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IN THE COURT OF APPEAL OF SIERRA LEONE

CR.APP.18/87 & CR. APP. 46/87

BETWEEN:

WILLIAM HARVEY THIELE EDMONDSON
AHMAD MOFADI - APPELLANTS

AND

THE STATE - RESPONDENT

CORAM:

Hon. Mr. Justice E.C. Thompson-Davis - J.S.C
Hon. Mr. Justice M.O. Adophy - J.A.
Hon. Mr. Justice A.B. Timbo - J.A.

S.A.J. Pratt, Esq., for the Appellant
D.P.P. for the State

JUDGMENT DELIVERED 6/2/01

THOMPSON-DAVIS, JSC:- The Appellant was on June 15, 1987 convicted by the High Court holden at Freetown, Mr. Justice N.D. Alhadi presiding, on fourteen counts of conspiring to defraud and sentenced to a fine of Le.1000 or six months imprisonment on each count, the terms of imprisonment to run consecutively, and the fines to be paid cumulatively.

I have been able to extract the following facts for the case, from the judgment of the trial court. The prosecution have alleged that Aureol Trading Investment Co, Ltd. a Company incorporated under the laws of Sierra Leone as consumers unlawfully purchased 900 gallons of kerosene and 900 galls of petrol from Shell (S.L.) Ltd. under invoice No.89353 of July 1, 1986, the company then unlawfully sold the said quantity of kerosene and petrol at a profit; to companies and persons with rights to purchase petroleum qua customers; and that the Appellant and some know persons together with some others who were unknown conspired together to carry out this act, thus depriving companies and persons as might be caused loss.

There is no doubt whatsoever that the gravamen of the Respondent's case is that Aureol Trading & Investment Company caused a breach in the law by buying petroleum products and selling them at a price over and above the controlled price, that their agreement had the tendency to frustrate the aims interior or purpose of the states.

At page 182 of the Records line 6 the learned judge in his judgment wrote:

"The prosecution's case that by the unlawful purchasing by Aureol Trading Investment Co. Ltd. of various quantities of petroleum products from Shell (S.L.) Ltd. they thereby caused economic loss to persons and companies by depriving them of their rights to purchase the same products to persons and companies at a price in excess of the regulated price.

That by the various acts of the accused persons it could be inferred that they had a purpose common between them to bring about this evil consequence. The unlawful purpose complained of is that by virtue of Rule 30 & 31 of the Petroleum Rules Cap. 236 it is provided that petroleum (that is dangerous petroleum) should not be kept for use or for sale in certain quantities without a store licence. That under Rule 31 Class C licence should be contained to keep petroleum in quantity exceeding two hundred gallons without a store licence. That having so brought these products, they resold them at a price far in excess of the Government regulated price. That this Company was selling at the price of Le.35.50 per gallon of petrol, and Le.37.30 per gallon of diesel oil when the controlled price for these products were Le.50 per gallon for petrol, and Le.28 per kerosene.

That Shell (S.L.) Ltd. were selling to its customers at a discount of 80 cents per gallon with free transportation from Shell to the premises of the customers; except that there is no discount for consumers, but there is still transportation."

It is quite clear from this passage from the judgment, that the prosecution in the Court below was saying that the Appellants and others agreed to sell price controlled goods (petroleum) at a price in excess of the permitted price.

The learned judge in his judgment relied on the presumption that the Appellants had breach Rules 30 and 31 of the Petroleum Rules Cap. 236 of the Laws of Sierra Leone. The Appellants were not charged with contravening these offences, and they were not mentioned at all in the Indictment, nor even were the words of the Statute followed in any of the several charges.

I think it is pertinent for me to say that in a case of Conspiracy the actual victims of the conspiracy need not be called by the prosecution but sufficient particularities must be given in the charge or by the evidence adduced to enable

the accused person and a Jury to know the nature of the charge. The alleged victims must be sufficiently described to be identified.

