

1
IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

PASTOR HENARIE FORTUNE JOS AH

INDICTMENT NO. DPP/2016/241

PROSECUTION: A. SHEKU ESQ, M.LANSANA ESQ AND S.J.Y
BÄRLATT

DEFENCE: C. TUCKER

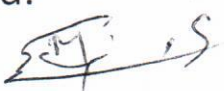
JUDGMENT DATED THE 1ST DAY OF AUGUST 2017

By an amended Indictment dated the 5th day of March 2016, the Accused Person is arraigned on Three Counts. The Indictment alleged that the Accused Person, Pastor Henarie Fortune Josiah on a date unknown between the 1st day of January 2013 to the 31st day of May 2013 at Freetown, converted one Benz Vehicle valued Thirty Two Million Leones (Le32, 000, 000, 00). Moreover, the same date, the Prosecution alleged that the Accused Person converted to his own use Seven Hospital Beds of the value of Seven Million Leones, Twenty One Mattress valued One Million Eight Hundred and Ninety Thousand Leones, Two Computers valued Four Hundred Thousand Leones , Twenty Rubber Chairs valued One Million

Seven Hundred Thousand Leones, Fifteen HP Printers valued Twenty-Two Million Five Hundred Thousand Leones, Twenty Television valued Eight Million Six Hundred and Forty Thousand Leones, Fourteen DVD Players valued Two Million One Hundred Thousand Leones. And on Count: 111, the Accused Person is alleged to have converted One Toyota Picnic Vehicle with registration no. AHQ 265 valued Thirty Two Million Leones. The converted items in the Indictment as alleged are said to be the properties of Joseph Allieu Saidu Sannoh.

The Accused Person pleaded not guilty to Counts 1, 11, and 111.

The Prosecution filed a trial by a Judge alone application. The Defence did not object and hence granted by the Court.

At the Commencement of the Trial, the PW1, Joseph Allieu Saidu Sannoh, identified the Accused Person as a neighbour and that this relationship later developed into a family friend. The PW1 told the Court ^{that} Madam Emma Kunstler is his elder  sister who is resident in Germany. The PW1 informed the Court that his elder sister Emma between the 1st day of December 2012 and the 31st day of December 2012, sent one Forty feet container to him through shipment and he produced and tendered in Court the Bill of Lading and same marked as Exhibit A1 to 2. The PW1, enlisted some of the things such as One Benze Poda Poda 207, One Toyota Picnic, Hospital Beds,

Mattresses 4-6 over Forty, Rubber Chairs, HP Printers, Computer sets, Rubber Bowls, Televisions, and according to the PW1 many other assorted items. The PW1 further testified that some of the things were given as donations at the Connaught Hospital and Koidu Government Hospital and some other things left with him by his sister Emra and on the return of his sister to Germany, the PW1 said the Accused Person confronted and informed him that a relative was interested in the Benze Poda Poda and that after negotiation of an agreed amount of Thirty Three Million Leones, the Accused Person advanced Fourteen Million Leones and promised to pay the remaining amount in a month. The PW1 testified that he accepted the said advance payment for the said Benz and vehicle handed over to the Accused Person.

The PW1 further testified that the Accused Person became his Sales man when he had cause to travel to Port Loko District. The PW1 said he later received information and made a report at the Calaba Town Police Station of Larceny Toyota Picnic vehicle registered in the name of the PW1 and have as it registration number AHQ 265. Upon information received the vehicle was arrested by the Police and the PW1 went to the Criminal Investigation Head Quarters where the PW1 identified the Accused Person and the said missing vehicle which was left under the custody of the Accused Person.

In Cross Examination the Accused Person reiterated his position in Chief regarding the allegation in issue.

The second Prosecution witness, Mohamed Sheriff testified in Court that he was instructed by the PW1 to take inventory of all things in the shop and handed over same to the Accused Person and the proceeds of sales must be handed over to the wife of the PW1 by the Accused Person who is now a salesman installed by the PW1.

This is of course a paramount concern to the bench. The manner in which the Accused person was put in charge of the business is improper. For someone to be in charge ^{of} property for the purpose of sale that fiduciary relationship must co-exist between the master and servant in a business world but I realized that was absent. If that is the case, The Accused person cannot be held legally accountable for Count 11.

The Third Prosecution Witness, Abu Bakar Bangura, , a Police detective attached at the Calaba Town Police Station , Freetown. According to the PW3, when the PW1 made a report of Fraudulent Conversion a Search Warrant was conducted and things discovered belonging to the PW1 at Ivan Drive. Beside, the PW3 told this Honourable Court that a Letter tendered in this Court as Exhibit B, was written to the Sierra Leone Road Transport Authority, now known as Road Safety Authority, and in replied thereof, The Road Safety Authority acknowledged

that the PW1 is the owner of the Toyota Picnic Vehicle, and the said Letter tendered as Exhibit C1 to 2.

