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IN THE COURT OF APPEAL OF SIERRA LEONE

CR. APP. 31 AND 32/2006

MATHEW MUSTAPHA MANNAH)
MOHAMED SYLVANUS KOROMA) - APPELLANTS

AND

THE STATE - RESPONDENT

CORAM

Hon. Mr. Justice P.O. Hamilton JA (Presiding)
Hon. Mr. Justice N.C. Browne-Marke JA
Hon. Mr. Justice S.A. Ademosu JA

SOLICITORS

E.N.B. Ngakui Esq.,	-	for 1st Appellant
M.A. Beloku Sesay Esq.	-	for 2nd Appellant
Ms. Glenna Thompson	-	for Respondent

Judgment delivered on the 6th day of Dec-b- 2008.

This is an Appeal by the Appellants herein Mathew Mustapha Mannah and Mohamed Sylvanus Koroma against their conviction and sentence by the High Court in Freetown presided over by Honourable Akiiki Kiiza J, on a four (4) Count Indictment of the offence of CORRUPTION contrary to Section 8(1)(a) of the Anti-Corruption Act,

No. 1 of 2000 (As Amended). The Appellants wee convicted and sentenced on the 30th August, 2006.

This Appeal is brought pursuant to Section 57(b) and 57(c) of the Courts Act, 1965 (as amended by Section 6 of Act No. 21 of 1966) and the powers of the Court of Appeal on the hearing of such an Appeal are fully spelt out in Section S. 58(1), 58(2), 58(3), 58(4) and Sections 59(1), 59(2) and 59(5) of the Courts Act supra. I will not reproduce these sections on this Judgment.

The trial was held at the Freetown High Court as a result of the Anti Corruption Act No.1 of 2000 a (as amended) under which proceedings were taken:

The Indictment which was preferred pursuant to the provisions of Section 38 of the Anti-Corruption Act No.1 of 2000 (as Amended) and filed reads as follows:-

COUNT 1

STATEMENT OF OFFENCE:

Soliciting an advantage, contrary to Section 8(1)(a) of the Anti-Corruption Act, 2000 (as amended).

PARTICULARS OF OFFENCE:

MATHEW MUSTAPHA MANNAH on an unknown date between 1st July, 2001 and 31st July, 2001 at Port Loko District in Sierra Leone, did solicit an advantage of Le.500,000.00 (Five Hundred Thousand

Leones) one male goat, one bag of rice and five (5) gallons of palm oil from one Idrissa Kanu, as an inducement to perform an act as a public officer.

COUNT 2

STATEMENT OF OFFENCE:

Soliciting an advantage, contrary to Section 8(1)(a) of the Anti-Corruption Act, 2000 (as amended).

PARTICULARS OF OFFENCE:

MATHEW MUSTAPHA MANNAH on an unknown date between 1st July, 2000 and 31st July, 2000 at Port Loko District in Sierra Leone did solicit an advantage of Le.500,000.00 (Five hundred thousand Leones) one male goat, one bag rice and five (5) gallons of palm oil from one Amadu Orab Thullah, as an inducement to perform an act as a public officer.

COUNT 3

STATEMENT OF OFFENCE:

Soliciting an advantage, contrary to Section 8(1)(a) of the Anti-Corruption Act, 2000 (as amended).

PARTICULARS OF OFFENCE:

MOHAMED SYLVANUS KOROMA on 25th January 2002 at Port Loko District in Sierra Leon, did solicit an advantage of Le.500,000.00 (Five hundred thousand Leones), one male goat, one bag rice and

five gallons of palm oil from one Idrissa Kanu as an inducement to perform an act as a public officer.

COUNT 4

STATEMENT OF OFFENCE:

Accepting an advantage contrary to Section 8(1)(a) of the Anti-Corruption Act, 2000 (as amended).

