

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

MARK GEORGE

COUNSEL:

M I KANU ESQ for the State

S JAMIRU ESQ for the accused

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

JUDGMENT DATED THE 7<sup>th</sup> DAY OF NOVEMBER, 2012. *Mr.*

THE CHARGES AND THE LAW

- Mr.*
1. The accused person is charged on a 3 Count Indictment dated 12 March, 2011 with the following offences. In Count 1, the charge is Misappropriation of Public Revenue contrary to Section 36(1) of the Anti-Corruption Act, 2008 - ACA, 2008. The particulars allege that the accused, on a date unknown between 16<sup>th</sup> and 25<sup>th</sup> February, 2009, being an Assistant Collector of the National Revenue Authority, (NRA) and being a Public Officer, misappropriated public revenue amounting to Le49,048,660 by aiding one Prince Taylor to evade the payment of PAYE taxes amounting to Le49,048,660 through the wilful issuance of an original NRA tax receipt for the sum of Le49,548,660 to the said Prince Taylor, instead of an original NRA tax receipt for the actual sum of Le500,000 paid by the said Prince Taylor to the said Mark George, thus depriving NRA of the difference of Le49,048,660 in tax payments.
  2. In Count 2, the charge is Abuse of Office contrary to Section 42(1) of the ACA, 2008. The particulars allege that between the same dates, the accused being a public officer, abused his office as an employee of the NRA by aiding Prince Taylor to evade payment of PAYE tax amounting to Le49,048,660 through the wilful and improper issuance of a receipt for the sum of Le49,548,660 to Prince Taylor instead of a receipt for the sum of Le500,000 which was the actual sum paid by Taylor.

3. Count 3, charges the accused with the offence of Abuse of Position contrary to Section 43 of the ACA, 2008. The particulars allege that between the same dates, i.e. 16<sup>th</sup>-25<sup>th</sup> February, 2009, the accused, being a public officer, abused his position as Assistant Collector by contravening the provisions of the NRA Act, 2002 through the wilful issuance of an original NRA receipt for the sum of Le49,548,660 whereas the receipt issued should have been for Le500,000, the amount paid by Prince Taylor.
4. Section 36 of the <sup>A</sup>CA, 2008 provides as follows: (1) *"A person who misappropriates public revenue, public funds or property, commits an offence. (2) 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 a public body is deprived of any revenue, funds or other financial interest or property belonging or due to that public body. (3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than L30million or to imprisonment for a term not less than 3 years or to both such fine and imprisonment."*
5. Section 42 of the ACA, 2008 states as follows: *"(1) A public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence. (2) A person guilty of an offence under subsection (1) shall on conviction be liable to a fine not less than L30million or to imprisonment for a term not less than 3 years or to both such fine and imprisonment."*
6. Section 43 of the ACA, 2008 provides that: *"A public officer who knowingly abuses his position in the performance or failure to perform an act, in contravention of any law, in the discharge of his functions or duties commits an offence and shall on conviction be liable to a fine not less than Le30million or to imprisonment for a term not less than 3 years, or to both such fine and imprisonment."*
7. I shall now proceed to examine the legal requirements of the three charges brought by the prosecution. In Count 1 which charges Misappropriation of public revenue, the prosecution must prove beyond all reasonable doubt, that the revenue misappropriated resulted in a public body being deprived of revenue which belonged to it; and further, the act which causes the public body to be deprived of that revenue, must be

wilful. The act of misappropriation is a single act. At the moment the amount of money, be it in the form of funds, or of revenue, leaves the coffers of the public body, there has been an appropriation. What makes it a misappropriation, is the wilfulness of the act, and the dishonest intention to deprive the public body of funds or revenue.

