

**IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN**

THE STATE

VS

HENRIETTA SARAH THOMAS

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA
DATED THE 22ND MARCH 2017**

Counsel:

Alhaji M. Kamara Esq for the State

Hannah A. Ahmed for the Accused

Judgment

1. The accused stands charged on a one Count Indictment dated the 29th day of March 2016 for the offence of fraudulent conversion contrary to Section 20(1)(iv)(a) of the Larceny Act, 1916. The allegation is that on a date unknown between the 1st day of July 1990 and the 1st day of August 1990 at Freetown, in the Western Area of the Republic of Sierra Leone fraudulently converted to her own use and benefit certain property, that is to say one land document entrusted to her for safe keeping by Princess Maria Boima for safe keeping

1.1.2. I thank Defense Counsel, Mrs. H. A Ahmed for defending the accused and for submitting a final address on behalf of the accused.

2. Burden and standard of proof

2.1. The prosecution has a duty to prove its case beyond reasonable doubt to gain a conviction on the offence as charged. See the case of *Woolmington Vs. DPP* which said principle of law has been adopted in all criminal cases within the Sierra Leone jurisdiction.¹ This principle of law is not without exception. Where an accused pleads insanity to an alleged crime, it will remain the duty of the accused to prove that his situation falls within the M'Naughten rules. There are also statutory exceptions which provides that where a defence is based on any exception, proviso or qualification, the accused will have the burden of proof in proving that the exception applies in his situation. In respect of the level of the burden of proof on the part of the Prosecution, I refer to the well known case of *R Vs. Edwards* (1975) QB 27 and *Miller Vs Minister of Pensions* (1947) 2 AER 372.

2.1.1. I am mindful of the fact that an accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his/her guilt. I have cautioned

¹ *The State Vs. Francis Mohamed Fofana Komeh & John Mans* (unreported).

myself that all doubts must be resolved in favour of the accused person. I shall now proceed to evaluate the evidence and the law before me.

3. The Law

3.1. Section 20(1)(iv)(a) of the Larceny Act 1916 provides as follows:

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 ... the property or any part thereof ... fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof ... shall be guilty of a misdemeanor and on conviction thereof liable to imprisonment for any term not exceeding seven years.

To succeed on a charge under Section 20(1)(iv)(a), the Prosecution must prove:

- a. That property was entrusted to the accused for safe keeping;
- b. That the accused fraudulently converted the said property to her own use or benefit or to the benefit of some other person(s);
- c. The intent to convert fraudulently must be shown.

4. Evidence analysis

4.1. PW1 was the complainant, Princess Mariah Boima who told the Court that the accused is her younger sister. She told the Court that their father while on hospital bed, gave her some keys to a box which had in it a brown envelope containing title deeds of properties in his name and which was to have been distributed between them, that is PW1 and her siblings. She collected the said envelope with title deeds and gave the envelope containing six documents to the accused, her sister for safe keeping. I must point out that the evidence before this Court as on the indictment herein is to do with one land document of title and the contention by way of testimonial evidence is to do with a property at Soldier Street, Freetown.

4.1.1. PW1 told the Court that 40 days after the demise of their father, she demanded the said title deeds from the accused but the accused told her, she gave the documents to their aunty, one Lucy Buck.

4.1.2. She told the Court that she called five meetings during which she asked the accused to produce the documents because she wanted to use her share of her dad's properties to send her son to medical school. She said despite her pleadings with the accused, the accused denied receiving any document from her so she made a report against the accused to the police at the CID HQ, Pademba Road. I must point that this could not be true because PW1 had earlier told the Court that the accused told her when she asked her for the document that she gave it to one Lucy Buck. PW1 told the Court that the accused produced two of the documents she had given her for keeps at a meeting a Janju Street which she said she gave to the police in support of her case against the accused. I wonder

how the accused could have produced any of the documents if indeed she had denied as PW1 said she did to have the documents.

