

Appellants Copy

COL.APP/64/2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE
1991 (ACT NO. 6 OF 1991) PART IX COMMISSION OF INQUIRY, SECTIONS
147-149

AND

IN THE MATTER OF THE CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018

IN THE MATTER OF THE COMMISSION OF INQUIRY EXAMINATION,
INQUIRY AND INVESTIGATION NOTICE (1) 2018 (HON.DR JUSTICE
BANKOLE THOMPSON)

BETWEEN:

FRANCIS KAIKAI - APPELLANT

AND

THE STATE
(Represented by the Attorney-General & Minister of Justice) - RESPONDENT

CORAM;
HON.MRS JUSTICE FATMATA BINTU ALHADI JA. (PRESIDING)
HON.MR. JUSTICE KOMBA KAMANDA JA.
HON.MRS JUSTICE TONIA BARNETT JA.

ADVOCATES;
EEC SHEARS MOSES ESQ - APPELLANT
R.B. KOWA ESQ, - RESPONDENT
A,SUWU KENDOR

JUDGMENT DELIVERED ON THE 18TH DAY OF SEPTEMBER 2023

The President of Sierra Leone by Constitutional Instrument No. 64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone, Act No. 6 of 1991 set up the Justice Bankole Commission of Inquiry with the said Judge as Chairman and Sole Commissioner.

The terms of reference of the Commission of Inquiry known as COI were laid down in Section 4 of the aforementioned Constitutional Instrument thus:

A, To examine the assets and other related matters in respect of;

i. Persons who were President, Vice President, Ministers of State, Deputy Ministers; and

ii Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.

b. To inquire into and investigate whether assets were acquired lawfully or unlawfully

c. To inquire into;

i Persons who were President, Vice President, Ministers, Ministers of State, Deputy Ministers; and

ii Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018

d. To ascertain as to whether the Persons referred to in paragraphs a – c

i Maintained a standard of life that which was commensurate to their official emoluments

ii Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty or abuse of office for private benefit by them

iii. Collaborated with any person in respect of such corruption, dishonesty or abuse of office

iv. Acted willfully or complacently in such a matter so as to cause financial loss or damage to the Government, Local Authority or Parastatal, including a Public Corporation

v. Acquired directly or indirectly financial or material gains fraudulently improperly or willfully to the detriment of the Government, Local Authority or Parastatal. Including a Public Corporation, statutory Commission, Body or university of Sierra Leone

vi. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.

The Sole Commission Hon. Justice Bankole Thompson during the course of the investigation found the Appellant wanton and therefore made adverse findings recommendations and report against the Appellant.

It is against the background of the aforesaid findings, recommendations, conclusion and report that the Appellant being dissatisfied filed a notice and grounds of appeal on the 11th day of November, 2020.

The grounds of Appeal are clearly laid out in grounds A-G thus.

GROUND OF APPEAL

GROUND A

The Learned Commissioner in his report at Pages 28 Paragraph 9 referred to testimony of the Appellant which is not correct as he never testified. He was not a person of interest as listed on Page (ii) Paragraph B. He was not invited to appear before the Commission as a person under investigation. He was the Procurement Officer appointed pursuant to Section 18 of the Public Procurement Act, Act No. 1 of 2016.

GROUND B

The Learned Commissioner erred in Law and acted in violation of the Appellant's Fundamental Human Right to the "presumption of Innocence" as provided in Section 23(4) of the Constitution of Sierra Leone, Act No. 6 of 1991 in failing to conduct a "full, faithful and impartial" inquiry as mandated by section 149(2) of the International Convention of Civil and Political Right 1966 by proceeding to make adverse findings against the Appellant.

GROUND C

The Learned Commissioner erred in Law and acted in violation of the Appellants Fundamental Human Right to be examined in person by examining him "On his action as Secretary to the Procurement Committee mandatory trials." He was never invited to appear before the Commission as a "Person of Interest" or as a "person

under investigation” by the Commission yet the Commissioner proceeded to make adverse findings against the Appellant. How was his culpability in the loss of Le61,061,440,000.00 determined and to what extent is he liable? There was no statement of how the amount was to be shared.

GROUND D

The Learned Commissioner erred in Law and acted in violation of the Appellant’s Fundamental Human Right to a “free and fair Trial” in violation of the provision of section 23(1) of the 1991 Constitution Act No. 9 of 1991 and the principle “Audi Alteram Partem” underpinning natural justice. The Commissioner thereby failed to adhere to the mandatory provision of Section 149(1) (a) of the Constitution in failing to conduct a “full, faithful and impartial inquiry” and in violation of Article 10 of the Universal Declaration of Human Right 1948, Article 14 of the International Convention on civil and political rights and Articles 3, 7 and 26 of the Africa Charter on Human and Peoples Right, by not according to the Appellant a fair hearing.

