IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE

Vs.

MARIAN SESAY
MARGARET KAMARA
ABU KARGBO

BEFORE HON. JUSTICE MIATTA MARIA SAMBA J.
DATED THIS 9TH DAY OF MAY 2018

Counsel:
A.J.M Bockarie Esq for the State
I.P. Mami Esq for the Accused Persons

JUDGMENT

1. The accused stand charged on a two Counts Indictment dated 21st day of July 2017 with the offences of Conspiracy contrary to law and for House breaking and larceny contrary to Section 26(1) of the Larceny Act 1916. The Prosecution's case is that on diverse days between the 24th day of February 2017 and the 26th day of February 2016, at Freetown in the Western Area of the Republic of Sierra Leone, the accused, Marian Sesay and Margaret Kamara conspired together with other persons unknown to commit a felony to wit: House Breaking and Larceny. It is also the Prosecution's case that on the 25th day of February 2017, at Freetown in the Western Area of the Republic of Sierra Leone, the accused, Marian Sesay and Margaret Kamara broke and entered the house of Dr. Hannah Sao-Kpato with intent to steal and stole therein: One Toshiba Laptop Computer of the value of Five Million, Nine Hundred and Ninety-Two Thousand Five Hundred Leones, One Black Leather Pouch of the value of Five Hundred and Sixty Two Thousand Five Hundred Leones, One Black Dinner Dress of the value of Three Hundred and Seventy-Four Thousand Nine Hundred and Twenty-Five Leones, One Packet of Beginners Pencils of the value of Thirty Seven Thousand Five Hundred Leones and physical cash of Four Million Leones all to the total value of Ten Million Nine Hundred and Sixty-Seven Thousand Four Hundred and Twenty-Five Leones, property of the said Dr. Sao-Kpato Hannah Max Kine.

I. I thank the Prosecutor A.J.M. Bockarie Esq for prosecuting this matter and Defense Counsel, I.P. Mami Esq for his effort in defending both accused persons.

2. Burden and standard of proof

2.1. It is an established rule that in all criminal cases, it is the duty of the Prosecution to prove its case beyond reasonable doubt. This proposition as expressed in the case of *Woolmington Vs. DPP* has been adopted in our jurisdiction in all criminal cases.[1] There are however Common Law exceptions to that established rule as for example, insanity under 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. See *R Vs. Edwards* (1975) QB 27. I also refer to the case of *Miller Vs. Minister of Pensions (1947) 2 AER 372,* re Lord Denning's statement, in respect of the level of proof of evidence required of the Prosecution.

2.1.1. 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 an accused person. I shall now proceed to evaluate the evidence and the law before me.

The Law-Conspiracy

The offence of conspiracy is committed when a person agrees with one or more persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intention, will necessarily amount to or involve the commission of any offence or offences by one or more of them and such agreement has been held to be sufficient to found a conviction for conspiracy.[2]

There need not be proven an agreement on a charge of conspiracy. The agreement can be inferred; it needs not be specifically proven.[3] Also, it is settled law that a conspiracy may be sufficiently proved where the circumstances are such that the overt acts which are proved against some Defendants may be looked at as against all of them, to show the nature and the objects of the conspiracy. So the evidence needs not include evidence of some tacit agreement on their part to commit any crime. It is enough that it can be safely inferred that the role of each of the accused persons show that they were part of a larger scheme which resulted in the commission of the offence.

Mens rea is important in conspiracy as it is in any crime. However, with conspiracy, proof of *mens rea* is found in the accused' willingness to perform his own part of the plot. The accused may know full well that the entire enterprise would involve the commission of offence(s) by one or more of the conspirators. Older authorities have suggested that the Prosecution need not prove that the party to the conspiracy had knowledge of the illegality of the acts to be done.[4] However, where proof is available, it is submitted that it is sufficient that the

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[1] *The State Vs. Philip Conteh & Oths (unreported).*
[2] *O'Connell v R* 1844 5 St. Tr.(NS).
[3] *R v Brisac* (1803) 4 East 164.
[4] See para. 4075 of Archbold, 36th Edn.

accused knew that there was going to be the commission of some offence.[5] I shall look into the substantive offence charged of robbery before looking into the evidence led, if any, on the charge of conspiracy.