4.1.3. In answer to questions put to her in cross examination, PW1 told the Court that she had no information that the accused had any intention of disposing of their late father's properties hereinbefore referred. She said no one ever told her that the accused sold or tried to sell even the documents of title. She told the Court that rather, it was she herself who wanted to sell her own share of the property and facilitate her son's studies.

4.1.4. PW1 said one Olu Cole did tell her that the title deeds herein referred were buried for safe keep save that when they visited the area where the documents were kept, they were nowhere to be found. She said no 'stranger' has laid claim to the property at Soldier Street or the property at York.

4.1.5. She told the Court that she has not been in speaking terms with the accused who is her younger sister of the same mother and father for about 24 years and that she is not in speaking terms with all her other. She denied bringing the matter to Court out of malice but rather so that the accused can produce the documents of title to her father's estate so that distribution of the properties can be made.

4.1.6. PW2 was Detective Inspector Amadu Vandy Kanneh attached to the Major Incidents Units CID HQ, Pademba Road, Freetown. He told the Court that having cautioned and questioned the accused in Krio who made her statement in Krio on an allegation of an offence of fraudulent conversion, himself and DPC 9718 Kamara Zainab I obtained a VCS from the accused on the 29th day of January 2015 which said statement was recorded in English. He said the recorded statement was read over and explained to the accused in Krio which she acknowledged to be true and correct by signing same in her own hand writing. He signed the statement as the recorder and DPC 9718 Kamara Zainab I signed as a witness. No objection raised by the accused, her statement was tendered as Exhibit A1-9.

4.1.7. On 30th day of January 2015, together with DPC 9718 Kamara Zainab I, PW2 obtained a charge statement from the accused. No objection raised by the accused, her charge statement was tendered as Exhibit B1-2.

4.1.8. In answer to cross examination PW2 told the Court that he did visit the scene of crime in a shop where the accused had told him in her statement she hid the documents of title hereinbefore referred. He confirmed he saw the hole where the documents were allegedly hidden by Olu Cole. He said he found out during his investigation that the accused is a beneficiary to the property now in question. He has no doubt on his mind about that. He said he did not find out that the property in contention had been disposed of in any way. PW2 told the Court that the accused told him she made copies of the documents of title herein referred which she said she handed over to their relatives.

4.1.9. PW3 was Olu Cole who told the Court that he used to live with the accused and that sometime in 2009, he helped the accused by digging a hole in which the

documents herein referred were kept. He said he moved from the accused person's home some three years after he had moved from the accused home, he was called upon by the accused who complained she could not find the documents in the hole, that is in the accused person's shop, her business place.

5. PW4 was Princess Buck Conteh who identified herself as a first cousin of both the complainant and accused. She said she herself enquired with the accused about the documents of title given her by PW1 and that the accused informed her that the said documents were buried for safe keeping but that they were not found when she went in search of them. She said the accused did tell her someone was helping her get copies of the said documents.

5.1. She said the documents of title in respect of properties at Soldier Street and York were handed over to her by Dr. Claudius Cole at a family meeting at Janju Street where the complainant, PW1 was also present. It could be recalled that PW1 told the Court in one breath that the accused produced two documents of title at a meeting at Janju Street and in quite another breath that the accused denied having the documents. I must note that there is nothing in evidence to suggest that the father of the accused and PW1 owned any other property other than those at Soldier Street and York. My understanding of the evidence so far by PW1 and PW4 therefore is that the two documents of title produced by the accused at the Janju Street meeting are for the properties at York and Soldier Street respectively.

5.1.1. PW4 told the Court that the reason why the said documents were handed over to her is because the accused had refused accepting the said documents of title from the accused because she, PW1, handed over the documents to the accused in an old envelop and that she, PW1 will only accept the documents in the same old envelop. She said the envelope contained copies of the title deeds. PW4 confirmed that the copies of documents of title handed over to her was in respect of properties at York and Soldier Street. She said she had not received any information that any of the property had been sold or disposed of in any way by the accused. She confirms also that the accused is a beneficiary of the estate in question. I have given my thought on that.

