CR APP 7/2000

IN THE COURT OF APPEAL OF SIERRA LEONE

SOLUKU JERMILL BOCKARIE - APPELLANT

AND

THE STATE - RESPONDENT

CORAM

Hon Mr Justice Bode Rhodes Vivour, JSC

Hon Mr Justice P.O. Hamilton,JA

Hon Mr Justice N.C. Browne-Marke,JA

Solicitors/ Counsel

R A Caesar Esq for the Appellant

S A Bah Esq for the Respondent

JUDGMENT DELIVERED ON THE DAY OF APRIL,2008

BROWNE-MARKE,JA.

INTRODUCTION

1. This is an appeal brought by way of Notice of Appeal dated August,2000 by the Appellant, SOLUKU JERMILL BOCKARIE against his conviction and sentence for the offence of Larceny contrary to Section 17(2)(a) of the Larceny Act,1916, by the High Court sitting in Freetown, The Hon Mr Justice S.A. ADEMOSU, presiding, on August,2000. The Notice contains five grounds of appeal. Later, another, three grounds were added; and in January this year, ground 9, was added on.

2. The grounds of appeal essentially relate to misdirections on the burden and standard of proof; failure to adequately consider the case presented by the Appellant; that the aggregate sum of money which the Appellant was convicted of stealing could not have been the property of the Government of Sierra Leone, in that it was money obtained from a Bank; that the Indictment was bad in law in that it did not charge the Appellant with stealing any particular sum of money between certain stated dates; and that the verdict was unreasonable and can not be supported having regard to the evidence.

THE TRIAL

3. On 25 August,1999 The Hon. Mr Justice L B O Nylander, High Court Judge, gave his consent in writing for the preferment of a one count Indictment for the offence of Larceny by Servant contrary to Section 17(1)(a) of the Larceny Act,1916 against the Appellant. He also Ordered that the Accused be arrested

by Warrant. On 26 August,1999 the Appellant appeared before the said Learned Judge; he was identified as the person named in the Indictment; and his date of trial was fixed for 17 September,1999.

3. The Indictment read as follows:

STATEMENT OF OFFENCE:

LARCENY CONTRARY TO SECTION 17(2)(a) of the Larceny Act 1916.

PARTICULARS OF OFFENCE

SOLUKU BOCKARIE on a day unknown between 1st and 30th June,1999 at Freetown in the Western Area of Sierra Leone, being Clerk or Servant to the Government of Sierra Leone stole the sum of Le294,433,411/00 from the said Government of Sierra Leone.

4. There is no indication in the Record, the number of witnesses listed at the back of the Indictment, but a perusal of pages 6-19 of the Record shows that there were about 10 additional witnesses, the respective summaries of whose evidence, appeared in these pages. The brevity of these summaries, (save for at least two, which were copies of statements obtained from these witnesses by the Police), apparently filed in pursuance of Section 188 of the Criminal Procedure Act,1965 when contrasted with the length of evidence led from these same witnesses, provides considerable food for thought as to whether the prosecution quite knew what its case was at its commencement, or whether it merely wished to 'ambush' the Defence. This practice, or rather 'ambush tactic' though not unlawful, in my judgment, detracts from the cohesiveness and consistency of the prosecution's case and has the tendency to way-lay the prosecution.

5. Though the trial date was fixed for 17 September,1999, the Record does not show that any proceedings were taken that day. The case was first mentioned for hearing on 21 September,1999 before the Hon Mr Justice M O TAJU-DEEN, now deceased. No plea was taken on this date, nor on the 9 other adjourned dates, until 2 March.2000 when the Appellant pleaded Not Guilty to the Indictment before the same Judge. The matter was again adjourned at the request of the prosecution to another date, and to other dates until 30 May,2000 when the said Judge noted at the bottom of Page 25 of the Record, that he was 'disabling himself from this case as from now.' No reasons for so doing were given. The case was adjourned to 8 June,2000.

