

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

AIAH CHRISPIN NGAUJAH

And

SAMUEL KAINDE HUGGINS

JUDGMENT DELIVERED ON <sup>15<sup>th</sup></sup> DAY OF OCTOBER, 2010  
BEFORE THE HONOURABLE JUSTICE M. SEY. J

The accused persons stand charged with one count of Misappropriation of Public Funds contrary to section 12(1) of the Anti-Corruption Act, 2000 (as amended).

The Particulars of Offence state that Aiah Chrispin Ngaujah and Samuel Kainde Huggins between the 1<sup>st</sup> November, 2006 and the 5<sup>th</sup> April, 2007 at Freetown in the Western Area of Sierra Leone, being public officers, to wit, the Establishment Secretary and the Permanent Secretary in the Ministry of Youths and Sports, respectively, misappropriated public funds by depriving the Government of Sierra Leone of the sum of Le89,618,738.00 (eighty-nine million, six hundred and eighteen thousand, seven hundred and thirty eight leones) by means of a false request for a Departmental Warrant dated 7<sup>th</sup> November, 2006, purporting to show that the sum of Le102,770,994 (one hundred and two million, seven hundred and seventy thousand, nine hundred and ninety-four leones) was due to the Ministry of Youths and Sports as arrears of salaries from the Holding Vote administered by the Establishment Secretary.

The prosecution led six (6) witnesses in support of their case, closing it on 10<sup>th</sup> March, 2010 and on the 19<sup>th</sup> day of March 2010 the accused persons were put to their



election. They elected to rely on their respective statements made to the Anti-Corruption Commission and which were tendered by the Prosecution as Exhibits F1-F3 and G1-G4. No witnesses were called by the defence. Thereafter, the Court, with the concurrence of the prosecution and defence, agreed that written Addresses be submitted through the Registrar of the Court. This was done and I accepted the submissions and they form part of the evidence.

Briefly put, the prosecution's case is that sometime in November 2006, the 2<sup>nd</sup> accused wrote a memorandum to the 1<sup>st</sup> accused presenting three fictitious arrears of salary payment vouchers and requesting the issuance of a Departmental warrant for the payment of outstanding salaries for 34 employees for the period between 1<sup>st</sup> January 2003 and 31<sup>st</sup> December 2003.

That no action was taken immediately because the Establishment Secretary's office did not have sufficient funds at the time but that on the 13<sup>th</sup> March 2007, the 1<sup>st</sup> accused issued a Departmental Warrant for the payment of the sum of Le102,770,994.00 to the Permanent Secretary, Ministry of Youths and Sports.

That between 13<sup>th</sup> March, 2007 and 5<sup>th</sup> April 2007, the 2<sup>nd</sup> accused completed a cheque order form for the issuance of a cheque in favour of the Permanent Secretary, Ministry of Youth and Sports, in the sum of Le89,618,738.00.

That on the 5<sup>th</sup> of April, 2007 one Prince Sylvanus Parker, acting on the instructions of the 2<sup>nd</sup> accused signed for and received a cheque numbered 700662 at the cash office of the Ministry of Finance. He took it to the 2<sup>nd</sup> accused who endorsed the cheque by signing and stamping it at the back and then gave the said Prince Sylvanus Parker a letter authorizing him to encash cheque number 700662.

That Prince Sylvanus Parker took the cheque to the Bank of Sierra Leone where he cashed it and received the sum of Le89,618,738.00 from which he deducted



Le618,738.00 and gave it to bank cashier as a gift. He was later arrested outside the bank at Siaka Stevens Street with the sum of Le89,000,000.00 (eighty-nine million leones).

PW1 Prince Sylvanus Parker testified that he had been called by the 2<sup>nd</sup> accused to the latter's office where the 2<sup>nd</sup> accused intimated to him that he had received instructions from the 1<sup>st</sup> accused requiring him to prepare payment vouchers for arrears of salary. PW1 said he prepared the payment vouchers using the names on the specimen voucher the 2<sup>nd</sup> accused had given to him. He said after he had prepared the vouchers he gave them to the 2<sup>nd</sup> accused for his signature. Thereafter the vouchers together with a request for a Departmental Warrant made out by the 2<sup>nd</sup> accused were handed over to PW1 who took them personally to the Establishment Secretary's office where he handed them over to PW4 Aliason Moses Moriba. PW1 further testified that he visited the Establishment Secretary's office on two occasions thereafter and that it was on his second visit that he met with the 1<sup>st</sup> accused who told him that the Departmental Warrant had been signed by him and the 1<sup>st</sup> accused asked him whether the cheque had now been prepared. PW1 stated that he was later called by the 2<sup>nd</sup> accused who instructed him to go and collect the cheque from the Accountant General's office and to encash it at the bank and take the money to him. He said the 2<sup>nd</sup> accused gave him a letter of authority to present to the bank. He identified Exhibit C2 as that letter. He said he collected Exhibit C1 which is the cheque for Le89,618,738.00 from the Accountant General's office and he encashed it and handed over Le618,738.00 to the bank cashier as a gift. On his way out of the bank he was intercepted and arrested by PW6 and some officers of the ACC.