The Law House Breaking and Larceny

Section 26(1) of the Larceny Act 1916 creates the offence of house breaking and larceny . The Section provides that:

Every person who:

Breaks and enters any dwelling-house, or any building ..., ... and commits any felony therein shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

Larceny in simple language is stealing. Section 2 of the Larceny Act, 1916 provides that:

Stealing for which no special punishment is provided under this or any other Act for the time being in force shall be simple larceny and a felony ....

The elements for the offence of house breaking as alleged herein, which must be proven by the prosecution beyond all reasonable doubt for a successful conviction must include the following:

a. Breaking and entering;
b. The place broken into must be a house, warehouse, store; shop etc.
c. A felony, that is stealing/larceny must have been committed in the house broken into;

Breaking as an element required under Section 26(1) of the Larceny Act 1916 involves actual or constructive breaking example, breaking by use of a duplicate key which one is not authorized to use or gaining admittance in any other manner. It is a requirement that the accused must also enter, having broken through the property. The common law rule is that the insertion of any part of the body, however small, is sufficient entry. Also, if an instrument is inserted into the building for the purpose of committing the ulterior offence, there is an entry even though no part of the body is introduced into the building.

The entry must be accompanied by *mens rea*. The defendant must know or be reckless as to the facts, which make the entry a trespass. It must be proved in the instant case, the accused persons entered the house with the intent to steal or he entered and stole something not being theirs.

The entry has to be into a particular building, in the instant case, No. 4 Habib Drive, Imatt where the alleged theft occurred. The meaning of the term 'building' varies according to the context. It is clear that it is not necessary that the structure be of brick or stone-work covered by a roof. See *Moir Vs. Williams*

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[5] *R v Siracusa* 90 Cr. App. R. 340 cited favorably in Archbold 2001 Edn p 2641.

(1892) QB 264. To be a building, a structure must have some degree of permanence. It is my view that a house as described in this case with lock and key will constitute a building. This was confirmed by PW1, PW2, PW3 and PW4. Suffice it to say that the place where the alleged larceny took place is a house, in this case a dwelling house within the description of Section 46(1) of the Larceny Act 1916. If therefore I hold that the Prosecution has proved beyond reasonable doubt that the accused made any entry into the house hereinbefore referred in any manner other than a lawful entry, such an entry will constitute entry as a trespasser. See *Boyle (1954) 1 QB 292*. The evidence before this Court is that the keys to the main house was in the custody of A2; that the Complainant's room was accessed by insertion of a nail in the key hole. It is clear that the reason why A1 entered the Complainant's house was to commit a felony which she did.

The ownership in the goods allegedly stolen from the house of the complainant remains the property of the complainant, Dr. Sao Kpato Max-Kine. According to the definition section, Sec. 1(1) of the Larceny Act 1916, *a person steals if without the consent of the owner, he fraudulently and without a claim of right made in goof faith, takes and carries oway anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof.*

The *actus reus* of stealing consists in the taking and carrying away of property belonging to the owner. Taking and carrying away in the context of the Larceny Act 1916 relates to some dealing in the property, which shows that the accused must have assumed the rights of the owner. Section 1(2)(ii) of the Larceny Act 1916 defines 'carrying away' to include any removal of anything from the place which it occupies ...' it is my view that the term 'carrying' as appears in Section 1(1) of the Larceny Act 1916, requires active conduct on the part of the accused. The evidence before this Court is that items listed in the Particulars of Offence on the indictment herein were removed from the Complainant's to the house of both accused persons as confirmed by both PW4 and A1 who said she saw the stolen items.

