

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

**THE STATE  
VS  
ALLIE KABBA**

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.  
DATED THE 4<sup>TH</sup> DAY OF DECEMBER 2018**

**COUNSEL:**

A.J.M. BOACKARIE ESQ FOR THE STATE

I KANNEH ESQ FOR THE ACCUSED

**RULING:**

1. The Accused, Alie Kabba stands charged on a three (3) Count indictment dated 12<sup>th</sup> day of February 2016 on allegation of the following offences:
  - a. Count 1: Bigamy, contrary to Section 57 of the Offences Against the Person's Act, 1861;
  - b. Count 2: Making false declaration for licence to marry, contrary to Section 20 of the Civil Marriage Act, Cap 97 of the laws of Sierra Leone, 1960;
  - c. Count 3: Making false statements on oath contrary to Section 2(1) of the Perjury Act, 1911.
2. The Prosecution's case against the Accused is as follows:
  - a. That the Accused, Alie Kabba, on the 13<sup>th</sup> day of August 2013 at Freetown in the Western Area of the Republic of Sierra Leone married Finda, Diana Konomanyi during the life time of his wife Edith Cline Kabba.
  - b. That the Accused, Alie Kabba, on the 12<sup>th</sup> day of August 2013 at Freetown, swore to an affidavit for the purpose of being granted licence to marry, stating therein that there is no lawful hindrance to the proposed marriage between he, the said Alie Kabba and Finda Diana Konomanyi, knowing the same to be false.
  - c. That the Accused, Alie Kabba, on the 12<sup>th</sup> day of August 2013 in Freetown, made statement on oath otherwise than in the course of judicial proceedings for the purpose of being granted licence to marry, stating therein that he, the said Alie Kabba is a divorcee, knowing the same to be false.
3. On the 25<sup>th</sup> day of November 2016, this Court gave a ruling, dismissing an application on a no case submission filed by Counsel for the Accused. Counsel for the State closed the case on behalf of the State on the 7<sup>th</sup> day of January 2017 and Counsel for the Accused closed the case on behalf of the Accused on the 20<sup>th</sup> day of July 2017. Both Counsel for the State and the Accused filed their respective final address for and on behalf of their clients at the close of the Accused's case.

## Burden and standard of proof

4. 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.<sup>1</sup> 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 provide 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.

5. I am mindful of the fact that an Accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his 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.

## 6. The Law

Section 57 of the Offences Against the Person Act 1861 provides that

*Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony .....*

6.1. To succeed on a charge for the offence of bigamy, the Prosecution must prove:

- a. Celebration of the first marriage and identity of the parties.
- b. Validity of the first marriage.
- c. That the first marriage subsisted at the date of the second marriage.
- d. Celebration of the second marriage.

It has been held in established cases that proof of an honest reasonable belief that the first marriage is invalid is a good defence to a charge of bigamy. It is for the Court to see how the evidence unfolds before coming to a decision.

## Evidence

7. PW1 was Alie Mansaray, the investigator attached to the Criminal Investigations Department. He told the Court that he met the accused during the course of an investigation in respect of an offence of bigamy as charged herein. He said he got to know Miss. Diana Konomanyi the Complainant, in the course of this matter when she made a complaint of bigamy against the Accused on the 16<sup>th</sup> day of December 2015.

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

7.1. PW1 told the Court that he obtained a Statement from the Complainant including a marriage certificate of the marriage officiated between the Complainant and the Accused, which he tendered for identification as Exhibit Z together with a Dissolution of Marriage Certificate between the Accused and his former wife, Edith Cline Kabba. He tendered Exhibits A and B(1-2) a Police invitation letter to the Accused and a Warrant of Arrest against the Accused.

7.1.1. The Accused was arrested and taken to the CID on the 23<sup>rd</sup> day of December 2015 where the PW1 together with Detective Inspector Kamara U.F in the presence of the Accused' Solicitor, obtained a Voluntary Caution Statement from the Accused, after being cautioned and questioned in English. His responses in English were recorded in English by the witness who handed over same to the Accused at its conclusion. The Accused read and signed the Statement in his own hand-writing and the witness signed same as the Recorder while Detective Inspector Kamara U.F. signed as the witness. He tendered the said Statement as Exhibit C(1-15). He told the Court that the Accused was detained pending investigations.

7.1.2. PW1 told the Court that the Sierra Leone Police sought assistance from INTAPOL for the original Court Records in the United States in respect of a divorce matter between the Accused and his ex wife hereinbefore referred to. He said that on the 30<sup>th</sup> day of December 2015, the Accused was charged with the offence of Bigamy and for making false statutory declaration. He tendered the Accused' Charge Statement, signed by the Accused, PW1 and Inspector U.F Kamara, as Exhibit D(1-7).