GROUND E

The Learned Commissioner erred in Law and in fact by ignoring the evidence before the Commission that the decision to procure the fertilizer referred to in pages 28-32 of the report were taken by a strategic management team which the Appellant had no vote in and was only secretary, but proceeded to make finding against him.

GROUND F

The Learned Commissioner erred in Law when he failed to categorically state in more equivocal term, that what happened during the strategic Committee meeting were procurement decisions, and failing to decide what the Appellant is liable for whether for taking a decision or participating in a decision making, thus making his findings ambiguous, opaque, uncertain and is bad in Law; yet proceeded to make an adverse finding against the Appellant based on such duplication of facts ambiguously.

GROUND G

The Learned Commissioner erred in Law and fact by failing to take into consideration the fact that the evidence led before the commission clearly show that the Appellant only joined the Ministry of Agriculture, in May 2016 and only provided secretariat duties to strategic management committee. Therefore, the findings were totally unsubstantiated, baseless, unsupported by law or evidence thereby manifesting erroneous, defamation by virtue of the fact that the Appellant is a qualified procurement officer and the highest standard of probating, honesty, and sterling personal reputation is required at all times and yet proceeded to make adverse findings against the Appellant.

A close perusal of grounds A to D show that all the issues contained therein are intertwined dealing with the fundamental principles of natural justice (*Audi Alteram Partem*), human rights, presumption of innocence as enshrined in Section 23 (1) of the Constitution of Sierra Leone Act No. 6 of 1991. It is necessary that by reason of the said grounds of Appeal, as already stated that I deal with them conjointly .

Counsel for the Appellant E.E.C Shears Moses esq. submitted that the Appellant was never invited as a person of interest to testify at the commission nor was he given the opportunity to defend himself .He submitted that by reason of these ,the Appellant was not accorded fair hearing as enshrined in section 23(1) of the Constitution of Sierra Leone Act No.6 of 1991 and International Instruments and Treaties such as Universal Declaration of Human Rights ,The African Charter on Human and People’s Rights etc as stated in the grounds of Appeal.

Conversely, Counsel for the Respondent R.B. Kowa Esq. submitted that though the Appellant was not listed as a person of interest pursuant to Section 149 (1) (a) of the Constitution of Sierra Leone Act No. 6 of 1991 which provides that the Commission of Inquiry shall “make a full, faithful and an impartial inquiry into any matter specified in the Commission of appointment’, the Appellant falls within section 4 d (iii) which state;

“The purpose for which this Commission is appointed are to:

(d) ascertain as to whether the person referred to in sub paragraph (a) – (e)

(iii) collaborated with any person in respect of such corruption, dishonesty or abuse”.

He submitted that the Commissioner acted within the Scope of his mandate by reason of the fact that he was required to examine, inquire and investigate the category of persons as provided for in Section 4 (a) – (c) and d (iii) to ascertain whether they collaborated with any person”.

In my considered view, the Appellant by reason of grounds A-D has also raised jurisdictional issues. It is important to underscore the fact that jurisdiction is key to every judicial proceedings . I can safely without hesitation say, it is the spinal cord of every legal proceedings and therefore when they are raised, they must be dealt with timeously. Where a tribunal or judicial process lacks jurisdiction however correct the proceedings were conducted amount to a nullity. In AG FEDERATION V A G ABIA STATE AND 35 ORS (2001) 7 SC (PT_ 100, Per Karibi Whyte (JSC) Nigeria as he then was defined jurisdiction to mean; the authority the Court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision.’

It is obvious that the Appellant was not listed as a person of interest pursuant to Section 4 a-c of Constitutional Instrument 149 however, under section 4 (d) (iii) reference to those who collaborated gives the sole commissioner extensive power and jurisdiction to rope in anyone who during the course of the investigation, it is proven collaborated ‘with any person in respect of such corruption, dishonesty or abuse’.

As regards the issue of fair trial, the presumption of innocence as enshrined in Section 23 of the Constitution, a Commission of Inquiry is not a criminal trial which requires the strict standard and burden of proof laid out in the case of WOOLMINGTON V DIRECTOR OF PUBLIC PROSEUCTION (1935 AC 462 (HL), dealing with the presumption of innocence in criminal trial where viscount Sankey opine “Throughout the web of the English Criminal Law a golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end or on the whole of the case, there is a reasonable doubt created by the evidence by either the prosecution of the prisoner.... No matter what the charge or where the trial, the principle that the Prosecution must prove the

guilt of the prisoner is part of the Common Law of England and no attempt to Whittle it down can be entertained". Such principle of Law cannot be imported in a commission of inquiry which is not a trial; but an investigation. This position of the Law was made explicit in the case of M A KHARAFI AND SONS LIMITED V ATTORNEY GENERAL OF GAMBIA GLA CIV.APP 046/2019 that 'a Commission of Inquiry does not adjudicate between the State and a person who appears before it, but it carries out an investigation in to the issues and matters that are within its terms and reference as per the legal instrument that establish it. Its report submitted to the Executive Branch of Government is neither a judgment, neither an order which is capable in itself of being executed as perceived by the Law".