5.1.2. Counsel for the State tendered Exhibit C1-2 as part of the evidence before this Court from the Bar and closed the Prosecution's case on the 5th day of December 2016.

5.1.3. The accused was put to her election in compliance with Section 192 of the CPA No. 32 of 1965 to wit:

- a. To make an unsworn statement from the dock and not be subjected to cross examination;
- b. Make a sworn statement from the dock and call a witness(es) and be subjected to cross examination;
- c. Rely on her statement to the police.

5.1.4. The accused chose to rely on her statement to the police. The Court's Order was that the Prosecution submits a final address on behalf of the State on the 10th day of January 2017 and on behalf of the accused on the 17th day of January 2017. A final address was submitted on behalf of the accused on the 25th day of January 2017 and to date, no final address has been submitted on behalf of the State. I have read the accused person's statement to the police.

6. I have stated the provision of Section 20(1)(iv)(a) of the Larceny Act, 1916 under which the accused was charged. The said section is concerned with cases where money is entrusted by a transferor to another with intent that it should be passed on by the transferee to a third party and where an obligation to pass on to a third party is imposed by the transferor in the first instance. It is noted that the matter herein has nothing to do with money entrusted to the accused but assuming that the title deeds herein could be described as money, I will look at the elements of the offence to determine whether or not the accused did in fact convert fraudulently that which was entrusted her for safe keeping.

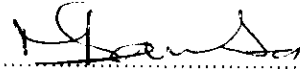
6.1. The accused has not denied that she was entrusted with property, to wit, title deeds to properties at York and Soldier Street; she has not denied that these said deeds were entrusted to her by PW1 for safe keeping.

7. Like any criminal offence, in order that the accused who stands charged with fraudulent conversion may be convicted, she must be found to have a fraudulent intent. It was for the Prosecutor to prove that the accused converted these documents to her own use and benefit or to the benefit of some other person and that such conversion was fraudulent and dishonest. See *R Vs. Bryce*, 40 Crim. App. R. 62. In *R Vs Hignett* (1950) 94 S.J. 149, the Commissioner trying a case for fraudulent conversion failed to direct that it must be proved that the accused had a fraudulent intent. The jury and Court of criminal appeal held that in view of this complete misdirection, the conviction on the charge of fraudulent conversion must be quashed.

7.1. The evidence before this Court is that the title deeds hereinbefore referred were entrusted to the accused for safe keeping for some 25 years before she produced them at a family meeting at Janju Street. PW1 herself who is the complainant told this Court that the accused did not dispose of any of the properties in question whether by way of sale, lease, mortgage or howsoever; that no body, no stranger has ever made any claim to the said properties. These same words were echoed in testimony by the blood cousin of the complainant PW1 and the accused. Granted the documents of title were not handed over in their original form but the authenticity of the copies produced by the accused have not been contested. I will discountenance the reason why the accused refused acceptance of the copies produced by the accused which authenticity as said were not questioned. Why would the accused attend the family meeting at Janju Street and hand over copies of the title deeds if she had any intent of fraudulently converting same? This charge is best described as baseless.

7.1.1. I note that the said copies of document were produced before the complainant, PW1 made a complaint to the police and the report and therefore

the charge is based basically on the fact that the documents were not produced in their original form and because they were produced in a newer envelope than that in which they had been given to the witness more than 25 years ago. One would expect that the police officers who charged this vexatious matter to Court and indeed prosecuting counsel would have seen reason to advise the complainant who is a lay person that she has no case against the accused. Counsel, if no one else knows, I hope, that title deeds for properties are registered and filed in the Books of Conveyances at the office of the Administrator and Registrar-General, Roxy Building, Freetown. In essence, even where the accused could not find the documents herein referred, it is a well known fact that those same documents could be gotten from the Roxy building. There is nothing in evidence to suggest that efforts were made to retrieve same therefrom but that such effort was futile. I hold that this is a wicked and vexatious charge and indeed a waste of the Court's logistics and time. The accused is accordingly acquitted and discharged.



