

CR.APP 5/2011

IN THE COURT OF APPEAL OF SIERRA LEONE

Between:

SARAH FINDA BENDU	-	Appellant
And		
THE STATE	-	Respondent

Counsels:

E.E.C. SHEARS-MOSES Esq. and S. KABBA-KOROMA Esq. for the Appellant

C. T. MANSTEBO Esq. and M. SAMBA (Ms) for the Respondent

CORAM:

Hon. Mr. Justice P. O. Hamilton Jsc.

Hon. Mrs. Justice V. M. Solomon J.A.

Hon. Mr. Justice A. S. Fofanah J.

RULING DELIVERED THIS 11th DAY OF AUGUST 2011 BY HONOURABLE MRS. JUSTICE V. M. SOLOMON J. A.

RULING

This is an appeal against the Judgment of the Honourable Mr. Justice N. C. Brown-Marke J.A. and this Court had given directions on the filing of synopsis by both parties. Both Counsels complied with the directions and Tuesday 2nd August 2011 was fixed for oral hearing (if any). Mr. Manstebo of Counsel for the Respondent raised in his synopsis a preliminary issue for determination by this Court to wit the determination of Section 28(3) of the Constitution of Sierra Leone 1991 (hereinafter called "The Constitution"). He submitted that the issue is central to the Appellant's appeal and it deals with the deprivation of her rights under Section 23 (7) of the Constitution. He submitted that this is a matter for the Supreme Court and the Appellant did not raise it in the High Court during the trial. He submitted that

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this preliminary issue is to be determined by the Supreme Court before the hearing of the substantive appeal in this Court. He relied on the provision of Section 28(3) of the Constitution that in any proceedings when any question arises as to the contravention of any of the provisions of Sections 16 to 27 inclusive, then if a party requests the Court has an obligation to refer it to the Supreme Court by virtue of its powers provided in Section 124 (2) of the Constitution and stay the proceedings. Counsel for the Respondent submitted that in page 2 of the synopsis the Appellant quoted verbatim the aforesaid section of the Constitution and this raises a matter for interpretation and so it constitutes determination by way of a case to be referred to the Supreme Court. He submitted that this Court is empowered under Section 129 of the Constitution but does not have jurisdiction to interpret the Constitution. That power is given to the Supreme Court by virtue of Section 124 of the Constitution and no other Court. Mr. Shears-Moses of Counsel for the Appellant submitted there is a misunderstanding of the Appellant's synopsis. The Appellant has not complained that her constitutional human right has been infringed but has appealed against the judgment of the Trial Judge and his statements. He submitted that the Appellant has complained about the Judge realizing what the Constitution provides, and having accepted it, contradicted himself by proceeding to convict the Appellant for something which he said was not a criminal offence before the Anti Corruption Act 2008 (hereinafter called "The Act"). Counsel referred the Court of Page 166 of the Records at paragraph 18 thereof. He submitted it was the Trial Judge

who raised the said section of the Constitution and his reasoning continued into paragraph 19 lines 11-19 at page 167 of the Records. He submitted that there is a difference between a complaint on the proceedings and the Judge's Judgment. According to Counsel there is no complaint about the interpretation of the Constitution in respect of Section 23(7). The Appellant is appealing on a statement made by the Trial Judge in his Judgment and not on whether her right has been violated by the indictment. This he submitted would have been dealt with during the trial and the Trial Judge displayed full knowledge and understanding of the provisions of Section 23(7) of the Constitution in his ruling on a No-Case submission and the Judgment. It does not now arise. He finally submitted that no constitutional issue has been raised and urged the Court to proceed with the hearing of the substantive appeal.

Having listened to both Counsels the question is to be asked whether the issue raised by the Appellant is on the denial of her constitutional right in respect of Section 23(7) of the Constitution or is it a reference of a statement made by the Trial Judge in his judgement? The Appellant's appeal is clear and in ordinary language, she has not in anyway canvassed the point of any denial of her right under the Constitution. Her complaint is that Section 23(7) of the Constitution was referred to just as the Trial Judge did and proceeded to explain how the Judge accepted that the particular offence was not a crime before the Act, but in contradiction went on to convict. This Court has to be careful in making reference to the Supreme Court. The matter to be referred must be a serious one calling for the intervention of that Court to interpret a Section of the

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Constitution. There is nothing for the Supreme Court to interpret in this case as no one is in doubt. I shall refer to the case of Sc: 2/2009 THE STATE V ADRIAN JOSCELYNE FISHER (unreported), the Supreme Court had a reference by way of case stated to it from the High Court. It is observed that Counsel for the Respondent was representing the State in that action. In the ruling of 12th June 2009 at paragraph 5 the questions referred to it were stated.

