

IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN

THE STATE

VS

MOHAMED DUMBUYA

HAJA ADAMA DUMBUYA

1. JUDGEMENT: By an indictment dated the 14<sup>th</sup> day of October 2019, both accused persons were charged with eight (8) counts criminal offences beginning with Manslaughter contrary to law, conspiracy to commit trafficking contrary to section 18 of the Anti-Human Trafficking Act of 2005, Engaging in Trafficking of persons contrary to section 2(2) of the Anti-Human Trafficking Act of 2005 and Cruelty to Children contrary section 4 of CAP 31 of the Laws of Sierra Leone 1960.
2. The 1<sup>st</sup> accused persons is charged with all eight counts aforementioned and the 2<sup>nd</sup> accused person is charged with three (3) counts containing in count 3,4 and 8. The particulars of the offences reads that the accused persons reads that on a date unknown between the 1<sup>st</sup> day of January 2006 and 31<sup>st</sup> day of December 2006 allegedly did what they did. On the count of conspiracy, the particulars of offence read that both accused persons on the 1<sup>st</sup> day of January 2004 and on diverse days between that date and the 31<sup>st</sup> of December 2006 at Freetown in the western area of the Republic of Sierra Leone **conspired with other persons' unknown to commit a trafficking offence**
3. THE LAW: In Sierra Leone as in other commonwealth countries and beyond even the burden and standard of proof in criminal matters has been one beyond reasonable doubt subject to the defence of insanity and any other statutory defences. The aforementioned is strict and it is the duty of the prosecution to fully comply and satisfy such burden and standard of proof if the prosecution is to gain conviction. It therefore goes without saying that any doubt found in the course of prosecuting the accused persons must be resolved in favour of the accused persons without furthermore. See the cases of **Woolmington** and the DPP.Sierra Leone authorities amongst other ***State v Francis Mohamed Fofana Komeh & John Mans*** (unreported). ***State v Alie Badara Mansaray & Others***
4. The governing principle of English criminal law, memorably affirmed by Viscount Sankey LC in **Woolmington v Director of Public Prosecutions** AC 462, 481, is that the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused is charged. The significance of this criminal principle cannot be underestimated because **Woolmington v DPP** [1935] UKHL 1 is a landmark House of Lords case, where the presumption of innocence was re-consolidated (for application across the Commonwealth). In criminal law the case

identifies the metaphorical " golden thread " running through that domain of the presumption of innocence. In evaluating the evidence before this court, the question I need to ask myself is whether the prosecution representing the state has adduced the essential elements that constitute the offences as charged in the indictment of the 14<sup>th</sup> day of October 2019.

5. Let me start with the offence of manslaughter. For the accused person or persons to be found guilty of the offence of manslaughter the prosecution must prove the following four elements, each of which the prosecution must prove beyond reasonable doubt: That the accused committed an act that caused the death of another person; That the relevant act was committed consciously, voluntarily and deliberately; See the case of *R v Lowe* [1973] QB 702
6. Conspiracy contrary to section 18 of the anti-human Trafficking of 2005 read:

An attempt or conspiracy to commit trafficking or aiding, abetting, counselling, commanding or procuring the commission of trafficking shall be punishable as if the offence had been completed

7. Conspiracy, without more, is always taken to be an agreement entered by two or more persons acting in concert or in combination to accomplish or commit an unlawful/illegal act or to do or commit an act which, per se, is legal/lawful through an illegal/unlawful means. The essential ingredients of the offence of conspiracy lies in the bare agreement and association to do or commit an unlawful act, or do or commit a lawful act by unlawful/illegal means. In *Omotola & Ors v. The State* (2009) 8 ACLR 29 at 147, this Court reiterated the point that: "Where more than one accused persons are accused of jointly commission (sic) of a crime, it is enough to prove that they participated in the crime. What each did in furtherance of the commission of the crime is immaterial. The mere fact of the common intention manifesting in the execution of the common object is enough to render each of the accused persons in the group guilty of the offence." Thus, it is immaterial whether the person accused had knowledge of its unlawfulness. The conspirators do not even need to be in direct communication with each other in respect of the offence. A Court can thus, infer, from the criminal acts of the parties including evidence and complicity. See: *Bolaji v. The State* (2010) All FWLR (Pt.534) 100. All that is required by way of proof is either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence..."Per MUHAMMAD, J.S.C. (Pp. 21-22, Paras. B-D) Coming back home see the case of *State v Marian Sesay & 2 Others*(2018) **UNREPORTED**