8. The NRA is a public body as defined in Section 1(f) of the ACA, 2008. It is a body "*....established by an Act of Parliament....*" It was established by the National Revenue Authority Act, 2002 which came into force on 19 September, 2002 by virtue of Statutory Instrument No 7 of 2002. The category of offenders is not restricted to public officers as it appears, the draughtsman of the Indictment seems to think. The public body must be deprived of revenue which belongs to it. "*Public revenue*" according to Section 1 of the Act, includes "*taxes, duties, fines, royalties, rents, fees, levies and charges payable to a public body.*"
9. The act of depriving the public body of revenue, must be committed wilfully. The Learned Editors of the 2007 Edition of BLACKSTONE'S CRIMINAL PRACTICE, have at paragraph A2.8 suggested the relevant meaning of '*wilful*.' They submit that it is now a "*composite word to cover both intention and a type of recklessness.*" They cite the explanation given by LORD DIPLOCK in SHEPPARD [1981] AC 394, where, in a case of child neglect, he said that '*wilful*' in the context of the UK Children and Young Persons Act, 1933 involved the actus reus of failing to provide the child with medical aid; and the mens rea of the parent, that of being aware of the risk to the child's health if not provided with medical aid, or that the parent's unawareness of this fact was due to his not caring whether his child's health were at risk or not. The Editors submit further that, '*wilfulness*' requires basic mens rea in the sense of either intention or recklessness, and that even in the absence of the word '*wilfully*' this is the mens rea which will normally be implied by the courts for serious criminal offences in the absence of any other factor indicating a wider or narrower basis. The case of *G* [2003] 4 All-ER765 HL has confirmed that wilfully means intentionally or recklessly, but it has departed from the objective test for recklessness suggested by LORD DIPLOCK in SHEPPARD, and opted for the subjective approach.
10. Further, the owner's consent is not a defence to a charge brought under this Act, as LORD KEITH repeatedly stated in the case of *GOMEZ*

[1993] 1 All ER 1 HL at page 9 para h, page 12j, page 13b,g,h, and LORD BROWNE-WILINSON at page 39c and page 40j. In sum, LORD KEITH said ".....Indeed, Lawrence's case is a clear decision to the contrary since it laid down unequivocally that an act may be an appropriation notwithstanding that it is done with the consent of the owner. It does not appear to me that any sensible distinction can be made in this context between consent and authorisation."

11. In the case of the offence charged in Count 2, the prosecution must prove that the accused was a public officer, i.e. that he was a member of a public body. The essential element in establishing that an accused person has abused his office, is that whilst being a public officer, he has improperly conferred an advantage on himself or someone else. Improperly conferring an advantage could consist, as in this case, of the act of the accused in facilitating or causing a receipt to be issued for the sum of Le49,548,660 whilst knowing full well that the sum paid to him was only Le500,000. The clear intention of this provision is to cover the dishonest abuse of any position of financial trust or responsibility, including that of a trustee, company director or executor, but it is not confined to fiduciary relationships and would extend to frauds committed by employees including those that cannot be prosecuted as theft. An 'advantage', according to Section 1(1) of the Act includes any payment, release, discharge or liquidation of any loan, obligation or other liability, whether wholly or in part. Evading or, assisting another to evade the payment of the proper tax could in my view, constitute 'release of an obligation or other liability', and thus constitute an advantage within the meaning of this section.
12. In the case of Count 3, the first requirement is that the proscribed act should have been done knowingly; that the accused person knew, and was not merely reckless, that his actions would have certain consequences. There must also be performance of an act, that is, he must do something in the discharge of his duties which he knows contravenes the Law; or, there must be a failure to perform an act which the accused knows he must perform in the discharge of his duties. In this case, the prosecution is saying the accused performed an act: he did something, i.e. he issued a false receipt which contravened the Law while discharging the duties of his office.

## PRELIMINARIES

13. The accused originally pleaded Not Guilty to all the charges before the late ADEMOSU, JA on 19 April, 2010. Apparently due to some administrative changes in the office of the Commissioner, and because of some unexplained reasons, the prosecution was unable to proceed before him. When the accused first appeared before me on 20 September, 2011 the charges were again read over to him. He pleaded Not Guilty again. Count 1 was amended on the Application of Mr Kanu, Counsel for the State. "Revenue" was substituted for "Funds" in the statement of offence, and in the particulars of offence, in Count 1. The amendments appear in my handwriting on the Indictment in my file. On 3 October, 2011, on the Application of the Attorney-General and Minister of Justice in writing dated 26 April, 2010, and by Mr Kanu, orally in Court, I Ordered that the accused be tried by Judge Alone, instead of by Judge and Jury. The prosecution thereafter proceeded to lead evidence in support of its case.

