

IN THE HIGH COURT OF SIERRA LEONE
Holden at Freetown

STATE

V

ALBERT ALPHONSO CONISON
GILBERT JOSHUA COLE
PC SANDY FOWAI aka AUGUSTINE CLAUDE MOMOH
MOHAMED BOCSOW KOROMA

Coram

Shuster J

Mr. Mason A/DPP for the Prosecution

Mr. A K A Babah for the Prosecution

Mr. E Turey for the first accused

Mr. Edwards Johnson for the second accused

Mr. Tejan Cole - Johnson 2nd Accd.

Mr. Tejan Cole for the third accused

Mr. O Williams for the fourth accused

RULING delivered 20th April 2005

RULING ON APPLICATION ON ADMISSIBILITY OF EVIDENCE UNDER THE
BANKERS BOOKS EVIDENCE ACT OF 1879

1. The defendants are charged on an indictment, dated 12th November 2004:

Alleging, that

the accused, conspired together that on divers dates between the 1st day of August 1999 and the 31st day of March 2003 at Freetown in the Western Area of Sierra Leone, they conspired together with other persons unknown with intent to defraud the Government of Sierra Leone by unlawfully reprocessing and re-encashing; meaning thereby authorising and making payment thereon, one hundred and one Government of Sierra Leone salary cheques of the total value of one billion eight hundred and fifty six million eight hundred and eighty seven thousand one hundred and thirty seven Leones, which said one hundred and one salary cheques had already been previously encashed.

2. During the course of this trial Mr. Tejan Cole, Counsel for the Third Accused, made a submission objecting to prosecution witness Mr. Claude SEIWOH producing into

evidence two Cash Books purporting to be working records of the Bank of Sierra Leone and relevant in the case before me.

Mr. Tejan Cole made the following oral submission:

The witness Mr. Claude SEIWOH is not competent to produce the two cash books because [1] It is contrary to the Bankers Act. [2] It is a private document as opposed to a public document. Mr. Tejan Cole said he was referring to those documents which are clearly private documents as opposed to public documents. He argued the production of a private document is based upon its custody. He emphasized the witness stated the cash books were in his custody, "as of now," and the witness admitted in open court he was not the maker of the documents.

Mr. Tejan Cole in his submission referred me to the case of Myers v DPP 2 ALLER 881 and the well established principle that it is only the maker of the document who should produce the document and not just its controller. His second point was the Bankers Books Evidence Act of 1879 which says amongst other things; that before a Bankers Book can be produced, evidence must be led, and the Bank Officer must inform the court [a] that the book or books to be produced are being used by the Bank and [2] that he the witness has examined them. He submitted that upon these two grounds the witness Mr. SEIWOH was not competent to tender the cash books. In addition Mr. Tejan Cole stated the witness was not in a position to answer any questions as to the contents, and there was no overwhelming evidence before this court that the cash books were compiled by cashiers. Mr. Tejan Cole indicated he would submit further written authorities to the court, the court adjourned for that to be done.

On Tuesday the 12th April 2005 Mr. Tejan Cole continued with his submission. He kindly submitted further cases for consideration by the court for which I am grateful;

PATEL v COMPTROLLER OF CUSTOMS 3 ALLER 1965 593
ABDULHAMID IBRAHIM PATEL 1981 CA JANUARY 16 & 26
R v KEARLEY 1992 2ALLER 345
 Which considered Myers v DPP?

Mr. Tejan Cole stated. As a result of the Myers case; if there was any departure from Myers case, it can only be done by Legislation. In a nutshell, Mr. Tejan Cole asked the court not to admit the two Cash books in evidence applying his submission and relying on the well established principles in the case of Myers v DPP.

Mr. Tejan Cole was enjoined, and supported in his application by the three other counsels for the other Accused.

3 Mr. Mason for the State agreed with Mr. Tejan Cole; if there was to be a departure from the principles enunciated in Myers case; that should be done by Legislation. State Counsel agreed the two documents the State were tendering were Bank of Sierra Leone cash books, that they were hearsay evidence and clearly private documents. Mr. Mason said the production of Bankers Books in criminal proceedings was covered by legislation in force in the Republic of Sierra Leone at this time. State Counsel went on to read in open court the gist of sections, 3, s4, and s 5 of the 1879 Act. He submitted the production of the original cash books is allowed by the Bankers Book Evidence Act of 1879. He submitted the witness Mr. SEIWOH was a competent person

to tender the cash books into evidence by his employment as an officer of the Bank of Sierra Leone. He asks me to admit the documents into evidence via that witness.

I will set out the following, in detail.

4 The Bankers Books Evidence Act 1879

[1] This Act was passed in order to obviate the inconvenience caused by the removal of ledgers and other account books from banks for the purpose of production in legal proceedings and in order to facilitate proof of transactions recorded in such ledgers and books.

[3] Subject to the provisions of this Act a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters transactions and accounts therein recorded.

Section 10 of the Act defines legal proceedings as including any civil or criminal proceedings or inquiry in which evidence is, or may be given

[4] A copy of an entry in a banker's book shall not be received in evidence under this act unless it be first proved that the book was at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. Such proof may be given by a partner or an officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorized to take affidavits Where the proceedings concerned are proceedings before a magistrate's court, enquiring into an offence as examining justices, this section shall have effect with the omission of the words orally, or...

