

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

SHEIKU TEJAN KOROMA

JUDGMENT

The accused was arraigned before this Court on the 4<sup>th</sup> day of November, 2009 on a 3 count information under the Anti-Corruption Act 2008 to which he pleaded not guilty.

The said 3 counts are hereinafter set out in full as follows:

COUNT I

STATEMENT OF OFFENCE

Abuse of Office contrary to section 42 (1) of the Anti-Corruption Act, 2008.

PARTICULARS OF OFFENCE

SHEIKU TEJAN KOROMA on a date unknown between March 2009 and May 2009 at Freetown in the Western Area of Sierra Leone, being the Minister of Health and Sanitation, and being a Public Officer, abused his Office as Minister, in respect of the award of a contract for the supply of medical consumables and reagents to the Ministry, by improperly awarding the said contract to the CARDINAL INVESTMENT LIMITED instead of to the HEALTH CARE PHARMACY, as the lowest and most



responsive bidder based on the recommendations of the Technical Evaluation Committee of the Ministry.

## COUNT 2

### STATEMENT OF OFFENCE

Abuse of position Contrary to Section 43 of the Anti-Corruption Act, 2008.

### PARTICULARS OF OFFENCE

SHEIKU TEJAN KOROMA on a date unknown between March 2009 and May 2009 at Freetown in the Western Area of Sierra Leone, being the Minister of Health and Sanitation, and being a Public Officer, abused his position as Minister in respect of the award of a contract for the supply of medical consumables and reagents to the Ministry by contravening the provisions of the Public Procurement Act, 2004 through the improper award of the said contract to the CARDINAL INVESTMENT LIMITED, instead of to the HEALTH CARE PHARMACY, as the lowest and most responsive bidder based on the recommendations of the Technical Evaluation Committee of the Ministry.

## COUNT 3

### STATEMENT OF OFFENCE

Willfully failing to comply with the laws, procedures and guidelines relating to the procurement of property, tendering of contracts and management of funds, contrary to section 48 (2) (b) of the Anti-Corruption Act, 2008.

### PARTICULARS OF OFFENCE

SHEIKU TEJAN KOROMA on a date unknown between March 2009 and May 2009 at Freetown in the Western Area of Sierra Leone, being the Minister of Health and Sanitation, and being a Public Officer, willfully failed to comply with the provisions of the Procurement Act, 2004, and the Regulations set out there under



relating to the procurement of property, tendering of contracts and management of funds, in respect of the award of a contract for the supply of medical consumables and reagents to the Ministry of Health, through the improper award of the said contract to the CARDINAL INVESTMENT LIMITED, instead of to the HEALTH CARE PHARMACY, as the lowest and most responsive bidder based on the recommendations of the Technical Evaluation Committee of the Ministry.

The prosecution must lead evidence to substantiate the elements of each offence on each Count beyond reasonable doubt and where there is a doubt that doubt must be resolved in favour of the accused. To put it simply, the burden of proving the guilt of the accused rests with the prosecution and continues throughout. The leading authority is the case of Woolmington vs. DPP [1935] A.C. 462 HL wherein Viscount Sankey opined at pp. 481-482 that:

"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt [subject to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. 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."

This principle applies in all criminal cases and in Sierra Leone it has been confirmed in several cases such as Hall vs. R (1964-66) ALR SL 189; Bob-Jones vs. R (1967-68) ALR SL 267 and Kargbo vs. R (1968-69) ALR SL 354. 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. The onus lies on the prosecution to prove every element of the offence with which an accused person has been charged beyond a reasonable doubt.



This Court is particularly mindful of the said principle enshrined in Woolmington especially since the trial of this accused before this Court is by Judge alone, instead of by Judge and Jury, pursuant to Section 144(2) of the Criminal Procedure Act, No. 32 of 1965 as repealed and replaced by Section 3 of the Criminal Procedure Amendment Act, No. 11 of 1981.

The standard is the very high standard of proving the case beyond reasonable doubt. In *Miller v Minister of Pensions* [1947] 2 All ER, Denning J. At pp. 373-374 had this to say:

"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'Of course it is possible but not in the least probable', the case is proved beyond reasonable doubt; nothing short will suffice."

In respect of Count 1, the ingredients of the offence of Abuse of Office are that:

- a. the accused was a public officer;
- b. who in the course of, or in relation to his public office improperly awarded a contract;
- c. that the conduct of using his office improperly was to confer an advantage on Cardinal Investment Limited.

