

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

V

AHMED M. BANGURA

JUDGMENT DELIVERED ON THE 19TH DAY OF NOVEMBER, 2020.

J. E.N KAINWO FOR THE ACC.

A.E MANLY SPAINE FOR THE ACCUSED.

The accused Ahmed Bangura is charged with the offence of abuse of office contrary to Section 42 (1) of the Anti-Corruption Act No. 12 of 2008. The particulars of offence states that Ahmed Bangura of No. 18 Peter Lane, Freetown in the Western Area of the Republic of Sierra Leone being a council surveyor employed by the Freetown City Council on a site unknown between Friday the 1st day of January, 2010 and Friday the 31st December, 2010 in Freetown in the Western Area of the Republic of Sierra Leone abused his office of council surveyor to wit:-Improperly conferred an advantage on Mr. Abu Bakarr Conteh by preparing a site plan in favour of the said Abu Bakarr Conteh in respect of a lease of property situate at Thompson Bay Off

Wilkinson Road Freetown purporting same to be the property of Freetown City Council.

Following an application filed for trial by Judge alone instead of Judge and Jury. The court proceeded and ordered the accused person to be tried by Judge alone instead of Judge and Jury. The accused pleaded "not guilty" to a one count charge of abuse of office contrary to Section 42 (1) of the Anti-Corruption Act No. 12 of 2008.

THE APPLICABLE LAW

Section 42 (1) of the Anti-Corruption Act No. 12 of 2008 states that "any public officer who uses his office to improperly confer an advantage on himself or any other person commits an offence. "Public officer" within the meaning of Section 1 of the Act means an officer or a member of a public body and Section 1(h) of the Act of 2008 defines "public body" to include Freetown City Council or any other City Council.

It is a requirement that (i) the accused should be a public officer (ii) the accused should use his office improperly (iii) the accused person used his office improperly by conferring an advantage on himself or any person. The prosecution must prove that the accused person was acting in the course of his employment as a public officer when he improperly conferred an advantage. Improperly conferring an advantage includes an element of impropriety. Blackstone 2003 at paragraph 815.2 states "these cases establish that the offence may take many forms and may involve either an improper act or an omission, but the misconduct must be wilful and the offender must be a public officer acting as such. Wilful misconduct involves

deliberately doing something which is wrong, knowing it to be wrong or with reckless indifference as to whether it is wrong or not."

Furthermore, Section 1(1) (g) of the ACC Act 2008 states "in this Act unless the context otherwise requires, "advantage" includes any offer, undertaking or promise, whether conditional or unconditional of any advantage within the meaning of paragraphs (a), (b), (c), (d), (e) and (f). Section 1(1) (b) of the A.C.A 2008 reads any other benefit service or favour (other than entertainment) including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary civil or criminal nature, whether or not already instituted.

BURDEN OF PROOF

In our jurisdiction the criminal law is partly statutory and partly common law. In as far as the Laws of Sierra Leone the legal burden of proving the guilt of the accused person rests on the prosecution even in the case of offences provided for in the ACA 2008. A trial Judge has to remind himself of where the burden of proof lies and how it is discharged. It is the duty of the prosecution to prove its case beyond reasonable doubt. It bears the burden of proving beyond reasonable doubt every element of the offence as in this case the elements stated supra. Livesy Luke Jsc. citing the case of SHALOM BAMBAV V THE STATE Cr. App 31/74 unreported says inter-alia "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 acquittal.

What was the evidence adduced in this case in support of the prosecution's case.

