

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN IN FREETOWN

ANTI-CORRUPTION DIVISION

THE STATE

V

KADIJA OLAMATU SEISAY - DEFENDANT

Counsel:

M. Sow Esq. - The State

D. E. Taylor Esq. - Defence

JUDGMENT DELIVERED THIS 13th DAY OF AUGUST 2020 BY HON. JUSTICE
F. BINTU ALHADI J. A.

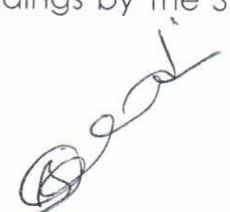
 1

1. THE ALLEGATION

The Accused, Kadija Olamatu Seisay is charged with 1 (one) count of Misappropriation of Public Property Contrary to Section 36 (1) of the Anti-Corruption Act No. 12 of 2008.

The particulars of the offence are that: Kadija Olamatu Seisay being the Deputy Minister of the Ministry of Works, Housing and Infrastructure (MWHI) in Sierra Leone, on a date unknown between the 18th day of December 2017 and the 30th day of September 2018 in Freetown in the Western Area of the Republic of Sierra Leone misappropriated Public Property to wit: a Toyota Land Cruiser Jeep GX1200 Series "Off-Road 2017" model, with registration number ANK 889.

2. On the 11th day of February 2019 the said Accused Person was arraigned and she pleaded not guilty. On the same date, an application for trial by Judge Alone was granted together with an application for an additional witness for the Prosecution.
3. Also, on the same date of 11th February 2019, the Accused Person, Kadija Olamatu Seisay was granted self-bail.
4. On the 30th of May 2019 the Prosecution closed its case and Counsel for the Defendant, Brima Koroma Esq informed the Court that he would open the case for the Defence at the next adjourned date. So soon thereafter, he informed the Judge in Chambers that he was withdrawing his representation. He was advised to make that announcement in open Court.
5. On the 9th of July 2019, Miss N. C. Browne – Marke deputising D. E. Taylor Esq, announced representation for the Defence. On the 15th of July 2019, Mr Brima Koroma announced his withdrawal for the Defence in open court. This time both Miss. Browne – Marke and Mr. D. E. Taylor were absent. However, Mr. Taylor sent a message via telephone that he will be representing the Defendant.
6. On the 23rd of July 2019 Counsel for the Defence, D. E. Taylor Esq filed a notice of motion dated 22nd of July 2019 praying that the Court perpetually stay the indictment herein and the proceedings by The State



against Kadija Olamatu Seisay. A ruling was delivered on the 5th of February 2020 in which an interim stay of the proceedings was granted. A final ruling on the application was delivered on the 13th day of May 2020 in which the evidence of an additional prosecution witness, P W 6, Sheik Ahmed Kamara was expunged and the application to perpetually stay the proceedings was dismissed.

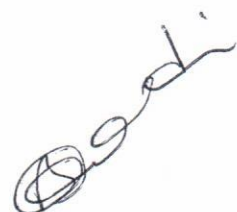
7. Since the ruling of 13th of May 2020, Counsel for the defence has been sending in one excuse after another for his absence. The Defendant has been ambivalent about making an election. She decided in the end that she wants her counsel to be present. The Court is of the view that Mr. Taylor has been treating it with contempt. He has been deliberately delaying these proceedings and abusing the process of justice. The Court has therefore decided to rely on the evidence given under caution by the Defendant to the Anti-Corruption Commission and withdraw the file for judgment.

8. The Prosecution's Case In Summary

8.1 The Prosecution's case inter alia according to the 1st witness, Umar Sesay, is that in a letter addressed to the Accused Person dated 8th December 2017 in her capacity as Deputy Minister of Works, Housing and Infrastructure was assigned a brand new official vehicle with registration number ANK 889 Exhibit B1- 3 and exhibit C.

PW 2, Mohamed Kini-Smart told the Court that he was the Transport and Liaison Officer at the Ministry of Transport and Aviation; with principal duties which included: facilitation of the allocation of government vehicles to ministers, deputy ministers and other senior government officials.

He recalled the 8th of December 2017 when he received a letter from the Secretary to the Minister of Transport and Aviation saying that a vehicle had been assigned to Kadija Olamatu Seisay, then Deputy Minister of Works, Housing and Infrastructure. He said that on the 13th of December 2017 he facilitated and licensed the insured vehicle in the name of the Ministry of Transport and Aviation. He said that some time circa 18th December 2017, Kadija O. Seisay and her security cum driver by the name of Prince, went to his office to receive the said vehicle.

A handwritten signature in black ink, appearing to be 'K. Sesay', written diagonally across the bottom right of the page.