6. On 8 October,1999 the then Attorney-General & Minister of Justice filed an Application pursuant to Section 144(2) of the Criminal Procedure Act,1965 for

7. On 8 June,2000 the Appellant appeared before The Hon Mr Justice S A ADEMOSU, then High Court Judge. The charge was again read over to the Appellant, and he pleaded Not Guilty to the same. The prosecution began leading evidence on that day. 14 witnesses in all were called by the prosecution. The prosecution closed its case on 8 August,2000. On 11 August,2000 after his rights had been explained to him, the Appellant elected to rely on his statement to the Police. He had no witnesses. The matter was adjourned for addresses. The then DPP addressed the Court on behalf of the prosecution on 17 August, 2000; and the Appellant's Counsel, R A CAESAR esq on 21 August,2000. Judgment was reserved for 30 August,2000 on which date it was delivered.

ISSUES

8. The first matter which has exercised my mind, is the charge in respect of which Mr Justice Nylander gave his consent on page 2 of the Record. The charge there is Section 17(1)(a) of the Larceny Act,1916. The Application for trial by Judge alone, also refers to Section 17(1)(a) of the same Act. The Indictment filed, and which appears on page 1 refers to Section 17(2)(a). The Judgment at page 133, also refers to Section 17(2)(a). At page 35 of the Record, the DPP applied for the Indictment to be amended so that 17(1)(a) should be read as 17(2)(a). The Application was granted. But no consequential amendments were made, so that the Order for Trial by Judge Alone which governed the conduct of the trial applied only to a trial for an offence under Section 17(1)(a). The question which arises here is, could the Appellant be lawfully convicted of an offence in respect of which no consent was given by a Judge, and in respect of which he had not been committed for trial, notwithstanding Section 148 of the CPA165? Also could he lawfully be tried by Judge alone, notwithstanding the absence of an Order authorizing him to be so tried in respect of the amended charge? If the answer to these questions is no, then it would seem the trial was a nullity.

THE CHARGE

9. Notwithstanding the query I have posed above, I propose to deal with the substance of the appeal. I shall start off with the charge. The charge refers to a lump sum of Le 294,433,411 /00 which the Appellant is alleged to have stolen on a day unknown between two days. As this is an aggregate amount, the question arises whether it is proper to charge the larceny of a lump sum in one count, or in other words, whether it is proper for the prosecution to bring a charge where there has been a general deficiency of monies. The subject

matter of the charge is the proceeds of the encashment of 35 cheques. On the evidence, it is clear that 24 of these cheques are dated 3 June,1999 and the remaining 11, 4 June,1999. Two of these cheques, GSL153945 - pages 263&264 of Volume II of the Record, and GSL153936 - pages 273&274 of the same volume, were encashed on 9 June,1999 by PW5 FRANCIS JOHNNY TOMA; and the others were encashed by PW6 ALLIE KHADAR on 8th, 9th, 10th, 11th, 14th, 18th, and 23rd June,1999 respectively - see pages 253 - 297 of the same volume. These cheques were drawn for specific amounts of money. Clearly, the offence of Larceny was committed on several days and not, as was canvassed by the Prosecution, and held by the Learned Trial Judge (LTJ) on a day unknown between two days. The substance of the prosecution's case, is not that the Appellant received these monies on a particular day, but on different days after the same had been collected by PW5 & PW6 respectively. The evidence led, was thus at variance with the charge.

