

IN THE HIGH COURT OF SIERRA LEONEN
HOLDEN AT FREETOWN
THE STATE
VS.
CHRISTIAN HAROLD ABIOSEH PRATT

BEFORE THE BEHONOURABLE JUSTICE MIATTA MARIA SAMBA, J.A
DATED THE 4TH DAY OF MARCH 2020

Counsel:

M. Sow Esq for the State

M. Beretay Esq for the Accused

Judgment

1. The Accused, Christian Harold Abioseh Pratt stands charged on a one Count Indictment dated the 28th day of March 2019 for offence as stated below:

1.1. Count 1

Statement of Offence

Abuse of Office contrary to Section 42(1) of the Anti-Corruption Act, No. 12 of 2008.

Particulars of Offence

CHRISTIAN HAROLD ABIOSEH PRATT of B40 Cantonment Road, Brookfields, Freetown, being the Director of Surveys and Lands at the Ministry of Lands, Country Planning and Environment, on a dated unknown, between the 1st day of July 2017 and the 18th day of July 2017, abused his office by improperly conferring an advantage on MARTIN TORTO ALIAS JUNIOR BIO, to wit; instructed and authorised one ABU BAKARR MAJID-SESAY to prepare a report unlawfully conferring a beneficial interest in State land on one MARTIN TORTO ALIAS BIO.

2. The Law

2.1. Section 42(1) Anti-Corruption Act, 2008 reads:

A public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence.

2.1.1. To succeed on a Section 42(1) offence, the Prosecution must prove the following:

- a. that the Accused is a public officer –

In respect of the Accused being a public officer, I refer to Exhibit A, especially Exhibit A5, answer to question 9 where the Accused confirmed that, during the period covered by the Indictment he was a civil servant occupying the position of Director of Surveys and Lands at the Ministry of Lands, Country Planning and the Environment. I also refer to the Accused person's testimony on oath at page 87 of the Judge's notes where he said he is a Civil Servant and Director of Surveys and Lands.

I refer to the definition of a 'public body' in the definition section of the Anti-Corruption Act, 2008 which provides that a 'public body' includes, Cabinet, any ministry, department or agency of government. It is my holding that the Ministry of Lands, Country Planning and Environment is Ministry of the Government of Sierra Leone.

I have looked at the definition of a 'public officer' under the definition section of the Anti-Corruption Act, 2008 which provides that a 'public officer' means 'an officer or member of a public body including a person holding or acting in an office in any of the three branches of government, whether appointed or elected, permanent or temporary or paid or unpaid'. I am satisfied that during the period covered by the Indictment, the Accused was a Public Officer holding the office of Director of Surveys and Lands in the Ministry of Lands, of the GoSL.

- i. **that the Accused used his office 'to improperly confer an advantage on another'**
The allegation against the Accused is that as a public officer and during the period covered by the Indictment, he improperly conferred an advantage on Martin Torto Alias Junior Bio named in the Indictment. The term 'advantage' is described in Part 1 of the Anti-Corruption Act 2008 to include:
 - a. any gift, loan, fee, reward, discount, premium or commission, consisting of money or of any valuable security or of other property or interest in property of any description or other advantage other than lawful remuneration;
 - b. any other benefit, service or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended of from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- ii. Proof of the allegation that the Accused instructed and authorised Abubakkarr Majid Sesay to prepare a report and thereby conferred an advantage on Martin Torto Alias Junior Bio will best come out, if at all, in evidence. The Prosecution must prove to this Court that the Accused, by his conduct, conferred an advantage on Martin Torto Alias Junior Bio. So I shall look at the Indictment and relate same to the facts as appropriate.
- iii. **that the Accused 'improperly conferred an advantage on another'** – the word 'improperly' connotes an element of dishonesty.

The elements of the offence of abuse of office was considered by the Court of Appeal in the *Attorney General's Reference* (No. 3 of 2003) (2004) 3 WLR 451 where Pill LJ emphasized the need for 'a serious departure from proper standards before the criminal offence is committed' and that 'for such a departure to be criminal will not be merely negligent'. He went on to say that a mistake, even if it is a serious one, will not itself suffice. For Lord Widgery, CJ, the neglect, if at all must be wilful and not merely inadvertence and it must be without reasonable excuse.

Lord Widgery, CJ, rejecting the argument in the *Dytham* (1979) QB 722 case stated that '*misconduct in a public office is more vividly exhibited where dishonesty is revealed ...*'

In *R V Borron* (1820) 3 B (and) Ald 432, Abbott, CJ stated:

The questions have always been, not whether the act done might upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive or corrupt motive under which description fear and favour may generally be included or from mistake or error. In the former case, alone, they have become the objects of punishment.