7.1.3. The witness told the Court that sometime in January 2016, he received the Court Record sought from the United States hereinbefore referred to, which said Court Record was admitted in evidence and marked Exhibit E(1-199).

7.1.4. In answer to questions put to him in cross examination, PW1 told the Court that his investigations revealed that the Accused's marriage to Ms. Konomanyi was his second marriage and that several attempts made to get Mrs. Edith Cline Kabba, the first wife, proved futile. The witness was referred to Exhibit D, the Voluntary Caution Statement of the Accused and he told the Court that the Accused told him that as far as he knew, he was divorced from his former wife at the time he entered into his second marriage with the Complainant herein.

7.1.5. PW1 was referred to page 154 of Exhibit E, the last line thereunder, to the words "Agreed as to conformance with oral decision" and said the Accused person's first marriage was orally dissolved by the Court in Chicago. He told the Court that he was not knowledgeable in foreign law and that he did not know that marriages could be dissolved on irreconcilable differences summarily without completing proceedings before a Court. He told the Court that the Court Records was one of the documents he relied on to charge the Accused of the offence of Bigamy.

8. PW2 was Evelyn Zizer Wilson, a retired Nurse who identified the Complainant as someone she had known for over 30 years. She said she witnessed the

wedding between the Accused and the Complainant on the 13<sup>th</sup> day of August 2013 as God Mother at the Registrar-General's Office. She witnessed the traditional wedding between the couple the following week in Kono.

8.1. In answer to questions put to her in cross examination, PW2 identified her signature on Exhibit L, the Marriage Certificate between the Complainant and the Accused. She told the Court that she was very much involved in the celebration of the wedding between the Accused and the Complainant. She told the Court that she personally spoke with the Accused who told her he was divorced and that she had no reason to doubt what the Accused, 'a man of his caliber and integrity' told her. She said she got to know that the Complainant was previously married to someone whose name she said she does not know. She said she believed when the Accused and the Complainant signed Exhibit L as Divorcee and Spinster respectively.

8.1.1. PW3 was Ekundayo Pratt a Civil Servant attached to the office of the Administrator and Registrar General. He told the Court that he was responsible for keeping safe custody of registered instruments including Marriage Certificates. He tendered Exhibit F1, a copy of the Civil Marriage Registration Form in respect of the matter herein; Exhibit G1, a copy of a receipt of payment in respect of the matter herein; Exhibit H1, a copy of an Affidavit sworn by the Accused dated the 12<sup>th</sup> day of August 2013; Exhibit J1, a copy of a Special Licence for the Accused and the Complainant herein in respect of their marriage dated 12<sup>th</sup> August 2013; Exhibit K1 a copy of the Registrar-General's address in respect of the marriage celebrated between the Accused and the Complainant; Exhibit L, the Certificate of Marriage hereinbefore referred to which copy was tendered as Exhibit M. PW3 read out the Registrar-General's address as in Exhibit K1 in open Court.

8.1.2. In answer to questions put to him in cross examination, PW3 told the Court that the Registry has standard forms as in Exhibits F and K, which are completed by couples wanting to get married. He said he does not know who completed Exhibit F. He was referred to Exhibit H, the Affidavit of the Accused, which he said he knows nothing about. He was referred to paragraph 3 of Exhibit H which he told the Court he does not know whether any such exhibit was attached to the said Affidavit. He said he knows one Mr. Mahdi who works for the Registrar-General's office but that he does not know what transpired between Mr. Mahdi and the Accused. The witness told the Court that it is a policy that status of couples must be always confirmed before officiating marriages. He told the Court that he does not know whether the Complainant's status as a spinster as on Exhibit L was checked. Probed further the witness told the Court that he in fact has no knowledge about what happens in the Department of Marriages at the Registrar-General's office.

9. PW4 was Yabom Lansana who identified the Complainant as a friend of over 20 years and the Accused as someone she met through the Complainant sometime in 2013 in Freetown. She recalled the 13<sup>th</sup> day of August 2013 when she witnessed the celebration of the marriage at the Registrar-General's office at Roxy Building, Freetown between the Complainant and the Accused. She said on

that day, 13<sup>th</sup> August 2013, she drove the Accused to the place of wedding at the Registrar-General's office where the wedding was officiated by the Registrar-General. She identified Exhibit L as the wedding certificate in respect of the said marriage.