10. Rule 3(1) of our **IIndictment Rules** which are to be found in the 1st **Schedule to the CPA,1965**, tells us that "....*where more than one offence is so charged....each offence shall be set out in the information or indictment in a separate paragraph called a count.*" **Archbold 35th** Edition tells us at ***paragraph 1738*** that "*It is not sufficient to prove a general deficiency of money; some specific sum must be proved to have been embezzled, in like manner as a larceny some article must be proved to have been stolen.*" In paragraph **1738** it is stated further that " *Where the Indictment contains only one count, charging the receipt of a gross sum on a particular day, and it appears in evidence that the money was received in different sums on different days , the prosecutor will be put to his election and must confine himself to one sum and one day.*" But if it had been the duty of the employee to render an account and hand over all monies received on a certain day, he could be charged with embezzling the whole amount on the day he was due to render such an account. This was certainly not the case here. It is stated further, that where it is possible to trace the individual items and to prove an embezzlement of individual property or money, it is undesirable to include them in a count alleging a general deficiency. **R v TOMLIN [1954] Vol. 2 All ER 272 , C.A.** is sufficient authority for this proposition of Law, though on the facts of that case, the individual amounts embezzled could not be traced There **PEARSON, J** stated at **page 274 para. A** "*Where separate offences can be charged in separate counts the court regards as improper an "omnibus" count in an indictment charging an aggregate of offences over a long period.*" The Court approved the reasoning along the same lines of **LYNSKEY,J in R v LAWSON [1952] Vol.I AllER 804 at page 808.**

11. **BLACKSTONE'S CRIMINAL PRACTICE 1992 Edition** also deals extensively with this issue under the rubric of *Duplicity and Quasi-Duplicity.* At Paragraph **D8.16 page 1134** the Editors state that "*if the evidence called at the trial in fact establishes more than one offence, then, subject to amendment of the indictment, if possible, the accused will be entitled to an acquittal, not because the count was bad, but because the prosecution have failed to prove him guilty of the precise offence charged in the count even though they may have proved him guilty of some other offence.*" In the instant case, the prosecution have alleged that a day unknown between two dates, the Appellant stole a specific amount of money, whilst the evidence led at the trial was to the effect that several amounts of money were stolen on different dates. It is not the case here as it was in **JEMMISON v PRIDDLE (1979) 69 Cr App R 83 at pp86-78** where **LORD WIDGERY in the QBD Div Ct** held that ".... what it means is this, that it is legitimate to charge in a single information one activity even though the activity may involve more than one act." There the activity was shooting deer without a gaming licence, and the issue was whether the firing of several shots by the Appellant was one activity or several activities. The instant case appears to me to sound more of Quasi-Duplicity than Duplicity simpliciter. Once evidence had been led from PW5 & 6, it is my considered opinion that the prosecution should have been called upon, if that were possible at that stage, to sever the Indictment into several counts, reflecting the dates the several cheques were encashed.

POINT NOT CANVASSED

12. I have noted that this point was not canvassed by the Defence at the trial, and it may be argued that that being the case, the Appellant may not have suffered any injustice, and that this Court should apply the proviso. I would be most willing to do so where the circumstances to so permit. But in order to do so, I should have to do considerable violence to our criminal jurisprudence, and I do not wish to embark on such a perilous course. It seems to me, that where the Court below went wrong, was in its focus on the Appellant's explanation of what he did with the proceeds of the cheques. It appears to me that the LTJ was put off by the allegations made by the Appellant in his statement to the police, and by Counsel in his cross-examination of the then Minister of Education, Dr Alpha Wurie, PW13, that some of the monies so received were passed on to him. In that statement, the Appellant had clearly admitted that the proceeds of the several cheques were indeed received by him, and that he disbursed the same in a particular manner. This was clearly criminal conduct of most reprehensible kind, coming as it did, so soon after the bloody rebel invasion of Freetown. But a Court of Law should not allow itself to be swayed by righteous indignation, but by sound principles of Law. The LTJ has considerable

experience in trying criminal cases, but he appears to have cast aside this reservoir of knowledge as a result of such indignation. His frequent references to the above allegation during his Judgment, provides evidence that his mind was greatly exercised by this apparent calumny, than by the propriety and efficacy of the prosecution's case.

