State.
- (2) In this section, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise”.

Having regard to all that I have said I am of the opinion that the territory of Sierra Leone is and had been since 27<sup>th</sup> April, 1961 a State and since 19<sup>th</sup> April 1971 has been a legal entity in our municipal law.

It follows therefore, that if any property is vested in any of the agents of the State, for example the President or the Government, that property is held by that agent for and on behalf of the State and therefore that property can properly be laid in the name of the State. Equally so, if a person is in the employment of an agent of the State eg, the Government, it follows that that person is in the employment of the State.

In my judgement therefore, at all times material to this appeal the appellant was a public officer in the employment of the State of Sierra Leone and it was therefore proper for the Particulars of Offence of the indictment to describe the appellant as a clerk or servant of the



State of Sierra Leone. This ingredient was clearly proved at the trial. I therefore find no merit in this aspect of the appeal.

The next question is: were the relevant Personal Emolument Vouchers, as well as the respective sums of money alleged to have been stolen, the property of the State of Sierra Leone? Learned counsel for the appellant argued with some degree of conviction that from the combined effect of the provisions of section 7 of the Constitution and the Interpretation Act 1971 those Personal Emolument Vouchers as well as the relevant sums of money in question should have been laid in the Particulars of Offence as being property of the Government of Sierra Leone and not in the name of the State of Sierra Leone. He argued further that since that was not done the offences of which the appellant was convicted and sentenced were not offences known to our municipal laws. With respect to Mr N D Tejan-Cole I think all he was trying to urge on us in his able argument was that because of those alleged defects the indictment was bad or defective. This must be the case because as learned counsel quite rightly conceded in the course of his arguments, both the offences of falsification of accounts and larceny as a clerk or servant were offences known to our municipal law, at all times material to the indictment. In my view what learned counsel for the appellant was trying to canvass was that, in effect, the particulars as laid did not support the offences in question on the grounds I have already stated above.

Section 7 of the Constitution (Consequential Provisions) Act 1971 is of relevance to the question just posed. It reads:

"Property. 7(1) Without prejudice to the generality of section 9 all property which immediately before the date of commencement of the Constitution was held by the Crown or by some other body or person (not being an authority of the Government of Sierra Leone) on behalf of or in trust for the Crown shall on that date by virtue of this subsection and without further assurance vest in the President and be held by, on behalf of, or as the case may be, the like trusts for the benefit of the Government of Sierra Leone; and all property which immediately before the date aforesaid was held by an authority of the Government of Sierra Leone on behalf of or in trust for the Crown shall be held by that authority on behalf of, or as the case may be on the like trusts for the benefit of, the Government of Sierra Leone.

References to the Crown in subsection (2) are references to the Crown in right of the Government of Sierra Leone and that sub-section shall, with necessary modifications, arising out of contract or other arrangement as it applies in relation to property."

In my considered view this section is complementary to s 16 of that same Act. This provision was necessary *ex abundanti cautela* and for administrative convenience. The President in law holds these public properties as an agent for and on behalf of the State of Sierra Leone.

This however, does not, in my considered opinion, deprive the State of Sierra Leone as a legal person one title of its proprietary rights over all public properties or monies provided by Parliament for its public service or use. I think it is for this very reason that Parliament did not repeal rule 5(3) of the Criminal Procedure Rules contained in the First Schedule to the Criminal Procedure Act 1965 (Act No 32 of 1965).

By virtue of the Laws (Adaptation) Act 1972 (Act No 29 of 1972) which was, amongst other things, an adaptation and modification exercise regarding the municipal law of the State of Sierra Leone, this particular Rule was adapted. Originally it read:

"Property belonging to or provided for the use of any Government establishment, service or department may be laid as the property of Her Majesty the Queen."



Section 7 of the Laws (Adaptation) Act 1972 which came into force on 18<sup>th</sup> April 1972 now provides inter alia that for the expression "Her Majesty the Queen" there shall be substituted for the expression the "Government of Sierra Leone" or "the State" as the context requires. Let me here again mention that the offences were alleged to have been committed in August, September and October 1972. I need hardly add that by the 1972/73 Appropriation Act 1972 the monies provided for expenditure during the period in question were, as the Act itself stated for the services of Sierra Leone.

In view of the brief legal historical sketch I have already given of our constitutional development I see nothing wrong in any sense in this context to substitute for the expression "Her Majesty the Queen" the expression "the State".

I must here and now make one point quite clear. I am not saying that in every criminal case involving public property that property must necessarily be laid in "the State" in every charge, information or indictment. What I am saying is that taking into consideration the whole tenor of our legislation as it stood in 1972 and at present, such property can be laid either in the name of the State of Sierra Leone" or in "the Government " or in "the President," as the case may be.

In view of the foregoing I hold that the property in the relevant Personal Emolument Vouchers as well as the various sums alleged to have been stolen by the appellant was well and properly laid in each case in the name of the State of Sierra Leone.

There is no necessity for me to go into Ground (vi) of the Grounds of Appeal. Suffice it to say that I find no merit in it.

For all these reasons I would dismiss this appeal.

Reported by Glenna Thompson