9.1. In answer to questions put to her in cross examination, PW4 told the Court that on the very first day when she spoke with the Accused, he professed his love for the Complainant and expressed an intention to marry the Complainant. She told the Court that the Accused was previously married and that she believed when the Accused told her he was divorced. She said she does not remember the Accused signing documents in her car as she was overwhelmed with the wedding. She was referred to Exhibit L and told the Court that she believed the Complainant when she said she was a spinster as in Exhibit L. She got to know that the Complainant was previously married and was a Divorcee before her second marriage.

9.1.1. PW5 was the Complainant, Finda Diana Konormanyi who identified the Accused as her ex-husband, having been married on 13<sup>th</sup> day of August 2013 and now divorced. PW5 told the Court that herself and the Accused were invited to the office of the Administrator and Registrar-General on a particular day which she does not recall, where they completed forms with their details as in Exhibit F. She said the Accused was again invited to the office of the AR-G where he attended and signed Exhibit H dated 12<sup>th</sup> day of August 2013. She referred to the top right column of Exhibit J dated 12<sup>th</sup> August 2013 captioned 'Special Licence' with both of their details.

9.1.2. PW5 told the Court that the procedures in respect of civil marriages were read out to both parties by the Administrator and Registrar-General including the offence of bigamy committed where one, being married, enters into another marriage without being divorced from the first marriage and the penalty thereto as provided by Exhibit K. the witness referred to Exhibit L, their wedding certificate.

9.1.3. The witness told the Court that she got to know about the Accused person's marital status while they were on honeymoon in Namibia and that she confronted the Accused in December 2013 on his status with the wife of his first marriage, Edith Cline Kahbah but that the Accused then snatched their original wedding certificate from her as they got into a fight. She invited PW2, one of their God Parents to their matrimonial home and made a complaint against the Accused; the Accused still refused to hand over the original certificate.

9.1.4. PW5 told the Court that she was once married to one Stephen Bockarie Jusu in London in 1989 as in Exhibit N but that they got divorced in 1994 to which she tendered Exhibit M1-2. The witness said in December 2015, she made a complaint of the offence of Bigamy against the Accused and made a statement at the police station to that effect.

9.1.5. In answer to questions put to her in cross examination, PW5 told the Court that before the marriage of 13<sup>th</sup> August 2013, she met the Accused in the United

States of America, in the State of Virginia where the Accused proposed to marry her; that she invited the Accused to Sierra Leone. The witness told the Court that prior to their marriage on 13<sup>th</sup> August 2013, she had only met the Accused for less than 6 weeks during which they stayed together at her house. She said she visited the Registry with the Accused on two separate occasions and that it was on their first visit that they were asked to complete their details on a form but that she was not asked about her marital status. The Court notes that the matter before the Court is one against the Accused and not against Ms. Konomanyi, the Complainant. There is no complaint against the Complainant for the offence of Bigamy nor is there any complaint against her for making a false statement. Counsel for the Accused had all the time to file an indictment against the Complainant in respect of those offences if it was so desired but he never did. They are therefore not in consideration and are indeed a waste of the Court's time as I am sure Counsel knows.

9.1.6. The witness was referred to Exhibits H1 and F. She told the Court that she was not present when the Accused signed Exhibit H and that Exhibit F which is unsigned, was completed by a gentleman whose name she cannot recall, in her presence. The witness said upon her enquiry about the marital status of the Accused, he told her he was divorced. She said she believed him when he told her he was divorced. She said the Accused told her he was going through child support proceedings and that she was not aware there can be divorce custody and property issues in one proceedings.

9.1.7. The witness was referred to Exhibit E1-199, which she identified as the Record of proceedings in respect of the Accused person's divorce in the Chicago Court. She reiterated their conversation in respect of maintenance and more money needed by the Accused person's first wife for their kids. PW5 was referred to the last paragraph on page 154 of Exhibit E captioned 'Judgment dated 27<sup>th</sup> September 2013' which the witness clarified was after her marriage of 13<sup>th</sup> August 2013 with the Accused.

10. PW6 was Abdul Rahman Mahdi, Assistant Registrar at the office of the Administrator and Registrar-General. Whose duties include administering of oaths as provided for under Cap 97 of the Laws of Sierra Leone, 1960. He told the Court that the Accused honoured an invitation from his office, where he went on the 12<sup>th</sup> day of August 2013 where he swore in his presence to an oath that he was a Divorcee and that the Complainant was a spinster; PW6 signed the said oath as in Exhibit H. The witness said normally, being that declarants are under oath, there will be no legal requirement to produce Divorce Certificates before signing a Civil Marriage Affidavit and that in the instant case, no divorce certificate was attached.