He explained that as per procedures for handing over vehicles, a vehicle inventory and receipt form was signed by Kadija Seisay and Prince signed as the witness; Exhibit B1-3. He said that he handed it over to Kadija Olamatu Seisay on the 12th of December 2017. ^{He} stated that the vehicle registration number was ANK 889, the Make/Type was Toyota Land Cruiser Jeep V8, the purpose was official; Exhibit B3 which is a copy of the Life Card.

He said that it was not a common practice for ministers to ask for the Life Card of their official vehicle.

The 4th Prosecution Witness, Prince Kennick, who was the Body Guard of the Accused, told the Court that the Kadija~~to~~ Seisay sent him to the Ministry of Transport and Aviation to collect the Life Card of her official vehicle. He said that Mr. Kini-Smart, the 2nd prosecution witness gave him the Life Card which he signed for. He said that it was the original Life Card and he handed it over to the Accused. Mr. Kennick testified that the Accused informed him that she was travelling to Conakry, Guinea; and that he did not accompany her on the trip since he was not asked to do so.

The Defence Case

The Court relied on the contemporaneous statements made by the Accused Person, Kadija Olamatu Seisay to the Anti-Corruption Commission (The State) which was tendered as exhibit A1- 24. In the said statements she denied misappropriating public property to wit: Toyota Land Cruiser Jeep GX1200 Series "Off-Road 2017" model with registration number ANK 889. (See the rest of the Defence's case under 'Analysis of the Law, Evidence and Findings' below).

The Law

The law defines misappropriation as 'the unlawful taking of money or property for an unauthorized purpose; Garner, B. A. 'Black's Law Dictionary' [2009, 9th ed] West, Thomson Reuters Publishers.

According to section 36 (1) of the Anti-Corruption Act of 2008, a person who misappropriates public revenue, public funds or property commits an offence."

Analysis of the Law, Evidence and Findings

The State has charged Kadija Seisay, a former Deputy Minister of Works, Housing and Infrastructure with one count of Misappropriation of Public Property contrary to section 36 (1) of the Anti-Corruption Act of 2008. The said section 36 (1) says

that "a person who misappropriates public revenue, public funds or property commits an offence."

Furthermore, section 36 (2) of the said Act provides that "a person misappropriates public revenue, public funds or property if he willfully commits an act, whether by himself, with or through another person, by which a public body is deprived of any revenue, funds or other financial interest or property belonging or due to that public body.

The question that arises is: Did the Accused Person, Kadija Olamatu Seisay misappropriate the said Toyota Land Cruiser Jeep GX 1200 Series "Off Road 2017" model, with registration number ANK 889; a public property? The verb 'to misappropriate' is to take and use property or money dishonestly; Black's Law Dictionary (supra). It is any assumption by a person of the rights of an owner or any such dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it.

From the evidence before the Court as testified by the 2nd Prosecution Witness, Mr. Mohamed Kini – Smart, a Transport Liaison officer of the Ministry of Transport and Aviation, he informed the Court that in January 2018, the Accused Person, Kadija Olamatu Seisay telephoned him to say that she will be travelling to Guinea on an official trip; and that she would need the original life card of her official vehicle as a "pass". He said that he referred her to the Permanent Secretary or the Minister of Transport and Aviation for approval.

He then said that Kadija Olamatu Seisay then sent the 4th Prosecution Witness, Prince Kennick to collect the Life Card from him, Mr Kini-Smart, on the understanding that she would return it immediately she returned. He said that in May 2018 he called the Accused Person for her to return the Life Card, since his Ministry was updating vehicles that were assigned to ministers and deputy ministers; but she never sent it back. When asked whether it was common practice for ministers to ask for the life cards of their official vehicles, Mr. Kini-Smart said no.

Under cross – examination, Mr Kini – Smart said that Kadija Olamatu Seisay did not sign for the life card of the said vehicle. Ms. Seisay however, did not deny that the life card and vehicle were given to her. She did not deny that she travelled to Guinea either.

The 3rd Prosecution Witness, Joseph Tekman Kanu, a Civil Servant and Senior Permanent Secretary at the Ministry of Tourism and Cultural Affairs; testified to the court on the 1st and 8th of April 2019. He said that he requested for the assigned official vehicle from the Accused Person and she told him that it had been commandeered by unknown persons. Mr. Kanu said that he told her to report the incident to the police. He said that he never heard from her again. Under cross-examination, he told the court that the Accused Person did not make the report to him in writing; but did orally.

The 4th Prosecution Witness, Prince Kennick, the Personal Body Guard of the Accused Person, Kadija Olamatu Seisay, in his evidence to the court said that in January to February 2018 the Accused Person sent him to collect the life card of the said vehicle. He said that he collected the card from Mr. Kini – Smart, the 2nd Prosecution Witness and that he signed for it.

He said that the life card was the original card and that he took it to the Accused Person; and which she accepted. He testified that Kadija Olamatu told him that she was going to travel to Conakry to buy spare parts. In response to a question as to whether he travelled with her; he said no because he was not asked to by her.

