

BETWEEN:-

IN THE COURT OF APPEAL OF SIERRA LEONE

EDWARD SISAY

(AS ADMINISTRATOR OF THE ESTATE) (OF AHMED

E. SISAY (DECEASED)

(INTESTATE) - APPELLANT AND

THE ATTORNEY-GENERAL AND

MINISTER OF JUSTICE

- RESPONDENT

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH

J.A.

HON. JUSTICE P.O. HAMILTON

J.A.

HON. JUSTICE A.N.B. STRONGE

J.A

HEARING: WEDNESDAY, 22ND FEBRUARY, 2006

TUESDAY, 2ND MAY, 2006

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THURSDAY, 21ST SEPTEMBER, 2006

COUNSEL:- MS. S G. SESAY FOR APPELLANT

KEKURA BANGURA, ESQ FOR RESPONDENT

JUDGMENT

DELIVERED THIS 22nd DAY OF MAY 2007.

AN.B. STRONGE, J.A:

This is an appeal from the decision of the High Court presided over by The HON. MR. JUSTICE AB. RASCHID dated the 6th January, 2005. The appeal is on eight (8) grounds, namely:

- I. The Learned Trial Judge erred in Law and misdirected himself when he held that in his opinion:

'The property situate at off Spur Loop measuring 0.4694 acre was forfeited to the State"

Having regard to the fact that there was no forfeiture of Assets Order before him.

- (2) The Learned Trial Judge erred in Law and misdirected himself in holding that the Applicant is entitled to immediate possession to the property and/or is entitled to immediately re-enter the said property situate lying and being at off Spur Loop Wilberforce former residence of Mr. Foday Yumkella former Minister of Presidential Affairs as he had no jurisdiction to do so having regard to the fact that a judgment of the High Court (a Court of concurrent jurisdiction) granting immediate possession to the Respondent to the property and an Order of the High Court (a Court of concurrent jurisdiction) granting leave to issue a Writ of Possession to the Respondent in respect of the property subsists.
- (3) The Learned Trial Judge erred in Law and misdirected himself when he held that the Applicant is entitled to an order setting aside all transaction leading to the sale and purchase of Government property situate lying and being at off Spur Loop Wilberforce also known as No. 2^A Spur Loop Wilberforce former residence of Mr. Foday Yumkella formerly Minister of Presidential Affairs having regard to the fact that sufficient facts were not before him and further that the matter was not properly before him.
- (4) The Learned Trial Judge erred in Law and misdirected himself when he held that the Applicant is entitled to an order cancelling the grant Deed of Conveyance dated the 5th September, 1991, pursuant to the findings of Report and Government White paper Report of the Hon. Mr. Justice Beccles Davies Commission of Inquiry as he had no jurisdiction to do so having regard to the provision of Section 7(3) of the Commission of Inquiry (Amendment) Act 1982.

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- (5) The Learned Trial Judge erred in Law and misdirected himself when he held that the applicant is entitled to an order for immediate possession and/or to an order that the Applicant is entitled to immediately re-enter the said Government property situate lying and being at off Spur Loop Wilberforce former residence of Mr. Foday Yumkella, former Minister of Presidential Affairs, in effect granting the Applicant relief which were prayed for in the alternative thereby making his ruling ambiguous.
- (6) The Learned Trial Judge erred in Law and misdirected himself when he held that the order for forfeiture is found in the white Paper and nothing need be done after the publication of the White Paper to give legal effect to any order for forfeiture made when he said:
- "In my view these provisions are clear as to the consequences of a Commission of inquiry. Therefore Counsel for the Respondent cannot be heard to say that after the publication of the White Paper there must be publication of a Public Notice and Statutory Instrument."
- Having regard to the provisions of Section 7(2) and 7(4) of the Commissions of Inquiry (Amendment Act) 1982.
- (7) The Learned Trial Judge erred in Law and misdirected himself when he wrongly construed Section 149(4) of Act No.6 of 1991 thereby causing him to believe that the Respondent should have appealed against the adverse findings of the Commission.
- (8) That the order dated 6th January, 2005 is against the weight of the evidence.