PW 1 KAWO KAMARA the investigating officer at the ACC stated the case to know

the accused person when the file was assigned to him for an alleged case of abuse of office. He was the lead investigator in their matter. The investigation was in respect of ownership of land at Thompson Bay Off Calton Carew Road. On the 14th of January, 2015 a Section 56 (a) and Notice was served on the Estate Officer of Freetown City Council. On the 23rd January, 2015, 2 set of letters were sent to the City Surveyor Eric Forster and Abu Bakarr Daramy the Chief Administrator. Two sets of questionnaires were sent out to the accused during the Ebola outbreak. The accused accepted the questionnaires and sent it completed and signed on every page. The letter dated 30th September, 2014 titled "Abuse of office position in relation to land at Thompson Bay Off Wilkinson Road addressed to the accused was tendered in evidence. There was a follow up question to the 1st questionnaire sent to the accused. It has a copy of a survey plan attached to it was tendered as Exhibit E1 to 4. On the 1st of October, 2015 further statement was obtained from the accused. The accused signed on every page of the statement which was tendered is (Exhibit G1 to 11). According to PW 1 he was tasked with the responsibility of keeping all documents received during the course of the investigation. On the 30th of September, 2015, Alpha G. Koroma and himself visited the property at Thompson Bay, on arrival they saw a market and dwelling houses on the property. PW 1 had documents in his possession, the first document was a letter addressed to the Chairlady Brothers Market from Deputy Chief Administrator Freetown City Council dated 12th July, 2011 (Exhibit H). The letter was a request to vacate present temporary market location being a private property. There is also another letter addressed to the Deputy Chief Administrator Freetown City Council from Calton Carew dated 29th August, 2013 titled Request to vacate present market location at

Thompson Bay Off Carlton Carew Road being a private property tendered as Exhibit J1 to 2. PW 1 also produced and tendered a letter addressed to Mayor of Freetown Municipality from Yada Williams and Associates titled Carlton Carew Property at Calton Carew Road Off Wilkinson Road dated the 25th November, 2013 tendered as (Exhibit L1 to 3).

The accused according to PW 1 submitted documents during the course of the investigations. The document is addressed to the Chief Administrator from Saidu Bangura dated 4th October, 2010 titled "Application for lease of Council land at Thompson Bay tendered as Exhibit "M". There was also a letter to Abu Bakarr Conteh dated 4th of October, 2010 an application for lease of land Exhibit "N", a letter from Brima Kamara dated the 4th of October, 2015, it is an application for lease of council land at Thompson Bay (Exhibit O). Letter addressed to Chief Administrator Freetown City Council from Mohamed Tarawalle, also an application for lease of Council land and letter from Sheriff Kargbo titled Application for lease of land at Thompson Bay tendered as (Exhibit K).

CROSS-EXAMINATION OF PW 1

In cross examination he agreed with counsel for the accused that the accused denied giving an advantage to Saidu Bangura. When the accused gave him a letter he went to inquire about it at Council. The letter was addressed to the Chief Administrator and he did not talk to the person who held that office.

He further agreed in cross examination that the accused was Council Surveyor and that the accused after surveying will forward survey plans to the City Surveyor for his signature. There is a document written on it "A. Sillah". In cross examination he stated he did not talk to A Sillah nor did he obtain statement from A. Sillah. The

accused is not authorized to sign a plan. The plan in Exhibit E1 has the name of the accused as Surveyor. According to Freetown City Council there is a plan titled "Property of Freetown City Council leased to Mr. Abu Bakarr Conteh". Abu Bakarr Conteh is a squatter. The survey plan of Abu Bakarr Conteh is not signed by the City Surveyor. The accused insisted throughout his interview that he did what was officially assigned to him to do.

PW 2 ARTHUR WILLIAMS LEWIS former Head of the Estate Department at Freetown City Council. He stated he is in charge of all Council properties leased out to tenants. The Estate Office is responsible for the administrative duties of the Department. According to PW 2 it is the right of all citizens to apply for a lease of land within the Municipality. He stated the procedure which is, all applicants must apply to the Chief Administrator. The Chief Administrator as Head of Administration will minute the applications to either the Mayor or the Estate Officer. The Estate Officer will then forward the Memo to the Chief Surveyor or Council Surveyor for action based upon recommendation from the Mayor to the Chief Administrator.