In the Hong Kong Court of Final Appeal in *Sin Kam Wah and anor V HKSAR* (2005) 2 HKLRD 375, Sir Anthony Mason NPJ in giving the leading judgment set out a mental element solely in relation to misconduct whether by act or omission:

The present position, then, is that the misconduct must be deliberate rather than accidental in the sense that the official either knew that his conduct was unlawful or wilfully disregarded the risk that his conduct was unlawful. Wilful misconduct which is without reasonable excuse or justification is culpable.

It is clear from the above that there needs to be proof of a mental element, an element of dishonesty to succeed on a Section 42(1) Anti-Corruption Act, 2008, charge.

Burden of Proof

This Court sits both as a tribunal of fact and as a tribunal of law. I must therefore keep in my mind and in my view at all times, that in all criminal cases it is the duty of the prosecution to prove its case beyond a reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence with which the accused person is charged.

If there is any doubt in my mind, as to the guilt or otherwise of the Accused person, in respect of the charge in the Indictment, I have a duty to acquit and discharge the Accused person of that charge. I must be satisfied in my mind so that I am sure that the Accused person has not only committed the unlawful act charged in the Indictment, but that he did so with the requisite *mens rea*, that is that the act was done wilfully.

I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the Prosecution has not proved its case beyond a reasonable doubt. No particular form of words is 'sacrosanct or absolutely necessary' as was pointed out by Sir Samuel Bankole Jones, P, in the Court of Appeal in *Koroma V R* (1964-66) ALR SL 542 at 548 LL4-5. What is of importance is that the Prosecution establishes the guilt of the Accused beyond a reasonable doubt. A wrong direction in this all important issue will result in a conviction being quashed.

The Court refers to the case of *Sahr Mbambay V The State* App. 31/74 CA (unreported)-the cyclostyled judgment of Livesey Luke, JSC at pages 11-13. At Page 12, where Luke JSC referring to *Woolmington V R* said, that '*if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the Prosecution or the prisoner ... the Prosecution has not made out the case and the prisoner is entitled to an acquittal*'.

The Court notes that after the Prosecution's case, upon being put to his election as required by Section 194 of the Criminal Procedure Act No. 32 of 1965, the Accused person chose to testify on oath which he did in his defence. I must state that an Accused person needs not

give evidence on his own behalf but when he does, the Court takes it into consideration and accords to it such weight as it thinks appropriate in the circumstance. The Accused does not bear the burden of disproving the case of the Prosecution, nor of proving his own innocence. What this Court is concerned about is whether the explanation given by the Accused raises a reasonable doubt in the mind of the tribunal of fact. If it does, the Accused is entitled to an acquittal.

Now I will deal with the proof of evidence based on the law, evidential, documentary or otherwise before the Court.

PW1 was Ishmael Kamara, an Investigation Officer at the Anti-Corruption Commission (ACC) who was a Recorder of a statement made under caution by the Accused, and on two separate days. He told the Court that before obtaining the statements from the Accused, the Accused was cautioned as to his rights and that after obtaining the statements both were read separately by the Accused who accepted same to be true and correct after reading and signing on each page of both statements. There being no objection by Counsel for the Accused, PW1 tendered Exhibit A1-11, the Accused person's caution statements which were read out in open Court to the hearing of the Accused.

There being no objection by Counsel for the Accused, PW1 further tendered the following documents:

- a. Exhibits B1-15, a Report dated 9th December 2016 by Karim Kargbo, approved by Donald Jones, Assistant Director of Surveys for the Director of Surveys and Lands;
- b. Exhibit C, a request for approval to dismantle 9 illegal structures by Augustine Kai Banya dated 31st January 2017;
- c. Exhibit D, a request to cancel the demolition of 9 makeshift structures at Plums Heath by Augustine Kai Banya dated the 7th April 2017;
- d. Exhibit E1-2, a Review of Report on Request for verification of CID land document by A.B Majid Sesay for the Director of Surveys and Lands dated 18th July 2017;
- e. Exhibit F1-3, Letter of Complaint to Director of Surveys and Lands of 20th July 2015 by Chief Foday Jalloh, Yayah Kalokoh, Reverend Aba During Etc.;
- f. Exhibit G, Letter of offer for lease of State land at Extension B at Plums Heath for Thomas S. Kamara by Brima Rogers, Permanent Secretary, dated 4th January 2007;
- g. Exhibit H, Letter of offer for lease of State land at Extension B at Plums Heath for Lansana Daramy by Brima Rogers, Permanent Secretary, dated 4th January 2007, with an attachment of GoSL Gazette.