## EVIDENCE OF PW1 - GIBRILLA BANGURA

14. PW1 was Senior Investigating Officer at the ACC, Mr Gibrilla Bangura. He recalled July, 2009. He received information from a Mr Prince Taylor of the British Council about the misappropriation of taxes meant for the Government of Sierra Leone. Mr Gobi and himself carried out investigations. He obtained statements from several witnesses, among them the then Programme Manager, British Council, Mr Peter Viner. Mr Viner gave him several documents. He tendered copies of these documents as exhibit 1 pages 1-7. Page 1 is a copy of an NRA Taxpayer's receipt 1009 dated 23 February, 2009. The tax payer, British Council's file number is given as B12. It evidences the payment of the sum of Le49,548,660 by British Council to an NRA cashier, M B George. Page 2 is a copy of another receipt issued to the British Council by M B George, evidencing the payment of the sum of Le500,000. Page 3 is a copy of a letter dated 18 May, 2009 from the NRA to Finance Director, British Council, informing the Council of its Tax obligations for the year 2008/2009. The detailed tax position is shown on page 4. The total liability in respect of PAYE tax is given as Le40,440,204 for the period 1

January, 2008 to 31 December, 2008. Page 5 is a copy of a letter dated 20 July, 2009 written by the Council's Director, Dr June Rollinson, to Mr Hassan Turay, Assistant Commissioner of Income Tax, NRA. In that letter, Dr Rollinson states, inter alia, that the Council had "paid cheque number 915361 [Le49,548,660] for PAYE arrears from June 08- Jan 09 in February 09. The NRA receipt number 111509 refers. We also paid withholding taxes [Le16,055,920] NRA receipt number 111510 refers. Copies of both of these are attached and I should be grateful if you could confirm therefore that our arrears as per your May letter are up-to-date? During my looking up the payments made to NRA, it came to my attention that two payments [both 20<sup>th</sup> February; our SCB cheques 915362 and 915369 for Le35,618,640 and Le15,502,827 respectively] do not have NRA receipts issued for the cheques presented to NRA and cleared through our bank account. I should be grateful if this matter could be investigated at your end."

15. NRA's response is at page 6, and is dated 4 August, 2009. The writer E S M Siaffa states that investigation into the payments made, were being made. Page 7 is another copy of page 5 with the addition of a minute addressed to the NRA's 'Head TPS. Pls TNA.' The minute is dated 31 July, 2009.
16. Between 5<sup>th</sup> and 10<sup>th</sup> August, 2009, the accused was interviewed by PW1 and Mr Gobi. His recorded interview was tendered as exhibit 2. pages 1-26.
17. Under cross-examination by Mr Jamiru, PW1 said that he had heard that Prince Taylor had misappropriated monies from British Council before he had interviewed the accused. Taylor fled the jurisdiction before the investigation was completed. The accused told him his superior was Mr Edward Siaffa and that he prepared receipts on his instructions. Both Mr Siaffa and the accused were detained. He did not know whether the accused received moneys from Taylor. He ended by saying he could not tell whether the accused was terminated from his employment, and whether he received terminal benefits. He was not re-examined.

#### EXHIBIT 2 - CONFESSION MADE BY ACCUSED

18. In his recorded interview, exhibit 2. At pages 4 et seq, he explained what transpired between himself and Mr Siaffa, and with Taylor. He said, inter