Before proceeding to examine the ingredients of the offence for Count 2, I think I ought to deal with defence counsel's submission that Count 2 is bad in law and must be struck out and the accused discharged on same. It is counsel's submission that the provision in section 43 of the Anti-Corruption Act 2008 requires knowledge to be proved but that in the Particulars of Offence the requirement of such knowledge is omitted and that



the word "knowingly" abused his position ..... is absent, which makes the Count bad in law.

I am not disposed to accept counsel's submissions because, to my mind, an indictment is adequate if the offence is stated with sufficient certainty and particularity to enable the accused to know what he is called upon to answer and the court to know what judgment to pronounce. In the case of R vs. Hall (1983) (unreported) it was held, inter alia, that an indictment for a statutory offence is sufficient if, in charging the offence, it substantially follows the language of the statute, fully informs the accused of the particular offence with which he is charged and enables the court to determine the statute on which the charge is based.

As regards the word "knowingly", In Archbold 2009 at paragraph 17-49 the learned authors have stated that: "where this word is included in the definition of an offence it makes it plain that the doctrine of mens rea applies to that offence. However, its absence is no indication that the doctrine does not apply": see per Lord Reid in Sweet v. Parsley [1970] A.C. 132 at 149 HL where D was charged with being concerned with the use of premises for the smoking of cannabis. The key issue in the case was whether mens rea was required, given that the Act did not say whether there was any need for knowledge of events.

Turning back to Count 2, the ingredients required to be substantiated by evidence by the prosecution are as follows:-

1. the Accused must be a public officer;
2. who in the course of or in relation to his public office;
3. knowingly abused his position; and
4. that abuse was in contravention of any law.

The Court's attention has been drawn to certain provisions to which we shall return later but for ease of reference I shall reproduce them hereunder viz:-

- a. Section 17 (2) of the Public Procurement Regulations of 2006 which states as follows:



e. keep confidential the information that comes into his or her possession relating to bids including bidders proprietary information.

Under Count 3, the accused is charged with wilfully failing to comply with the laws, procedures and guidelines relating to the procurement of property, tendering of contracts and management of funds, contrary to section 48 (2) (b) of the Anti-Corruption Act 2008.

The ingredients of this offence are as follows:-

- a. public officer – Minister of Health and Sanitation;
- b. wilfully failed to comply with procurement laws, procedures and guidelines;
- c. Intention (Mens Rea);
- d. procurement of Property, tendering of contracts and management of Funds

The prosecution has argued that the accused wilfully failed to comply with the laws and guidelines referred to earlier on and has sought to rely on the leading case of R v. Sheppard (James Martin) [1981] A.C. 394. HL in which the majority held that a man 'wilfully' fails to provide adequate medical attention for a child if he either (a) deliberately does so, knowing that there is some risk that the child's health may suffer unless he receives such attention; or (b) does so because he does not care whether the child may be in need of medical treatment or not. The majority equated 'wilfully' with common law recklessness.

However, it is the submission of defence counsel that from the totality of the evidence the prosecution has failed to proffer evidence to substantiate the ingredients in (b), (c) and (d) in Count 3 above.



## The Evidence

The case of the prosecution consists of the testimonies of their five witnesses and the various exhibits before the Court.

PW1 Rasan Ahmed Fawaz is the owner/proprietor of Health Care Pharmacy and one of many bidders for the supply of laboratory reagents i.e. Lot 8. In his evidence in chief, he stated that he did all that was required for the bid and was present like all other bidders when the bid was opened. That was as it should have been. He knew at once that he was the lowest and most responsive bidder and he made arrangements with his suppliers in Holland to get ready to dispatch the supplies. He waited and when he heard nothing after some considerable delay he wrote to the Independent Review Panel with his concerns (Exhibit R). He was cross examined by counsel for the defence and he stated that he knew Jamal Shallop but that he had never done business with him. The witness further said that he bided for lots 3 and 8 and that he wrote the letter withdrawing from the process (Exhibit C).