10.1. In answer to questions put to him under cross examination, the witness told the Court that the Accused did tell him that he was a divorcee. He told the Court that Exhibit H1 which is a standard form was prepared by the office of the Administrator and Registrar-General, not the Accused. The witness told the Court that procedurally, his office requests for proof of status but that there is nothing in law that say such proof must be tendered or that the Accused was

under an obligation to prove his marital status. He said he was not familiar with the divorce laws of the United States of America.

10.1.1. On the 19<sup>th</sup> day of October 2016, upon an application made by Counsel for the State and there being no objection raised in respect of the said application, DPC 9389 Mansaray S, Mariama Seray Kallay, Felix Alfred Will and Dr. George John Komba Kono listed as witnesses at the back of the indictment were dispensed with. Counsel for the State produced the Court Orders dated the 12<sup>th</sup> day of February 2016 in its perfected form and dated 15<sup>th</sup> February 2016, both marked as Exhibit O1-2 and P1-2 respectively and closed the Prosecution's case on the said 19<sup>th</sup> day of October 2016.

11. Counsel for the Accused filed a no case submission for and on behalf of the Accused which by the ruling of this Court on the 25<sup>th</sup> day of November 2016 was dismissed and the Accused put to his election in compliance with the Criminal Procedure Act 1965, Act No. 32 of 1965 to wit:

- a. Make an unsworn statement from the dock and not be subject to cross examination.
- b. Make a sworn statement from the witness stand and be subject to cross examination by the prosecution and call a witness(es) to testify on his behalf.
- c. Rely on his statement to the police.

11.1. The Accused chose to go to his defence on oath and call witnesses. On the 7<sup>th</sup> day of February 2017, Counsel opened the case for the Accused by making an oral statement after which the Accused took the witness stand as DW1.

12. DW1 identified PW5 as his ex wife and Edith Cline Kabba as his first wife with whom he was married for 11 years and with whom he was separated in 2009. He said he petitioned for the dissolution of his marriage to his first wife in 2011. He said he first met PW5 when he was a student at Fourah Bay Court then again in 1985 when she was a student at the Young Women Christian Association and that after some 26-27 years, he again met PW5 through a mutual friend about June 2013 towards the end of his divorce with his first wife. DW1 told the Court that he explained his divorce proceedings in Court to PW5 at which stage it was clear to him that it was impossible for him to live as husband with his first wife and that what was at that stage being determined had to do with alimony, property, custody and maintenance of their children as the Court had already established irreconcilable difference between himself and his first wife, which under American law is a ground for divorce. It could be recalled that PW5, the Complainant told the Court that the Accused told her, upon her enquiry as to his status, that he is divorced and what was remaining of his divorce proceedings had to do with child maintenance.

12.1. The witness told the Court that before and during the proceedings, he lived separately with his first wife and by the time he met PW5, he believed that his divorce proceedings were over as acknowledged by the Judge as the only issues remaining was to do with maintenance, custody, alimony and property as above

mentioned; that he was in Court during his divorce proceedings of 25<sup>th</sup> July 2013 when the legal arguments in respect of property, alimony, custody as aforesaid were made by the lawyers; he tendered a notarized copy of the said proceedings as Exhibit Q1-27.

12.1.1. He said he agreed to marry PW5 because he loved her as much as she loved him and they agreed on getting married in October 2013, the month of the Complainant's birthday but that they rather got married in August. DW1 told the Court that he hoped that by the date set for his marriage to PW5, the underlying issues in respect of his divorce from his first marriage would have finished. He left the United States of America for Sierra Leone about the 9<sup>th</sup> or 11<sup>th</sup> day of August 2013 for his wedding to PW5.

12.1.2. The witness was referred to line 18 on page 4 of Exhibit Q "My lord, ... there is a stipulations between the parties regarding ground ..." to which he said he believed his marriage to his first wife was therefore over as the stipulations as to grounds for his divorce was over and it was only left for determination of other issues such as maintenance for the kids as above mentioned. He reiterated that issues in respect of dissolution of his first marriage was addressed in Exhibit Q1-27.

12.1.3. The witness referred to Exhibit R1-10 titled "Motion to reopen Proofs/Rulings" which he said has to do with the July proceedings filed by Counsel for Edith Cline Kabbah, paragraph 3 on pages 6-8 thereof which reads "The irreparable differences have been proven ... the parties have been separated for more than 2 years ... the grounds have been proven ..." The witness referred to Exhibit E151-153 and said that Exhibit R1-10 was first in time. He referred to a document on the 'remaining issues' dated 11<sup>th</sup> day of September 2013 and told the Court that those remaining issues are part of the divorce proceedings between himself and his first wife. He tendered Exhibit S1-11 and referred to paragraphs 15-17 on page 3 thereof and reiterated that his understanding was that the marriage had been dissolved on grounds stipulated and that it was only left for other issues to be dealt with. He said Exhibit S had nothing to do with the dissolution of the marriage itself because same had been dissolved.