PARTICULARS OF OFFENCE:

MOHAMED SYLVANUS KOROMA on a day unknown between 1st September, 2001 and 31st January, 2002, at Port Loko District in Sierra Leone did accept an advantage of Le.200,000.00 (Two hundred thousand Leones) from AMADU ORAB THULLA as an inducement to perform an act as a public officer.

The trial properly commenced on 21st June, 2006 and the learned Trial Judge in his recorded Judgment on 31st August, 2006 found 1st Appellant guilty on Counts 1 and 2 and 2nd Appellant guilty on Counts 3 and 4 and sentence the 1st Appellant to three months imprisonment on Counts 1 and 2 to run concurrently and the second Appellant to three months imprisonment on Counts 3 and 4 to run concurrently.

It is against these verdicts of Guilty and sentence that both Appellants have appealed to this Court on the following grounds of Appeal.

(1) The Judgment is unreasonable and cannot be supported having regard to the evidence before the Court.

(2) The Learned Trial Judge erred in allowing the Prosecution not to call a witness listed on the back of an indictment either to examine him or merely to tender him for cross examination by Defence Counsel.

(3) That the Judgment is against the weight of evidence.

In my humble opinion grounds one (1) and (3) can be conveniently entertained under one ground as being ground one (1).

GROUND (1)(One)

The Judgment is unreasonable and cannot be supported having regard to the evidence before the Court. When an appeal is anchored on this general and over used ground of appeal in criminal cases it is inviting the Court of Appeal to in other words review and evaluate the evidence that was adduced before the trial Court.

I have fully perused the record of proceedings especially the judgment of the learned Trial Judge. However, it is for me to note that there are very strict limitations on the power of the Court of Appeal to set aside or reverse the decision of the trial Court on issues of fact. The Court of Appeal cannot embark on a re-evaluation of the evidence and thereby arrive at a different conclusion from that of the trial Court because an appellate Court is not permitted to inquire into disputes but to inquire into the ways the disputes have been tried and settled. Moreover, to reverse the decision of the trial Court which is based on its assessment of the quality and credibility of witnesses

who testifies before it, the appellate Court must not only entertain doubts that the decision of the trial Court is right but must also be convinced that it is wrong. Findings of fact made by a trial Court are entitled to respect by an appellate Court, particularly when it is clear that the trial Court had performed its primary duty of evaluating and ascribing probative values to the evidence before it properly.

It is not every minor error committed by a trial Court that will result in its judgment being set aside. It must be demonstrated that the error was substantial and formed part of the basis of the decision complained of and that it resulted in a miscarriage of justice **(Emphasis Mine).**

On the basis of the above exposition and more so the underlined emphasis let me turn to the merits of the arguments in this appeal.

The main argument by both Counsels for the appellants in support of ground one is that the evidence of P.W.2, P.W. 3, P.W.4 and P.W.5 were full of inconsistencies which rendered their evidence unreliable since they were filled with many contradictions and discrepancies which the Learned Trial Judge ought to have fully considered in detail.
This could be distilled thus – whether there are material contradictions in the prosecutions' case which ought to have been resolved in favour of the appellants and the failure of which occasioned a miscarriage of justice.

In considering the inconsistencies the Learned Trial Judge without in any way considering or showing some the inconsistencies in the prosecutions' evidence however slight, minor or major they may be said at Page 44 of the records:

> *"I have carefully reviewed all the evidence and have critically analysed the demeanours of the prosecution witnesses on this point and I find P.W.3, P.W.4 and P.W.5 reliable witnesses …….. there were minor inconsistencies are material ones in the prosecution witness testimonies. These could safely be ignored by the Court……..."*

What are those minor inconsistencies? With due respect to the Learned Trial Judge the contradictions ought to have been treated seriatim and pointed out in some detail by the Learned Trial Judge and see whether or not they ought to have contradictions whether minor or not to see whether or not they go to the material issues of the case alleged against the appellants since a material point in the prosecutions' case does create a doubt in their case that the Appellants are entitled to benefit from. The Learned Trial Judge ought to have considered them however minor before dismissing them as not being material ones in the prosecutions' case. However it must be re-emphasised that it is not every minor contradictions that is fatal to the prosecutions' case but it must be pointed out clearly especially in a case of this nature where the Learned Trial Judge is both Judge of Law and fact. For the reasons above given, I shall resolve this issue in favour of the appellants.