8. In the instant case before me, the questions I need to ask myself are: Was there any direct evidence in proof of the common criminal design or in the alternative can it be proved by inference derived from the commission of the offence? These questions will be addressed in due course in my judgement

9. There are two counts on engaging in trafficking persons contrary to section 2(2) of the Anti-human trafficking Act of 2005. This section reads

(2) A person engages in the trafficking in persons if he undertakes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

(3) For the purposes of subsection (2), "exploitation" includes, at a minimum—

(a) keeping a person in a state of slavery;

(b) subjecting a person to practices similar to slavery;

(c) compelling or causing a person to provide forced labour or services;

(d) keeping a person in a state of servitude, including sexual servitude;

(e) exploitation of the prostitution of another;

(f) engaging in any other form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;

(g) illicit removal of human organs;

(h) exploitation during armed conflicts

10. The question I need to ask myself with regards this count is: Does this offence create an offence in the stipulated Act? If the answer is no, then I say no more the accused ought to be acquitted and discharged. Again the question I will pose for my consideration is whether two or more people will conspire together to commit a crime that does not exist in the eyes of the law. Even though section 18 creates the offence of conspiracy to commit trafficking which apparently is the substantive offence this seems not to rhyme with the very section 2(2) the accused persons have been charged with

11. Finally, the 1<sup>st</sup> accused person is charged with cruelty contrary to section 4 of CAP 31 of the Laws of Sierra Leone and it reads

(a) " If any person over the age of sixteen years, who has the custody, charge, or care of any child, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb or organ of the body and any mental derangement), that person shall be guilty of a misdemeanour and shall be liable-...."

12. Here if the prosecution is to gain conviction they must prove assault wilful though, abandonment in a manner to cause injury to his or her health. The aforementioned are the essential elements the prosecution must prove. Did the prosecution prove the above essentials? I will consider that shortly in my judgement.

13. THE PROSECUTION'S CASE: In proving their case against both accused persons the prosecution called five witnesses and tendered several exhibits which include the statements made by both accused persons. For purposes of clarity and to assist me in determining whether the prosecution adduced the elements constituting the eight(8) offences charged let me at this stage summarise the evidence of the prosecution witnesses as follows:

14. **PW1 – Aminata Sesay** (Complainant)

15. During examination-in-chief, PW1 testified before this court that she is the mother of one of the alleged victims called Mohamed Dumbuya and the step mother of Amara Dumbuya and sister-in-law of Memunatu Mansaray. She testified that the 1st Accused is her ex-husband and the 2nd Accused was her mother-in-law. PW1 informed the court that sometime in 2004 she was informed by her son that they are travelling abroad the following day. She claimed that both Accused persons are planning to take both Amara Dumbuya and Mohamed Dumbuya (children) out of the jurisdiction without her knowledge. She acted on the information given to her by visiting the home of the 2nd Accused in early morning hours of the following day and only to realise that she (2nd Accused) and the children have departed to the Kissy Ferry Terminal enroute to Lungi Airport. She told the Court that she left immediately together with her brother and mother to the Ferry Terminal where she met the 2nd Accused and the three (3) victims inside the ferry.

