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Cr. App. 2/2002

**IN THE COURT OF APPEAL OF SIERRA LEONE**

BETWEEN:

THE STATE – **APPELLANT**

AND

TOMMY SESAY – **RESPONDENT**

CORAM:

**HON MR JUSTICE M. E. TOLLA THOMPSON J A**
**HON MR JUSTICE G. GELAGA KING J A**
**HON MRS JUSTICE PATRICIA MACAULAY J A**

G. J. Sowei, Esq, with him, P.C.M. Sowa, Esq., for the State.
A. B. Lansana Esq., for the respondent

**JUDGEMENT DELIVERED ON THE 10TH DAY OF DECEMBER 2002**

**HON MR JUSTICE G. GELAGA KING, J. A.:** On the 18th of November last, after counsel for the State had argued his grounds of appeal, we decided not to call on the respondent to reply. We there and then dismissed the appeal and reserved judgement in order to give our reasons. We now do so.

To appreciate the raison d'être for the short shrift I shall now set out the grounds of appeal, some of which are rather novel, in extenso:

"1. That the learned trial judge did not sufficiently consider or at all the ingredients of the offence of larceny in a dwelling house contrary to section 13 (a) of the Larceny Act, 1916.

2. That the learned trial judge failed to sufficiently consider or at all the question of insanity raised against the complainant, Alfred Theophilus Morgan.

3. That the learned trial judge erred in law in holding that the charge of larceny in a dwelling house contrary to section 13 (a) of the Larceny Act, 1916, against the respondent is bad for duplicity.

4. That the learned trial judge erred in law in substituting the High Court, the trial court in its criminal jurisdiction, with the incompetent sittings of a mystic and thereby held herself bound by the findings of the mystic in connection with the innocence of the respondent and issues concerning the complainant.

5. That the verdict is unreasonable or cannot be supported having regard to the evidence."

Mr Sowei for the State, with the leave of the Court, argued grounds 2 and 4 together. Both grounds, in my judgement, are clearly frivolous and vexatious. With regard to ground 2, why should the trial judge consider any question of insanity, if at all, raised against the so-called complainant who apparently, was P.W.1? Was P.W.1 on trial? Was he the person charged in the indictment? Section 73 of the Criminal Procedure Act, No 32 of 1965, obliges the trial court only to consider the question of insanity only where it is given in evidence **that the person charged** was insane or not responsible for his action at the time the offence alleged was done. In the case of witnesses, be they complainant or not, it is trite to say that the duty of the tribunal is to evaluate their evidence adduced at the trial in the quest to decide whether the prosecution has proved its case beyond reasonable doubt.

As for ground 4, it is equally frivolous and, *a fortiori,* unintelligible and patently absurd. Who is this mystic? What is the meaning of the prosecutorial jargon "incompetent sittings of a mystic"? Where in her judgement did the learned trial judge hold herself "bound by the findings of the mystic in connection with the innocence of the respondent and issues concerning the complainant"? I have been unable to find any reference to a mystic in the whole of the record, let alone the judgement. It ought to have been obvious to the appellant that such a ground did not stand a scintilla of a chance of succeeding. As was said in **R. v. Taylor [1979] Crim. L. R. 649,** 'frivolous' must include a ground of appeal that could not possibly succeed in argument. I must here stress the need for counsel to prepare, carefully, concise and intelligible grounds of appeal and I deplore the time-wasting effect of ill-prepared and inaccurate grounds. I go further and emphasize that it is contrary to counsel's duty to put forward as a ground of appeal a sweeping and trumped-up attack on the judgement which is wholly unjustified. Vide **R. v Mason (1976) 62 Cr. App. R. 236.**

As regards ground 3, nowhere in the judgement did the judge hold that "the charge of larceny in a dwelling house contrary to section 13 (a) of the Larceny Act, 1916 against respondent is bad for duplicity". All the judge did was to comment on and criticize the charge as drafted, but without holding that it was bad for duplicity, and it is wrong and unfair to put words into the judge's mouth. I shall

refer to the relevant comment of the trial judge at page 69 lines 14 to 21 of the record. The judge had this to say:

> "Yet the prosecution in its wisdom had charged the accused on two situations in the count. The fact that they have stated in the particulars of the offence that the incidents took place on a date unknown between 1st and 31st of December 1998 is no legal basis for joining both incidents in one count. A charge of this nature must be one and only one incident and therefore its use is justified (stet) because the exact date is not known."

The basis on which the lower court found the respondent not guilty and consequently acquitted and discharged him is decidedly not on the ground of duplicity, as can be seen from the following extract from the judgement at p. 70 lines 6-11:

> "I cannot arrive at any other conclusion than that the accused received the items with the consent of the wife and when he took them to the Alphaman, who retained them, he did not intend to deprive the complainant permanently of them."

She concluded by stating quite clearly and unambiguously:

> "I find as a fact and in law that the accused did not intend to deprive the complainant permanently of the subject-matter of the indictment."

Duplicity was not mentioned by her and was not the ground on which she arrived at the decision to find the accused not guilty and acquit and discharge him.

In **R. v Singh [1973] Crim. L. R. 36** the practice of attributing to the judge statements he did not make is frowned upon. It behoves practitioners to bear in mind that where they are complaining of particular passages in a judgement, particulars, in accordance with this Court's rules, identifying the passages by reference to the record, should be given. This Court frowns on the somewhat novel and distasteful practice of extracting sentences from a judgement out of context if within context they cannot be the subject of criticism.

I now turn to grounds 1 and 5, which are certainly without any merit. The learned trial judge carefully and meticulously, sufficiently and adequately considered all the ingredients of the offence charged in the indictment. To contend otherwise in a ground of appeal can only have, as I stated supra, a time-wasting effect for which this Court will, in the interest of justice, not grant any indulgence, or show any tolerance. The appellant had applied for and been granted trial by judge alone and the judge laboriously reviewed her roles as both judge and jury, diligently and impartially evaluated the evidence of each and everyone of the witnesses and rightly came to the conclusion she did. She constantly reminded herself that it was for the prosecution to prove the case against the accused beyond reasonable doubt and that any such doubt will inure to the benefit of the accused.

For all the reasons I have given, this appeal, in my judgement, ought not to have been brought and we, therefore, did not hesitate in not calling on the respondent to reply and in summarily dismissing it.

Hon Mr Justice G. Gelaga King, J. A.

I agree

Hon Mr Justice M.E.T Thompson, J. A.

I agree

Hon Mrs Justice Patricia Macaulay, J.A.