IN THE SUPREME COURT OF SIERRA LEONE

SC.CR.APP.NO.1/93

BETWEEN

FODAY B. M. SAWI - APPELLANT

AND

THE STATE - RESPONDENT

CORAM:

HON. MR. JUSTICE D. E. F. LUKE	-	C.J.
HON. MR. JUSTICE A. B. TIMBO	-	J.S.C.
HON. MR. JUSTICE H. M. JOKO-SMART	-	J.S.C.
HON. MR. JUSTICE S. C. E. WARNE	-	J.S.C.
HON. MRS. JUSTICE V. A. D. WRIGHT	-	J.A.

O.V. Robin-Mason Esq., for the Appellant

S. A. Bah Esq., for the Respondent

JUDGEMENT DELIVERED THE 24TH DAY OF OCTOBER 2000

TIMBO, J.S.C.

The Appellant was arraigned on a two-count Indictment in the Freetown High Court presided over by William Johnson J (sitting alone) with the following offences:-

(1) Larceny contrary to Regulation 38 (a) of the Public Economic Emergency Regulations 1987 (P.N. No.25 of 1987)

(2) Fraudulent Conversion of property contrary to Regulation 39(b) of the Public Economic Emergency Regulations 1987 (P.M. No.25 of 1987).

At the end of the trial the appellant was found guilty on both counts and sentenced to: Le400,000.00 fine or 10 years imprisonment on Count 1 and Le40,000.00 fine or 1 year imprisonment on Count 2, both terms of imprisonment to run consecutively.

Being dissatisfied with the decision of the learned trial judge, the Appellant appealed on both counts. The court of Appeal unanimously allowed the appeal in respect of the second count and accordingly quashed the conviction and sentence. The court was, on the other hand, divided as to the first count. Thompson-Davis JSC and Adophy JA (as he then was) while dismissing the appeal, Taju-Deen J.A. on his part, was of the opinion that the Appellant was equally not guilty on this Count and ought to be acquitted and discharged. So we are here concerned with only Count 1.

The circumstances, which gave rise to Count 1, were briefly as follows: the Appellant was at all material times Permanent Secretary in the Ministry of Works, Freetown. He had pioneered a building project known as the Daru Rest House Project. While the building was still under construction he managed to procure certain items of furniture for the said house. He directed that the said furniture should be delivered to his official residence at Kingharman Road, Brookfields instead of to the Government Store in Freetown. This was sometime in March 1987. Inside the same month the Appellant wrote to the Area Engineer in Kenema informing him of the acquisition of the furniture and promised that he would be sending them to him for safekeeping to await the completion of the Daru Rest House. He had not done so up till August 1987 when the matter was reported to the police in Freetown. The C. I. D. subsequently found the furniture in a house the Appellant was erecting not far away from his official quarters where the furniture had originally been off-loaded. All the pieces of furniture were however untouched. None had been installed in the Appellant's new house.

In his statement to the police the Appellant said among other things, that he had kept the furniture in his house because he was afraid that they would be stolen if left in any of the designated Government stores. Furthermore, he told the police that he had in fact dispatched eight of the chairs to Daru on loan for the official opening of the Daru Rural Bank (another project partly funded through his efforts) by His Excellency the President with specific instructions that they should be put in a secluded area after the opening ceremony.

The Appellant filed three grounds of appeal to this court. When the hearing commenced before us, counsel for the Appellant sought and was granted leave to argue only the third ground thus abandoning the other two Grounds. Ground three states:

> "The Court of Appeal did not apply the proper legal test relating to intent to deprive permanently in so far as it relates to the charge of Larceny with which the Appellant was convicted and

> thus wrongly held that the essential ingredient of the offence charged that is, the intent to deprive permanently was proved directly or inferentially by the prosecution".

More particularly, counsel submitted that the test as laid down by the Court of Appeal was incomplete in so far as it failed to address the issue as to the time the intent to deprive permanently if any, was formed. This was what Adophy J. A. (as he then was) said in reading the judgment of the Court at page 177 of the typed record.