Taking clearly amounts to appropriation and the act of taking amounts to an assumption of the rights of the owner, in this instance, the right of the complainant and owner, Dr. Max-Kine. See *Rogers Vs. Arnott (1960) 2QB 244; (1960) 2AER 417.*

There is no definition in Section 26(1) of the Larceny Act 1916 of the property which must be stolen but Section 1(3) of the Act which relates to the offence of stealing provides that the property stolen must have value. The evidence before this court is that things stolen from the complainant's home has a total value of Le. 10,967,425/00 (Ten Million Nine Hundred and Sixty Seven Thousand Four Hundred and Twenty Five Leones).

The property stolen must have been taken without the consent of the owner. In other words, it must be property belonging to another. Section 1(2)(iii) of the Larceny Act 1916 defines who the 'owner' of property could be as 'any part owner or person having possession or control of, or a special property in, anything capable of being stolen'. Property is regarded as belonging to any

person having possession or control of it or having in it any proprietary right or interest. Viscount Dilhorne in *Lawrence Vs Metropolitan Police Commissioner (1972) AC. 626, HL* said that the words 'belonging to another' simply means that at the time of appropriation, the property appropriated belonged to another person. It is my considered opinion that the basis of larceny is founded on 'possession in fact' that is, interference of another's property. The evidence as per the indictment and so far led before this court is that the properties stolen were properties which belonged to the complainant, Dr. Sao Kpato Max-Kine as testified to by the PW4 and A1.
Stealing requires an intention permanently to deprive the owner of his property. The mental elements required for a conviction of the offence of stealing includes:

a. fraudulently;
b. without a claim of right made in good faith;
c. with intent at the time of such taking, permanently to deprive the owner thereof.

Doubts were cast in *R Vs. Williams (1953) 1 QB 660* with regards to the necessity for the use of the word 'fraudulent' as a requirement for *mens rea* for the offence of larceny. The question was asked in the said case whether the word 'fraudulently' adds any meaning to the *mens rea* requirement where it is also a requirement that a no claim of right made in good faith must be proven for a conviction on a charge of larceny. It was suggested that fraudulently amounts to dishonesty in much the same way as 'no claim of right made in good faith' will amount to dishonesty. It may be correct to say therefore that the word 'fraudulently' is superfluous.

The claim of right must be a claim of legal right not a moral right. See *Rose Vs. Matt (1951) 1 KB 810; (1951) 1 AER 361.* The taking away or appropriation of another's property will amount to stealing if it is done without a claim of right made in good faith, that is to say, the property was taken dishonestly and with an intention of permanently depriving the owner. Dishonesty suggests that the accused must have acted without a claim of right made in good faith.

There need not, of course, be any permanent deprivation in fact. There have been cases in which it has been held that temporary or limited deprivation of the owner can amount to larceny where the person who took and carried away really meant to treat the property as his own. See *R Vs. Manning (1852) Dearly 21.* In the instant case, the evidence led is to the effect that the accused persons who took the complainant's properties without her consent. Even though with the intervention of the police the said properties were returned to the Complainant, the manner of taking will suffice to constitute for the offence of larceny.

The Prosecution led four witnesses in chief to prove its case against the accused persons between 11th day of October 2017 and 25th day of March 2018, the day on which the Prosecution closed its case.

5. Evidence Analysis

5.1. PW1 was the complainant, who identified herself as Dr. Mrs. Sao Kpato Hannah Isata Max-Kine. She identified the accused persons as her neighbors. She recalls 25th day of February 2017 when in the morning hours, at about 8.00am, together with her mother, she left her home for her sister's place wherefrom she left for a wedding at about 2.00pm. PW1 told the Court that while she was away she received a phone call and was given some information which the Court notes was in respect of theft at her house.

PW1 told the Court that she immediately left for the Congo Cross Police Station intending to make a report but she was directed to a police station close to her home. She called the police station close to her home who visited the crime scene on the, the 26th day of February 2017 She complains that her suitcase was opened; her laptop bag costing $70 was opened and all its contents were on her bed; her Toshiba Laptop costing $700 was missing; Le.4,000,000,000/00 (Four Million Leones) was missing; Beginners Pencils costing $5 were missing; her black dinner dress costing $50 was missing. She said she made her report at the Akon Police Station where she made a statement.