At the hearing of the Appeal Ms. S.G. Sesay appeared as Counsel for the Appellant and Mr. K. Bangura appeared for the Learned Attorney-General and Minister of Justice.

Ms. Sesay sought and obtained leave of the Court to deal first of all with Grounds 1 and 6 of the Grounds of Appeal. Counsel made the following submissions:

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- I. That there was no forfeiture of Assets Order before the Learned Judge and that he erred in Law and misdirected himself when he held that the Order for forfeiture is found in the White Paper and nothing need be done to give legal effect to any order for forfeiture made thereunder.
2. In the alternative if the Court were to hold as the Learned Trial Judge did that the provisions of the COMMISSIONS OF INQUIRY (AMENDMENT) DECREE No.5 of 1992 have been repealed by THE NATIONAL PROVISIONAL RULING COUNCIL DECREES (REPEAL AND MODIFICATION) ACT No.3 of 1996. Counsel will still submit that there was no forfeiture order before the Learned Judge. The COMMISSIONS OF INQUIRY (AMENDMENT) ACT No. 1 of 1982, SECTION 7(2) provide that the President may on the advice of Cabinet make an order forfeiting to the Government of Sierra Leone all or any part thereof of the assets of such person whether or not such assets are in his name.
3. That there must be an order made pursuant to the Act expressly identifying the asset to be forfeited and expressly declaring that the same is forfeited to the Government of Sierra Leone.
4. That after the publication of the WHITE PAPER a forfeiture of Assets Order must be made for the purpose of legally and validly divesting the person of his legal interest in the property and transferring the said interest to the STATE.

For reasons which will appear later in this Judgment I will at this stage consider and evaluate the above submissions and Mr. Bangura's reply thereto.

Mr. Kekura Bangura's reply to the Appellant's argument on GROUNDS 1 and 6 of the Appellant's Grounds of Appeal can be summarized as follows:-

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1. That the subject matter of this Appeal was subject of a Commission of Inquiry appointed by the Government of Sierra Leone, to investigate into the Assets and other related matters of all persons who were Presidents, Vice presidents, Ministers, Ministers of State and Deputy Ministers, within the period from 1st day of June 1986 to the 22nd day of September 1991 and to inquire into and investigate whether such assets were acquired lawfully or unlawfully.
2. That by Section 149(4) of the Constitution of Sierra Leone "where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of inquiry shall, for the purpose of this Constitution, be deemed to be a judgment of the High Court of Justice and accordingly an appeal shall lie, as of right, from the Commission to the Court of Appeal."
3. That there is an order of forfeiture against the Appellant which can be found at page 32 of the SIERRA LEONE GOVERNMENT WHITE PAPER ON THE REPORT OF THE JUSTICE BECCLES DAVIES COMMISSION OF INQUIRY, Volume 4 of March, 1994.

BACKGROUND:

To appreciate the nature of the Appeal it will be useful to set out the background to this case.

The N.P.R.C. Government in its attempt to eradicate corruption, mismanagement and in discipline in the affairs of Government, by Public Notice No. 172 in the Extraordinary Issue of the Sierra Leone Gazette dated Wednesday, 13th June, 1992, instituted the Justice Beccles-Davies Commission of inquiry:-

INTER ALIA:-

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- (i) To examine the Assets and other related matters of all persons who were Presidents, Vice-Presidents, Ministers, Ministers of State and Deputy Ministers within the period from the 1st day of June, 1986, to the 22nd day of September, 1991, and to inquire into and investigate whether such Assets were acquired lawfully or unlawfully;
- (ii) To inquire into and investigate the activities of all persons who were Presidents, Vice-Presidents, Ministers, Ministers of State and Deputy Ministers within the period from the 1st day of June, 1986, to the 22nd day of September, 1991, and to ascertain as to:-
 - (a) whether they maintained a standard of living above that which was commensurate with their past official emoluments;
 - (b) Whether they were in control of pecuniary resources or property disproportionate to their past official emoluments.
 - (c) Whether allegations of corruption, dishonesty, or abuse of office for private benefit by them, or in collaboration with any person or persons in respect of such corruption, dishonesty or abuse of office are established;
 - (d) Whether they acted willfully or corruptly in such manner as to cause financial loss or damage to the Government , a local Authority, Corporation, a Statutory Corporation, or the University of Sierra Leone.