BURDEN AND STANDARD OF PROOF

12. It led also to his summary dismissal of Defence Counsel's submissions on the burden and standard of proof. That the principle enshrined in **WOOLMINGTON** 's case applies to all criminal cases, is without doubt. It applies much more strongly, where the Judge is both Judge of Law and fact. The LTJ erroneously, in my view, confined that principle to cases of murder or manslaughter only at page 146 of the Record. The Sierra Leone cases confirming this principle are numerous, and I shall only cite those which have been reported: **HALL v R [1964-66] ALR SL 189; LABOR-JONES v R [1964-66] ALR SL 471; KOROMA v R [1964-66] ALR SL 542; BOB-JONES v R [1967-68] ALR SL 267; AMARA v R [1968-69] ALR SL 220; KARGBO v R [1968-69] ALR SL 354; SAHR BAMBAY Cr App 1/76 C.A** was unreported. All of these cases confirm that the legal burden of proof in a criminal case always rests on the prosecution, and that it never shifts; and that the burden lies on the prosecution to prove every element of the offence with which an accused person has been charged beyond a reasonable doubt. Could this Court hold that the prosecution in the Court below proved beyond a reasonable doubt that on a day unknown between the 1st and 30th day of June,1999, the Appellant stole the aggregate sum of Le294,433,411 /00? I opine not. The evidence points in the opposite direction. There is credible evidence that the Appellant did, in his capacity as an employee of the Government of Sierra Leone, receive the various amounts of money exhibited at pages 263-297 of Volume II of the Record. But rather unfortunately, he is not charged with the larceny of these individual amounts. I consider this omission a grave error on the part of the prosecuting authorities, and I consider it also rather unfortunate that right up to the end of the case, the error was not brought home to them, and thus rectified.

ARGUMENTS OF COUNSEL

13. I have read through the written submissions filed and presented by Counsel for the Appellant and for the Respondent respectively. I note that Counsel for the Respondent, in that written submission, has not seriously contested the issues raised by the Appellant. Nor did Counsel who appeared in this Court on behalf of the State. The Appellant argued further, that the money stolen was not the property of the Government of Sierra Leone, but that of the Government's Bank, the Bank of Sierra Leone, in that the monies were on the

several dates, collected from the Bank by PW5 & PW6, and brought to the Appellant in his office. That may be true where the person accused has not reduced the money, nor the valuable security, into his employer's possession through his own hands, or the hands of a co-employee. Here, the evidence clearly shows that whenever the cheques were encashed, the proceeds thereof were handed over to the Appellant by these two witnesses, and the same was misappropriated by the Appellant. Such conduct amounts to stealing the Government of Sierra Leone's money within the meaning of **Section 17(2)(a) of the Larceny Act,1916.** It proscribes stealing money "**entrusted to, or received or taken into possession by ….a person by virtue of his employment.**" Counsel also relied on the old case of **SOLOMON v R (1920-36) ALR SL 59.** There, the money alleged to have been stolen was never reduced into the possession of the accused person's employer. The money was paid over by Genet, at the accused person's behest, to his wife, who then paid the same over to one Betts. Though Solomon's employer was the eventual loser, since he had to repay Genet the money he had paid over to Solomon's wife, the facts of the case had stronger affinity with the offences of obtaining money by false pretences and fraudulent conversion of property, rather than with Larceny. Mr Justice Purcell's direction to the jury on the intent to defraud at page 62 LL15-17 bears this out.

CONCLUSION

14. Had it not been for the view I have taken in paras 11-12 above, and had this Court the power to sever the Indictment into its several parts as the evidence led at the trial so demands, I should have had no hesitation in holding that the money stolen belonged to the Government of Sierra Leone.

15. In the result, I hold that the Indictment as it stands, is insupportable in law, and cannot ground a conviction for Larceny under the Larceny Act,1916. I do not think this an appropriate case in which to apply the proviso. It follows that the Appellant's appeal is allowed. His conviction and sentence are SET ASIDE and an ACQUITTAL AND DISCHAGRE substituted in their stead.

.....

Hon Mr Justice N. C. BROWNE-MARKE
Justice of Appeal
April,2008

CR.APP.7/2000

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

BETWEEN:

SOLUKU JERMILL BOCKARIE - APPELLANT

AND

THE STATE - RESPONDENT

**CORAM**
Hon. Mr. Justice Bode Rhodes Vivour, JSC
Hon. Mr. Justice P.O. Hamilton, J.A.
Hon. Mr. Justice N.C. Browne-Marke, J.A.

