

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE

VS

DENNIS JONES

BEFORE THE HONOURABLE JUSTICE MIATTA MARIA SAMBA, J.
DATED THE 11TH DAY OF APRIL 2018

Counsel:

Jilo M. Kainwo for the State

Emmanuel S. Abdulai Esq for the Accused

JUDGMENT

1. The Accused stands charged on a one Count Indictment dated the 16th day of December 2015, for the offence of Conspiracy, contrary to Section 128(1) of the Anti-Corruption Act, No. 12 of 2008. The Prosecution's allegation is that on diverse dates between Monday, the 4th day of May 2015 and Sunday, the 31st day of May 2015, the accused, Dennis Jones, conspired together with other persons unknown to deceive Dominic Anselm Joseph Beary, a Director of Network Proximity (SL) Limited into paying the amount of USD 100,000 purportedly as fees for an international gateway licence. Represented by Counsel, the accused pleaded 'not guilty' to the allegation on the 16th day of December 2015 when the matter was mentioned for the first time.
2. I am mindful of the fact that an accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his guilt. I have cautioned 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. Burden and Standard of Proof

That the principle enshrined in the case of *Woolmington Vs. DPP* applies to all criminal cases, is without doubt. The principle that the burden of proof in all criminal cases rests with the prosecution is applied much more strongly when the Judge is both Judge of law and fact. Numerous Sierra Leone cases confirm this principle; those which have been reported include *Hall Vs. R (1964-66) ALR SL 189*; *Labor-Jones Vs. R (1964-66) ALR SL 471*; *Koroma Vs. R (1964-66) ALR SL 542*; *Bob-Jones Vs R (1967-68) ALR SL 267*; *Amara Vs. R (1968-69) ALR SL 220*; *Kargbo Vs. R (1968-69) ALR SL 354*. Those not reported include *The State Vs. Francis Mohamed Fofanna Komeh and John Mans* (unreported); *The State Vs. Hamzza*

Alusine Sesay & Sarah Finda Bendu (unreported); *The State Vs. Philip Conteh & Two Oths* (unreported) *The State Vs. Philip Lukulay* (unreported) and *The State Vs. Alieu Sesay & Four Oths* (unreported). All of these cases confirm that the legal burden of proof in a criminal case always rests on the prosecution and that the burden rests on the prosecution to prove every element of the offence with which an accused person has been charged beyond reasonable doubt.

Section 128(1) of the Anti Corruption Act, Act No. 12 of 2008 reads:

Any ... conspiracy to commit a corruption offence ... shall be punishable as if the offence had been completed and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

4. As per E.E. Roberts, J.A, as he then was, now JSC, in the case of *The State Vs. Alphajor Y. Bah et al* (unreported) and Paul, J in the case of *The State Vs. Solomon Hudolo Katta & Oths* (unreported), Section 128(1) of the Anti-Corruption Act of 2008 (hereinafter referred to as the Act), creates the offence of conspiracy. The side notes of Section 128 of the Act names the offence of conspiracy and sets out the alternative ways in which it could be committed, including the punishment it would attract. Conspiracy is therefore a common law offence made statutory by Section 128 of the Act. The term 'conspiracy' describes the offence of conspiracy to commit an offence contrary to Section 128(1) of the Act.
5. Counsel for the State and the Accused submitted their final addresses in support of their respective cases which I have read with keen interest. Most of what has been submitted on behalf of the Accused which has to do with whether or not the Anti-Corruption Commission has powers to prosecute the Accused, him being a private individual and not a public officer was addressed in this Court's ruling of 27th day of September 2016, on a no case submission filed on behalf of the Accused.
6. The Court said in the said ruling that the Anti-Corruption Commission can only charge cases that fall within the powers conferred on it by the Anti-Corruption Act No. 12 of 2008. The Court refers to the provisions of Section 7 of the Act, which sets out the objective for which the Anti-Corruption Commission was created. Parliament did not shy away from setting out the objects for which the Commission was created. In the whole of that section, Parliament did not for once suggest that the Commission should only combat corruption in public offices or public officials. The definition of corruption includes acts of dishonesty under 'any enactment'. See Section 7(2)(R) hereinbefore referred.
7. Section (128)(1) of the Act appears to me to be very much unambiguous as to the person(s) who can commit a conspiracy offence. The Anti-Corruption Act is quite specific in its reference to people liable under its provisions. It is clear from the Act, read as a whole, that where the intention is to refer to public officers in certain sections, it says so specifically. See Sections 38(1), 42(1), 43, to name a few which requires

the Prosecution to prove that the Accused is a public officer. When the Act refers to persons who may not necessarily be public officers or have any dealings with public officers, the Act also makes specific references to such persons as in Sections 40, 41(1) and 128(1) of the Act to name a few. When the Act requires proof of corruption offences by non-public official directed at monies meant for the public good, it is also clear in that respect as in Section 36(1) and (2) of the Act.