alia: "In February, 2009 I was at Tax Payers Services Unit....During that period, I was in-putting withholding taxes. However, there were transfers of personnel from my unit which created a vacuum or vacancy at the Finance section. By then, only one staff in the person of Robert Abu was left in the Finance section. I was therefore instructed by the Head of our unit Mr Edward Siaffa to be receiving tax payment and issuing receipt for same to the payers." When asked who had issued the receipt exhibited as page 1, he said he prepared and issued it to the British Council through Taylor. He agreed he had only received the sum of Le500,000 from Taylor though he issued a receipt for a much larger amount. When asked why he did so, his answer was as follows: "Prince Taylor was working at the NRA since 2003 to sometime in 2008 when he left the NRA for British Council. During his tenure at NRA he was my boss in that he was my superior heading Rent unit. In February, 2009 surprisingly, Prince Taylor called me on my phone and said he wanted to see me. He enquired where I was. I told him that I was in the office. On the following day during the morning hours, Prince Taylor came to me in the office....He met me receiving payment. He called me along the corridor of the office where is meant for reception. Prince Taylor then began explaining to me that he has some problem in his office at British Council. According to him he travelled out of the country and on his return he met his colleague workers in the Finance Department have misappropriated some money which according to him, he is responsible, being the head of the Department. He further said this problem will cost him his job. He further asked me to prepare a receipt for him for the alleged tampered amount. He did not tell me how much was involved. I advised him that I am not in a position to prepare any receipt without receiving the corresponding money as all my day's work are subject to verification by the Head of unit Mr Edward Siaffa. I therefore suggested to him that he could explain his problem to Mr Siaffa as they have been senior colleagues. Few minutes later, I was called by MR Siaffa to his office where Prince Taylor was seated. At that moment Prince again explained his problem and even stated the amount involved as Le49,548,660.03 for which he needed an official receipt from NRA to cover it up. Mr Siaffa then asked me how best or possible we could assist him. I replied that it could not be possible without any payment as the receipt books are in quadruplicate.

*Cancelling any original receipt must reflect in all of them. Mr Siaffa even commented that the money involved was too large for the kind of assistance he was requesting. However, Prince Taylor persuaded Mr Siaffa who instructed me to prepare a receipt for him for that amount of money (i.e. Le49,548,660.03) after making some payment. The following day, Prince Taylor came with the sum of Le500,000 and for which I prepared a duplicate, triplicate and quadruplicate receipt No. L ITD 00111509 dated 23/2/09 where as I prepared the original of the same receipt number for the sum of Le49,548,660.03. I signed it. I did not receive any benefit or advantage from Prince Taylor as a reward for what I did". When asked in what form Taylor made payment, he said Taylor paid in cash.*

19. Later, at page 11 he was shown a photocopy of the receipt for the sum of Le49,548.660.03 - exhibit 1 page 1. He admitted he prepared and issued it. At page 20, he said: *"Having realised that I have committed an offence under the Anti-Corruption Act, I am asking that an opportunity is given to me for a refund of the above amount. Thereafter I would ask the Commission for clemency and assured that I will henceforth refrain from all corrupt practice."* There, his recorded interview ended.

#### LAW ON CONFESSION

20. The accused's recorded interview constitutes in Law a full confession of the facts constituting the crimes with which he is charged. A confession could by itself sustain a conviction without the need for corroboration, although the Court would look for evidence supporting its truth. I cite in support of this proposition the case of KULANGBANDA v R [1957-60] ALR SL 306 C.A. BAIRAMIAN, CJ said at page 307 citing the headnote of R v SYKES [1913] 8 Cr App R ,233 that: *"a confession properly proved in law needs no corroboration to found a conviction, although in practice there is invariably some corroboration....the headnote of KANU v R 14 WACA at page 30 reads... the confession.....was free and voluntary and in itself fully consistent and probable, and the inculcating statements were corroborated by several facts testified to by witnesses for the Crown - which showed that the confessions were true."* I have no doubt in my mind that the accused's confession is true, and that it was made voluntarily by him.

PW2 - DAVID ALPHA LANSANA

21. PW2 was David Alpha Lansana, Assistant Commissioner, Domestic Taxes Department of the NRA. He confirmed that letters were addressed to the British Council concerning their outstanding tax liabilities. The British Council sent to his office the original of exhibit 1 page 1. An investigation was conducted. He identified the cashier issuing the receipt as the accused. He confirmed also that the NRA only received the sum of Le500,000 in respect of the payments due from the Council. He was cross-examined by Mr Jamiru on matters relating to the work plans and working methods at the NRA. Whether accused was acting on the instructions of Mr Siaffa or not does not really matter. The accused has not pleaded Duress in this Court. Nor has he pleaded superior orders. Neither defence would, on the facts of the case, in any event, avail him.

PROSECUTION CLOSES

22. At the close of the evidence of this witness, Mr Kanu sought leave to dispense with calling Mr Viner, whose name appeared on the back of the Indictment, as a witness as he had left the jurisdiction. Leave was granted, and the prosecution rested.