In the case of land, the Council Surveyor will survey and give back the Surveyor's Plan to the City Surveyor, the Plan will then be forward to the Estate Office and the Estate Office will forward it to the Valuation Department for assessment and valuation of the property surveyed. There is a Lands Committee which either approves or disapproves documents. Where it is approved the Committee will forward it to Council's general meeting presided over by the Mayor for final approval. When it is done it will be forward back to the Estate Office with minutes indicating approval of such lease. The document will be forwarded to the applicant for him to agree with the terms and conditions. The Mayor will append the signature and seal

of the Freetown City Council. PW 2 in his testimony referred to Exhibit E, it does not have the signature of the City Surveyor. In response to questions put to the witness in examination in chief, PW 2 stated he cannot tell whether Exhibit E was issued by the Freetown City Council. He does not know "A Sillah". Exhibit M is an application from Abu Bakarr Conteh to FCC. PW 2 identified M, N, O and P.

CROSS-EXAMINATION OF PW 2:- In cross examination he agreed that the process is complete when both City Surveyor and Council Surveyor signs the plan. He is not aware of any dispute over land between Calton Carew and Big Brother Market for land situated Off Calton Carew and one Abu Bakarr Conteh. The job of the accused is to prepare a plan. The Plan will only be approved by the City Surveyor. He has never seen Exhibit H1 and 2 and K. Exhibit C 1-4 is a Plan bearing the name A.M Bangura and prepared by A.M Bangura the accused.

In response to questions put to him, he agreed with A.E Manly-Spaine that the job of the accused is to prepare a plan.

PW 3 ERIC CHRISTIAN ARTHUR FORSTER City Surveyor testified he has been a

City Surveyor for 18 years. His duties are to inspect council properties, re-survey and to report to the Estate Officer. He knows the accused is employed as a Surveyor at the Freetown City Council. They work together and both of them take instructions from the Estate Officer. Exhibit E according to PW 3 is titled as property leased to Mr. Abu Bakarr Conteh situated at Thompson Bay Off Willkinson Road. He did not sign it because it is not the property of Freetown City Council. There is no document attached to it as to who gave the land for approval for the land to be surveyed by the accused.

CROSS-EXAMINATION OF PW 3:- In cross examination he stated they both take

instructions from the Chief Administrator and Estate Officer. He is also the Surveyor for Conrad Calton Carew. If he does not sign the plan it is invalid. He did not append his signature on it. He does not know whether slums were devolved to City Council.

PW 4 ABU BAKARR DARAMY the Chief Administrator of Freetown City Council

stated in evidence that he took up office on the 3rd of November, 2014. He recognises the accused, the accused is a staff of Freetown City Council. The accused according to PW 4 is the City Surveyor. He was the Human Resource Manager and some his duties are the implementation of projects. He produced in evidence Exhibit E a photocopy of a site plan captioned property of FCC leased to Mr. Abu Bakarr Conteh. There is no name of a surveyor on it. The property is not property of Freetown City Council.

CROSS-EXAMINATION OF PW 4:- In response to questions put to him by A.E. Manley-Spaine Esq he agreed that the accused is not the City Surveyor but a surveyor. There is the City Council Surveyor employed by the Freetown City Council. City Surveyor supervises City Council Surveyor. If the plan is not signed by the City Surveyor nobody's put into possession. It is not the duty of the accused or any other person to put anyone into occupation of the land.

PW 5 ISSA TOMMY KOROMA a civil servant attached to the Probate Department

Law Courts Building whose duties include registration of all probate including Letters of Administration, produced in evidence Letters of Administration of Onipide Abigail Cline Thomas as Exhibit R. There was no cross examination of PW 5.

PW 6 EKUNDAYO PRATT also a civil servant attached to the office of the

Administrator and Registrar General in Freetown whose duties include custodian of