The Commission submitted its Report in Several Volumes. A Government White Paper (GWP) was subsequently prepared in several volumes as a result of the Report of the Commission of Inquiry. The Government White Paper was published in March, 1994. In Volume

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FOUR of the Government White Paper which deals with the Appellant, the N.P.R.C. ordered that "State Land off Spur loop measuring 0.4694 Acre -----acquired by Mr. Sisay during the period under investigation whilst holding public office, be forfeited to the State".

THE HIGH COURT

Following the publication of the Commission of Inquiry Report and more particularly, the Government White Paper thereon, the Respondent instituted proceedings by way of Originating Notice of Motion in the High Court to set aside; "all transactions leading to the sale and purchase of Government property situate, lying and being at off Spur Loop Road, Wilberforce, also known as No. 2^A Spur Loop Wilberforce Freetown, former residence of Mr. Foday Yumklla formerly Minister of Presidential Affairs and/or an order canceling the Grand Deed of Conveyance dated the 5th day of September, 1991, between the Government of Sierra Leone as Vendor of the one part and Ahmad Edward Sisay as purchaser of the other part and Registered as No. 1162/91 in volume 453 at page 12 in the Books of Conveyances kept in the office of the Administrator and Registrar-General at Roxy Building, Walpole Street, Freetown pursuant to the findings of Report and Government White Paper of the Hon. Mr. Justice Beccles Davies Commission of Inquiry into the Assets and other related matters of all persons who were Presidents, Vice Presidents, Ministers, Ministers of State and Deputy Ministers etc. and subsequent confirmation of the said confiscation by Justice P.L.V. Cross Commission of inquiry (THE REPORT OF THE NATIONAL UNITY AND RECONCILIATION COMMISSION)."

2. Further that this Honourable Court grant immediate possession to the applicant herein and/or an Order for the applicant to immediately re-enter

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the said Government property situate, lying and being at off Spur Loop Road Wilberforce, also known as No.2A Spur Loop Wilberforce, former residence of Mr. Foday Yumkella, Former Minister of Presidential Affairs.

By Order dated the 6th day of January, 2005, the High Court granted the two orders sought in the Originating Notice of Motion referred to above. It is against that order of the High Court that the Appellant has appealed to this Court.

The COURT OF APPEAL

The EIGHT (8) GROUND of Appeal by the appellant have been reproduced IN EXTENSU. The grounds of Appeal raise both procedural as well as substantive issues of law. It will be convenient in this Appeal to deal with GROUNDS 1 and 6 of the Appeal first.

As stated earlier in this Judgment, the Appellant made two submissions:

1. That there was no Forfeiture of Assets order before the Learned Trial Judge and that the Learned Trial Judge erred when he held that the order for forfeiture is found in the White paper.
2. The Commissions of Inquiry (Amendment) Act I 982, Section 7(2) provides that the President may on the advice of Cabinet make an order forfeiting to the Government of Sierra Leone all or any part thereof of the assets of such person whether or not such assets are in his name.

The Respondent sought to enforce the Report of the Justice Beccles Davies Commission of Inquiry and the Justice P.L.V. Cross Commission of Inquiry, as they perceived these reports, by instituting proceedings in the High Court by way of Originating Notice of Motion for the reliefs stated earlier in this judgment.