The allegation against the Accused is that he gave instructions to one Abubakarr Majid Sesay to write a report on ownership of the subject matter in dispute against 32 state lodge officials in favour of one Martin Torto Alias Junior Bio.

The Court refers to Exhibit B1-5 signed by Mr. Karim Kargbo and approved by Donald Jones, PW 4 and PW 9 respectively. In answer to questions put to him by the investigator at the ACC and in his testimony before the Court, the Accused denied knowledge of Exhibit B1-5, saying he only got to see same at the ACC when he was called upon to make his statement in respect of the allegations herein. The Accused told the investigator that PW 9, Donald Jones was charged with the responsibility of addressing police reports including the dispute relating to

the subject matter herein forwarded the Ministry of Lands by the Sierra Leone Police. I refer to Exhibit V2, part of the statement of Donald Jones, PW 9, where he said that he got to know about the land dispute when a police request to investigate the ownership of the said land was referred to him for action by the Accused. It is noted that this issue emanated from a police report.

I refer to Exhibit J 1-11, the statement of Karim Kargbo, PW4 especially Exhibit J4 and 6, where Mr. Kargbo said that he did Exhibit B1-5 pursuant to an assignment given him by Donald Jones, PW 9. My understanding of the Accused testimony is that he did not instruct the contents of Exhibit B1-5 done by Mr. Karim Kargbo.

I take note of Mr. Karim Kargbo's testimony that the Accused asked him to change his Report as in Exhibit B1-5 to reflect ownership of the subject matter herein by the party claiming private ownership, that is Martin Torto Alias Junior Bio. He said Mr. Donald Jones was present when the Accused gave him the said instructions. The Court notes that the Accused denied any such happening.

I now refer to Exhibit A and specifically to question 19 where the investigator suggested to the Accused, that the Accused it was who gave instructions to Abubakarr Majid Sesay to do a report on the ownership of the subject matter in dispute. The Accused denied giving Mr. Majid Sesay such instructions and gave his appreciation that the Ministry of Lands does not investigate ownership or title to land. The Accused in answer to question 20 put to him in Exhibit A told the investigator that the Court it is which investigates title to land; I cannot agree more.

I refer to Exhibit E from the Office of the Director of Surveys and Lands titled 'Review of Report on Request for the Verification of Land', Document on CID HQ CR No. 170/14 dated 18th July 2017 under the hands of Abu Bakarr Majid-Sesay, pp, the Director of Surveys and Lands, who is the Accused. I refer to the Accused person's position in respect of Exhibit E in his answer to question 21 in Exhibit A and his testimony before the Court where he said that Exhibit E is the findings of a Complaint Committee.

The Court notes that though the author of Exhibit E, Abu Bakarr Majid Sesay told the Court that he signed Exhibit E for and on behalf of the Accused as Director of Surveys and Lands, the Accused is not in copy of Exhibit E. It is also noted that the Accused said in testimony that he only got to see Exhibit E for the first time at the ACC during his statement taking and that he never instructed Abu Bakarr Majid Sesay to write Exhibit E.

Further to the above, I refer to Exhibit K1-11, the statement of Abu Bakarr Majid Sesay to the ACC especially Exhibit K3 where he told the ACC, in answer to question 7 that he was directed to investigate the matter in respect of the disputed land in question by the then Permanent Secretary. The assignment as per Exhibit K page 5 was to determine:

- h. Whether the disputed land was state land;
- i. Whether the disputed land was leased to former state lodge staff or whether it was the property of Martin Torto Alias Junior Bio.

AbuB akarr Majid Sesay was initially satisfied as in Exhibit K8 that based on Exhibit B1-5 and an attached gazette, the subject matter in issue was State land. The Court takes note that Majid-Sesay said at Exhibit K8 that the Accused, in the presence of Karim Kargbo, told him to change his views that the property was State land. The Accused denied ever telling Majid-Sesay to change his views and it is noted that Karim Kargbo never confirmed this point in his testimony or in his statement to the ACC. He also told the ACC as in Exhibit K8 and in testimony before the Court, that Karim Kargbo told the Accused in his presence that he was influenced to write Exhibit B1-5, which the Accused denied and which Kargbo never confirmed.

Majid-Sesay also told the Court in his testimony on oath, that Karim Kargbo was present when the Accused dictated the contents of Exhibit E1-2 for him to type out on behalf of the Accused and that they both returned to his office where he typed out Exhibit E1-2 and took back to the Accused for editing while Karim Kargbo stayed in his, Majid-Sesay's office. Again, the Accused denied this ever happened. Karim Kargbo told the Court that it was himself and Pratt who were present in the Accused persons' office when the Accused spoke to him about Exhibit B1-5.