PW1 told the Court that a day or two after the theft, she was summoned by one Mammy Haja, another neighbor where she met about 20 other persons in the community including police officers. She said she saw the A1 with a boy named Sheka. She told the Court that a Toshiba Laptop and Leather pouch were presented to her which she identified as some of the stolen items. PW1 told the Court that the matter was then charged to Court; she said upon being shown the said laptop and its pouch in Court, being that the said laptop contained sensitive information relating to her job, she applied that the said laptop be handed over to her, which was done by the Court. The law is that deprivation of property need not be permanent to constitute the offence of larceny; temporary deprivation will suffice.

In answer to questions put to her in cross examination, PW1 confirmed that she is the owner of properties referred to in the indictment which were stolen and the subject of litigation. She told the Court that she has no receipt for the said items but that when the stolen items were presented to her, to ensure the laptop was hers, the police asked that she opens it as it was secured by a password, which she did. Counsel got PW1 to describe the laptop, leather pouch and black dinner dress which she did. I wonder why that line of cross examination? Who ever told Counsel that one cannot steal property belonging to another person other than the Complainant? Or is Counsel suggesting that if the said stolen items did not belong to PW1 they could not have been stolen? That would be a very wrong assumption to make in law. I invite Counsel to read the case *Hibbert Vs. Mckiernan (1948) 2 KB 142; (1948) 1 AER 860.*

PW2 was Detective Police Constable 13301 Carew A attached to the CID Mountain Police Station, Freetown who investigated the matter herein. She recognized A1 and A2. She recalls the 25th day of February 2017 when whilst on duty, the Complainant made a report of house breaking and larceny and the matter was assigned to her for investigation. She told the Court that together

with the Scene of Crime Officer, DPC 11115, Mansaray A she visited No. 4 Habib Drive, SS Camp, Freetown where she observed that the Complainant's room door was damaged and widely opened with her personal effects scattered around.

PW2 told the Court that during the course of her investigations and whilst still at the scene of crime, PW1 said she saw a black handled kitchen knife and assorted coloured cups at the scene which were the taken to the police station as exhibits. She told the Court that photographs were taken at the scene by the Scene of Crime Officer DPC 11115 Mansaray A. She told the Court that statements were taken from the Complainant and her witnesses separately.

PW2 told the Court that because the names of both A1 and A2 came up during the course of her investigation, they were invited to the police station on the 26th and 28th day of February 2017 respectively, where they were contemporaneously interviewed separately. She told the Court that together with Detective Sergeant 5792 Dumbuya A, on the 26th day of February she cautioned and questioned A2 in Krio; she made her responses in Krio and same was recorded in English by Sergeant 5792 Dumbuya A. At the conclusion of A2's statement taking, same was read over and explained to her in Krio which she acknowledged to be true and correct by affixing her right hand thumb print. PW2 signed the statement as a witness and Detective Sergeant 5792 signed as the recorder.

PW2 told the Court that on the 28th day of February 2017, together with DPC 11115 Mansaray A, she interviewed A1; she cautioned and questioned her in Krio; she made her responses in Krio and same was recorded in English by DPC 11115 Mansaray A. At the conclusion of A1's statement, same was read over and explained to her in Krio which she acknowledged to be true and correct by affixing her right hand thumb print. PW2 signed the statement as a witness and DPC11115 Mansaray A signed as the recorder. No objection raised by Counsel for both A1 and A2, the Voluntary Caution Statements of both accused persons were tendered as Exhibits A1-7 and B1-4 respectively.

PW2 told the Court that during the course of investigations, the Complainants Toshiba Laptop was produced by the SS Camp Community Chief, Haja Tarawally who the Court notes is the same person referred to by the Complainant, PW1 as Mammy Haja. She said the investigations revealed that the said Mammy Haja got the said Laptop from the A1.

