

CR. APP 19/2003; 20/2003; 21/2003; 23/2003; 24/2003; 25/2003; 26/2003

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

JAMES TILLAY
MUSTAPHA CONTEH
DADDY KOROMA
AMARA KAMARA

}
}
}
}

APPELLANTS

ISSA SESAY
MUSTAPHA TURAY
PATRICK TUCKER

}
}
}

AND

THE STATE

RESPONDENT

CORAM:

HON. MR. JUSTICE J. KAMANDA, J. A (Presiding)
HON MR JUSTICE G. GELAGA KING, J. A
HON MRS JUSTICE S. BASH-TAQI, J. A.

I. F. Mansaray Esq, the Appellants
S. A. BAH Esq, for the State/Respondent

JUDGMENT DELIVERED ON TUESDAY 23RD DAY OF MAY 2006.

HON MRS JUSTICE S. BASH-TAQI, J.A -: This is an appeal from the Judgment of Hamilton, J. (as he then was) sitting at the High Court in Kenema against sentence.

The Appellants, on the 23rd day of October 2003, were convicted of conspiring together and with others unknown, to break into a shop belonging to a Mr. Ibrahim Khalil Basma, a businessman in Kenema, and of stealing therefrom, goods to the total value of Le18,000,000.00, the property of the said Ibrahim Khalil Basma.

The Appellants had been charged, on indictment, with the following offences, namely: .

- Count One: Conspiracy contrary to Law;
- Count Two: Larceny contrary to section 21 (1) of the Larceny Act of 1916.

All the Appellants pleaded not guilty. At the conclusion of the trial, the Jury unanimously found all the Appellants, save the 2nd, guilty of conspiracy, and all 7 Appellants guilty of Shop Breaking and Larceny. The 2nd Appellant was acquitted and discharged on the Conspiracy count. The Learned Trial Judge sentenced the Appellants to 12 years imprisonment in respect of the Conspiracy offence, and 14 years in respect of the Shop

Breaking and Larceny charge. He further ordered that the sentences were to run consecutively, that is say, that the Appellants, with the exception of the 2nd Appellant, are each to serve a period of 26 years imprisonment.

All the Appellants have now appealed to this Honourable Court against the sentences. At the commencement of his argument, Counsel for the Appellants, Mr. I. F. Mansaray, sought leave of the Court to abandon Ground 2 of the Grounds of Appeal, which was granted and Counsel proceeded to argue Ground 1, which reads:

"1. That the sentence was manifestly excessive."

Counsel for the Appellants submitted that the Learned Trial Judge did not consider mitigating factors which would have led to a considerable reduction of the sentences passed on the Appellants. He could not, however, refer the Court to any part of the Records of the proceedings ^{where} such mitigating circumstances were recorded.

Counsel submitted further that 5 of the Appellants, namely, the 1st, 2nd, 3rd, 5th, and 6th Appellants were first offenders, and that the Learned Trial Judge ought to have considered this as a mitigating factor which should have led to a reduction of the sentences with respect to these 5 Appellants.

He further submitted that, all the Appellants, except for the 1st Appellant, begged for mercy, a factor which the Trial Judge should have taken into consideration when passing the sentences. Counsel submitted that in the circumstances, he was now appealing to this Honourable Court to temper justice with mercy and reduce the sentences so that they run concurrently rather than consecutively.

With respect to the 4th and 7th Appellants who have previous convictions, Counsel relied on the discretion of the Court to do what seemed best in the circumstances.

Counsel for the State, Mr. S. A. Bah in his reply, submitted that he was relying on the Court's discretion ⁱⁿ the matter.

The Court has taken into account the submissions made by Counsel for the Appellants and for the State and having perused the records of the proceedings in the High Court, this Court is satisfied that the Learned Trial Judge applied the correct sentences allowed by law. However, since Counsel for the Appellants raised the point that some of the Appellants were first offenders, this is a factor which the Learned Trial Judge ought to have considered in passing sentence. We must point out however, that it is within the Judge's discretion to order that the sentences run concurrently or consecutively. However, in all the circumstances of the case, we have come to the conclusion that the appeals of the 1st, 2nd, 3rd, 5th, and 6th Appellants should be allowed, and that the sentences of 12 years and 14 years imprisonment should run concurrently instead of consecutively.

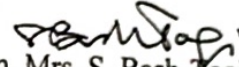
With respect to the 4th Appellant, the record states that he had three previous convictions, one for which he was sentenced to 14 years. This Court holds that his sentences of 12 years and 14 years should run consecutively.

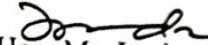
The appeals of the 4th Appellant, Amara Kamara and the 7th Appellant, Patrick Tucker, are accordingly dismissed.

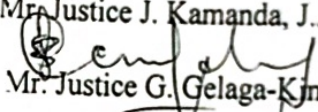
We order that the sentences for the 1st, 2nd, 3rd, 5th and 6th Appellants be set aside and the sentences of 12 years and 14 years run concurrently instead of consecutively.

I agree

I agree


Hon. Mrs. S. Bash-Taqi, J. A.


Hon. Mr. Justice J. Kamanda, J.A (P esiding)


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