PW2 Edward Bai Kamara is the Permanent Secretary at the Ministry of Health and Sanitation and he was Chairman of the Procurement Committee. His evidence is very important from the prosecution's point of view. PW2 testified that when he submitted the Technical Evaluation Report in a minute to the Minister he out rightly objected to the recommendation of Healthcare Pharmacy as the winner of the bid notwithstanding the price difference between Health Care Pharmacy and Cardinal Investment Limited. He stated that the accused did not do his objection in writing; that he did it verbally and kept on insisting that the Procurement Committee membership should not sit as a Committee to confirm that recommendation. He said the accused simply demonstrated his preference for Cardinal Investment Limited but he did not give them any reason. The witness stated further that they saw it difficult to go by that given the differential in prices and it was contrary to



procurement rules; that after the Minister's objection they as a Committee waited for his approval and that he wanted to ensure that they complied with his instruction that Cardinal Investment should be awarded the contract; that when they finally met as a Procurement Committee and due to the pressure they were getting from the accused the committee agreed that cardinal investment be awarded the contract for lot 8.

The witness tendered in evidence Exhibit D, the minute paper of 15/10/08; Exhibit E, the Minutes of the Technical Evaluation Committee which recommended that the contract for the supply of Laboratory reagents - Lot 8 be awarded to Health Care Pharmacy who offered the best evaluated bid; Exhibit F the minute paper of 5/1/09; Exhibit G minute paper of 9/3/09; Exhibits H and H1 which are letters written by Alfred H. Kandeh, CEO National Public Procurement Authority (NPPA) and addressed to the PW2; Exhibit J the Ruling of the Independent Procurement Review Panel (IPRP); Exhibit K Minute Paper of 26/5/09 and Exhibit L Minute paper of 14/7/09.

The prosecution has submitted that these exhibits are extremely important; that the minutes demonstrate the communication between the accused and the Permanent Secretary and the information flow and that the accused was aware that his actions were against the law.

Under cross examination, PW2 said that as Chairman of the Procurement Committee he had an overriding power in decision making but in this case the decision was reached by members of the entity.

PW3 Mohamed Kallon was the Procurement Manager. He gave a run down of the procedure used for the particular bid. He tendered in evidence Exhibit M which was the Notification of the Award of the contract to Cardinal Investment signed by the accused and Exhibit N i.e. the contract dated 23<sup>rd</sup> June 2009 signed on behalf of the Government of Sierra Leone by the accused. He also gave evidence that the accused had insisted



that the contract for Lot 8 should be given to Cardinal in direct contravention of the recommendation of the Technical Evaluation Committee whose recommendation had been endorsed by the Procurement Committee.

PW4 Momodu Sittar is the Senior Investigator at the ACC. He tendered in evidence Exhibit O which is the interview of the accused. The said interview has been accepted by the defence.

PW5 Alfred Herbert Kandeh. This witness is the Chief Executive Officer of the National Public Procurement Authority (NPPA). He was called as an expert to give a run down of procurement process and his specific knowledge of the NPPA's involvement in the events at the Ministry of Health and Sanitation. He told the Court that despite numerous letters to the Ministry, which said letters were copied to the Minister, the impasse continued due to the Minister's insistence that Cardinal Investment Limited should be awarded the contract. In summary the actions of the Minister were against the law. In cross examination there was an attempt to impeach his credibility by saying that he had been present at a meeting of stakeholders called by the Minister of Finance and Economic Development. This the witness denied.

In his defence, the accused testified on oath and he told the Court that he came to know about Lot 8 when papers were put before him by PW2 to sign. He stated that he thinks that those letters were award letters and that included the notification of award letter (Exhibit G) and that he had no discussion with the Permanent Secretary. He said that few days after that Jamal Shallop came to his office to offer him a Le 50 million bribe to award the contract to Health Care Pharmacy (apparently Shallop's Company). He said he declined it and that he later



called the Permanent Secretary into his office to ask him why the gentleman was so desperate to secure the contract; that after that discussion, the Financial Secretary called him to tell him about a problem with Lot 8. Subsequently the Finance Minister called a meeting which he described as a family meeting which included the owners of Cardinal Investment Limited, Healthcare Pharmacy, the Financial Secretary and Dr. Kandeh (PW5); that they reached an agreement that Health Care Pharmacy would withdraw from the bidding and that it should be awarded to Cardinal Investment Limited.

The Accused in his evidence has sought to have the court believe that Exhibit C (the withdrawal of Healthcare from the process) was in fact drafted by PW5. However, it is noteworthy that this was not put to PW5 in cross examination nor was it put to PW1 who was the author of that letter. The contents of Exhibit C are clear - they were withdrawing for the simple reason that the process had taken too long and was too costly to them. This was in fact confirmed by DW2. Indeed the process had been long delayed and this delay had been the subject of the complaint by PW1 to the Independent Review Panel. It is therefore not surprising that PW1 would withdraw from the process in August 2009 for after having submitted his bid as long ago as October 2008 particularly so since the Ruling (Exhibit J) which was in his favour and binding was being ignored by the Accused.