PW2 told the Court that together with Detective Sergeant 5792 Dumbuya A, she cautioned and obtained charge statements from both A1 and A2 separately in Krio which was recorded in English separately. She said at the end of obtaining the said charge statements, same was read over and explained to both accused persons separately in Krio which they both separately admitted to be true by affixing their right hand thumb print. No objection raised by Counsel for both accused persons, the said charge statements were admitted as Exhibits C1-2 and D1-2 respectively.

In answer to questions put to her in cross examination, PW2 told the Court that she was the lead investigator in respect of the matter herein. PW2 told the Court that the keys she refers to are those of the Complainant and that A2 told he she put the keys which she received from Daniel Morseray in her bed room.

PW2 told the Court further that when she interviewed A1, she told her she got the laptop from one Abu who she said she interviewed during the course of her investigation. She said Abu told her he got the laptop from A2 which A2 denied. The Court notes that Abu is the 3rd Accused whose name now remains on file as he is in evasion of justice.

PW3 was Unisa Amadu who identified the Complainant as his aunt with whom he resides and the accused persons as neighbors. He told the Court that on the 25th day of February 2017, he collected the keys to the house from one Ngor who is also a neighbor and everything in the house was intact. He said he left the house at about 2.00 pm after dropping the house keys with the A2 with instructions that she hands over same to Ngor who was at that time not around. He returned home between 7.00-8.00pm and realized the house was open. He observed the door to his room was damaged and stuffs were scattered all over. He made a report at the Regent Police Station. He told the Court that at a community meeting held in respect of the theft, one Sheka and A1 produced the Complainant's stolen Laptop.

In answer to questions put to him in cross examination PW3 denied that A1 was a maid for the Complainant even though he agreed that she helped at the house some times. He said their home was open to both accused persons and that because they reposed trust in them, they at least on two occasions have left the keys to their house with A2. He reiterated that he found the door to his bedroom and that of the Complainant's, damaged and that himself and the Complainant are the only persons who carry their bedroom keys which were not part of the keys left with A2 on that day. He told the Court that he left his room door locked with a padlock on the door when he left home. He told the Court that the Complainant's Laptop was tendered at the Magistrate Court; that it is not to his knowledge that the Laptop and other stolen items were found in the accused persons' possession.

PW4 was a juvenile X, aged 10, who the Court is satisfied understands the importance of telling the truth. PW4 identified the A1 as his sister and the A2 as his step mother. He said he knows the Complainant. PW4 told the Court that it was A2 who asked himself and A1 to enter the Complainant's home and steal therefrom and that they did as instructed. He told the Court that himself and A1 opened the door by inserting a nail; they entered and searched the house. he said he took the Laptop bag in which was a calculator and some money. Himself and A1 took the stolen items to A2 who then kept them under her bed. PW4 told the Court that the Complainant was not home when himself and A1 entered the house.

In answer to questions put to him in cross examination, PW4 denied knowing the Prosecutor before he first met him at his office. He reiterated that all he said in

chief is true as to what transpired at the Complainant's house on the day concerned. He again reiterated the A2 is his step mother and that he had returned home from school before the incident. It can be recalled that PW3 told the Court that he left the house at about 2.00pm and returned home between 7.00-8.00pm when he realize that the house had been broken into. The timing supports PW4's testimony in respect of time.

PW4 again told the Court that when himself and A1 entered the house, there was no one at home. This piece of evidence also supports PW3's testimony that when he returned home at about 11.00am on that fateful day, he left no one at home when he left at 2.00 pm; even Ngor, with whom he would have left the keys was no where in the neighborhood. PW4 agreed himself and A1 have entered the Complainant's house a lot of times before and that A2 has also entered the Complainant's home in the past. He said himself, A1, A2, his brother Lansana and Abu knew the stolen items were kept under A2's bed. He denied that he took the keys from A2 on his own and entered the house on his own and stole the items referred. He denied that his step mother shouted at him at the sight of the stolen items and said PW4 was bringing problems into her home or that A2 threatened to make a complaint against him.