8. The Court agrees with Counsel for the Accused that the Accused is not a public official. The Court also agrees that the company, Network Proximity Ltd is not a public body within the definition section of the Anti-Corruption Act No. 12 of 2008. It is also agreed that no public funds or public revenue as defined by the interpretation section of the Anti-Corruption Act No. 12 of 2008 was involved in the matter herein. Of importance however is the fact that the Anti-Corruption Act No. 12 of 2008 is a specific Act designed to curb corruption. It therefore provides for offences to be charged under its ambit, inclusive of Section 128(1).
9. Counsel for the Accused person argues that the prosecution has failed to prove that there was any agreement between the Accused and any other person to commit a corruption offence as in Count 1 of the Indictment. It must be noted that with the offence of conspiracy, the evidence required need not include evidence of some tacit agreement on the part of the alleged conspirators to commit any crime. It is enough that it can be safely inferred that the role of each of the alleged conspirators show that they were part of a larger scheme which resulted in the Principal in the instant case loosing money. In other words, if the alleged conspirators agreement is carried out in accordance with their intention, it will amount to or involve the commission of any offence or offences by one or more of them. Such agreement can, as said be inferred; it need not be specifically proven. The evidence that must be adduced by the Prosecution is the role played by each of the alleged conspirators showing that they were in fact part of the enterprise which resulted in the commission of the corruption offence.
10. Proof of *mens rea* is important in proving the offence of conspiracy much as is in proof of any other crime. It was held in *R Vs. Griffiths* (1966) 14 B 589 that for an offence to be complete, the Defendant must adopt a criminal design as their common purpose. The Prosecution must prove that the Accused had in mind a common design or purpose and did certain criminal acts in pursuance of this purpose. With conspiracy, proof of *mens rea* is found in the Accused' willingness to perform his own part of the plot. The Accused may know full well that the entire enterprise would involve the commission of offence(s) by one or more of the conspirators. Lord Bridge in *R Vs. Anderson* (1986) AC. 27 H.L. said: "*The necessary mens rea of the crime in my opinion is established if it is shown that the Accused when he entered into the agreement intended to play some part in the agreed course of conduct in pursuance of the criminal purpose which the agreed course of conduct was intended to achieve, nothing less*

will suffice, nothing more is required". Archbold at para 4075 of its 36th Edition says, the Prosecution need not prove that a party to the conspiracy had knowledge of the illegality of the acts to be done. Where proof is available however, *R Vs. Siracusa* 90 Cr. App. R. 340, (cited favourably in Archbold 2001 Edn p 2641) says it is sufficient that the Accused knew that there was going to be the commission of some offence.

11. Evidence

11.1. The particulars of the offence as per the indictment state that on diverse dates between Monday, the 4th day of May 2015 and Sunday the 31st day of May 2015, the Accused conspired with other persons unknown to deceive Dominic Anselm Joseph Beary into paying the amount of USD100,000 (One Thousand Dollars), purportedly as fees for an international gateway licence.

11.2. PW1 was Thomas Thaimu Kanu, Senior Investigative Officer at the Anti-Corruption Commission. He recognized the accused as someone he and his colleague investigators interviewed on three separate occasions having cautioned him in a language that the accused understood. He said that at the end of taking each of the accused person's statement, he, the accused read and signed each page of each statement as the maker. The said caution statement was admitted into evidence as Exhibit B1-19.

11.3. PW1 told the Court that upon an invitation honoured by Ibrahim Sillah, the Managing Director of Salone Champion News Paper from whom he obtained a statement, he received the 4th May 2015 edition of the Salone Champion News Paper with the caption on page 7 reading "Government to award TELTAC and Network Proximity International Gateway". He told the Court he had tendered the original of the said News Paper in a related case. Page 7 of the said News Paper was tendered as Exhibit C.

11.4. He told the Court that further to his investigation, a Notice pursuant to Section 57(2) of the Anti Corruption Act, 2008 was served on the Managing Director of the Guarantee Trust Bank, Wilberforce Street Branch, Freetown seeking the account opening documents in respect of Network Proximity, Sierra Leone Limited on Account No. 2013I2605210 as well as other issues. The said Notice was tendered as Exhibit D. He said the Notice was complied with; bank documents including the statement of Account No. 3126065/002/001/000 covering the period 29th July 2014 to 29th June 2015, marked Exhibit F1-29 attached to covering letter dated 9th day of September 2015, Exhibit G1-4 and Exhibit H1-18, were tendered to the Court.