12.1.4. DW1 tendered Exhibits U1-4 dated 21<sup>st</sup> October 2011, V1-6 dated 30<sup>th</sup> October 2011, W1-77 dated 22<sup>nd</sup> May 2013, X1-122 dated 12<sup>th</sup> June 2013 headed 'Remaining Issues', Y1-113 dated 26<sup>th</sup> June 2013. He told the Courts that he understood Exhibit X1-122 to have to do with remaining issues of custody, child maintenance, property, alimony etc as his divorce was no longer part of the proceedings.

12.1.5. In cross examination, the DW1 was referred to Exhibit R1-27 dated 29<sup>th</sup> August 2013, especially paragraphs 6-8 on page 7, "we stipulated to grounds ...." He was referred to paragraphs 15-24 on page 7 "... the grounds of irreconcilable difference has been proven by a preponderance of the evidence. The irretrievable breakdown of the marriage ... two children were born to the marriage and the parties were married in 1999 ....The grounds have been proven



....” The witness was referred to page 2 paragraphs 12-17 and to page 3 paragraphs 3-6 of Exhibit R and he told the Court that the divorce proceedings in the USA had ended by the date of his second marriage in Sierra Leone.

12.1.6. DW1 was referred to pages 151-154 of Exhibit E especially the last line on page 154 “agreed as to conformance of oral decision” which he reiterated meant as per decision as to stipulated grounds on the 25<sup>th</sup> day of July 2013 as in Exhibit Q1-27. He was referred to page 27 of Exhibit Q, lines 5-12 thereof, “I ... an official court reporter ... transcript of ... with rule and administrative ...” which same words are on page 10 lines 5-12 of Exhibit R showing it as a true and accurate report of the Court proceedings. He admitted to have signed Exhibit H which he said he signed in a vehicle in front of the Registry Building where it was given to him and which he signed without actually reading it; he barely glanced at it.

12.2. DW2 was Egberch N. Ekechuku, a Legal Practitioner, practicing family law including divorce and child support in the State of Illinois for the past 20 years. She tendered Exhibits BB and CC as her Licence to practice law in the State of Illinois. The witness explained the procedures for divorce in the State of Illinois including filing a petition for divorce stating the grounds including irreconcilable differences, cruelty, desertion and adultery. She said parties are most of the time represented by Counsel and if the divorce is uncontested, then recovery of asset is done before the parties make their appearance before a Judge and make their testimony. In respect of irreconcilable difference, she said the parties must have lived separately for two years as in the case of the Accused and his first wife and that is basically all that needs to be proven and the second stage will be distribution of assets and maintenance for children.

12.2.1. DW2 was referred to Exhibit E1-199, which she said cannot be complete without Y1-113, B1-6, U1-4, Q1-27, S1-11, R1-10, W1-77 and X1-122 because, according to the witness, Exhibit E contains all the filings done in the case and the rest are the records of proceedings. She told the Court that in the State of Illinois, a marriage can be dissolved before other issues pertaining to the divorce are dealt with. The witness was referred to Exhibit Q1-27 which she identified as the closing arguments of the proceedings of the Court on 25<sup>th</sup> day of July 2013 which she said was after the parties had testified before the Judge and the marriage dissolved and that the Court was now considering other issues. This Court’s understanding of ‘other issues’ include distribution of properties, maintenance for children, alimony etc.

12.2.2. She said issues in the closing arguments in the divorce matter between the Accused and his first wife covered only child support, maintenance and distribution of assets. The witness was referred to Exhibit R1-10 especially to lines 10-11 and line 23 on page 6 which reads

Mr. Marshall: “Your Honour, the only thing I would ask the Court is let me go get this petition and see if that’s what it is.

The Court: I was going to rule on grounds already or did I already do that?

Mr. Marshall: Well we stipulated to grounds.

The Court: ... but I did make a ruling on that?

Mr. Marshall: No

The Court: I don't know if I did"

12.2.2. DW2 told the Court this was a discussion between the Judge and the Attorneys. She said the grounds stipulated being irreconcilable differences was already established and there was no further need for any testimony on that ground.