On this note, the legal observation of the bench is that Fraudulent Conversion contrary to Section 20(1)(iv)(a), had to do with the retention of goods given to you by some^{one} for safe keeping and it has to be returned upon demand. Here I submit the Accused shall be legally accountable suppose it is prove that the Person did take possession of the said Toyota Picnic Vehicle for safe keeping and failed to hand over same when needed by the PW1. This I humbly submit is in sharp contrast to Counts 1 and 11 herein. In Count 1, for instance, a Criminal action can not lie on the ground that the PW1 has already testified in Chief the Accused Person gave him Fourteen Million Leones (Le 14,000,000.00). I submit legally that the Accused Person can be held legally accountable and the only option left open to the PW1, is to proceed with an action in Civil on Count 1.

The Fourth Prosecution Witness, Abdul Karim, testified in Court that he is aware about the said Toyota Picnic Vehicle in that he had a very closed dealings with the accused person which involved monetary consideration of Twenty Million Leones for this said vehicle but the Accused Person vamoosed and this very subject matter the Toyota Picnic Vehicle was arrested by the Roads Authorities. To me, this is a confirmation thereof that

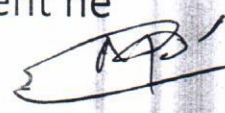
6

the Accused Person failed to retain the property of the PW1 , instead put on sale with the intention of depriving the PW1 permanently. But the Accused Person ran out of luck, courtesy of the Roads authorities.

The final and fifth Prosecution witness in this case, Onia Patricia Quee, a detective Police Constable, attached at the Criminal Investigation Department, Head Quarters Freetown. This witness produced and tendered the Voluntary Cautioned Statement of the Accused person as Exhibit G1 to 10. But the Accused Person denied all the allegations contained therein. The Accused Person was nevertheless charged by the Police and same produced and tendered as Exhibit H1 to 2.

The Prosecution thereafter closed its case. The Committal Certificate tendered as J.

Commencement of Defence Case. The Accused Person was put to his election. The Accused Person relied on his Statement made to the Police and said he has two witnesses on the very first he was put to his election. On the second occasion, the Accused Person told the Court that ^{he} relied on his Statement he made to the Police but he has no [^]witness.



The Defence submitted written Address for the Accused Person and sought that the Accused Person be acquitted and discharged.

This Honourable Court, withdrawn this file for Judgment. It is very clear in law, the Accuse Person as in this case ~~to~~ rely on his sole Statement can only succeed if he acted rightly.

[Handwritten signature]

For instance On Count 1, the Law is clear and unambiguous, since the Accused Person made part payment for the benze vehicle, an action certainly lie in Law but ^{not} in Criminal, rather in Civil Suit for the remaining amount. Consequently the Accused Person is acquitted and discharged on Count 1.

[Handwritten signature]

On Count 11, as I said earlier, the principle of Equity and fairness will hold sway. There PW1 did not in any way established a Master/Servant relationship which would have led to the Accused person being arraigned for Larceny Servant on Count 11. No reference of a binding relationship between the Accused Person and the PW1. The PW1 must have acted fairly with the Accused Person by putting him on salary but mainly relied on neighborhood and family friendship. I also acquitted and discharged the Accused Person on Count 11.

But on Count 11, as I observed earlier, Toyota Picnic was put in the custody ^{of the Accused Person} for safe keeping and not for sale. The testimony of the PW4 is [^]conclusive, in that it corroborated the testimony of the PW1 that indeed a vehicle in the nature of Toyota picnic was with the knowledge of the Accused Person and this is contrary to the spirit and Letter of Section 20(1)(iv)(a) of the Larceny Act 1916 which has to do with the retention of goods

[Handwritten signature]

and same be returned upon request or for onward transmission to a third party.

Section 20(1)(iv)(a) of the Larceny Act 1916 states 'Every person who being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply or pay or deliver for any purpose or to any person the property or any part thereof or any proceeds thereof'

. I submit therefore that the Prosecution has prove its case beyond reasonable doubt on Count 111 , as established in the case of Woolmington Vs. DPP. The Accused Person acted criminally after faith was vested in him. The Accused Person is guilty on Count 111.

ALLOCUTUS ON COUNT 111:

— The Defence asked for Mercy for the Accused Person.

— The Prosecution relied on the description
D-1

Sentence

The Grand Jury
is sentencing to
five years
imprisonment on
Count III.

M. J.

1-8-17

Stevens J

Court - Time

Spent in custody

at the Remond
Prison must be
included.

~~M~~
~~ing~~

1-8-2017
Stevens J.