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Hon. Jst. Miatta M. Samba, J

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
THE STATE
VS.
IBRAHIM SORIE KOROMA

BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.
DATED THE 29TH DAY OF NOVEMBER 2017

Counsel:

A.J.M. Bockarie Esq for the State
Feio Edward Esq for the Accused

Judgment

1. The accused, Ibrahim Sorie Koroma, stands charged on a one Count Indictment dated 29th day June 2015 with the offence of wounding with intent contrary to Section 18 of the Offences against the Person's Act, 1861. The Prosecution's allegation is that on the 22nd day of February 2015, at Freetown in the Western Area of the Republic of Sierra Leone, the accused, Ibrahim Sorie Koroma wounded Alhaji Bah with intent to cause him grievous bodily harm.
2. Section 18 of the Offences against the Persons' Act 1861 provides as follows:

Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person ... with intent to do some ... grievous bodily harm to any person ... shall be guilty of a felony, and being convicted thereof shall be liable ... to be kept in penal servitude for life

- 2.1. Grievous bodily harm as appears in section 18 of the Offences Against the Persons' Act (OAPA) 1861 means nothing more than serious bodily harm. The commission of a Section 18 OAPA 1861 offence does not necessarily involve a battery. For the prosecution to secure a conviction on a Section 18 offence, it must prove specifically that the accused person caused grievous bodily harm to the victim named in the Indictment with the specific intent of malice. If they fail to do this, then, if there is evidence that the accused may have been reckless as to whether injury was caused to the victim or not, then the accused would be guilty of an offence under Section 20 OAPA 1861, if he is charged with one but not one under Section 18 OAPA 1861.

3. Burden and standard of proof

- 3.1. This Court is sitting both as a Tribunal of Fact and as a Tribunal of Law. I must therefore 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 reasonable doubt. It bears the

burden of proving beyond a reasonable doubt every element of the offence or the offence with which the accused person is charged.

- 3.2. If I have any doubt in my mind as to the guilt or otherwise of the accused person in respect of any or all of the charges against him in the Indictment, I have a duty to acquit and discharge that 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 act charged in the Indictment but that he did so with the requisite *mens rea*; i.e. I am also mindful of the principle that even if I do not believe the version of the events put by the defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt.
- 3.3. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by SIR BANKOLE JONES, P in the Court of Appeal in *Koroma Vs. R* (1964-66) ALR SL 542 at 548 LL 4-5. 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. See the judgment of Livesey Luke, JSC at pgs 11-13 in *Sahr M'Bambay Vs. The State* Cr. App 31/71 CA unreported.
- 3.4. Referring to the case of *Woolmington Vs. DPP*, Luke, JSC said at page 12 of his judgment that "if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or the prisoner ... the prosecution has not made out the case and the prisoner is entitled to an acquittal." According to Tambiah JA at page 358 LL 3-5, "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." The accused in that case pleaded self-defence. The same point was re-stated by Awoonor-Renner JSC in *Franklyn Kenny Vs The State*, Supreme Court Cri/App 2/28 unreported at pages 6&7.
- 3.5. On file is an instrument under the hands of the DPP dated 19th day of August 2015 for trial by Judge made pursuant to Section 144(2) of the CPA No. 32 of 1965 as repealed and replaced by Section 3 of the CP Amendment Act No. 11 of 1981. No objection being made to the application, Bockarie's application was granted by this Court.

4. EVIDENCE ANALYSIS

4.1. PW1 was the complainant, Alhaji Bah. He told the Court that the accused is his neighbor at No. 9 Cemetery Road, Adonkia, Freetown. He told the Court that the accused was in the habit of depositing rubbish at the back of his window for which he made a complaint to one Mr. Alhaji, a tenant at the accused' compound. he said he heard the

accused rain insults at him as he spoke with Mr. Alhaji and he asked the accused to stop insulting him.