16. PW1 further testified that at the Airport, whilst she was trying to pursue the 2nd accused and the victims, she had an attack when she was subsequently taken to a herbalist for treatment a village close to the airport called Kasonna. On her return from the herbalist, she realised that the victims have departed to a foreign destination unknown. She further informed the court that on his return to Sierra Leone some few years later, she approached the 1st Accused about his child but she received no clear answer from him. She later reported the matter to police for their intervention.

17. **PW2 – Isatu Turay**

18. She informed the court that she is the mother of the complainant in this matter and the 1st Accused was her son-in-law. She testified that sometime

in 2006, PW1 informed her that Mohamed (her grandchild) had informed her earlier that himself and brother Amara will be travelling to meet the 1<sup>st</sup> Accused (father). PW1 further informed her that despite being with the kids for the entire day she was never informed about the proposed travel arrangements for the kids. She further testified that it was she who suggested to PW1 to rush to the ferry terminal to see if they could be found. She said they eventually found the 2<sup>nd</sup> Accused and the victims at the Ferry terminal. According to her, they greeted the 2<sup>nd</sup> Accused who responded but could offer any explanation. She further testified that herself and PW1 followed the 2<sup>nd</sup> Accused and the alleged victims to Lungi Airport where they met them.

19. At the Airport, they were standing under the tree to the entrance of the airport when PW1 suddenly informed her that she is feeling cold. she was taken to herbalist at Kasona for treatment. She informed the court that on their return to the airport, they could not find the 2<sup>nd</sup> Accused and the alleged victims. They returned to Freetown. She told the court that on his return to Freetown in 2007, she approached the 1<sup>st</sup> Accused on a couple of occasions to enquire about the whereabouts of her grandson. She received assurances from the 1<sup>st</sup> Accused that her grandson is fine. She testified that Aminata later reported the matter to the police and statement was taken from her.

**20. PW3 – Abdul Sesay**

21. He testified that he is the brother of PW1. He told the court that he accompanied PW1 to the residence of the 2<sup>nd</sup> Accused but they could not find the alleged victims and the 2<sup>nd</sup> Accused. According him, they left for the ferry terminal on the suggestion of PW2 where they met the alleged victims together with the 2<sup>nd</sup> Accused. He further informed the court that they followed them to Lungi where they also met the 2<sup>nd</sup> Accused and alleged victims.

22. PW3 also testified that whilst they were standing at the entrance of the airport watching the alleged victims and 2<sup>nd</sup> Accused from afar, PW1 had an attack and she was rushed to herbalist at Kasona for treatment. Upon their return to the airport, the alleged victims and the 2<sup>nd</sup> Accused could not be found.

**23. PW4 – Sia Conteh (ASP)**

24. She was formerly attached at TOCU and now at the Family Support Unit at Lumley Police Station. She recalled contemporaneously interviewed the Accused persons in krio and recorded same in English which the Accused persons confirmed to be true and correct. She testified obtaining charge statement from the Accused persons.

**25. PW5 – Ibrahim Khalil Sesay (Det. Constable)**

26. A police officer attached to the FSU at Criminal Investigations Department of the Sierra Leone Police. He recalled taking interview statements severally

and on diverse dates from the Accused persons, PW1, PW2, DW1 and DW2. He testified that the file was later transferred to TOCU at Hastings for further investigations. This is all he knows about this matter