> "It is accepted that to sustain this element, the thief must intend to deprive the owner not temporarily but permanently of his property. Regrettably, there seems not to be any statutory definition of the words "intention of permanently depriving". In respect of this, the learned trial judge said inter alia, "these issues can only be resolved by inferences to be drawn from the evidence adduced herein". Learned counsel for the State dealing with this submitted and quite rightly that to prove that ingredient one can only infer whether the accused had the intention to permanently deprive".

Regulation 38(a) under which the Appellant was charged in Count 1 stipulates,

> "38 Every person who-
> (1) Steals any chattel money or valuable security belonging to or in the possession of the Government, Local Authority or a Public Corporation or entrusted to or received or taken into possession by such person by virtue of his employment ..... Shall be guilty of an offence".

And by Section 1(1) of the Larceny Act, 1916,

> "a person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof".

It is remarkable that at no time did Adophy J. A. (as he then was) stress that the intent permanently to deprive the owner must be formed the time at which the taking away occurs as stated in Section 1(1) of the Larceny Act 1916. This point is also emphasised in Archbold Criminal Pleading Evidence and Practice 35 Edition paragraph 1471 at page 596.

There is no doubt that there was an asportation of the furniture by the Appellant. But was the necessary animus furandi (the mental element) present at the time of such taking or for that matter, at any other time? The

evidence indeed disclosed that the Appellant gave orders for the delivery of the furniture to his quarters rather than to a Government store. He however explained the reasons for doing so. In his evidence in-chief he stated that:

> "From experience, a lot of thieving had been going on in Government stores and quarters. For example, at the Kissy second Highway Store, a lot of thieving was done there. I had to draft in the Military to provide twenty-four hours security. The Lodge at Hill Station was vandalised and the case was in court. P. K. Lodge was also vandalised and had to be refurbished. At Kissy Central Stores, several battery chargers were stolen. The Government stores were not safe because I was promoting the Daru Rest House through the Area Engineer and the Daru Rural Bank through the promoters of which I was one, I decided to keep the items myself ..... I kept the furniture to make sure they were safe. The items would have gone if the project had been completed".

Mrs. Kona Koroma his deputy also said in her evidence that during this period they had reports of in-sufficiency of security in some of their quarters and stores. Under cross-examination by Mr. Terrence Terry, Counsel for the Appellant in the High Court, she admitted that she raised no objections when the Appellant instructed her to convey the furniture to his residence. In answer to another question by defence counsel, she told the court that,

> "if the goods are delivered to the stores and they are stolen, the Permanent Secretary and the Storekeeper would take full responsibility therefor".

She even went further to say that if she was Permanent Secretary her first and foremost task would be to ensure the safety of goods ordered and that the burden was especially heavier when the goods had to leave Freetown for Daru. Concluding her testimony she agreed it was not unusual to keep Government property temporarily before eventual delivery to their final destination.

Turning to the crucial question whether the Appellant had the necessary intention permanently to deprive the Government of Sierra Leone of the ownership of the furniture at the time he received them or more accurately when he caused them to be delivered at his residence, we will clearly see from the evidence that there was no such intention on the side of the Appellant. This is supported by the story of the Area Engineer, Ishmael Kebbay the third prosecution witness who said during his examination in-chief,

> "I recall March, 1987 – I heard from the accused in connection with the furnishing of the repaired building. He told me that he had secured some furniture for the building (Rest House), which would

be sent to me later. The Accused said that he would send the furniture after the completion of the repairs".

There was no evidence before the Court that the repairs to the building at Daru had been completed and that the Appellant had refused to release the furniture. On the contrary, the Court was informed that the repairs had been delayed due to lack of funds.