PW 4 reiterated that it was A2 who asked himself and A1 to enter the Complainant's home and steal therefrom. This line of questioning shows A2 was indeed aware that the Complainant's home was to be broken into and items were to be stolen. I believe PW4's testimony in its entirety. The overt act of A1 and PW4 shows the nature and object of the conspiracy. Both A1 and A2 were clearly part of a larger scheme which resulted in the commission of the offence of house breaking and larceny on the 25th day of February 2017. A2 knew that the entire episode involved the commission of house breaking and larceny by A1 and PW4 in the Complainant's house. That A2 it was who asked A1 and PW4 to enter into the Complainant's home and commit a felony which they did commit supports the charge of conspiracy.

The Prosecution closed the State's case on 31st January 2018 and tendered the Committal Warrant from the bar as Exhibits E1-2 and F1-2. In the presence of their Counsel and in compliance with Section 192 of the CPA No. 32 of 1965, the accused persons were put to their election on the 21st day of March 2018 to wit:

a. Making an unsworn statement from the dock
b. Making a sworn testimony from the witness stand
c. Relying on his statements to his police

The accused persons chose to make rely on their statements to the police.

For the avoidance of any doubt, based on the testimony of PW4 and the Voluntary Caution Statement of A1, the persons referred to as Ngor in the testimony of PW3 and the statement of the A2 has nothing to do with the issues before this Court. I refer to the statement of the A1 as in Exhibit A1-7 where she denied entering the Complainant's home with Sheka. She said she was informed by A2 that her half brother Sheka brought a black bag which was place in a kiosk where her uncle, Abu was supposed to pass the night. She said Abu did not pass

the night but went home at Lumley with the black bag. A1 confirmed that on that fateful day, 25th February 2017, she got to know that the Complainant's home had been broken into though she did not know what had been stolen. The Court notes that this was a house frequented by the A1 to help with domestic work yet she would want this Court to believe she showed so much latitude upon hearing about theft in that very same house.

A1 told the police that when the police arrested her mother A2 on the 26th day of February 2017, herself and others went to Lumley and collected the stolen bag from Abu which they handed over to her elder brother, Lansana's, wife, Monica. It could be recalled that PW4 told the Court that himself, A1, A2 and Lansana knew that the stolen items were kept under A2's bed. Simply put, all four of them had knowledge that these items were stolen items.

When she was further interrogated, A1 said that in fact when the police searched their home, the stolen items including the computer was with her brother Osman at the same address. A1 and A2 and others knew the computer and money were items stolen from the Complainant.

I have stated the elements required for a successful prosecution of the offence of house breaking. The testimonies of A1 and PW4 do not point at A2 to have entered the house of the Complainant even though I am satisfied that A2 conspired with A1 and other persons unknown to steal the items referred to in the indictment from the Complainant's house. Based on the evidence and facts before the Court, a charge of accessory before and/or after the fact or handling stolen property against the A2 would have been better placed.

13. Verdict

13.1. The evidence before this court is that of Conspiracy and house breaking and larceny. A1 knew that she had no authority to break, enter and steal the complainant's property in her house.

I am satisfied that the elements of the offence of Conspiracy contrary to law is well proven beyond reasonable doubt against the A1 Marian Sesay and A2 Margaret Kamara and that the offence of house breaking and larceny contrary to Section 26(1) of the Larceny Act 1916 is well proven beyond reasonable doubt against the A1, Marian Sesay. Based on the evidence led and circumstances of the case therefore, I find you both, Marian Sesay and Magaret Kamara guilty of the offences of Conspiracy as charged in Count 1 and I find you Marian Sesay guilty of the offence house breaking and larceny as charged in Count 2 of the Indictment of 21st day of July 2017 and I so hold.

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Hon. Jst. Miatta M. Samba J.