12.2.3. DW2 told the Court that after the closing arguments on 25<sup>th</sup> July 2013, the Judge adjourned to deal only with issues of distribution of properties for which the Attorneys returned to Court on the 11<sup>th</sup> day of September 2013, the day on which the Judge ruled on the said distribution and maintenance. The witness position is that the marriage between the Accused herein and his first wife ended on the 25<sup>th</sup> day of July 2013 after the closing arguments.

12.2.4. The witness was referred to Exhibit E154 the paragraph which reads "Agreed as in conformance of oral decision" which the witness said it was on the 11<sup>th</sup> day of September 2013 that the Judge entered his oral decision made on 25<sup>th</sup> July 2013 which the Attorneys perfected on the 27<sup>th</sup> September 2017. She identified Exhibit E149 as a Motion to reopen proofs filed by Mrs. Edith Cline Kabba on the 4<sup>th</sup> day of September 2013 and that Exhibit R1-10 is a transcript of Notice of Motion to reopen proof on grounds, that is, the Applicant wanted the grounds for the dissolution of marriage reopened but that this was refused by the Court.

12.2.5. In answer to questions put to him in cross examination, DW2 told the Court that she was before the Court as an expert witness as she was contacted and her services solicited by Counsel for the Accused. She said she was not present in Court when the proceedings as in Exhibit R1-10 was done. She was referred to line 23 at page 6 thereof, "I don't remember" and she said her understanding of those words are that the Judge did not recall what happened in a prior proceeding. This is how this Court also read those lines.

12.2.6. DW2 reiterated that technically, the marriage between the Accused and his first wife ended on 25<sup>th</sup> July 2013. She was referred to Exhibit Q1-22 line 19 where the Judge said "As this case has gone several different, I am going to take advancement and take a ruling on it" to which she said that the Judge could have, on that same day ruled but that if it was approaching close to end of business, the Judge will ask that the Attorneys return to Court on another day as they did on 29<sup>th</sup> September 2013.

12.2.7. She was referred to p7 lines 15-26 of Exhibit R1-10 above referred and she said by those lines, the Court pronounced judgment on divorce on the 29<sup>th</sup>

day of August 2013 and that the Judge's judgment was delivered on the 11<sup>th</sup> day of September 2013

### **Analysis**

13. I have read the Closing Address filed by both Counsel for the State and the Accused and I must say that they make interesting read. I have also considered the authorities cited by both Counsel.

13.1 To succeed on a charge for the offence of bigamy, the Prosecution must prove:

- e. Celebration of the first marriage and identity of the parties.
- f. Validity of the first marriage.
- g. That the first marriage subsisted at the date of the second marriage.
- h. Celebration of the second marriage.

13.1.1. I have no doubt, based on the evidence before this Court that there was a marriage between Alie Kabba and one Edith Cline Kabba which said marriage, a monogamous marriage, was dissolved on the application of the Accused under the grounds of irreconcilable differences, which is not a ground for divorce under the laws of Sierra Leone but which is a valid ground for divorce in the United States of America and in the State of Illinois where the parties to the said first marriage resided during the subsistence of their marriage and indeed where their marriage was officiated.

13.1.2. In respect of the second requirement as to validity of the first marriage, it is the law that the second marriage cannot be bigamous unless the first marriage was valid. The case of the Defence is that the first marriage was dissolved by the Court in Illinois on the 25<sup>th</sup> day of July 2013 with the remainder of issues to be dealt with by the Court including maintenance for the children of the first marriage, alimony, distribution of property etc to be determined by the Court at a subsequent day. Based on the laws of Sierra Leone, it would appear that the Accused entered into a second marriage in Sierra Leone with the Complainant a few months before the dissolution of his first marriage albeit that he may not have understood it in that form and or its legal implications. There is enough evidence from the Accused himself that the wife of his first marriage was still living when his second marriage was officiated.

13.1.3. The Court notes that both parties, that is the Accused and the first wife were lived separately for even more than two years before the Accused Petitioned for a divorce; this said period qualifies for a divorce on grounds of irreconcilable differences under the laws of the United States of America. The latter point however confirms that the first marriage was still subsisting albeit on paper when the Accused contracted a second marriage, apparently misguided as to the laws. It is also clear from the entire evidence, oral and documentary before this Court that a second marriage was celebrated between the Accused and the Complainant, Finda Diana Konomanyi on the 13<sup>th</sup> day of August 2013 by the Administrator and Registrar-General at the office of the Administrator and Registrar-General, Roxy Building, in Freetown.

13.1.4. I have stated that the Defendant's case is that the marriage between the Accused and his first wife was declared as at an end on 25<sup>th</sup> day of July 2013. The Defendant's witness supports that position as it operates in the United States of America. I have said that the parties were divorced on the grounds of irreconcilable differences which could only be proved, under American law, where the parties lived separately for a minimum of two years as confirmed in testimony by DW2. The venue of the first marriage as said, is the United States of America which divorce laws which are different from those of Sierra Leone cannot be discountenanced.