Moreover, Sonny Julius Musa, the Manager of the Daru Rural Bank had emphasised in his testimony that when he received the eight chairs from the Appellant he was given strict orders to secure them properly as they were for the Rest House. The C.I.D. themselves found the chairs were not in general use but had been kept separately in a safe place by the Manager. Even the tenth prosecution witness, Sonny Kangoma the cabinet maker from Daru, narrated in court that sometime in 1987 when he had cause to live with the Appellant on a short visit to Freetown, he saw the furniture in the Appellant's new house and that the Appellant had told him that they were for the Daru Rest House and that he would eventually transfer them to Daru upon the successful completion of the building scheme.

As was contended by Mr. S. E. Berewa, counsel for the Appellant in the Court of Appeal, not once had the Appellant asserted any claim of right over the furniture or made any attempt to dispose of them or treat them as his own property. The presence of these factors, in my view, would surely negative any intention on the part of the Appellant to deprive the Sierra Leone Government permanently of the use of the furniture.

Thus in Rv Hudson (1943) 29 CR.App.R. 65 where a letter containing a cheque was by mistake delivered to the prisoner who had received it innocently, the court held that the prisoner did not receive the cheque until he had opened the letter and discovered it contained a cheque. If at that time he formed the animus furandi in relation to the cheque then he would be guilty of Larceny of the cheque. Vide also Maynes V. Cooper (1950 40 Cr.App.R. 198.

Likewise in Ruse V Read (1949) I All E. R. 398. Here the respondent while on leave went to spend part of his holiday with his mother in Sidmouth, Devon, England on the 30th June 1948. Coincidentally, an amusement fair was being held on that same day in the village. Around 9 p.m. one Raymond Purchase rode his bicycle to the fair and left it by the wall near the entrance and went inside. Fifteen minutes or so later on his way back he discovered to his amazement that the bicycle was no longer there. Meanwhile, the respondent while on his way to the fair ground visited several public houses and had plenty to drink. On his way out, the respondent saw the bicycle. He removed it and rode it for two hours. He then became sober. But not knowing what to do with the bicycle he took it home and placed it in the Lane at the back of his mother's house. The following day, he got panicky. So he drove the bicycle to the railway station and consigned it by rail to York

addressing the label thus "Mr. Read, York Railway Station, to be collected". Upon being arraigned for the larceny of the bicycle the respondent argued that when he took the machine he did not realise because of his drunken condition, the consequences of his action and it was to get rid of it that he sent it to the York Railway Station. It however became clear later that he had no intention of going to the said railway station to collect it. The justices held that the respondent had no intention at the time of taking the bicycle to permanently deprive the owner of his property and so was incapable of forming such an intention. He was found not guilty and duly discharged. On appeal by the prosecution, the King's Bench Division (Lord Goddard CJ. Humphrey's and Finermore J. J. held the initial taking of the bicycle by the respondent being a trespass (though not felonious, there being no animus furandi) the sending away of the bicycle to York Railway Station the next day was a clear manifestation of the respondent's intention to deprive the owner permanently of his property and therefore he should have been convicted and they so ordered.

Even under the English Theft Act 1968 it is still the law that the appropriation must be followed by an intention on the part of the accused to permanently deprive the owner of the property alleged to be stolen. This point was heavily underscored by Edmond Davies LJ. In RV. Easmon (1971) 1 ALL. ER 945. The facts were somehow interesting. On the evening of the 27th December, 1969 a certain woman police Sgt. Crooks together with two other plain clothes officers went to the Metropolitan Cinema in Victoria, London. She sat in the aisle seat and placed her handbag by her side on the floor. She attached the said bag to her right wrist using a piece of black cloth. One of the officers occupied the inside seat next to her. During the interval, when the lights were put on, they saw the Appellant sitting on the aisle seat in the row immediately at the back of Sgt. Crooks but the seat next to him was vacant. Shortly after the light had been switched off Sgt. Crooks felt the string tied to her wrist tightened. She then at once passed a prearranged signal to one of her friends, P. C. Hensman. The cotton string was pulled a second time but so hard that she had to break it off. Within a few seconds the officers heard the rustle of tissues and the sound of the handbag being closed. The Appellant then rose from his seat and went to the toilet. When the officers turned round they saw Sgt. Crooks' handbag lying on the floor behind her seat and in front of the seat previously occupied by the Appellant who had meanwhile moved to another part of the cinema hall. The contents of the bag were all in order not one had been removed. When confronted by the police officers about the theft of the handbag and contents the Appellant flatly denied having anything to do with that. He was later charged with the theft of handbag and contents under section 1(a) of the Theft Act 1968.