27. **EVALUATION OF THE EVIDENCE:** From the totality of evidence above, it is crystal clear that the elements of manslaughter I have explained above are lacking in the prosecution's case. There is no evidence of death as alleged in the particulars of offence contained in count 1 and 2. No documentary evidence to prove death nor has there been evidence to prove that the 1<sup>st</sup> accused person had killed Mohamed Dumbuya and Amara Dumbuya subconsciously or deliberately. As a matter of fact, the court had the opportunity to have spoken to Mohamed Dumbuya in Italy who confirmed that they were both alive in Italy and were in the university. Both of them are now over eighteen (18) years old
28. Conspiracy. Both accused persons are charged with the offence of conspiracy contrary to section 18 of the Anti-Human trafficking of 2005. I have already explained what constitute the offence of conspiracy and its elements. Meaning that it is the duty of the prosecution to prove the two elements of conspiracy, i.e. whether there was an agreement and the intention to carry out that agreement into effect by the conspirators and in this case the accused persons. From the evaluation of the evidence of the five prosecuting witnesses I have not seen any semblance of direct evidence implicating the accused persons nor any inference to be drawn from the evidence implicating both accused persons
29. Let me at this juncture consider the substantive offence under which both accused persons were charged. The accused persons were charged for human trafficking contrary to section 2(2) of the Anti-human trafficking of 2005. I have said earlier in my judgement that this section does not create an offence but rather only shows the ways by which human trafficking could be committed. It is important at this stage to reproduce section 2(1) of the Anti-Human Trafficking Act of 2005 and it reads 2. (1) It is an offence for any person to engage in the trafficking in persons. It is my candid legal view that one cannot conspire to commit an offence that does not exist and therefore if the prosecution has not proved the substantive offence then one cannot be found guilty of the inchoate offence of conspiracy let alone where the act committed is not an offence.
30. In the Nigeria case of the **STATE VS AWARA (2020) LPELR-50265(CA)** the court of appeal on the allegation of conspiracy to commit forgery, held that the main offence of forgery having not been proved, the allegation of conspiracy to commit forgery could not be sustained. This is because common intention to commit a crime is an important ingredient of the offence of conspiracy and the offence of conspiracy can only be inferred from criminal acts or inaction of the parties concerned. Thus, the respondent having been absolved of the allegation to commit forgery, there was no crime on which the allegation of conspiracy could stand. There are three elements need to be proven by the prosecution for the offence of human trafficking under our Sierra Leone Anti Human trafficking and they are the act itself, the means and purpose. Assume that both accused persons have been charged under section 2(1) aforementioned, the prosecution has not adduced any evidence demonstrating the


three elements. No evidence to show that the children were exploited in Italy even though they were transported to that country by the 1<sup>st</sup> accused person. Probably if the accused persons have been charged with the offence of human smuggling under the present Anti Human trafficking and Smuggling there would have been every likelihood that they would have been found guilty. I say no more.

31. PW1 and the 1<sup>st</sup> Accused were living as husband and wife after he was deported from Holland. It is in evidence that when the 1<sup>st</sup> Accused was deported from Holland, he was living happily with PW1 at the residence of the 2<sup>nd</sup> Accused and they later moved to Wan Pole at Allen Town. PW1 never reported the matter to the police until almost 10 (ten) years after the children left Sierra Leone. She also had the finest of opportunity to have reported the matter to the police at kissy terminal, targrin police station and lungi police station or so soon thereafter. She also heard the opportunity to have reported the 1<sup>st</sup> accused person when he arrived in Freetown after he was deported from Holland. PW1 failure to do so cast doubt as her sincerity and credibility. The 2<sup>nd</sup> accused person was in Freetown and wonder why she did not commence legal steps against her if she was so personate about the travelling of her son to Italy without her consent. The testimony of PW1 ought to be treated with a pinch of salt because it is inconsistent as well as unreliable as per counsel appearing for the accused persons.

32. Section 4 of the Cruelty to Children contrary to Cap 31 of the Laws of Sierra Leone upon which the Accused persons were charged provides as follows:

(a) *"If any person over the age of sixteen years, who has the custody, charge, or care of any child, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb or organ of the body and any mental derangement), that person shall be guilty of a misdemeanour and shall be liable-...."*

33. With regards this offence the prosecution has failed to adduce any evidence against the Accused persons to support their case in Counts 6, 7 and 8 of the indictment. Not an iota of evidence be it direct or by inference drawn from the conduct of the 1<sup>st</sup> accused person was adduced by any of the five prosecution witnesses. It is a bad case for the prosecution in its entirety. Both accused persons ought to be acquitted and discharged on all counts and they are both acquitted and discharged accordingly

 7/7/2022