

ROGERS v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Hon Mr Justice Ken E O During JA, Hon Mr Justice S C E Warne JA, Hon Mr Justice S M F Kutubu JA, 22 November 1979

[1] **Criminal Law and Procedure – Public order – Publication of false report likely to injure reputation of the Government – Necessity to prove report was false – Report unintelligible in absence of innuendo – Publication of an unintelligible report could not be an offence – Public Order Act 1965 s 32(3)**

[2] **Words and Phrases – “To publish” – Public Order Act 1965 s 37**

In September 1976 the appellant published a news item in *The Times* newspaper which referred, inter alia, to the sale of a Presidential Lodge refurbished by government monies and occupied by ‘Shak’ to the Sierra Leone government for Le98,000, and questioning why the President did not stay in State House. The appellant was arraigned before Marcus Cole J and convicted on charge of publishing a false report which was likely to injure the reputation of the Government of Sierra Leone contrary to section 32(3) of the Public Order Act 1965. No innuendo was alleged in the indictment on which the appellant was convicted.

Held, per Ken During JA, allowing the appeal and quashing the conviction:

1. It was necessary for the prosecution to prove that the report was false. Apart from setting out the paragraphs of publication in the indictment, the indictment ought to have contained statements and innuendoes necessary to render the report intelligible and it would then have been the duty of the trial judge to consider whether the innuendoes were capable in law of being applicable. The newspaper report was not intelligible without any innuendo. In fact the witnesses called by the prosecution to establish that the report was false agreed in the court below under cross examination by counsel for the defence that reading the report as a whole it did not make sense.
2. It was not sufficient for the prosecution to establish that the report may be false but to prove that it is in fact false. It is not for the defence to prove that the report is not false. The prosecution had the opportunity to apply for amendment of the indictment at any time during the trial stating innuendoes, but did not do so. It is inconceivable that Parliament would have made it an offence to publish an unintelligible report.
3. The prosecution failed to prove that the appellant published or caused a false report to become known or likely to become known to any other person than himself or that the appellant authorised publication to any other person or persons. The prosecution should have lead evidence to show how the report got to the President.

Legislation referred to

Public Order Act No 46 of 1965 ss 32(3), (5), 37

Appeal

This was an appeal by Lamin Bockari Rogers against conviction on a charge of publishing a false report likely to injure the reputation of the Government of Sierra Leone contrary to s 32(3) of the Public Order Act 1965. The facts appear sufficiently in the following judgment.

KEN DURING JA: The appellant was arraigned before Marcus Cole J, as he then was, sitting alone without a jury and was convicted on charge of publishing a false report which is

likely to injure the reputation of the Government of Sierra Leone contrary to section 32(3) of the Public Order Act No 46 of 1965. The particulars of offence read as follows:

“that Lamin Bockari Rogers on September 1976 at Freetown in the Western Area of the State of Sierra Leone published a false report which is likely to injure the reputation of the Government of Sierra Leone in the form of a news item in the weekly publication, to wit The Times; which contained the following false report.

“A Presidential Lodge for Le98,000 sold to Sierra Leone after expansion expenses had been incurred by Government?” The known Cur rat Presidential Lodge was built and occupied by Shak has been sold to the Sierra Leone Government for Le98,000. It is also gratifying to know that the sale was affected after the Sierra Leone Government had undertaken expansion of this Lodge expense for Presidential needs. Why did the President not stay in State House? This is where our Ex-Colonial Governors Lodged and ... to meet the High Standards. I think this is a serious measure of waste to the taxpayers of this country; this is waste, run State House and a Private Lodge for the President. The President in his capacity as Landlord has been receiving rental allowances for this lodge and after expansion.”

No innuendo was alleged in the indictment on which the appellant was convicted.

Section 32(3) of the Public Order Act No 46 of 1965 reads as follows:

“Any person who publishes any false statement, rumour or report which is likely to injure the credit or reputation of Sierra Leone or the Government shall be guilty of an offence and liable on conviction to fine not exceeding three hundred Leones or to imprisonment for a term not exceeding twelve months or both.”

Section 32(5) of the Act states:

“It is no defence to a charge under this section that the person charged did not know or did not have reason to believe that the statement rumour or report was false, unless he proves that before he communicated such statement, rumour or report he took reasonable measure to verify the accuracy of the statement, rumour or report.”

Under Section 37, the interpretation section of the Act:

“to publish” includes – (a) with reference to spoken words or audible sounds, to speak such words or make such sounds in the hearing of another person; (b) in all other cases to cause directly or indirectly the printing, painting, effigy or other means by which the defamatory, seditious or false matter is conveyed to be so dealt with either by exhibition, reading, recitation, description delivery or otherwise, as that the defamatory seditious or false meaning thereof becomes known to any person (including the class of person or persons whom the defamatory seditious or false matter may be understood to refer to).

The prosecution must prove that the report is false, that the appellant published or caused the false report to become known or likely to become known to any person other than himself or that the appellant authorised the publication thereof to another person or persons. In this case the prosecution alleged that the words complained of applied to the government of Sierra Leone.