On the issue that the Appellant was not heard on the merit, this Court has ruled in similar cases, that where a party thinks he has not been given fair hearing at the Commissions of Inquiry, it behooves that individual to present evidence in the Court of Appeal elucidating the same. Mere complaints without bringing forth the evidence, will not propel the Court to do otherwise.

In view of the compelling evidence before me Grounds A B C and D of the Appeal are hereby dismissed.

I shall now turn to Grounds E F and G of the Appeal and also deal with same as they are interrelated all dealing with the Purchase of Fertilizers in the Ministry of Agriculture and Food Security. There is evidence that the Appellant joined the Ministry of Agriculture in May 2016 as a Procurement Officer. The records at pages 2163 – 2188 at Volume VI of the records of Appeal show that the Appellant was a Procurement Officer and not in control of the fertilizer scheme. He was at the lower cadre of the management team. He did not have the final say neither was his decision imperative. The Minister, Permanent Secretary and Director of Crops were in full authority and had the overriding power to dictate the purchase of the fertilizers. The evidence reveal that the Government of Sierra Leone through the Ministry of Agriculture, Forestry and Food Security Planned to purchase 94,500 bags of 50kg inorganic fertilizer to distribute to about 750,000 farmers in the 13 districts of Sierra Leone to promote increased agricultural productivity. Evidence further reveal that during 2014-2016 the Ministry was headed by Dr. Sam Sesay and later Prof. Monty P. Jones. The said Ministry received the sum of USD22,367,500 for the purchase of 280,000 of 50kg bags of fertilizer. The evidence further reveal that it was the sole

responsibility of the MAFF to properly plan how to acquire, store and distribute the fertilizer to achieve the goal of enhancing agricultural productivity.

It is significant to underscore the fact that no proper policy document was put in place by MAFF as required for the efficiency of the fertilizer project. In exhibit X1 – 62 which is the performance Audit Report on Management of the Fertilizer Scheme as seen in pages 1480 – 1543 which was tendered by SW4 Mr. Morie Lansana. At pages 16-17 of the records , he stated that “A Policy document is a document that we do require that will guide as to how the whole scheme would have been operated from initiation to operation but during our audit we realized that document was lacking”. It is also stated at page 20 paragraph 3.1.1. and at page 51 paragraph (a) of Exhibit X1 – 62 that ‘the lack of a policy document which would have guided the implementation of the scheme led to the mismanagement of the fertilizer scheme and misuse of Governments funds. In fact, there is uncontroverted evidence that the fertilizer scheme started its implementation in 2014 when the Appellant was not even working at the Ministry of Agriculture, Forestry and Food Security. He joined the Ministry only in 2016 as Procurement Officer when the implementation of the project was at a far advanced stage. How then could the Appellant who was not the the Head of the Project, neither was he the sole authorizing person, be held responsible?

In order for the Appellant to be held accountable as a collaborator the Respondent must show that he took an active part in a scheme, where fraudulent activities of all of them led to either the misappropriation of funds or that the Government through their conduct suffered financial loss. I have not seen that kind of evidence before me particularly so when the Appellant was neither a Minister nor a Professional Head of MAFF.

As regards the issue of technical specification, it is obvious that NPK 20.20.20 was purchased instead of NPK 0.20.20 which was what was in the contract. The Appellant was a Procurement Officer and not an expert in crop science. In volume V and VI and volume VII pages 2199 of the records the technical specification is shown clearly. The Appellant was not and did not hold himself out as an expert in the verification or specification of fertilizers and therefore, could not have rejected the purchase of same. In fact, there is no evidence to show that he had any command responsibility. He was merely part of a team consisting of his superiors whose duties were to instruct him to act accordingly. He could therefore not be held responsible

for the acts of his superiors. There is also no evidence to show that he benefited personally from the said fertilizer scheme in anyway.

It is significant to note that in Commissions of Inquiry, as in the instant case, the burden of proof squarely rest on the State , that is, the Respondent herein to bring forth evidence against the Appellant. Such legal obligation cannot be whittled down in the absence of compelling evidence, as in the instant case against the Appellant.

In view of the evidence before the court and the law, I hereby make the following orders ;

1. That the Appeal is allowed based on grounds E ,F and G.
2. That the adverse findings, report and recommendations against the Appellant by the sole commissioner The Hon.Dr. Justice Bankole Thompson herein are set aside.
3. Each party to bear its costs.



HON. MR.JUSTICE KOMBA KAMANDA J.A.

HON.MRS JUSTICE FATMATTA BINTU ALHADI JA. (presiding)

I agree .. 

HON.MRS JUSTICE JUSTICE TONIA BARNETT

I agree .. 