This Court is in agreement with the Appellant that the Respondent had no legal basis to institute the proceedings, such as that taken in this case to enforce the Report of the Commissions of Inquiry referred to. we agree that

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the appropriate procedures are to be found under the Commission of Inquiry Act (CAP 54) as Amended. Sections 7 (2), (3) and (4) of that Act set out the machinery whereby the Report of a Commission of Inquiry may be enforced. Sections 7(2), (3) and (4) of the Act are as follows:-

7(2):

Upon the receipt of such a report, if it appears to the President that any person has acquired assets for himself or in the name of any other person in an unlawful manner or is responsible for any irregularity or malpractice resulting in any financial loss to the Government of Sierra Leone or to any Local Authority or corporation, or any other body whatsoever, the President may on the advice of the Cabinet, make an Order -

(a) requiring such person to make good the financial loss to the Government of Sierra Leone, or any local authority or corporation or any other body as the case may be:

OR

(b) forfeiting to the Government of Sierra Leone or any Local authority or corporation or any other body as the case may be, all or any part thereof of the assets of such person, whether or not such assets are in his name.

7(3) Any Judge of the High Court shall upon application by the Attorney-General and Minister of Justice make such Order or Orders as may be necessary for the purpose of giving full effect to the Order for forfeiture of assets made by the President under sub-section (2) hereof, and shall in particular but without prejudice to the generality of the foregoing, where necessary, order any person to execute such instrument as may be necessary for enabling any assets situate outside Sierra Leone to be vested in the Government of Sierra Leone. Or any Local Authority or corporation, or any other body as the case may be.

7(4)

Any order made under sub-section (2) may include provision for vesting the assets or any part thereof or the property in such assets or part thereof in a Department of Government, a Local Authority or corporation or any other body as the case may be and. In particular, the Order may direct:-

- (a) In the case of assets lodged in a Bank, the manager or a person in charge of the bank in which the assets are lodged shall pay the assets into the consolidated fund, or any bank account as the case may require;
- (b) In the case of assets in the form of stocks, shares, debentures, bonds, or choses-in-action, the responsible officer concerned shall register them as required or necessary, in the name of the Government of Sierra Leone or any local authority or corporation, or any other body as the case may require;
- (c) In the case of assets in the nature of immovable property the Administrator and Registrar-General shall remove the name of the person or that of any person in whose name the property is registered from the Register and register forthwith such property in the name of the Government of Sierra Leone or any local authority or corporation, or other body as the case may be, and the property shall vest forthwith in the Government of Sierra Leone or local authority or corporation, or any other body (as the case may be) as from the date of such Order.

From the above provisions it is abundantly clear that the Power to enforce the findings and recommendations of a Commission of Inquiry is vested in the President

acting on the advice of the Cabinet. When an order of forfeiture has been made by the President acting on the advice of the Cabinet following the findings and recommendation of a Commission of inquiry, the High Court is obliged to enforce such an order of forfeiture.

In glaring disregard of the obvious procedure laid down under the Commission of Inquiry Act, the Respondent chose to enforce the findings and recommendations of the Commission of inquiry, as perceived by him, by instituting proceedings in the High Court by way of Originating Notice of Motion on the misconception that such a procedure is open to them under Section 149(4) of the Constitution. Such a procedure is wrong. I have searched in vain for any authority for the manner in which the Respondent purported to seize the Appellant's property as in this case. Apart from the procedure set out, in Section 7(2), (3) and (4) of the Commission of Inquiry Act, there are clear rules setting out the procedure to be followed in seeking an order of forfeiture of land. Correct legal procedure must be followed; particularly where a person's right to his property is to be forfeited.

This Court is of the view that the Learned Trial Judge erred in Law in his acceptance that the Appellant was entitled to enforce the Commission's finding, as perceived by him, by way of an originating notice of motion under section 149(4) of the Constitution. The order granted by the High Court setting aside the Conveyance of the property in question between the Government and the appellant ought not to have been made. There is no basis in law for the granting of that Order. That order is hereby set aside.

The Appeal is allowed. Order of Court dated 6th day of January, 2005 is set aside.

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HON. JUSTICE U.H. TEJAN-JALLOH, JSC

HON. JUSTICE P.O. HAMILTON, J.A.

HON. JUSTICE A.N.B STRONGE, J.A.