In the particulars of the indictment it is stated that:

“A Presidential Lodge for Le98,000 sold to Sierra Leone after expansion had been incurred by Government? The known Cur rat Presidential Lodge was built and occupied by Shak has been sold to the Sierra Leone Government for Le98 000.”

As I have already stated above the prosecution must prove that the report was false. Apart from setting out the paragraphs of publication in the indictment in my view the indictment ought to

have contained statements and innuendoes necessary to render the report intelligible and it would then have been the duty of the trial judge to consider whether firstly in law the innuendoes are capable in law to be applicable.

In my view reading the alleged report without any innuendo it could not be said it is intelligible. In fact the witnesses called by the prosecution to establish that the report was false agreed in the court below under cross examination by counsel for the defence that reading the report as a whole it did not make sense.

Mr Barber, the Registrar General for Sierra Leone, a witness for the prosecution in his evidence agreed that an innuendo was necessary under cross-examination if the report should make sense. In this connection I would refer to the evidence of Cecil Lionel Williams under cross examination by counsel for the defence who said inter alia:

"I have read the article in court, there is no mention of a house at King Harman Road in that article. There is no mention in the article of a house owned by the President at King Harman Road." "I cannot say where that Presidential Lodge is. I accept that the Presidential Lodge can be any where in the world. I cannot say from the 1st paragraph where Presidential Lodge is situated. I cannot also say what Government incurred any expansion expenses." ...

"2nd para: 'The known Cur rat Presidential Lodge which was built and occupied by Shak has been sold to the Sierra Leone Government for Le98,000.' "This paragraph does not state who sold it."

"The known Cur rat Presidential Lodge" makes no sense to me." ...

"The paragraphs which tell about buying and selling do not make sense to me."

In his address in the court below learned counsel for the prosecution is reported to have said:

"Says prosecution led evidence that the matter contained in the said publication Exhibits B & C is that the Government bought the Presidential Lodge built and occupied by Shaki allowing for printing and typographical error for Le98,000 after Government incurred expansion expenses in respect of the said lodge Exhibits B & C."

There was no mention of the word "Shaki" in the indictment nor was there an innuendo in the indictment that the word "Shak" should be understood to mean "Shaki". There was no innuendo to assist the trial judge to come to a decision as to where the Presidential Lodge must be understood to be situated. In my view the prosecution could have greatly assisted the trial judge had innuendoes been alleged and then the trial judge could have been in a position to consider whether the innuendoes are capable in law to be understood as alleged by the prosecution and consider also whether in fact the words should be understood as alleged in the innuendoes. There was no mention of any house at King Harman Road in the alleged report. It is not sufficient for the prosecution to establish that the report may be false but to prove that it is in fact false. It is not for the defence to prove that the report is not false. The prosecution had the opportunity to apply for amendment of the indictment at any time during the trial stating innuendoes, but did not do so. It is inconceivable that Parliament would have made it an offence to publish an unintelligible report.

It was contended by appellant's counsel in the court below and in this court that the prosecution failed to prove publication to warrant conviction on the charge against him.

Dealing with the question of publication the learned trial judge in his judgement said inter alia:

"Indeed the evidence reveals that the President got the publication of the Times Newspaper dated 7th September, 1976. The question arises how did he get it?"

The accused in his statement Exhibit 'A' which is not challenged said inter alia:

"I am Editor of the Times and weekly newspaper in Sierra Leone. I published the article relating to the present charge."

To my mind the accused by admitting that he published the article the subject-matter of the charge, he is in effect admitting that he so dealt with it in a manner as that the false meaning becomes harmful to the person for whom it was intended.

With respect to the learned trial judge in the absence of evidence as to how the report got to His Excellency he ought not to come to such a conclusion.

In my view when the appellant said he "published" he was not necessarily saying that he had in mind the interpretation of "to publish" in the Act or that he knew what "to publish" meant under the Act. In my view the prosecution failed to prove that the appellant published or caused a false report to become known or likely to become known to any other person than himself or that the appellant authorised publication to any other person or persons.

One could think of the case of a writer of a book with fictitious characters who locks his script in his drawer and someone not authorised by him breaks it and takes out the script and leaves the same somewhere where it would be accessible to others or publishes the same to others. Should he the writer without more be convicted under the section? One would expect the prosecution to lead evidence to show that he caused such script to become known or likely to become known to any other person than himself if the writer is charged with publishing under the section.

In my view the prosecution should have led evidence as to how the report got to His Excellency. After listening to the arguments advanced by learned counsel for the appellant in this court; which were advanced with clarity, learned counsel for the state with candour told us that she cannot support the conviction.

In my view the submission by counsel for the defence that the prosecution did not make out a case to answer should have been upheld by the trial judge. I would allow the appeal, quash the conviction and enter a verdict of not guilty and if the fine of Le150 has been paid by the appellant, order that it be returned to the appellant.

Reported by Anthony P Kinnear and Glenna Thompson