Karim Kargbo said in his statement and indeed in his testimony before the Court that this discussion between himself and the Accused in respect of change of his Report as in Exhibit B1-5, happened in the presence of Donald Jones and not Abu Bakarr Majid-Sesay.

I note the inconsistencies in the testimonies and statements of the Prosecution witnesses, Abubakarr Majid Sesay and Karim Kargbo. I refer to the testimony of PW1 at page 15 of the Judge's notes where he said 'there was some amount of inconsistencies in the statement of Majid-Sesay and Karim Kargbo. I cannot tell which of the Prosecution Witnesses is honest with the Court. Their testimonies have not helped me in any way and in any event, the Accused denies the testimonies of PW2, 4 and 9, of which I note that the testimonies of PW2 and PW4 are inconsistent and not supportive of what transpired between each of them with the Accused.

I have looked at Exhibits C and D of 31st January 2017 and 7th April 2017 by Mr. Augustine Kai Banya, PW 8 in his capacity as Director of Country Planning. I find nothing to suggest the Accused's involvement in the demolition or otherwise of the subject matter in question. PW8's testimony does not support PW2 nor PW4's, testimony that Accused instructed them to change Exhibit B1-5 and write out Exhibit E1-2.

Even though the charge before the Court is one to do with abuse of office by the Accused, I wish to make the following points which has nothing to do with the matter before the Court. Appreciating the expertise of officers of the Ministry of Lands, Country Planning and the Environment, I hasten to state that the determination of ownership of real property as in the instant case is a legal issue that falls under the jurisdiction of the judiciary. There is no evidence in Exhibit E1-2 or any document on file to suggest that the subject matter is State property; or that shows the acquisition of the subject matter concerned. In fact, the only documents of title presented to the Ministry to show ownership of the subject matter were those of one Mrs. Cecelia Sesay, showing private ownership under which, it is the Court's understanding, Mr. Martin Torto Alias Junior Bio laid claim. I have deliberately used the term 'documents of title' because all other documents submitted by other persons including State

Lodge Officers laying claim to the land were offer letters and a gazette, as in Exhibits G and H1-3. I need not state that offer letters and a gazette do not legally depose title to real property.

It is apt to now touch on the issue of abuse as charged and the supposed advantage conferred on Martin Torto Alias Junior Bio. I have said that one of the elements that the Prosecution needs to prove to succeed on this one Count is to show that the said Martin Torto Alias Junior Bio did in fact benefit from that to which he was not entitled. I refer to the case *The State v Ekundayo Constance Shears-Moses* where on a charge of abuse of office, it was proven by the Prosecutor that indeed and in fact, extra marks were dishonestly awarded by the Accused to one Ms. Jamilatu Alicia Sesay to make out a pass in the module 'Jurisprudence and Legal Theories' and this was shown by Exhibit G in that case; also, it was proven in another Count that the Accused dishonestly caused a pass grade to be awarded to one Alimatu Tity George for her dissertation, a requirement for an LLB (Hons) degree when in fact she never submitted a dissertation. Again, this was shown by Exhibit K in that case.

In the instant case, the Prosecution has failed to show the advantage conferred on Martin Torto Alias Junior Bio by the Accused. Even if the Accused did instruct Abu Bakarr Majid Sesay to prepare a report as in Exhibit E1-2, (which said instructions the Accused denies), I do not accept that the act of giving instructions will amount to conferring an advantage in the absence of proof that as a result of such instructions (assuming it ever happened), Martin Torto Alias Junior Bio benefited that to which he was not entitled. No proof of such benefit by way of a title which will grant him right to the said property for instance has been shown by the Prosecution. It is the Court's position that Exhibit E1-2 did not confer beneficial interest or title in State land on Martin Torto Alias Junior Bio.

In sum, the Accused denied giving instructions or authorisation to Abu Bakarr Majid Sesay to do Exhibit E1-2 in favour of Martin Torto Alias Junior Bio. Karim Kargbo's testimony does not support Majid Sesay's testimony that he, Karim Kargbo was present when the Accused gave Sesay instructions to do Exhibit E1-2. In fact, according to PW1, Abu Bakarr Majid Sesay's testimony and that of Karim Kargbo are inconsistent.

I reminded myself earlier of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the Prosecution has not proved its case beyond a reasonable doubt. In light of the above, having read the Indictment dated the 21st day of March 2019 and having listened to testimonies and read the evidence and the closing address by both Counsel and having considered the applicable laws, I returned the following verdict:

Count 1:- Not guilty.

The Accused is therefore acquitted and discharged.


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Hon. Jst. Miatta Maria Samba, J.A.