Under cross examination PW1 stated that the 1<sup>st</sup> accused was not present at the bank when he cashed the cheque. He also stated that he did not hand over the money or any part of it to the 2<sup>nd</sup> accused. He



confirmed that the 2<sup>nd</sup> accused had told him that he did not trust the accountants at the Ministry of Youths and Sports and that was why he wanted him to prepare the vouchers. PW1 maintained that he was familiar with the signature of the 2<sup>nd</sup> accused and he identified it on Exhibit C2 and on Exhibits D1-D4.

PW2 Dudley Beresford Crown stated that he is employed at the Accountant General's office where he is in charge of the Stores and Records Centre. He testified under oath and he produced and tendered the following documents:

- Covering letter from the Establishment Secretary dated 15<sup>th</sup> March 2007 and addressed to the Permanent Secretary, Ministry of Youths and Sports. This was admitted as Exhibit A1.
- Departmental Warrant from the Establishment Secretary's office and dated 13<sup>th</sup> March 2007 admitted as Exhibit A2.
- Cheque Order Forms in triplicate admitted as Exhibit B1-B3.

This witness was not cross examined by counsel for both accused persons.

PW3 was Claude Seiwoh a senior Manager at the Bank of Sierra Leone. Upon the request of the ACC he uplifted certain documents from the bank and he produced and tendered them in court. They were a Government of Sierra Leone cheque No. 700662, a letter of authority signed by S.K. Huggins i.e. the 2<sup>nd</sup> accused and addressed to the Bank of Sierra Leone and a cheque listing form from the Accountant General's office confirming that the Accountant General had approved the payment of the money to the 2<sup>nd</sup> accused. These documents were admitted in evidence as Exhibits C1-C4 respectively.

When questioned by counsel for the 1<sup>st</sup> accused, PW3 stated that the name of the 1<sup>st</sup> accused did not appear on any of those four documents and that he did not see the designation of Establishment Secretary on any of

the documents. He confirmed that it was the 2<sup>nd</sup> accused Mr S.K. Huggins who had issued the authority in Exhibit C2 and that the back of Exhibit C1 shows that one Mr. Prince Parker received the amount of Le89,618,738.00.

The accused persons are charged under Section 12(1) of the Anti Corruption Act 2000 (As amended) which provides:

12. (1) Any person who misappropriates public revenue, public funds or property is guilty of an offence.

Further, subsection (2) defines the concept of misappropriation as:

"A person misappropriates public revenue, public funds or property if he wilfully commits an act, whether by himself, with or through another person, by which the Government, a public corporation or a local authority is deprived of any revenue, funds or other financial interest or property belonging or due to Government, the public corporation or local authority."

The interpretation section of the Anti Corruption Act 2000 defines the concept of public funds as:

'Public Funds' means any monies paid from funds appropriated by parliament from the Consolidated Fund or any other fund under subsection (2) of section 111 of the Constitution.

A fund under subsection (2) of section 111 is defined as:

(2) The revenues or other monies referred to in subsection (1) shall not include revenues or other monies -



(a) that are payable by or under an Act of Parliament into some other fund established for a specific purpose; or

(b) that may by or under an Act of Parliament, be retained by the department or Government that received them for the purpose of defraying the expenses of that department.

What is Misappropriation?

The Concise Oxford Dictionary gives the meaning of the word "misappropriate" as:

"Take and use wrongly – apply someone else's money to a wrong [especially one's own] use"

In Halsbury's Laws of England [3<sup>rd</sup> Edn.] Vol. 10 – Criminal Law – Page 790, Para 1529 reads:

"Any Director.....who fraudulently takes and applies for his own use and benefit ....."