The Supreme Court after considering the submissions warned that such references should not be "treated lightly". Neither the High Court nor any other court should refer every question of law affecting the Constitution to it. The reference must be related to interpretation and enforcement of a provision of the Constitution and must be issues on Law. The Supreme Court in its wisdom decided that it was not a constitutional issue ~~to~~ refer to it. I shall now refer to paragraph 15 of the Ruling of Tejan-Jalloh CJ which reads thus:

"15 This Court has pointed out on numerous occasions that a reference should not be treated lightly and referring issues to the Supreme Court does not relieve the High or any Court for that matter of the responsibility of the issues itself. It is not the purpose of section 124 of the Constitution that the High Court (and I would add any other Court) should refer every question of law - contentious or not - affecting the Constitution. The reference should be on matters relating to the enforcement or interpretation of any provision of the Constitution and the issues must be of law. I

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agree that in section 124 the auxiliary verb "shall" is used which in legislative drafting denotes compulsion. However, I must make clear that the question of reference must be referable to and/or connected with, section 124(1) (a) and (b) of the constitution. This can be illustrated by two contrasting decisions of the Supreme Court."

The Appellant in her submission of No-Case has all through out stated that the offences which she is charged with are not an offence at the time it was committed. I refer to pages 66 to 72 of the Records. The Trial Judge did address that in his Ruling on the No-Case Submission at pages 93 to 102 of the Records. I shall refer particularly to paragraph 22 at page 101 of the Records which reads thus:

"22. I now turn to MR SHEARS-MOSES's submission on behalf of the 2nd accused. I have dealt with all the legal points canvassed by him, in dealing with Mr WRIGHT's submission above. Infact, at some ~~stage~~ ^{UWS} stage, whilst reading through Mr Wright's submission, it appeared he was arguing on behalf of both accused persons. But I suppose, he argued in this manner on the basis that for him to succeed in his fight for the 1st accused, he must first demolish the case against the 2nd accused. Mr SHEARS-MOSES has argued forcefully, that the decision to procure the tow trucks was not taken by his client alone, but by a Committee; that she did not even sign the contract with Mabella; that was done by PW3; and that in any event, in April, 2008 Section 48 was not yet part of our Laws, so that failure to follow the Rules of

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procurement laid down in the Public Procurement Act, 2004 and in its 2006 Rules was not punishable as a criminal offence. The answer to this is that, notwithstanding the breach of these Rules, if the tow trucks which were eventually delivered by the 1st accused, where in accordance with the specification prepared by PW2, and had secured the approval of PW4, there would hardly have been need for a criminal trial...."

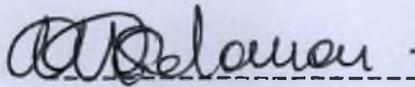
He went on at paragraph 19 of his Judgment at page 167 of the Records and it reads thus:

"19.Willfully Failing to comply with procurement Laws was not punishable by fine or imprisonment prior to 2008, but was clearly proscribed by the Public Procurement Act, 2004 and the 2006 Regulations. It was clearly a wrongful act. What in my respectful opinion the 2008 has done, is to prescribe a punishment for the contravention of the 2004 Act and the 2006 Regulations."

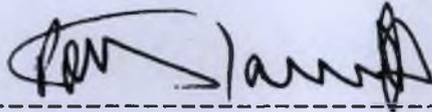
To my mind the issue of whether the offence committed is an offence has been dealt with by the Trial Judge. The Trial Judge in his judgment had addressed this at paragraph 18 of the Judgment at page 166 of the Records. He made reference to the case of ADEL OSMAN V THE STATE. The reference of that case to the Supreme Court was by the Trial Judge and its circumstances differ from the present proceedings. The issue was whether Emergency powers and Proclamation of State of Public Emergency do contravene the citizen's right under the then Constitution of Sierra Leone 1978. Each case must be treated on its own facts.

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For the foregoing reasons, I do agree with the submissions of Mr. Shears-Moses for the Appellant that the synopsis's reference to Section 27(3) of the Constitution is not about deprivation of the rights of the Appellant but on the statements of the Trial Judge in his Judgment. The preliminary objection is therefore overruled. The parties are to present their oral arguments to the appeal herein today.

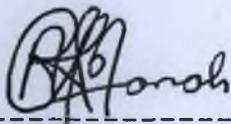


HONOURABLE V. M. SOLOMON J. A.



I agree

HONOURABLE P. O. HAMILTON Jsc



I agree

HONOURABLE A. S. FOFANAH J