**Solicitors**
R. A. Caesar Esq. for Appellant
S.A. Bah Esq. for Respondent

**JUDGMENT DELIVERED ON DAY OF APRIL, 2008**
**HAMILTON, J.A.**

I have had the opportunity of reading before hand the draft judgment of my learned brother Honourable Justice N.C. Browne-Marke and the dissenting judgment of my learned brother Honourable Justice Bode Rhodes-Vivour.

I agree entirely with the conclusion reached and the reasons therefore of my learned brother Honourable Justice N.C. Browne-Marke. I have nothing useful to add to his conclusion. I do concur with the decision reached by him therefore that the appeal be allowed, the conviction and sentence set aside and an acquittal and discharge be substituted.

Hon. Justice P.O. Hamilton
**Justice of the Court of Appeal**

C.R. APP 7/2000

## DISSENTING JUDGMENT OF HON. JUSTICE BODE RHODES-VIVOUR JSC

I have had the benefit of reading in draft the judgment of my learned brother, Hon. Justice N. Browne-Marke and regret that after full consideration of the issues involved in this appeal, I find myself unable to agree with his conclusions. At the trial fourteen prosecution witnesses gave evidence. Evidence led showed that the appellant stole the sum of Le294,423,411/00. The said sums were salaries for teachers in the Southern Province for the period April and May, 1999 and at the time the offence was committed the appellant was the Permanent Secretary in the Ministry of Education, Youths and Sports.

After the prosecution closed its case this is what transpired.

**DEFENCE**

Accused is informed of his rights. He elects to rely on his statement to the Police and calling no witness.

The appellant did not give evidence or call any witness in defence of the charge, rather he relied on his statement to the Police. The contents of this statement is alarming. It reads in part:

> *"…… From time to time I gave cheques to Allie Khadar who was a ward to me to encash the said cheques at the Bank of Sierra Leone to meet the Ministries demand. In this way the total value of the thirty five Government of Sierra Leone cheques drawn in favour of teachers salaries in Bo for the months of April and May 1999 was*

*expended. Like I had always said such unauthodox arrangements are never recorded not witnessed and are built on confidence between the parties, i.e. the Minister and I. I now regret that I trusted him only to find that he was using me as a scape goat to divert attention away from himself.....".*

PW5 is Francis Johnny Toma. In his sworn testimony in Court he said he gave 35 cheques to the appellant. PW6 is Allie Khadar. He agrees with the statement above, that the appellant gave him cheques to encash and he encashed them and handed the money to the appellant.

The case for the appellant is that he stole the said sum for the then Minister of Education, Youths and Sports. He and his Counsel apparently forgot that stealing/larceny is a strict liability offence. The appellant has to answer for his acts. That is why the learned trial judge in a well considered judgment found as follows:

*"In my judgment and on the authorities earlier cited I hold that the accused bears full responsibility for all the proceeds of the thirty five cheques he encashed through PW5, Toma and PW6, Allie Khadar. Without any iota of doubt in my mind I am satisfied enough to say that the guilt of the accused has been proved by the prosecution beyond any shadow of doubt. For all the forgoing reasons I find the accused guilty as charged.....".*

The reasoning and conclusion above is based on the clearest and most compelling evidence. The appellant was found guilty and sentenced to seven years imprisonment.

According to my learned brother the appellant was charged with stealing a lump sum of Le294,423,411/00 on a day unknown between two days. Since the subject matter of the charge is the proceeds of the encashment of 35 cheques, there ought to be 35 counts. The evidence led, was thus at variance with the charge.

The *ipsissima verba* of the charge reads:

**STATEMENT OF OFFENCE**

LARCENY CONTRARY TO SECTION 17(2)(a) of the Larceny Act 1916

**PARTICULARS OF OFFENCE**

SOLOKOR JEHMIL BOCKARI on a day unknown between 1st and 30th June 1999 at Freetown in the Western Area of Sierra Leone being Clerk or Servant to the Government of Sierra Leone stole the sum of Le294,423,411/00 from the said Government of Sierra Leone.