11.5. PW1 told the Court that a Notice pursuant to Section 56(1)(a) of the Anti-Corruption Act aforementioned was served on one Fatmata Pierce of the said Guarantee Trust Bank inviting her to the Anti-Corruption Commission in respect of management of funds for Network Proximity and their account hereinbefore stated. The said Notice was tendered as Exhibit E.

11.6. In answer to questions put to him in cross examination, PW1 reaffirmed to the Court that he was involved in obtaining the accused person's statement. He

said the accused told him he wrote a story which he got from sources and that as a journalist he was prohibited by law from disclosing his source. He referred to Exhibit C, p7 of the Champion News Paper and told the Court that he read the story. He said he got to know not far from the date of his testimony that TELTAC was awarded the Licence and that he does not know when the decision to award the Licence to TELTAC was taken.

11.7. PW1 was referred to Exhibit F1-29 and he told the Court that the name of the Accused is not written anywhere on the said exhibit. He was referred to Exhibit H1-18 and he told the Court that there is no evidence to show that the accused withdrew money from the account referred to in the said exhibit. Exhibits F and H are to do with bank documents of Network Proximity to which the Accused is not a shareholder. It is no surprise therefore that the name of the Accused or his photo is not attached to neither Exhibit F nor H.

11.8. He said the Accused told him during his interviews that when he got his information, he made several attempts to confirm same with government authorities but that he could not get any confirmation. The Court notes that the charged against the Accused is not for publication of unconfirmed publication but one of conspiracy to commit a corruption offence. PW1 told the Court that the Accused, during his interviews agreed to have been in contact with one Mohamed Sesay whom he said he first got to know six (6) months before he was invited by the Anti-Corruption Commission, in respect of a Samsung telephone sale transaction and that he last spoke to the said Sesay a month before his first interview with the Anti-Corruption Commission.

12. PW2 identified himself as Theo Nicol and as the Deputy Minister of Information and Communications, then, for the Government of Sierra Leone. He said the telecommunications industry is under his purview. He said NATCOM is responsible for granting of licences and that the Ministry of Information and Communications is the line Ministry for NATCOM. Nicol told the Court that between October and November 2015, licence for international gateway was only granted to Sierratel which said licence was operated by TELTAC and not other telecommunications operators. He assured the Court that as Deputy Minister of Information he was in a position to know if NATCOM grant licences for international gateway to any company. PW2 told the Court that about October or November 2015 the international gateway licence was liberalised. He said Network Proximity SL Limited was not granted an international gateway licence before October and November 2015.

12.1. In answer to questions put to him in cross examination, PW2 informed the Court that before he became Deputy Minister, he was a journalist for 31 years and that he worked for news makers in UK, Premier media and Premier news in Sierra Leone. He said in his 31 years as journalist, he cultivated journalistic sources and that those source gave him reliable information which he published after he would have cross checked his information. He said he could not recall reading the Salone Champion Newspaper of 4th May 2015.

13. PW3 was Dominic Anselm Berry. He told the Court he resides in the United Kingdom. He said he has known John Mason for about 15 years and that they did charity work together in London. He said one Mohamed Osman Sesay was introduced to him by John Mason in March 2014 and that he met him, that is Mohamed Osman Sesay in July 2014. PW3 told the Court that Mohamed Osman Sesay was supposed to assist them in their purchase of an International Voice Gateway Licence; he said Sesay helped them with processes needed to purchase the said Licence and that Mr. Sesay was working on his behalf in Freetown to meet people and arrange meetings with stakeholders in Freetown when ever he visits. PW3 told the Court that he is the founder of Network Proximity Company, which has three shareholders, namely, himself, John Mason and Mohamed Osman essay and that the purpose of forming the company was for purchase of the International Gateway Licence.

13.1. He referred to Exhibit C, a copy of the Salone Champion News Paper of 4th May 2015. He said he first got to see Exhibit C when an email was sent him to his personal email address as at dominic.berry@gmail.com on the 5th day of May 2015 from Mohamed Osman Sesay as at Mohamedosmansesay@gmail.com, to which the said exhibit was attached. He tendered the said email as Exhibit J. PW3 told the Court that the purpose why the said email was sent to him was to prove to him that the Government of Sierra Leone had requested some money as part of the International Gateway Licence requirement. He said he gained confidence after seeing the publication so he transferred the amount stated in Exhibit J to Sierra Leone.