Defence counsel has submitted that the award was done by the Procurement Committee only that the Accused signed Exhibits M & N which were forwarded to him for signature by PW2 and therefore that the mens rea is lacking in this case. Counsel submitted further that the action of the accused was neither wilful nor intentional. He stated that it is clear that the prosecution has failed to establish the element of knowledge against the accused nor was any evidence led as to constructive knowledge as was established in the case of *Flintshire CC vs. Reynolds* 170 JP 73 DC, where it was held that constructive knowledge, i.e. having the means of knowledge, as where a



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person signed a form containing false information after it had been completed by another, is insufficient. Counsel further submitted that the accused may have been negligent which does not suffice for criminal liability in this case; that Exhibit M was not an award letter but a mere Notification of Award and that there is a striking distinction between notification of the award of contract and the actual award of contract; that the effect of Exhibit M was to notify Cardinal Investment of the recommendation of the Procurement Committee and that, from the evidence of PW5, a contract is awarded after clearance is given by the NPPA which in this case was done after the signing of the notification of award letter by the accused. Counsel went on to submit that notwithstanding Exhibits M and N, the contract was not awarded until it was cleared by the Finance Ministry after the withdrawal letter from Health Care Pharmacy (Exhibit C). He also submitted that up to that time the contract had not been awarded as there had not been a certificate of no objection by the Ministry of Finance.

At this stage I shall pause here to examine the dates and sequence of events in this case.

- a. Bid opening on 6<sup>th</sup> October 2008 – Exhibit B
- b. Minutes w.e.f. 15/10/08 – Exhibits D, E, F, G, K, L
- c. Letter from NPPA dated 16<sup>th</sup> March 2009 – Exhibit P
- d. Letter from E.B.Kamara Senior PS Ministry of Health & Sanitation to CEO NPPA dated 30<sup>th</sup> April 2009 – Exhibit Q.
- e. Complaint to Independent Review Panel dated 7<sup>th</sup> May 2009 – Exhibit R
- f. Letter from NPPA dated 14<sup>th</sup> May 2009 – Exhibit S
- g. Ruling of independent Review Panel dated 22<sup>nd</sup> May 2009 – Exhibit J



- h. Notification of Award of Contract dated 27<sup>th</sup> May 2009 – Exhibit M
- i. Contract 23<sup>rd</sup> June 2009 – Exhibit N
- j. Withdrawal of Bid – 10<sup>th</sup> August 2009 – Exhibit C

It is pertinent to note from the dates and sequence highlighted above that Exhibits M and N show that the decision to award the contract to Cardinal Investment Limited had already been made by letter dated 27<sup>th</sup> May 2009 and that the contract was signed on the 23<sup>rd</sup> June 2009, whereas Health Care Pharmacy's withdrawal of bid was done on the 10<sup>th</sup> August 2009.

In my considered view, counsel's submission that the contract was not awarded until it was cleared by the Finance Ministry after the withdrawal letter from Health Care Pharmacy (Exhibit C) is untenable.

The accused admitted signing Exhibits M and N which according to him were forwarded to him for signature by PW 2. He also clearly stated in his evidence that he first became aware of the bid for medical consumables and laboratory reagents when PW2 sent a minute to him for the opening of bid for the award of the contract and that he had not been involved in the working of the two Committees responsible for the award of contract. I do not accept the evidence of the accused that he signed both documents but was not aware of what he was signing and that he would sign anything put before him by his Permanent Secretary or that he had not read the Procurement Act. This simply cannot be true. If the accused had not seen the minute papers, he would have seen Exhibits P and



S which were letters sent by the Chief Executive Officer of the National Public Procurement Authority (PW5) to the PS and copied to him. Similarly he would have seen Exhibit J the ruling of the review body. It is not a defence for the accused to state in the witness box that he was deceived by the PS and that he would sign anything put before him. Quite apart from the fact that ignorance is no defence, for a man who stated under cross examination that he is a civil engineer and that he is a very intelligent man, it is impossible that he would not have known about the existence of any of these documents and was just busy appending his signature to any document put before him without reading it.