GROUND 2(Two)

Both Appellants have argued that the Learned Trial Judge erred Judge erred, in allowing the prosecution not to call witness whose name appeared at the back of the Indictment, either for him to be examined in-chief, or for him to be tendered for cross-examination. The witness was Abdulai Gbla II. The Record does not state why it is he was not called. The prosecution did not ask for him to be dispensed with before closing its case; not did the Defence request that he be brought to Court, for the purpose of him being examined in-chief, or for him to be cross-examined. The defence at the trial had a right to make this request,

It is true that the prosecution has a duty to call all of the witnesses whose names are listed at the back of the Indictment; but failing to do so does not necessarily invalidate a trial; nor does it render a conviction null and void. *ARCHBOLD 35TH Edition t paragraph 1373* states *"that the prosecution must have in Court the witnesses whose names appear at the back of the Indictment, but there is a wide discretion in the prosecution whether they should call them and, having called them, either to examine them or merely to tender then for cross-examination."* The duty of the prosecution is also emphasized in *HALSBURY'S LAWS OF ENGLAND* 2nd Edition at page 164. Unless there are exceptional reasons for not doing so, Counsel for the prosecution should call all witnesses listed at the back of the Indictment so that the Defendant may have an opportunity of cross-examining them. The situation contemplated in the citations from *ARCHBOLD* and *HALSBURY'S LAWS OF ENGLAND,* is one

where there has been a preliminary investigation, and an Indictment has been filed in the Crown Court based on a committal. That was he position in *KELFALA v R (1937-49).* The Learned Trial Judge may have been wrong to say, for the reasons he gave, that he was not bound by the decision of an Appellate tribunal. He said that was an old decision, and had no relevance in the present age. The point is that that decision was irrelevant in the present age, because, here the witnesses whose names appeared on the back of the Indictment had not testified at a preliminary investigation. Their names wee listed at the back of the Indictment as persons whose summaries of evidence would be served on the defence in accordance with provisions of the Anti-Corruption Act, 2000, and who would testify at the trial.

Failure to call Mr. Gbla at the trial did not therefore invalidate the trial, as no request was made by the defence for him to be called.

One point I would like to highlight at this penultimate stage of this judgment is that in reading the records it is clear that Pa Roke Sesay was the one who demanded the Le.500,000.00 (Five hundred thousand Leones) and the food items which he received as Regent Chief (Acting Paramount Chief). By virtue of Sections 8(3) and 8(4) of the Anti-Corruption Act 2000 such are fully covered as gifts under native law and custom especially when issues of the settlement of bush land disputes and it is a recognized customary practice by Paramount Chiefs and Regent Chiefs (Acting Paramount Chiefs). It is not surprising that the prosecution did not call Pa Roke Sesay to testify in this matter as this would have put an end to the matter.

In conclusion of this Judgment it must be made clear "extract of findings or extract of evidence" in Anti-Corruption investigations does not form part of the evidence led in Court. Therefore Counsel for 2nd Appellant's submission of juxtaposing the evidence of witnesses in Court and the summary or extract of evidence is untenable and completely irrelevant.

I therefore hold that the conviction of both appellants is unsafe and unsatisfactory. The appeal is therefore allowed and the conviction quashed.

I Order that a verdict of acquittal and discharge be entered in the case of each appellant.

HON. JUSTICE P.O. HAMILTON J.A.

I agree:..... 5/12/08 .....

Hon. Justice N.C. Browne-Marke J.A.

I agree:.....

Hon. Justice S.A. Ademosu J.A.