13.2. He referred to Exhibit H11-18 dated 25th May 2015, especially page 13 and said that was a transfer of money he made from the United Kingdom to the Company's bank account in respect of the government inflow requirement of \$100,000/00. He said he transferred \$110,270/00 to cover the money required as per Exhibit J as well as for late filing charges as he was told by Mr. Mohamed Osman Sesay. He got to know later that the request as in Exhibit J, was not made by the Government of Sierra Leone. PW3 told the Court that Network Proximity was not granted the Licence for the International Voice Gateway as according to PW3, the application was never made.

13.3. In answer to questions put to him in cross examination, PW3 told the Court that he does not know the Accused Dennis Jones; he said the Accused, Jones, was never introduced to him on phone by anyone and that he never asked that money be paid to a journalist when he made the transfer hereinbefore referred. It would seem from this line of cross examination that Counsel tried to justify payment of money from transfers made by John Beary to the Accused which Beary denies. This line of cross examination does not help the case for the Accused. Well, for the offence herein, there was no need for the Principal to know or have spoken to the Accused. If, an enterprise was already formed by the Accused and his co conspirator(s), there is no requirement that the loss caused the Principal ought to have been paid to the Accused, appreciating his unique position as a journalist. It is enough that their design was accomplished.

14. PW4 was Momoh Kemoh Konteh, the Chairman and Commissioner of NATCOM. He told the Court he does not know the Accused nor does he know any Company named Network Proximity Sierra Leone Ltd. He said the issue in respect of Licence is handed by a Committee set to receive applications after which the Applicants are interviewed. The financial and technical requirements for issuance of a Licence if met are sent to the Director General who then sends same to the Chairman for his final signature.

14.1. Konteh told the Court that since his assumption of office at NATCOM, no application for an International Gateway Licence for Network Proximity Sierra Leone Ltd has been forwarded to him for his approval. He referred to Exhibit C and told the Court that NATCOM is responsible for the issuance of International Gateway Licences and that the content of Exhibit C does not reflect the policies of NATCOM; he meant the request for payment of \$100,000 before the International Gateway Licence could be granted. To my mind, the Chairman meant the Commission could not be part of a corruption campaign. In answer to questions put to him in cross examination, PW4 told the Court that he has never met the accused and that he does not read the Salone Times News Paper.

15. On the 13th day of May 2016, Counsel closed the case for the Prosecution. The Accused was put to his election pursuant to Section 194 of the Criminal Procedure Act, No. 32 of 1965. Being that Counsel for the Accused was absent, the matter was adjourned for the Accused to be advised by his Counsel before exercising his option. On the 17th day of June 2016, Counsel for the Accused indicated to the Court that he intends to file a No case Submission on behalf of the Accused which he did. On the 27th day of September 2016, a Ruling on a No Case Submission was delivered by this Court on which said date the accused was put to his election pursuant to Section 194 of the Criminal Procedure Act No. 32 of 1965. The accused chose to testify on oath and call witness(es).

15.1. The Accused came to his defence on the 30th day of September 2016. He identified himself as a journalist working for the Sierra Express Media, 2 years prior to his testimony. He said he knows one Mohamed Osman Sesay whom he first met during a telephone business transaction. He said Sesay had sold him a telephone which was faulty and that after the said sale, he met him again as he is his friend.

15.2. He referred to Exhibit C, a copy of his News Paper dated 4th May 2015 titled "Government to award TELTAC and Network Proximity International Gateway". He said he got his information for his story from one Mohamed Kamara who told him he works at State House. He said he did not disclose his source to the Anti-Corruption Commission because of the rules of journalism.

15.3. The Accused told the Court that he did not receive his information in respect of the story he published from Mohamed Osman Sesay nor did Sesay pay any money to him to write his story. I wonder then why Counsel in cross examination asked PW3 Beary about instructions that payment be made to a journalist. He said he did not take Exhibit C to Sesay upon its publication. He said he tried in vain to verify the information he received from Mohamed Kamara

with NATCOM and Ministry of information and Communications and other MDAs. I have made my comment in respect of unconfirmed publication *vis a vis* the offence charged.

15.4. In answer to questions put to him in cross examination, the Accused told the Court that Mohamed Osman Sesay was his casual friend; that they are not best of friends who will exchange telephone calls. He said he could not recall when Sesay sold him the mobile phone referred herein or when he last saw him. The relationship between the Accused and the said Mohamed Osman Sesay is irrelevant to the offence charged.