I believe the testimony of PW2 that he had throughout the process briefed the accused through the several minute papers sent to him i.e. Exhibits D, F, G, K and L. Indeed he was informed as far back as 5<sup>th</sup> January 2009 and he rejected the recommendation of the Technical Evaluation Committee so that the Procurement Committee had to go along with him as 'He is the boss' - as stated in Exhibit G. It is pertinent to note that at no time during the cross examination of PW2 was it put to him that the minute papers were falsified.

The truth is simply that the accused had signed both documents and that he knew he was signing in view of his off stated position that Cardinal Investment should be awarded the contract. This position is supported by the statement of his own witness DW2 Edmond Koroma who stated that he had conversations with the accused to prevail on him to change his position. The Accused had long since made up his mind and Exhibits M and N were signed by him to further his intentions of awarding the contract to Cardinal. In so doing, the accused had unilaterally altered the decision of the body



tasked to award contracts and by so doing he had awarded the contract to Cardinal Investment Limited. I so hold.

I have considered the provisions of Section 17 (2) of the Public Procurement Regulations of 2006 (supra) in the light of the evidence adduced by the prosecution. The accused was the Minister of Health and Sanitation and the Head of the procuring entity and as such he should have adhered to the provisions spelt out in Section 17 (2) PPR 2006 to wit:

That the Head of a Procuring Entity shall not:

1. Modify a submission; or
2. Reject any submission without good reason in writing.

However, the actions taken by the accused were outside the scope and power of the Head of entity. He interfered in the process and by so doing imposed his will and abused his position. The fact that it was his unilateral decision to award the contract to Cardinal Investment Limited is further supported by Exhibit O.

During his interview, the accused in answer to Question 25 stated as follows:

"..... Because I did not believe in lowest bidders all the time that was why I asked for the contract to be given to the second lowest bidder, which I always do advise".

Question 26: " Who awarded the contract to the bidder you are referring to in your answer to question 25

Answer: "That is me, because I advised".

Question 27: "Who was the bidder you awarded the contract to?"

Answer: "I awarded the contract to Cardinal Investment, the second lowest bidder."



Question 36: " Do you have the authority to overturn the decision of the Technical Evaluation Committee in the award of the contract in question?"

Answer: "Yes, I acted in the capacity as Minister of Health and in the interest of this nation to award contract to individuals, especially in this case ....."

The above excerpts from exhibit O show and support the evidence of PW2 that despite protestations and advice by him through the various minutes (exhibits above) the Minister used his position as Head of the Entity to overrule the recommendation of the Technical Evaluation Committee and the Permanent Secretary's advice. The Minister, he said, stated that he was prepared to go to Pademba Road Prisons rather than award the contract to the legitimate winner. The decision was his and his alone and that was why he refused to sign the forms for all the other lots because Lot 8 was not approved. This is further supported by DW2 – Edmund Koroma, the defence's own witness in his evidence before the court. Clearly, the letters from the NPPA and the ruling had been brought to his attention, but being the Minister, he felt he did not have to adhere to laid down rules and he could and should abuse his office and position.

I also do not believe the claim put forward by the accused that Jamal Shallop went to his office and offered him a bribe of Le 50 million. If that had happened, the accused would have swiftly brought it to the attention of the ACC when he was first interviewed. He also had other opportunities to have brought it to their attention at his subsequent interviews. Crucially, he did not state in evidence that he told the PS who was the first person he spoke to after the alleged bribery attempt. I find it simply incredible to believe that, a man who claims the President of Sierra Leone had given him an additional assignment to clean up 'the most corrupt Ministry', had been offered a bribe in his office in the very Ministry and then he



award the contract and did not know about it until after the meeting of 10<sup>th</sup> August 2009. On the other hand the accused insisted that Cardinal Investment should be awarded the contract because Jamal Shallop was the owner of Health Care Pharmacy and had put in multiple bids and therefore lot 8 should go to someone else. I do not believe the testimony of the accused and I reject it accordingly.

It is not in dispute that the accused being the Minister of Health and Sanitation was a Public Officer. What is being contended by the defence is that he abused his office and his position as Minister and used his office improperly. I am, however, satisfied that the evidence against the accused as adduced before this Court is overwhelming. I find that the prosecution has proved all the elements of the offences as charged on the indictment on all three (3) Counts beyond reasonable doubt. I accordingly so hold and I thus find the accused guilty and hereby convict him on each Count from Count 1 - Count 3.

  
JUSTICE M.Y. SEY

11/03/2010