13.1.5. The Court notes that the Accused throughout his testimony told the Court that he believed he was divorced from his first wife before he contracted his second marriage with the Complainant here. As said, they no longer lived together and his belief was based on the Court proceedings and his understanding of especially the words 'stipulation as to grounds' found in Exhibit E 1-199 which he said he understood to mean that the Judge declared a divorce between himself and his first wife on 25<sup>th</sup> July 2013 and that all that was remaining for the Court was determination of property, alimony and maintenance for the children.

13.1.6. PW1 in testimony and referring to Exhibit D, told the Court that the Accused told him that as far as he knew, he was divorced before he contracted his second marriage. PW2 told the Court that he personally spoke with the Accused and that he told him that he was divorced and that she had no reason to doubt what the Accused, 'a man of his caliber and integrity' told her. PW4 also told the Court that the Accused told her he was divorced and PW5, the Complainant told the Court that the Accused told her he was going through child support proceedings; that when she confronted the Accused as to his status, he told her he was divorced. PW6 also told the Court that the Accused did tell him he was divorced before his second marriage. All the testimonies by the said Prosecution Witnesses were as explained to all the several people in their various capacity having to do with the second marriage to the Complainant by the Accused as he believed his status to be.

13.1.7. I have read Exhibit D, the Voluntary Caution Statement of the Accused in its entirety. He stated at page 2 of Exhibit D, that at the time of his second marriage to Finda Diana Konomanyi, the Judge in his divorce case in respect of his first wife, had ruled that his first marriage was dissolved in July 2013 and that the only pending matter was determination of properties and maintenance for the kids; at page 12 of Exhibit D, the Accused stated that the ruling as to dissolution of his marriage was transcribed and filed on 27<sup>th</sup> September 2013. He reiterated at pages 9 and 13 of Exhibit D, that "I was a divorcee when I got married to Diana on 13<sup>th</sup> August 2013".

13.1.8. The Accused told the Court that he petitioned for dissolution of his first marriage in 2011. The Court notes that this was before he met the Complainant in the earlier months of 2013. He told the Court that he hoped the underlying issues in respect of his said divorce would have finished before he enters into his

second marriage. What are those underlying issues. Throughout his testimony, the Accused maintained these were to do with issues of sharing of property, maintenance for the children born of his first marriage as referenced in Exhibits S1-11, U1-4, V1-6, W1-77 and X1-122. He referred to Exhibit E154, the Judgment of 27<sup>th</sup> September 2013, the words "Agreed as to conformance of oral decision" which the Accused told the Court he understood to mean, decision as to stipulated grounds of 25<sup>th</sup> July 2013 as in Exhibit Q1-27. He referred to Exhibit R1-10 and told the Court that 'irreparable difference' had been proven by 25<sup>th</sup> July 2013.

13.1.9. DW2 confirmed the legal requirement for a divorce on grounds of irreconcilable differences wherein, the parties must have lived separately for at least two years as in the case between the Accused and his first wife. DW2 told the Court, and in line with the Accused person's reasoning, that the first marriage had been dissolved by the date of the closing arguments as there was not going to be any further testimonies or arguments in respect of the grounds for divorce as could be understood from Exhibit R1-10 dated 29<sup>th</sup> August 2013, after the supposed second marriage, lines 10-11 and 22 on page 6 thereof. For DW2, all remaining was for the Court to determine property and maintenance for the kids. DW2 told the court that technically, the Accused' first marriage ended on 25<sup>th</sup> July 2013.

14. I refer specifically to page 6 lines 10 upwards of Exhibit R, between the Judge and Counsel:

Mr. Marshall: Your Honour, the only thing I would ask the Court is let me go get ... let's go get this petition and see if that's what it is.

The Court: Do ... I was going to rule on grounds already or did I already do that?

Mr. Marshall: Well, we stipulated to grounds.

The Court: You stipulated ....

Ms Henderson: We stipulated to grounds.

The Court: But did I make a ruling on that?

Mr. Marshall: No

The Court: I don't know if I did.... I don't remember.

Ms. Henderson: I know we stipulated to grounds....

The Court: I am ready to rule on grounds and I'll reserve.