ACCUSED PUT TO HIS ELECTION - S. 194 CPA, 1965 AND CASE FOR ACCUSED

23. The accused was put to his election in accordance with the provisions of Section 194 of the Criminal Procedure Act, 1965. The methods by which he could present a defence, if he so desired, were explained to him. The accused elected to testify on oath and said he had no witnesses.

EVIDENCE OF THE ACCUSED

24. His evidence is recorded on pages 8-11 of my minutes. He tendered in evidence a copy of his letter of appointment, as exhibit 3. It shows he was appointed Collection Assistant with effect from 1 December, 2003 by letter dated 26 November, 2003. He explained his duties and the manner in which they were performed. He denied being a member of the Accounts department. However, he was instructed by Mr Siaffa to issue receipts though this was to be done under his supervision. He narrated

what transpired between himself and Taylor in February, 2009; and also, what transpired in Mr Siaffa's office between the three of them. Again, he said he was instructed to issue the fake receipts on the instructions of Mr Siaffa. This more or less confirms his confession made at the ACC, exhibit 2 pages 1-26. He tendered his letter of termination dated 16 April, 2010 as exhibit 4. He was terminated with effect from 19 April, 2010. He was paid benefits totalling Le2.2million. Under cross-examination, the accused admitted signing both pages 1 and 2 of exhibit 1. Thereafter, the accused closed his case. Both Counsel submitted written addresses. They are in this file.

#### BURDEN AND STANDARD OF PROOF

25. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which an accused person is charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused person, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused person of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused person has not only committed the unlawful acts charged in the Indictment, but that he did so with the requisite *Mens Rea*: i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the accused, I must give him the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "*sacrosanct or absolutely necessary*" as was pointed out by SIR SAMUEL BANKOLE JONES, P in the Court of Appeal in *KOROMA v R* [1964-66] ALR SL 542 at 548 LL4-5. What is required is that it is made clear by or to the tribunal of fact, as the case may be, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed. The onus is never on the accused to establish this defence any more than it is upon him to establish provocation or any

other defence apart from that of insanity. I must also bear in mind, and keep in view at all times that when an accused person testifies from the witness box, his evidence is treated like any other piece of evidence. Any evidence which inculpates him could sustain a conviction, while evidence which exculpates him, could if the circumstances so warrant, be treated as self-serving.

## ASSESSMENT OF EVIDENCE AND FINDINGS

26. I have reviewed the whole of the evidence adduced in this case, and I have come to the conclusion that the accused is guilty of all the offences charged in the Indictment. He misappropriated public revenue which was due and paid to the NRA by the British Council, in that he wilfully committed an act, to wit, issuing a receipt for Le49,548,660.03 when he had only received the sum of Le500,000 as payment. He did so, whilst being fully aware that he was perpetrating a fraud on his employer. His excuse is that he was authorised by his superior to do so. That excuse is unacceptable in any Court of Law. He also abused his office in that he conferred an advantage corruptly on Prince Taylor; and ironically, on British Council. If it had not been for the accused's connivance with Taylor, the Council would have had to repay the tax due in full because Taylor was in their employ. The Council are by the accused's criminal acts, been released from the additional liability of having to pay the same amount of money to the NRA as taxes. The NRA has lost the revenue due it as a result of the criminal conduct of the accused. The accused also abused his position because he performed an act in contravention of the National Revenue Authority Act, 2001 in that he dishonestly issued a receipt in respect of an amount of money he knew he had not received. And as I have said in other cases I have tried, I will not convict an accused person of an offence under the Ant-Corruption Act if he has not been dishonest, whether the offence charged is one of Misappropriation of public revenue or abuse of office, or abuse of position. I believe the accused in this case was dishonest in the manner in which he issued the false receipt exhibit 1 pages 1&2. He is therefore guilty on all Counts.

## 27. VERDICT

Count 1 - Guilty

Count 2 - Guilty

Count 3 - Guilty.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

## ALLOCUTUS:

And please for duty. Please for me.  
I am a student at SPAN School of Applied  
Accounting. I have omitted one. This is  
my first time.

## SENTENCE:

Count 1 - - £30 million or 4 years.

Count 2 - - Combined P-discharge

Count 3 - - Combined P-discharge

Consequential Only. The sum of £49,048,660/10  
shall be received by the Aze Am Prince

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

TALON wherever he is, and put over to  
the NRA. Mee JA.

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