

**IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN**

THE STATE

VS

ELIZABETH AYO JOHNSON

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.
DATED THE 17TH DAY OF MAY 2017**

Counsel:

AJM Bockarie Esq for the State

Legal Aid Board for the accused

Judgment

1. The accused stands charged on a four Count Indictment dated the 2nd day of August 2016 for the offence of obtaining money by false pretences contrary to Section 32(1) of the Larceny Act, 1916. The allegation is that on the 31st day of May 2015, the 22nd day of June 2015, the 8th day of June 2015 and the 11th day of June 2015, at Freetown, in the Western Area of the Republic of Sierra Leone with intent to defraud, the accused, Elizabeth Ayo Johnson obtained Le. 1,500,000/00 (One Million Five Hundred Thousand Leones), Le. 2,000,000/000 (Two Million Leones), Le. 6,000,000/00 (Six Million Leones) and Le. 1,600,000/00 (One Million Six Hundred Thousand Leones) respectively from Benjamin Mohamed Koroma by falsely pretending that she has a house with three bedrooms and a parlor to let, knowing the same to be false..

1.1. Section 32(1) of the Larceny Act 1916 provides as follows:

Every person who by any false pretence

(1) with intent to defraud, obtains from any other person any ... money ... or causes or procures any money to be paid ... to himself or any other person for the use or benefit or on account of himself or any other person shall be guilty of a misdemeanor and on conviction be liable to penal servitude for any term not exceeding five years.

1.1.2. I thank the Prosecutor A.J.M Bockarie Esq for prosecuting this matter and for his final address. I also thank Defense Counsel, C. Sembie for defending the accused on behalf of the Legal Aid Board and for submitting a final address on behalf of the accused.

2. Burden and standard of proof

2.1. The prosecution has a duty to prove its case beyond reasonable doubt to gain a conviction on the offence as charged. See the case of *Woolmington Vs. DPP*

which said principle of law has been adopted in all criminal cases within the Sierra Leone jurisdiction.¹ This principle of law is not without exception. Where an accused pleads insanity to an alleged crime, it will remain the duty of the accused to prove that his situation falls within the M'Naughten rules. There are also statutory exceptions which provides that where a defence is based on any exception, proviso or qualification, the accused will have the burden of proof in proving that the exception applies in his situation. In respect of the level of the burden of proof on the part of the Prosecution, I refer to the well known case of *R Vs. Edwards* (1975) QB 27 and *Miller Vs Minister of Pensions* (1947) 2 AER 372.

2.1.1. I am mindful of the fact that the accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing her 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. The Law

3.1. The provisions of Section 32(1) of the Larceny Act, 1916 has already been stated.

3.1.2. Section 40(1) of the Larceny Act, 1916 provides that:

'On the trial of an Indictment for obtaining or attempting to obtain any ... money ... it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with the intent to defraud'.

3.1.3. Archbold 35th Edition at para 1935 provides that the False Pretence should be set out with sufficient certainty in the Indictment. In the instant case, the false pretence alleged is that the accused Elizabeth Ayo Johnson, with intent to defraud, on diverse days obtained a total of Le. 11,100,000 from Benjamin Mohamed Koroma by falsely pretending that, she has a three bedrooms house to let out to the said Benjamin Mohamed Koroma, knowing same to be false.

3.1.4. Archbold reminds us that 'the Prosecutor must prove the making of the pretence as stated in the Indictment.' However the Learned Editors of that Edition state in para 1944 that 'it is sufficient if the actual substantial pretence, which was the main inducement to part with money is alleged in the Indictment and proved although it may be shown by evidence that other matters not laid in the Indictment in some measure operated as an inducement upon the Prosecutor's mind.

3.1.5. The pretence must be as to an existing fact. It must be a fact that exists or did exist. I refer to para 1945 of Archbold 35th Edition which provides 'when ever a person fraudulently represents as an existing fact that which is not an existing fact, and so gets money, that is an offence within the Act. But it is not necessary that it should be by words; the conduct and acts of the party will be sufficient

¹ *The State Vs. Francis Mohamed Fofana Komeh & John Mans* (unreported).

without any verbal or written representation. The Prosecution must prove that the alleged false pretence operated in the mind of the accused’.

3.1.6. In *Reg Vs. Jennison (1862)*, a bachelor induced a spinster to give him money in pretence that he was single; he wanted the money to furnish a flat; and that he will come back and marry her. His wanting the money to furnish a flat and his coming back to marry the spinster was held to constitute false future promises which do not qualify as an existing fact. Holding himself out as a bachelor was held to be an existing fact which will qualify for an offence under Section 32(1). In the instant case, the accused holding herself out to have a three bedrooms house to let is an existing fact.

