

CR. APP. 7/88
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IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

RICHARD E. BARLAY }
TAMBA DUMBAR MATTURI } - **APPELLANTS**
GEORGE SAFFA AMARA (Decd.) }

AND

THE STATE - **RESPONDENT**

CORAM:

HON. JUSTICE DR. A. B. TIMBO - C. J.
HON. MR. JUSTICE M. O. ADOPHY - JSC.
HON. MR. JUSTICE N. D. ALHADI - J. A.

JUDGMENT DELIVERED ON THE 11th DAY OF *Jme* **2003**

TIMBO, C. J.

The appellants were charged on a two counts Indictment for:

- (1) Causing money to be paid to another by false pretences contrary to Regulation 40
(a) of the Public Economic emergency Regulations 1987 (P N No 25 of 1987) as
amended.

(2) Conspiracy to procure money to be paid by false pretences contrary to Regulation 44 of Public Emergency Regulations 1987.

Both offences were alleged to have been committed between the 15th day of February 1987 and 31st day of July 1987; and on the 15th day of April 1987 respectively.

All three appellants were found guilty on both counts by Wright J. (as she then was) and fined Le100,000 or 3 years imprisonment for Count 1 and Le100,000 or 3 years imprisonment for Count 2. The fines were cumulative and the sentences to run concurrently.

The first appellant was represented by Mr. Eke Ahmed Halloway while the second and third were represented by Mr. C. V. M. Campbell and later by Mr. Alusine S. Sesay. The 3rd appellant died before the commencement of the appeal proceedings.

I shall confine myself in this judgment to the ground of appeal, which I believe is common to all the appellants. This is frequently referred to as the omnibus ground. It states that "the judgment/verdict is unreasonable and cannot be supported having regard to the evidence." If the appellants succeed on this, then in my view, it will no longer be necessary to consider the other grounds.

The case for the prosecution was essentially one involving the supply of various spare parts by the Maisa Group of Companies of No. 8 Pultney Street Freetown up to the total amount of Le149,200 to the Ministry of National Development and Economic Planning for which the Government of Sierra Leone had made payment, but as was alleged by the prosecution the spare parts were never supplied.

What evidence did the State advance to support both counts 1 & 2?

I shall start by examining the evidence of the main prosecution witnesses in so far as such evidence is relevant. First, the evidence of P.W5. This is Mr. Thorpe, the former

Director of the then Road Transport Department. This witness outlined the procedure for the acquisition of new vehicles and also for the procurement and or purchase of spare parts for vehicles belonging to Government Departments. He stated the procedure briefly as follows: The vehicle is first submitted to the Road Transport Department for inspection. This is followed by the collection of the Pro forma invoices. When these have been obtained a request form is prepared by the relevant Ministry and is then handed to this witness for scrutiny and approval. After approval an L P O is prepared by the Ministry concerned. Finally, the L P O required the signature of the Ministry and the Minister of State, Finance.

It is important to note that this witness admitted that there were several Government Departments and Ministries which never complied with these procedural requirements to send their vehicles for inspection and also to register those vehicles that have been newly acquired. Specifically, the witness said the Ministry of Development and Economic Planning was one such Ministry which consistently failed to adhere to these procedures and observed further that State House was the biggest culprit in this regard. The practice of negotiating the procurement of spare parts by the Ministries themselves had gone on for ages and is common knowledge that even without the participation of R T. D. in such purchases by the Ministry of Finance, the Treasury and the Bank of Sierra Leone had always sanctioned such purchases or payments. The hold-ups and unending delays had led most Ministries and Departments into the practice of buying their spare parts direct themselves.

This practice though not strictly in conformity with procedure cannot constitute a criminal offence as such and certainly not the offence with which in my opinion, the appellants were charged.

Let me now turn to the mens rea of the offence in Count 1, which is the intention to defraud. It is trite law that to obtain a conviction for obtaining money by false pretences it must be established that the money was obtained by means of the pretence alleged - that is to say, the prosecution must prove that the alleged false pretence operated on the

mind of the person alleged to have been defrauded and induced him either wholly or partly to part with the money. See *R v Grail* [1944] 30 Cr. App. R. 81; *R v Sullivan* [1945] 30 Cr. App. R. 132; *Regina v Amadu Bunduka Chirm* Cr. App. 29/63; *Welham v D.P.P.* [1960] 2 W L R 66.

The prosecution tried to establish that the Maisa Group of Companies had no intention to supply the spare parts procured to the Government of Sierra Leone. For an offence to be committed, the mens rea must precede and or run in conjunction with the actus reus of that offence. In other words, what the prosecution must prove is that before or at the time they obtained the payment for the spare parts the Maisa Group had already formed the mens rea i.e. the intention not to supply and this, the appellants knew.

From the evidence of Amadu Bangura P. W. 7, i.e. an Accountant in the Ministry of Development and from the statement of the 1st Appellant it is manifest that contrary to Government regulations on procedure Ministries had inculcated the habit of completing all the necessary paper work thus creating the impression that the supply had already been made thereby causing payment to be effected to the supplier even though in actual fact no such supply had been received. Because of bad experiences in the past in dealing with Government Ministries suppliers had repeatedly refused to supply goods unless they had actually been paid. This was emphasised by the 1st Appellant in his statement when he said – “no business concern ever supply goods to our Ministry before payments are made. The practice had always been “payment before delivery.”

That being the case, it is difficult if not impossible for the prosecution to establish that before or at the time when payment was made to the Maisa Group of Companies they had no intention to supply.

In these circumstances, I therefore hold that the mens rea of the offence in count 1 had not been proved by the prosecution nor the actus reus in respect of all the appellants. The question whether or not to supply the spare parts rested entirely on the supplier Company and not the appellants.

On the second count of conspiracy, for a conspiracy charge to hold, the prosecution must prove that there was an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means – R. v Thompson. 50 Cr. App R 1.

Here, in my considered opinion all that the appellants were doing in signing those vouchers was to comply with the procedure prescribed by the Ministry for the procurement of the spare parts. They were simply executing their legitimate duties. Each person was doing exactly what he was authorized to do. The prosecution must prove that the alleged conspirators were acting in pursuance of a criminal purpose held in common between them and that each conspirator knew that there was in existence or coming into existence a scheme which went beyond the illegal act which he agreed to do.

To quote the exact words of Paull J in R v Griffiths and ors [1965] 2 All ER 448 (the "lime fraud" case)

"... in law all must join the one agreement, each with the others in order to constitute one conspiracy. They may join in at various times, each attaching himself to that agreement; any one of them may not know all the other parties, but only that there are other parties; any one of them may not know the full extent of the scheme to which he attaches himself; but what each must know is that there is coming into existence, or is in existence, a scheme which goes beyond the illegal act which he agrees to do" (at pp. 597,290).

In view of what I have said above, the appeals are bound to succeed and I so hold. The convictions are quashed and if any fines have been paid, they should be refunded.



HON. JUSTICE DR. A. B. TIMBO, C. J.

I agree *re/ce/aj* HON. MR. JUSTICE M. O. ADOPHY - JSC.
I agree HON. MR. JUSTICE N. D. ALHADI - J. A