4.2. The accused threatened to hit the complainant but he withdrew into his home. When he came out and walked through the drainage, the accused approached PW1 and he fell to the ground. The accused then hit PW1 with a stick on the upper part of his left eye lid; he fell and went unconscious. When he gained consciousness he realized he had a deep wound in that part of his left eye lid where he had been hit by the accused. On his way to the Adonkia police station to make a complaint against the accused, he saw the accused with the stick which he had hit him with. He told the Court that a photo of his wound was taken by the police officer and he was issued a medical certificate which he took to the Connaught hospital where he was treated for his injuries sustained at the hands of the accused. He said he submitted the medical report to an officer named Mr. Idrissa at the Adonkia Police Station which said report he tendered for identification as Exhibit Z.

4.3. In answer to questions put to him in cross examination, PW1 reiterated the accused is his next door neighbor; he disagreed with Counsel that his house and that of the accused are separated by a fence. He disagreed with Counsel for the accused that he rushed at the accused and hit him in the neck as he was showing Mr. Alhaji where he intends to put a boundary fence. PW1 told the Court that on the day he made his report to the police station, he was also called and question in respect of him wounding the accused which he said he denied.

4.4. PW1 told the Court that there was no fight between the accused and himself. He said there were people present, including the Mr. Alhaji when the accused hit him with a stick on his left eye lid. He denied making derogatory utterances against the accused. PW1 disagreed with Counsel that he hit his forehead on the wall. I wonder why Counsel would think that someone would hit his forehead against a wall yet get a deep cut which resulted in three stitches in the upper left eye lid.

5. PW2 was Ahmed K Sesay. He said on the 22nd day of February 2015, he went to have food at the back of Alhaji Bah's house. He said he saw Alhaji's mother pulling Alhaji Bah, that is the complainant from the accused and that he pulled the complainant's mother and the complainant off the scene. He also pulled the accused off the scene and warned him against arguments in respect of the boundary between the accused property and that of the complainant.

5.1. He said he then saw the accused walk back towards the complainant who was cleaning rubbish off his property and pushed him and hit him with a stick he had in his hands in the face. he said the

complainant bled profusely from where he had been hit. He then went with the complainant to the Adonkia police station.

5.2. In answer to questions put to him in cross examination, PW2 told the Court that he does not know whether or not there was any problem between the accused and the complainant. he reiterated that he saw the accused when he pushed the complainant and used a stick to hit the complainant. he said though he was a stranger in that area at the time of the incident, he observed there were other people present when the accused pushed the complainant and hit him with a stick, which said people he could not name because he was a stranger then in the area.

6. PW3 was DPC 10174, Idrissa Massa Bangura, attached to the CID Adonkia Police Station. He said he received a complaint of wounding with intent from the complainant, Alhaji Bah against the accused and he it was who investigated the matter. He said he issued a Police Medical Report Form in duplicate to the complainant for examination and treatment at the Connaught Hospital which the complainant returned, endorsed. He identified Exhibit Z as the said Medical Form. He said he obtained statements from the complainant and his witnesses.

6.1. PW3 told the Court that on the 26th day of February 2015, he invited the accused to Adonkia Police Station on which said day, together with DPC 10603 Yamba E.J, he cautioned and contemporaneously interviewed the accused in Krio. The accused he said, made his response in Krio which was recorded in English. The accused admitted his statement to be true and correct by affixing his right hand thumb print which said statement DPC 10603 signed as a witness and PW3 signed as the recorder. The accused then informed the Court that he was forced to sign the statement; a *voir dire* was therefore conducted with the accused person's statement tendered as Exhibit VD1-9 by PW3. Voir Dire witness No. 2, Emmanuel John Yamba identified VD1-9 as that which was willingly given by the accused under no duress. The accused opened his case in respect of the voir dire on the 4th day of May 2016.

6.2. The Court notes that the intention of the accused to call the Operations Manager of the Africell Operations Manager has nothing to do with the allegations of the accused hitting and wounding the accused in the left upper eye lid. Therefore, the Operator's failure to show up at the Court to testify on behalf of the accused in respect of the voir dire is in no way prejudicial to the case of the accused. The accused having failed on several occasions to continue his case on the voir dire, this file was withdrawn for ruling on the 16th day of November 2016. On the 30th day of November 2016, a ruling was delivered to the effect that indeed, the statement was that of the accused, willingly signed by him.