The learned judge also stated in his judgment that:-

“From the acts and activities of the 1st, 3^d and 4th accused (the Appellants herein) there is manifest evidence on which one can safely and reasonably infer an agreement between them to bring about their evil result. It is reasonable to infer from their conduct in the whole petroleum transaction that they were perpetrating a diabolical scheme by fraudulent and dishonest devise to cause economic suffering on the petroleum consuming public by depriving them of their right to purchase petroleum qua customers of Shell as to how and when they so desire.

The 1st and 4th accused were actively employed in procuring purchases and to facilitate the purchasing of the products by Aureol from Shell. Whilst the 3rd sat peacefully in his office disposing of those products at exorbitant price.”

Now the agreement complained about by the prosecution must be of a specific nature known to the law, it is a matter of judgment of opinion than of obvious law. The prosecution in the court below was saying that the Appellants and others agreed to sell price – controlled goods (petroleum) at a price in excess of the permitted prices.

The appellant has on the other hand, later applied to this court that the Indictment discloses no offence known to the laws of Sierra Leone. His amended grounds of Appeal read: (1) That the Indictment with a several particulars of offence discloses no offence known to the laws of Sierra Leone.

- (a) “The offence stated as ‘Conspiracy to defraud’ is based, according to the ‘Particulars of Offence’ on conspiracy “by the unlawful purchasing by Amal Trading and Investment Company Limited, a Company incorporated in Sierra Leone Limited and unlawful selling the same &c &c &c.” Such Particulars expressly indicate contractual relationship between two separate corporate personalities, and the offence of conspiracy has not yet been extended to embrace such contractual relationships. Further,

the said 'Particulars' indicate the gravamen of the offence in the context of 'unlawful purchasing' as 'consumers' a classification created by Shell for its own internal organisation, and not recognised by any laws of Sierra Leone.

- (b) The learned trial judge based his conviction of the Appellant (and others) on the applicability of certain statutes and statutory instruments, to wit, Rule 30 and 31 of the Petroleum Rules made under Cap. 236, and The Control of Goods Act, Cap. 228, (vide page 182, lines 6 et seq) which do not support the existence of any offence as laid in the 'Particulars', and which said laws were nowhere mentioned in the Indictment, either expressly or even by implication."

It is wrong for a judge to add to the criminal law, or punish a person whether or not getting in agreement with others to do any acts which are most prohibited by a statute or common law. Furthermore the conduct of the Appellants shows no trace of illegality, dishonesty, fraud or deception.

Superintendent of Police and Second in Command to the Chief Police Officer Western Area Mr. Seth Amadofor who was called by the prosecution said under cross-examination

"..... my investigations also revealed that Aureol Trading Company paid for such petroleum product on each of those invoices (Ex. BB-OO). I received no complaints from Shell regarding the payment for those consignments. My investigations did not reveal anything out of the ordinary in the Books of Shell Co."

The question now is How did the purchasing and selling of these petroleum products by Aureol Trading Company become unlawful? Were such purchasing or selling prohibited by a Statute? As I said earlier on "to effect objects prohibited by a Statute it is sufficient to follow the words of the Statute which had been breach in any charge brought against the person accused". I find no such reference in this matter.

Having said all this I must say that I do not agree with learned counsel that the Indictment does not disclose any offence known to the laws of Sierra Leone; it does, but one is bound to say that the facts relied on do not prove the offence as charged. I must say that it is not necessary to consider the other ground of appeal.

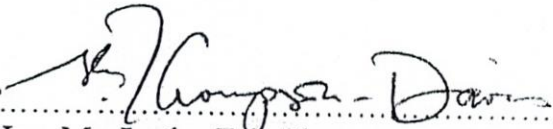
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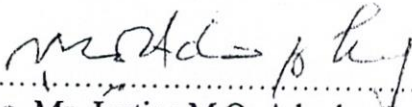
The appeal is upheld.

The conviction and sentence are set aside, and if the appellant has paid any of the fines imposed on him such fines are to be refunded to him accordingly.


(Sgd)


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Hon. Mr. Justice E.C. Thompson-Davis, J.S.C.

I Agree


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Hon. Mr. Justice M.O. Adophy, J. A.

I Agree


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Hon. Mr. Justice A.B. Timbo, J.A.