The well laid down position of the law is that charge(s) for any offence(s) may be joined in the same indictment if those charge(s) are founded on the same facts or from or are a part of a series of offences of the same or similar character. That is to say all charge(s) of the same character can be lumped together. See

*R v. Taylor 1925 18Cr. App R.P. 25*, *R v. Clarke 1925 18 Cr. App R.P. 166*. In this case PW6 was instructed by the appellant to encash the said cheques. He encashed them and gave the money to the appellant. In my view if there were 35 counts the evidence to prove them would be the same or similar in

character. In the instant case the charge is not even defective, but assuming that it is defective, the law is that a defective charge could in appropriate cases be cured. It is settled law that a defect in a charge which does not render it bad in law cannot nullify a conviction so long as an offence known to law is disclosed in the charge. In the Particulars of the offence the appellant as servant to the Government of Sierra Leone, which he was as Permanent Secretary stole the sum of Le294,423,410. An offence known to law is very clearly disclosed in the charge. The second rule to apply in criminal appeal is to consider whether the conviction is right. To my mind the conviction is right.

In *R v Thompson 1911-1913 ALL ER Rep Ext 1394 Hearing date 20 December 1913*

The indictment charged the appellant with having on divers days between February 1909 and 4th October 1910 unlawfully had carnal knowledge of his daughter. A second count charged him with a similar offence on divers days between 4th October 1910 and the end of February 1913.

Objection was taken to the indictment on the ground that the two counts referred to were bad as charging more than one offence in fact an indefinite number of offences in each count. The objection was not sustained and the appellant was convicted.

On appeal it was held that the indictment was irregular in form ….. but that as the appellant had not been embarrassed or prejudiced in any way, the Court would act under and give effect to section 4 of the Criminal Appeal Act 1907, and dismiss the appeal.

In *Maurice Cohen 1909 3 Cr App R.P 180*

The Court came to the conclusion that an amendment tc an indictment ought not to have been made but there being no miscarriage of justice the *proviso* to section 4 of the Criminal Appeal Act 1907 came into operation, and their Lordships dismissed the appeal.

In *John Harris 1910 5 Cr App R. 285*

The decision was based upon the view that the indictment was bad, and the Court held, assuming that the indictment was bad, that the case came within the *proviso* of section 4(1) of the Criminal Appeal Act 1907, inasmuch as the jury had convicted on the clearest evidence and there was no appeal on the merits, and they found it impossible to say that any actual miscarriage of justice was occasioned.

*In Rex v Asiegbu 3 WACA P.142*

Both counts were open to objection on grounds of duplicity. The appeal was dismissed. The reasoning of the West African Court of Appeal was that since no objection was made in the trial Court to the charge, the Court of Appeal is therefore satisfied that the appellant was not prejudiced in any way and that no miscarriage of justice has resulted.

The old form of procedure was for the accused persen not to object to a bad/defective charge at the trial Court. Allow the trial to proceed to conclusion and be convicted, then raise the issue of the charge being bad and then get off on appeal. Several accused persons got off on appeal, despite clear evidence. This prompted Parliament in England to promulgate the *proviso* of section 4 of the Criminal Appeal Act 1907. The intention of

Parliament was that no purely technical point should succeed. The test is whether the appellant was prejudiced in the trial.

Once the appellant was not embarrassed or prejudiced and no miscarriage of justice had occurred the appeal would be dismissed. In this case, the appellant pleaded not guilty to the charge, and was represented by Counsel right through the trial by Mr. R.A. Caesar. If the appellant was in any way prejudiced or embarrassed by the way in which the charge was framed objection could and should have been taken. See *Rex v. N. Asiegbu (supra)*

There was no objection to the charge rather the acts constituting the offence were admitted. The facts proved established the guilt of the appellant beyond reasonable doubt. The appellant was convicted on the clearest and most compelling evidence.

Miscarriage of justice is a failure of justice. It means failure on the part of the Court to do justice. It is justice misapplied, misappreciated. It is an ill conduct on the part of the Court which amounts to injustice. By no stretch of imagination can it be said that there was miscarriage of justice in the trial Court.