I must state that in dealing with cases of misappropriation, it is generally more difficult for me to decide whether misappropriation occurred than to decide whether property was unlawfully taken. This is more so because I am minded of the Principle that a person is not criminally liable for his conduct unless the prescribed state of mind coincides with the prohibited actus reus being present. This said Principle is frequently stated in the form of a Latin maxim "ACTUS NON FACIT REUM NISI MENS SIT REA"

"An act does not make a man guilty of a crime unless his mind be also guilty."

In the instant case, the accused persons are alleged to have misappropriated public funds by depriving the

Government of Sierra Leone of the sum of Le89,618,738.00.

The prosecution must prove beyond reasonable doubt that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons:

- i. As the Establishment Secretary and Permanent Secretary of the Ministry of Youths and Sports, respectively
- ii. On a date unknown between 1<sup>st</sup> November 2006 and 5<sup>th</sup> April, 2007 at Freetown
- iii. Misappropriated
- iv. Public funds
- v. By wilfully depriving the government of Sierra Leone of the sum of Le89,618,738.00.

Thus the actus reus and mens rea of the offence must be proven by the prosecution and where the prosecution fails to prove the elements of the offence as set out above, the prosecution must fail.

In respect of the 1<sup>st</sup> accused, what act has the prosecution shown that was done wilfully by the 1<sup>st</sup> accused which led to the Government of Sierra Leone being deprived of funds? Having carefully considered all the evidence adduced, I find there is no evidence before the Court establishing any mens rea or actus reus on the part of the 1<sup>st</sup> accused. As stated by PW3, Claude Seiwoh, under cross examination, the name of the 1<sup>st</sup> accused did not appear on any of those four documents and neither did PW3 see the designation of Establishment Secretary on any of the documents.

In the Prosecution's Closing Address, counsel has submitted that it can be inferred from the testimony of PW1 that the 1<sup>st</sup> accused had shown keen interest in



the progress of the Departmental Warrant and secondly, that the circumstances under which the request was made should have alerted the 1<sup>st</sup> accused to act with more circumspection. On the other hand, defence counsel has contended in his "addendum to Closing Address to the Court", that the actions of the 1<sup>st</sup> accused, as disclosed by the evidence of PW4 Alison Moses Moriba, were in the line of his normal every day duty, which had been the case for several other Government Departments, and which was in accordance with the provisions of the Administrative and Financial Regulations Act.

In any event, in my considered judgment, I find that the prosecution has failed to prove its case against the 1<sup>st</sup> accused beyond reasonable doubt. In the result, I find the 1<sup>st</sup> accused not guilty as charged and he is hereby acquitted and discharged.

In respect of the 2<sup>nd</sup> accused, he has denied the charge preferred against him and in his defence he elected to rely on his Statements tendered as Exhibit G-1, 2, 3 and 4.

Moreover, the 2<sup>nd</sup> accused has contended that since the money was recovered and tendered in Court as Exhibit E, it means no public funds were misappropriated. In his Closing Address to the Court, defence counsel cited the case of Chan Man Sin v Attorney General for Hong Kong [1988] 1 W.L.R. (PC) to buttress his argument.

I have perused the said judgment in Chan Min Sin. In that case, D an accountant for H and M withdrew \$4.8m from both H's and M's accounts using forged cheques. Both accounts went overdrawn, but within agreed limits. D argued that the bank had no right to honour the forged cheques and the transactions should have been void.



Held: D was guilty of theft of choses in action, i.e. the debts owed by the bank to the companies.

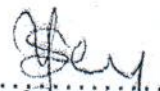
Lord Oliver opined thus:

*"One who draws, presents and negotiates a cheque on a particular bank account is assuming the rights of the owner of the credit in the account or (as the case may be) of the pre-negotiated right to draw on the account up to the agreed figure."*

The general concept is that misappropriation is the criminal act that characterizes embezzlement, just as "taking" characterizes larceny. The statutory definitions of embezzlement include no express requirement that the culprit means to deprive the owner permanently. In my considered judgment, the offence was consummated at the point that PW1 Prince Sylvanus Parker withdrew the money from the bank. At that point there was an appropriation of public funds or property belonging to the Government of Sierra Leone. In the circumstances, I find that the dishonest deprivation is the offence – not the subsequent disposal of the funds.

From the totality of the evidence adduced, I must state that I find the evidence against the 2<sup>nd</sup> accused overwhelming. I am satisfied that the prosecution has proved its case against him beyond all reasonable doubt and I hereby find him guilty and convict him accordingly.

It is hereby ordered that Exhibit E should be returned to the Bank of Sierra Leone.

  
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Justice Mary M.Y. Sey

15/10/10