During her interview statement under caution at the Anti-Corruption Commission on the 18th of September 2018, Kadija Olamatu Seisay admitted that during her tenure as the Deputy Minister of Works, Housing and Infrastructure, she was assigned with an official land cruiser vehicle with registration number ANK 889. She recalled being the receipt of the said vehicle when it was handed over to her at the Ministry of Transport and Aviation and that she signed for it on the 18th of December 2017. She also confirmed that she signed for the said vehicle in the presence of the Transport Officer, Mr. Mohamed Smart and her Security Officer, Mr. Prince Kennick.

Ms. Seisay also said that she was aware that by acknowledging receipt of the said vehicle, it implied that the safe custody of the vehicle was her responsibility.

On the question of whether she knows that her actions in the handling of an official government vehicle assigned to her, amounted to negligence that could be attributed to the misappropriation of public property contrary to Section 36 (1) of the Anti-Corruption Act of 2008. Kadija Olamatu Seisay said that she knew that it was her responsibility to look after the said vehicle, but did

not agree to being negligent because it was the circumstances that prevailed at the time, that made her ask a Mr. Bashiru to drive the said vehicle.

On the question as to whether she cross-checked with her grand-daughter on Mr. Bashiru's version of events, since she reported that her grand-daughter was in the vehicle; Ms. Seisay replied that it did not occur to her to ask, since her grand-daughter was only 7 years old and was a "small kid."

During her interview on Wednesday 7th November 2018 on a question as to the location of the vehicle's life card, Ms. Seisay said that "it was in the vehicle ever since."

When she was asked as to how she possessed the Life Card of the vehicle; she said that she had an official trip to make to Guinea between December, January and February on infrastructure and had to go with the vehicle. She said that whilst trying to obtain the travelling documents, it was requested that she submit the Life Card of the vehicle.

Ms. Seisay also explained that the then Minister of Transport and Aviation, insisted that the Life Card must be returned to the Transport Officer upon her return; but that when she returned, it did not occur to her to return the Life Card.

Furthermore, Ms. Seisay said that she heard about the instruction to hand over government vehicles in the possession of Ministers and other former officials; ~~and~~ but that she was in Magburaka then; and did not do anything about it.

Ms. Seisay opined that the said vehicle was not misappropriated; but was convinced that it was forcefully taken from a Mr. Bashiru, a private driver of hers.

From the facts and evidence of the case and taking into consideration the provision of the law as stated above, it is clear that Kadija Olamatu Seisay understood that she was responsible for the care and safety of her official vehicle, Toyota Land Cruiser Registration No. ANK 889. She admitted to have requested for the Life Card of the vehicle because she wanted to go on an official duty in Conakry, Guinea.

It is the view of this Court that possession of the Life Card of a vehicle translates to ownership. Ms Seisay did not have to own the official vehicle in order to travel on an official trip. She had no business requesting for the said Life Card because travelling on official duties automatically triggers the Foreign Affairs Department to conduct all the necessities; not Ms. Seisay. Under such circumstances, all she

does is to receive her travel documents, per diem and other official necessities from her Ministry. Her actions were therefore fraudulent.

The Court has carefully listened to the witnesses of the prosecution, who are all public officials who stated what their duties were and have all in the estimation of this Court, carried out their duties diligently. Ms. Seisay was given an opportunity to make an election but she refused stating that she wanted to wait for her lawyer; who had asked for so many long adjournments to the extent that the file had to be withdrawn for judgment.

I have no doubt in my mind that the Accused, Kadija Olamatu Seisay, judging from her statement to the Anti-Corruption Commission (The State) has treated the misappropriation of the said vehicle with impunity. It is clear that she really did not care and she considered the vehicle to be her own private property. She saw her 7 year old daughter as "a little Kid" who would not understand what is going on around her if she was asked. I found that amazing. She said that the erstwhile Minister of Transport and Aviation "insisted that she return the Life Card to the Transport Officer" but said that she forgot about that on her return.

This indicated that she did not see the significance of her responsibility and did not attach any importance to the trust that was reposed in her as a Deputy Minister. She did not believe that she was negligent.

In view of the whole evidence before the Court and the law; and considering that the vehicle has been found, I find Kadija Olamatu Seisay, Former Deputy Minister of Works, Housing and Infrastructure **Guilty** of the offence of Misappropriation of Public Property contrary to Section 36 (1) of the Anti-Corruption Act of 2008.

Sentence:

1. that Kadija Olamatu Seisay is to pay a fine of Le 60,000,000 (Sixty Million Leones) into the Consolidated Revenue Fund within 28 days from today's judgment **OR**
2. Serve a period of 4 years (Four years) Imprisonment.

Signed: _____

Hon. Justice F. Bintu Alhadi J.A.

Date: _____

13th August 2020