15.5. He referred to Exhibit B1-19, his Voluntary Caution Statement and restated to the Court that, in Exhibit C, he did say that the Government of Sierra Leone did grant an International Gateway Licence to TELTAC and Network Proximity and that both companies should pay \$100,000 to the Ministry of Information and Communication:

16. DW2 was Mohamed Osman Sesay who told the Court he got to know the Accused in respect of a mobile he sold him. He said the Accused is not his friend. He referred to Article C, which he said he bought and sent to one Dominic Beary. He said he did not know who the author of Exhibit C was when he bought the news paper but that the caption in the News Paper, 'Government to award TELTAC and Network Proximity International Gateway' was of interest to him. Sesay told the Court he was not in touch with the writer or Proprietor of the News Paper before Exhibit C was published. He said he sold the mobile phone hereinbefore referred years before the publication of Exhibit C and that after the mobile transaction, he never got to meet the accused again nor was he in any telephone conversation with the accused.

16.1. In answer to questions put to him in cross examination, DW2 told the Court that he is being tried on a charge of conspiracy in a related case having to do with the charge against the Accused. It is noted that the Accused herein and the said Mohamed Osman Sesay were jointly charged by the Anti-Corruption Commission for conspiracy and that an application for severance was granted by this Court when the Prosecutor informed the Court that the Accused herein could not be served with his indictment as he was no where to be found. DW2 reiterated that he is not friends with the Accused whom he said he never had telephone conversations with and that he never gave his telephone numbers to. I have said that the relationship between the Accused and DW2 is irrelevant to the offence charged. It could however be recalled that the Accused told the Court on oath that he got to meet DW2 again after the sale to him of a telephone which was faulty and that Sesay was his casual friend.

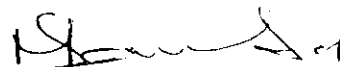
17. On the 9th day of November 2016, relying on Archbold 36th Edn paragraph 553 at page 151 under the rubric "Rebutting evidence" the Prosecutor made an application to the Court to call evidence in rebuttal. Counsel for the Accused opposed the Prosecutor's application. Counsel's application was upheld by this Court for reasons stated in the Court's ruling of 16th day of November 2016. All

effort by the Prosecutor to get the said Mohamed Kamara to testify in rebuttal of the accused person's testimony before the Court proved futile.

18. The Accused' evidence is contrary to that of DW2, Mohamed Sesay. The Accused told the Court that after the sale of a faulty Samsung phone to him by DW2, he again got to meet DW2 some other time. DW2 told the Court that after the said sale he never met the Accused. DW2 said he is not friends with the Accused but the Accused refers to him as a casual friend though not best of friends; they are friends, the Accused told the Court. Their being friends, whether casual or intimate or howsoever is irrelevant to the Court in respect of the charge against the Accused as said but one wonders why either party will give conflicting answers in this respect to the Court. The meeting of the Accused and DW2 or their subsequent communication, or their meeting for any other purpose, which is denied by DW2 but which said meeting the Accused said happened, is crucial to untangling the offence of conspiracy as charged; the meeting of the mind to take part in a criminal act is crucial.

19. It is clear from PW2's testimony that between October and November 2015, the Licence for International Gateway was granted only to Sierratel, which said Licence was operated by TELTAC and that no Licence was granted to Network Proximity. It is certain that the Accused published Exhibit C in which he said the GoSL requested both TELTAC and NETWORK PROXIMITY to submit to the Ministry of Information and Communications fees of \$100,000 into their accounts and that the said money should be reflected into the bank statements of the said companies, not later than 11th May 2015; that the questions put to PW3 in cross examination suggests payment was to be made to a journalist for publication from the said transferred funds; that the Licences will be issued to both companies not later than 29th May 2015.

20. It is also certain that DW2 attached Exhibit C to an email as in Exhibit J, to Dominic Beary, PW3 and relying on that said publication, PW3 transferred \$100,000 into the company (Network Proximity) account in Sierra Leone. The \$100,000 was then withdrawn by DW2, Mohamed Osman Sesay who is signatory to the said account. The circumstances of the entire trial reveal a close link and meeting of minds between the Accused, DW1 and DW2 which by their conduct culminated in a conspiracy to commit a corruption offence under Section 40 of the Anti-Corruption Act, 2008. For the Commission, the publication by the Accused as in Exhibit J is a scam agreed upon by the Accused and DW2, Mohamed Osman Sesay to deceive PW3, Dominic Beary into losing \$100,000 and the Court sees it as such and for that I find the Accused guilty as charged.



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Hon. Jst. Miatta M. Samba, J