One of the objects of Section 4(1) of the Criminal Appeal Act 1907 is to prevent the quashing of a conviction upon a mere technicality which had caused no embarrassment or prejudice. It reads:

> *"Provided that the Court may notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour*

*of the appellant, dismiss the appeal, if they consider that no substantial miscarriage of justice has actually occurred".*

Allowing this appeal by my learned brother is on a mere technicality and very peripheral. As long ago as 1907 the Courts have been departing from technicalities to doing substantial justice. Indeed in the Commonwealth of which Sierra Leone is a proud member, Courts of Law are more concerned with doing substantial justice. Courts of Law and Equity ought not to follow arid legalism or technicalities to the extent that justice in the matter is not done to the parties. Rules of Court must at all times be interpreted to prevent undue adherence to technicalities. Reliance on mere technicality to defeat the cause of justice will at all times be rebuffed by the Courts because for quite a long time now they are enjoined to do substantial justice. The days of technicality which sadly my learned brother relied on to allow the appeal are now in the remote past.

I must digress at this stage to say a thing or two about Counsel.

A Counsel retained to conduct a case has general authority to decide in his discretion how to conduct the case. Once a Counsel is retained, the client is bound by his conduct of the case. If the client is dissatisfied with the way Counsel conducts the case he can withdraw the case from him. It follows that a Counsel who has been briefed and has accepted the brief and indicated to the Court that he has instructions to conduct the case, he is to conduct the case in the manner proper to him. He can even compromise the case. He can submit to judgment. He could filibuster if he considers it necessary for the conduct of his case. The only thing open to the client is to withdraw

instructions from the Counsel, or if Counsel was negligent, sue in tort for professional negligence. Such are the powers but such are also the risks.

On 8/6/2000 the charge was read and explained to the appellant (see page 26 of the Record of Appeal). The appellant pleaded not guilty without a qualification of his plea that the charge as couched was ambiguous or unintelligible. Mr. R.A. Caesar represented the appellant throughout the trial. At no time did the appellant or his Counsel complain that he did not understand the charge. Rather his defence was his statement which is abundantly clear that the appellant stole the sum of Le294,423,411/00. When the charge as laid which avers that the appellant stole the sum of Le294,423,411/00 is read against the background that the appellant offered no sworn testimony, and no objection to the charge as couched, then any complaint of the charge being defective becomes hollow. To my mind is a mere storm in a teaport.

If the appellant was in some confusion as to the real purport of the charge his Counsel, Mr. R.A. Caesar should have so indicated by way of objection. He did not do so. That is not all. Learned Counsel for the appellant neither raised the issue during trial nor at final address. This to my mind clearly shows that the appellant was not misled, embarrassed or prejudiced by the charge and no miscarriage of justice occurred. On page 36 of the Record of Appeal after the trial judge crdered amendment of the charge *inter alia* to read Le294,423,411/00 and not Le175,093,000/00, this is what Mr. R.A. Caesar, learned Counsel for the appellant had to say:

*"I have no objection to the application for this amendment being sought but only to warn that I hope other amendments would not be made that might embarrass".*

Learned Counsel knew when his client could be embarrassed. As far as he was concerned the appellant was never embarrassed. It is clear the appellant was never embarrassed. The main and dominant issue in this appeal is whether the charge was sustainable. The charge is the substance of this appeal as quite rightly pointed out by my learned brother. Other points raised are trivial, not worth commenting on as anything said cannot improve this appeal.

The position of the law then and now is that since the appellant was not misled by the charge, no embarrassment or prejudice had been suffered, and there had not been a substantial miscarriage of justice the appeal would be dismissed. This is an appeal which is dismally devoid of merit. I hereby dismiss the appeal for lack of substance.

B. Rhodes-Vivour

.....

**HON. JUSTICE BODE RHODES-VIVOUR**
**JUSTICE OF THE SUPREME COURT**

*REF: BRV/HJ*