3.1.7. Section 32(1) of the Larceny Act, 1916 does not require the Prosecution to prove that the monies paid out were monies belonging to the person or persons who did the paying out. In the instant case therefore, the Prosecution need not prove that the Le. 11,100,000/00 paid out on diverse days belonged to Benjamin Mohamed Koroma. In the case of *Fred Ball (1952) Cr. App. Rep 24*, Lord Goddard, LCJ sets out the true position at page 27 that: “The Section does not say ‘obtains from the owner’ but ‘obtains from any person’. There is no doubt that ‘obtains’ means obtaining the property and not merely possession, and the obtaining must not be in such circumstances as amount to larceny for this purpose....’

3.1.8. The Prosecution must also prove beyond a reasonable doubt the falsity of the pretences. The pretences must be false at the time it is made to the knowledge of the defendant’. According to Lord Alverstone, LCJ in *Amar Nath Dutt (1913) Cr. App. Rep 51* at pages 57-59, ‘... in Indictments for obtaining money by false pretences, the important thing is the knowledge of the person making the pretence....’

3.1.9. The Prosecution must also prove beyond reasonable doubt that Benjamin Mohamed Koroma was induced by the false pretences made by Elizabeth Ayo Johnson to part with a total of Le. 11,100,000/00 paid on diverse days. As stated in Archbold 35th Edition at para. 1961, that is an essential ingredient of the offence though in many cases it may be inferred from the facts of the case. Where money is obtained by pretences that are *prima facie* false, there is an intent to defraud and use of false statements to obtain the money, though the money might have been obtained without them, is evidence from which there may be inferred an intent to defraud. In support of this proposition is the judgment of MR Justice Avory in the Court of Criminal Appeal in *Fergusson (1914) Cr. App Rep 113* at pages 114-115. In *R V Fisher; (1963) 1 AER 744*, Winn J said in the Court of Criminal Appeal at page 747 paras. D-E: “The concept of obtaining credit manifestly comprises two elements, first an act or process of ‘obtaining’; second, ‘a thing obtained’.

3.1.10. Having in some measure settled the parameters of the law relating to obtaining money by false pretences, an offence under Section 32(1) Larceny Act 1916, I shall now analyse the evidence in order to determine whether it measures up to the requirements of the law or falls short of it.

4. Evidence analysis

4.1. PW1 was Juliet Koroma, wife of Benjamin Mohamed Koroma. She said she recalls the 31st day of May 2015, 2nd day of June 2015 when in her presence, her husband, Benjamin Mohamed Koroma gave the accused Le. 1,500,000/00, Le. 2,000,000/00 for purposes of renting a house at No. 10 Clarence Street, for which a receipt was issued. She said the accused lives at the same house, that is No. 10 Clarence Street, Freetown. She tendered Exhibits A, B, C dated 8th day of June 2015 and Dated 11th day of June 2015 being receipts for payment of Le. 1,500,000/00, Le. 2,000,000/00, Le. 6,400,000/00 and Le. 10,000,000/00 respectively.

4.1.1. In answer to questions put to her in cross-examination, PW1 reiterated that she was present when all payments as above mentioned were made by her husband to the accused. She said no amount of money paid by her husband was refunded by the accused. PW1's testimony remained unshaken.

4.1.2. PW2 was Benjamin Mohamed Koroma who acknowledged PW1 as his wife. He said he recalls informing the accused that he received a notice to quit from No. 4 Upper Brook Street, Freetown, the accused told him that she has a house to let at No. 10 Clarence Street, Freetown at Le. 6,000,000/00 per annum. On the 31st day of May 2015, he paid Le. 1,500,000/00 part-payment as rent of the said property. He identified Exhibit A as the receipt issued him upon payment of the said Le. 1,500,000/00. He said on the 2nd day of June 2015, he made a further payment of Le. 2,000,000/00 to the accused as further part payment for the said property. He identified Exhibit B in respect of the second payment of Le. 2,000,000/00 afore mentioned. PW2 told the Court that on the 8th day of June 2015, he made a further payment of Le. 6,400,000/00 to the accused as further part payment for the property which said payment was receipted. He identified Exhibit C in that respect. He said that on the 11th day of June 2015, he made a further payment of Le. 1,600,000/00 to the accused in respect of rent for the said property which said payment was also receipted to read a total of Le. 10,000,000/00 as in Exhibit D.