6.3. PW3 continued his testimony on the 20th day of January 2017 when he tendered Exhibit A1-9, the VCS of the accused and Exhibit B1-3, the charge statement of the accused. In answer to questions put to him in cross examination, PW3 told the Court that he read through Exhibit A1-9 and that he did visit the scene of crime. He said he did not find the area where a fence stick as alleged by the accused was uprooted and found no blood on the wall where the accused said the complainant had hit his head. I have made my comment in respect of that line of cross examination. It confirms in fact that indeed, an injury was caused but not by the accused. I have said that it is impossible that the complainant could have hit his forehead against a wall and yet sustained deep cuts in the upper eye lid that warranted three stitches. He said he did obtain statements from persons who were present at the crime scene. PW3 tendered Exhibit C, the endorsed Police Medical report Form hereinbefore referred.

7. The Prosecution tendered the Committal Certificate as Exhibit D1-2 and closed its case on the 29th day of March 2017. Pursuant to Section 194 of the accused was put to his elections to wit:

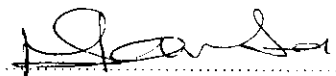
- a. Make his statement from the dock;
- b. Make a sworn statement from the witness stand;
- c. Rely on his statement to the police.

7.1. This matter was mentioned on the 26th day of April and 17th day of May 2016 but the accused was absent on both days. On the 24th day of May 2017, a warrant for the arrest of the accused was issued by this Court. he was again absent on the 31st day of May 2017, the 14th day of June 2017, the 28th day of June 2017. He was brought to this Court under arrest on the 19th day of July 2017 when he informed the court that he will rather make his election in the presence of his lawyer. On the 27th day of September 2017, the accused chose to rely on his statement to the police and he confirmed to the court that he did sign each page of his statement he made on the 26th day of February 2015. This file was withdrawn for judgment on the 8th day of October 2017.

8. In his statement, the accused said on the day in question, the complainant went to his compound which is next to his and rained insults at him for his discussion with Sheik Alhaji in respect of the complainant's complaint to the said Sheik Alhaji against the accused for depositing rubbish in the complainant's compound. he said the complainant referred to him as a bastard and that he should confront him if he believed he was born of his mother. He said the complainant's mother joined her son and rained insults at him referring to him as a bastard to which he responded by raining insults at the complainant and his mother.

8.1. He said the complainant hit him around the waist and back with a stick he had uprooted from his compound. he fell on the ground and the complainant held him around the neck and hit him in the mouth; he said he sustained injuries to his lips. He said the complainant then hit his own face on the wall and sustained some injuries to his face. the accused told the Court that he was issued a Police Medical Report Form at the Adonkia Police Station but no such form was returned to the police or tendered in evidence to confirm the accused' allegation that he was injured by the complainant. I have said that it is clear that that piece of evidence could not be correct for reason above stated and I do not believe the accused in that respect. It is clear that it was the accused who wounded the complainant in his left upper eye lid

9. As said, I believe the accused it was who hit the complainant with a stick on his upper left eye lid which resulted in the complainant receiving three stitches to the injured area. The complainant's version of events was corroborated by PW2 who was an eye witness at the scene. He saw the accused in argument with the complainant; he tried to separate the accused and the complainant; the accused left the scene and he saw him walk back towards the complainant and pushed the complainant to the ground; he saw the accused hit the complainant with a stick on his face and he saw the complainant bleeding from the area of his face where he had been hit by the accused. The accused did not call any witness who could corroborate his version of events in his statement on which he now relies. The injury sustained by the complainant qualifies for the offence of 'causing grievous bodily harm' in Section 18 of the OAPA 1861. On the strength of the evidence and arguments preferred before the Court, I find the accused Ibrahim Sorie Koroma, Guilty as charged.



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Hon. Jst. Miatta M. Samba, J