Edmund Davies L.J. delivering the judgement of the Court of Appeal, which reversed the decision of the lower court, had this to say at page 947.

> "In the respective view of this court, the jury were misdirected. In every case of theft the appropriation must be accompanied by the intention of permanently depriving the owner of his property. If the appropriator has it in mind merely to deprive the owner of such of his property as on examination proves worth taking and then finding that the booty is to him valueless then leaves it ready at hand to be repossessed by the owner he has not stolen".

Continuing, the learned justice of appeal opined;

> "If a dishonest postal sorter picks up a pile of letters intending to steal any which are registered, but on finding that none of them are, replaces them he has stolen nothing".

Edmund Davies LJ. maintained this was so in spite of section 6(1) of the theft Act 1968 which provides that,

> "A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is never the less to be regarded as having the intention of permanently depriving the other of it if his intention is to treat it as his own to dispose of regardless of the other's rights".

The Court of Appeal further held that the Appellant could not even be convicted of attempted theft unless it was proved that he was animated by the same intention permanently to deprive as in the case of the full offence.

I am not oblivious of the fact that the English authorities I have cited in this judgement are merely persuasive and not binding on us. That notwithstanding, I see a lot of good sense in them and so I adopt them.

As we have seen in Ruse V. Read (infra) the Appellant was convicted because as soon as he consigned the bicycle to York Railway Station when he had no intention of ever collecting it from there it became obvious from that moment he intended to deprive the owner permanently of the use of his property. The situation is different, altogether in the instant case. Here, all along the Appellant denied that he ever intended to deprive the Government of Sierra Leone of the use of the furniture. He explained throughout that he took the furniture to his residence purely because he did not want them to be stolen, nor did he conceal the fact that these items of furniture were with him for safekeeping. He informed the Area Engineer immediately after he had received them. The fact that he kept them from March to August 1987 does not in my considered opinion alter the situation in any way. According to the Area Engineer, the Appellant said he would send the furniture when the repairs to the building were finished. We have heard that the building had not been completed up to the period the Appellant was arrested. The police found the eight chairs the Appellant sent to Daru well secured. So too the rest of the furniture they retrieved from the Appellant's new house. They

were all intact not a single piece had been utilised. No evidence was ever led to indicate that the Appellant had done some act, which was inconsistent with the Government's ownership of the furniture. The Appellant was steadfast in his denial that he delivered the furniture to his residence for any other purpose than to protect them from being carted away.

I have taken considerable care and pains to analyse the salient features of the evidence as well as the law applicable in this appeal. Had the court of first instance and the Court of Appeal done the same, I have no doubt their conclusions would have been completely different. Be that as it may, I regret I cannot accept that there was evidence either direct or indirect from which it could be inferred that the Appellant had intended at the time he took delivery of the furniture or at any time thereafter, to deprive permanently the Government of Sierra Leone of the ownership of the furniture, the subject-matter of the charge in Count 1.

The appeal is therefore allowed. The Appellant is acquitted and discharged. The fine of Le400,000.00 if already paid should be refunded.

Let me say before I end, the dissenting opinion of Taju-Deen J.A. has regrettably been of no assistance to us in this court. It contains nothing of significance.

(Sg) Hon. Mr. Justice A. B. Timbo, JSC.

I agree (Sg) Hon. Mr. Justice D.E.D. Luke, C.J.

I agree (Sg) Hon. Mr. Justice H. M. Joko-Smart JSC

I agree (Sg) Hon. Mr. Justice S.C.E. Warne JSC.

I agree (Sg) Hon. Mrs. Justice V.A.D. Wright, J.A.

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