registered documents such as Conveyances leases Powers of Attorney etc. etc. produced in evidence Conveyance dated 25th of May, 1983 expressed to be made in favour of Onipide Abigail Cline Thomas nee Carlton Carew, tendered as Exhibit S 1. There was also no cross examination of PW 6. PW 7 CONRAD CARLTON CAREW an Architect and owner of an Architectural firm by the name of Olu Wright and Carlton Carew at 22 Sanders Street Freetown. PW 7 in his testimony recalls receiving a letter from the A.C.C. He made a report and contracted City Council who had established market place on the property of his late aunt Onipide Cline Thomas at Thompson Bay Off Wilkenson Road, Freetown. He did not receive a favourable reply from City Council which prompted him to contact the A.C.C. He made statement to the A.C.C. He indicated that he is the Attorney and beneficiary of the said Estate and also took out Probate of the said Estate in the High Court in 2009. According to PW 7 Abu Bakarr who had testified that the said property was leased to him was charged with trespass in the Magistrate Court. He Abu Bakarr testified in Court that the property was leased to him by the Freetown City Council. He asked the market women to vacate the property. The matter was concluded at the Magistrate Court, he produced the judgment for identification. He did not set the positive response from the A.C.C. There was no cross examination of PW 7.

PW 8 LEONARD HARDING Deputy Assistant Registrar Magistrate whose duties include custodian of Magistrate Court records, signing of Court Orders. He produced in evidence the judgment dated 31st of October, 2012 in relation to a matter entitled Corad Carlton Carew v Abu Bakarr Conteh and Allieu Badara Bangura, a matter presided over by Magistrate Mannuella Harding now Justice Harding J. the judgment is Exhibit C1 to 19. There was no cross examination of PW 8. At this

juncture the prosecution closed and the accused person was put to his election. The accused on the 1st of October, 2016 relied on his statement made to the A.C.C and called no witnesses. Both parties submitted their respective addresses in writing.

The allegation by the Prosecution is that the accused Ahmed M. Bangura abused his office in that being a council surveyor employed by the Freetown City Council on site unknown improperly conferred an advantage on Mr. Abu Bakarr Conteh in respect of a lease of property situate at Thompson Bay Off Wilkinson Road Freetown. Did the accused abused his office? The burden of proof is on the Prosecution to prove the elements of the offence beyond reasonable doubt. PW 2 Arthur Williams Lewis former head of Estate Department at Freetown City Council stated that the function of the council surveyor is limited to only preparing a plan. According to PW 2 in cross-examination the plan will only be approved by the City Surveyor. PW 2 testified about the processes and procedures for an applicant to be granted a lease of council land. Eric Christian Arthur Forster stated in evidence that unless he signs a plan, if he does not append his signature on a plan it will be considered invalid. PW 4 evidence in cross examination also corroborates the testimony of PW 2 and PW 3. He confirmed that the city surveyor Eric Forster supervises council surveyor, if the plan is not signed by the city surveyor, nobody is put into occupation of the land. There is no evidence before the court that it is the accused who put into occupation Abu Bakarr Conteh. The evidence is that the land at Thompson Bay Off Wilkinson Road Freetown is a private property and not property of Freetown City Council. The property was a subject matter of an action at the Magistrate Court and there was a judgment tendered as Exhibit C1 to 19 given by Magistrate Manuela Harding now Justice Manuela Harding J.

From the entire evidence adduced in this court, I fail to see how the accused could confer an advantage to himself. It is clear from the testimony of PW 2 that the preparation of a plan alone by the council surveyor (the accused) is not the end of the process, the process ends with the preparation of the lease by the City Solicitor and same executed by the Mayor. Exhibit M-Q were all received by the Chief Administrator's office requesting the lease of council land at Thompson Bay.

The processes and procedures involving the signing of a lease is very much cumbersome from the evidence of the Chief Administrator. The Accused's immediate supervisor was Eric Forster. There is uncontroverted evidence that;

It is not the accused who approved the plan. The plan in question of Abu Bakarr was approved not by the accused. The accused is only responsible for the preparation of the Plan. As both Judge and Jury and from the entire evidence adduced by the Prosecution, I am unable to find any evidence of the Accused conferring an advantage on Mr. Abu Bakarr Conteh. The Prosecution has failed to prove the guilt of the Accused beyond reasonable doubt. Abu Bakarr Conteh did not give evidence in this matter.

In the light of the foregoing, I shall return a verdict of "Not Guilty" on the count charged.

The Accused is Acquitted and Discharged accordingly.



HON. JUSTICE ALUSINE SESAY -JSC.