[5] A copy of an entry in a banker's book shall not be received in evidence under this Act unless it is further proved, that the copy has been examined with the original entry and is correct. Such proof shall be given by some person, who has examined the copy with the original entry and may be given orally, or by an affidavit sworn before any commissioner or person authorized to take affidavits.

The expression some person in section 5 is not limited to an officer of the bank
R v Albutt and Screen 6 Cr App R 55 CCA

[6] A Banker or officer of a bank shall not in any proceedings to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a judge made by special cause.

[7] On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed unless the court or judge otherwise directs.

5 I have been referred to various cases by learned defence counsel. I have

considered each individually. I have considered Archbold, and encapsulate these authorities into this is my Ruling.

In considering the case of Myers v DPP 1964 2 ALL ER 88/
I draw attention to the following

Lord Morris said at page 890

The Bankers Books Evidence Act did more than merely avoid the need to have actual books in court Para C.

Lord Peace at page 899 referred to an extremely important consideration in
Thaylor J's judgment in the case of Nelson v First National Bank of Killingley 1895
69 FED 798 where a comparable problem arose.

In that case the facts were:-

Camp-scalers measured logs and entered the amounts on cards which were copied each day into the scale book. The book was periodically tested by inspectors by sample measurements and the inspectors gave evidence of the books correctness. THAYLOR J said [65]

"It is said that the camp scalers should have been hunted up and their testimony introduced. When the scalers made their count and measurement; two records thereof were made; one for the memory of the scaler, the other in the scale book. Which is now the best evidence? Years have elapsed. The entries in the scale book remain unchanged; they are now just what they were when they were originally made. If the scalers had been produced and had testified that.....as they now remembered it, the number and quality were so and so, but on the production of the scale books they showed a different quantity and measurement which should prevail? It cannot be maintained that there is more reliable evidence than the production of the scale book."

We entertain no doubt that the scale books in question were properly admitted into evidence. They appear to have been kept under conditions that were calculated to prevent mistakes therein, and to ensure a high degree of accuracy, and they were identified by witnesses who had control and were familiar with their contents and whose special duty it was to see that they were properly and accurately kept..

Section 1 of the Bankers Books Evidence Act 1879 uses the words, "and in order to facilitate proof of transactions recorded in such ledgers and books."

A contrary case;

In R v Patel 1981 3ALL ER 96 CA Bristow J said

The evidence led by the Crown to prove that Ashraf Patel was an illegal immigrant was that of Brian Stone, Chief Immigration Officer at Manchester International Airport. His evidence was that his examination of Home Office records showed that Ashraf was not entitled to a certificate of registration in the United Kingdom and was at the time with

which count 4 was concerned was an illegal immigrant.. Counsel for the appellants submitted to the trial judge that the Home Office records were inadmissible to prove that Ashraf was an illegal immigrant. The trial judge ruled that they were clearly admissible.. Counsel for the appellant submits to this court that he was wrong., relying on the decision in the House of lords case Myers v DPP 1964 2 ALL ER 881 AC 1001 and in particular on the observations of Lord Morris and Lord Hodson [1964 2 ALL ER 881 at 890 896 [1965 AC 1001 at 1028 1035. Bristow J went on to say:

In the judgment of this court, the Home Office records relied on in this case are hearsay, just as were the commercial records in question in Myers v DPP and since they cannot therefore speak for themselves in criminal proceedings, and are not within those classes of documents which since the Criminal Evidence Act 1965 have been allowed to speak for themselves in criminal proceedings, an officer responsible for their compilation and custody should have been called to give evidence that the method of compilation and custody is such that if Ashrafs name is not there he must have been an illegal immigrant. It is not suggested that Mr. Stone is such an officer. In the courts judgment the judge was wrong to admit the evidence about the state of the records for the purpose for which it was tendered. In addition Ashraf failed to appear at the trial and give evidence. In addition the appellant made no admission about whether Ashraf was an illegal immigrant.

6. Conclusion

Legislation is in force by the introduction and passing of the 1879 Banker's Books Evidence Act, which fully supports the production of Bank Records or Books, Ledgers [and the like] into evidence in either a Criminal or Civil Trial; subject to conditions defined in the Act.

There is an application before me to admit two cash books into evidence via prosecution witness Mr. SEIWOH. There is a contrary application to prevent the admission by counsel for the defence. That is what I have to decide today.

In my respectful view the law is clear. All necessary conditions precedent to the admission of a Bank document [or documents] has been complied with by the prosecution before this court.

The witness Mr. SEIWOH is a senior official of the Bank of Sierra Leone. He has had custody and control of the original cash books and has testified to that effect before me.

Applying the case of Nelson v First National Bank of Killingley 1895 and THAYLOR J's judgment Cash Books are likely to be true records of the Bank of Sierra Leone provided they have been kept under the control of the Bank of Sierra Leone. They are likely to have been audited, and accurately compiled, unless the contrary is proved

The Bankers Book Evidence Act of 1879 is widely used throughout the Commonwealth of Nations. The Act has remained unchanged since 1879; it is recorded in editions of Halsburys, Archbold and widely reported elsewhere. The Act is in force in the Republic of Sierra Leone.

I have no hesitation whatsoever; in allowing what I describe as a well defined well documented statutory exception to the Hearsay Rule to be admitted in evidence .

Accordingly I will allow Mr. SEIWOH to tender the two cash books of the Bank of Sierra Leone in evidence today.

I thank counsel for their submissions.



Shuster J
Judge of the High Court
Freetown
20th March 2005