15. The Court observed the *demeanour* of the Accused through out the trial and I am comfortable in saying that I consider the Accused person's belief a *bona fide* belief, for it is the law as held in the case of *R V King* (1964) 1 QB 285 and at 48 Crr. App. Rep 17 that "an honest belief based on reasonable grounds that the

marriage alleged to constitute the first marriage was invalid is a good defence. This position of the law is also reported in Archbold Criminal Pleading Evidence and Practice, paragraph 3803 at page 1380 under the rubric "Nullity of first marriage".

15.1. How could the Accused have had this belief that his first marriage had been invalidated? The Court refers in addition to all of the above including the testimonies of all the witnesses, to Exhibit X dated 12<sup>th</sup> day of June 2013 page 51 thereof, lines 10-24 which read:

Mr. Marshall: Your Honor, outside of reiterating I believe, we have a stipulation, I am not sure ... that the parties were married in July of 1999, that the parties have been separate and apart since April of 2011, that irreconcilable differences have arisen in the marriage that would cause the irretrievable breakdown of the marriage and attempts at reconciliation have failed, and any future attempts at reconciliation would be futile. I thought that was the understanding regarding grounds, that grounds were not an issue at the time.

Ms. Henderson: We stipulate to the grounds.

Mr. Marshall: Ok

The Court: Stipulation accepted.

15.1.1. The Court further refers to Exhibit Q dated 25<sup>th</sup> day of July 2013, page 4 lines 18 through 24 where Mr. Marshall said:

*"Your Honor, there is a stipulation between the parties regarding grounds so I won't belabor that issue. For purposes of argument, we are going to focus primarily on maintenance ... the custody of the children, division of property ...."*

15.1.2. The question I have asked myself is whether a reasonable person in the Defendant's position would have believed honestly that his first marriage was invalidated by the Court before he entered into his second marriage. I sum up the courage, based on the defence of honest reasonable belief and say that a reasonable man in the Accused person's position would so believe.

15.1.3. In *R V. King* (1964) 1 QB 285 the Defendant had remarried while his previous marriage was still valid. He was prosecuted for bigamy contrary to Section 57 of the Offences Against the Person Act 1861. His argument was that he entered into the new marriage under the honest mistaken belief that his previous marriage was void. The issue to be determined by the Court was whether a genuine mistaken belief as to a fact is a defence to a charge of bigamy under Section 57 of the said Act. It was held that mistake can be used successfully as a defence in this context only where the belief is not only honest, but also reasonable-this would negate the *mens rea* requirement of Section 57. The case of *R V Gould* (1968) 2 QB 65 further retrenched the rule that honest and reasonable belief could amount to a defence to a charge of bigamy.

15.1.4. The Court refers to Exhibits H, J and K in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Counts of the indictment. Exhibit H is an application for a special licence to conduct a civil marriage under Cap 97 of the Laws of Sierra Leone 1960. The Court refers to paragraph 3 thereof where the Accused declared and deposed that he was a Divorcee. The Court considers Exhibit H which precedes the date of marriage and which better still is the backbone for the contraction of a civil marriage to be a very important document in the form of a condition for a Cap 96 and 97 marriage. The Court notes that stated on the said paragraph 3 are the words "Copy of the Divorce Certificate is attached and marked". The Accused having declared that he was a Divorcee, the person who signed Exhibit H on behalf of the Deputy Administrator and Registrar-General who the Court believes was PW6, ought to have requested for the Divorce Certificate, marked same and attach on file for the records. That does not dispute the Accused belief that he was a Divorcee.

15.1.5. Now we have an Accused who believes he was divorced at the date of contracting a second marriage. It is not that he failed to divulge his status but having given that piece of vital information, the Registry staff chose not to request the divorce certificate which said request could have drawn to the Accused' mind that under Sierra Leone law, for his first marriage to be dissolved, there must be a Certificate of Divorce and not as he believes. I do believe that the Accused was honestly mistaken as to fact. I have held that the Accused reasonably believed that he was divorced from his first wife when he contracted his second marriage. He could therefore not be said to have sworn to something that is false for the purposes of getting married as charged in Counts 2 and 3 of the Indictment herein; he swore to what he believed in based on his personal knowledge as deposed in paragraph 6 of Exhibit H

In light of the above,

**HAVING READ** all the documents including the exhibits and authorities submitted by both Counsel;

**HAVING HEARD** all the witnesses for the Prosecution and the Defence;

**HAVING HEARD** both Counsel for the State and Counsel for the Accused and sitting as both Judge and Jury, I have considered the facts in this case in its entirety and now return the following verdict:

Count 1-Not Guilty

Count 2-Not Guilty

Count 3-Not Guilty

The Accused, Mr. Alie Kabba is acquitted and discharged on all three Counts accordingly.

  
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Honourable Justice Miatta M. Samba, J