4.1.3. PW2 clarified that Exhibit D which he prepared and which was signed by the accused was supposed to read Le. 11,500,000/00 instead of Le. 10,000,000/00. My understanding of this piece of evidence is that the total amount paid to the accused by Benjamin Mohamed Koroma for rent in respect of No. 10 Clarence Street was Le. 11,500,000/00 reflecting payments of Le. 1.5M, Le. 2M, Le. 6.4M and Le. 1.6M on diverse days.

4.1.4. PW2 told the Court that the accused had assured him that the property will be vacant and ready for him to move into in mid June 2015. He said the property was still occupied in mid June and that when he called the accused in respect of the property being still occupied, the accused told him that she was at that time in Liberia but promised that on her return, she will ensure that PW2 gets vacant possession of the property for him to move in. He said he continued calling on the accused who gave him no definite answer as to when he can move into the

property for which he had made payment of Le. 11.5M. He then realized that the said property was in fact occupied by the accused person's step mother.

4.1.5. In answer to questions put in cross-examination, PW2 reiterated that he made a payment of Le. 11.5M to the accused in respect of rent for No. 10 Clarence Street. He denied that the agreement was for the accused to hand over vacant possession of the property in September 2015; he denied that the accused offered to refund his money in September 2015. There is no doubt, based on the testimonies of PW1 and PW2 and the exhibits tendered so far, that is Exhibits A to D that money was paid to the accused for rent of property.

4.1.6. PW3 was Investigator, Marian Sandy attached to the PWD Police Post, Harbour Division. She said while she was on duty on the 21st day of July 2015, the accused was arrested and brought to the police by PW2 on complaints of obtaining money by false pretences. She told the Court that upon the file being assigned to her for investigation, together with Detective Sergeant 7229, Mohamed Kabba Sesay, she obtained statement from the accused, having cautioned her. She said the accused accepted the contents of her statement which was read over and explained to her by affixing her right hand thumb print. No objection raised, the voluntary caution statement of the accused was tendered as Exhibit E1-6 which was read out to the Court.

4.1.7. PW3 referred to a charge statement of the accused done by herself and Detective Sergeant 7227 Mohamed Kabba. The accused denied the signature on the said charge statement as not being hers. This warranted a *voir dire* in respect of the said signature. On the 18th day of January 2016, 1st day of February 2016 and 15th day of February Court Witness Brima Turay testified and tendered Exhibit F1-2, a Forensic Report to the Court. Based on Exhibit F1-2, the charge statement of the accused marked Exhibit G1-2 was allowed to form part of the evidence before the Court. PW3's testimony under cross-examination remained unshaken.

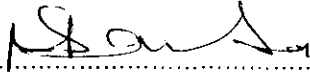
5. On the 18th day of March 2017, the Prosecutor tendered the Committal Certificate of the accused, marked Exhibit H1-3 and closed the case on behalf of the State. On the 29th day of March 2017, the accused was put to her election pursuant to the CPA No. 32 of 1965 to wit:

- a. Make an unsworn statement and not be subjected to cross-examination.
- b. Make a sworn statement and be subjected to cross-examination and call witness(es).
- c. Rely on her statement to the police.

5.1. The accused chose to rely on her statement made to the police. I have listened with keen interest to the testimonies of all witnesses in respect of this matter. I also listened attentively when the voluntary caution statement of the accused was read out in open Court in the presence of the accused; I have further endeavored to read the said statement of the accused which she now relies on in her defence.

5.1.1. The accused admits to having received money to the tune of L.e. 10M from PW2 in respect of rent for property she held herself out to have. She identified receipts of payments made to her on diverse days by PW2 as in Exhibits A-D, in respect of the said property. She admits PW1 was present when all these payments were made. She agrees at page 4 of her Voluntary Caution Statement that she does not own a house which she could have let.

6. Applying the law herein before stated in respect of obtaining money by false pretences and the testimonies before this Court together with the Voluntary Caution Statement of the accused, it is clear that the accused knew she had no property to let to PW2; she gave no reason why she collected L.e. 11,100,000/00 from PW2. PW2 was in imminent need of property to let as he had been given notice to vacate the property where he was living and this fact was explained to the accused. She held herself out to have property to let to PW2 knowing the same to be false. Holding herself out constitute present pretence as at that time. It is my holding that the accused, Elizabeth Ayo Johnson is guilty of obtaining money by false pretence from Benjamin Mohamed Koroma for which I now convict you.


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Hon. Jst. Miatta Maria Samba, J