

COI. APP. 11/2020

2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991 (ACT NO. 6 OF 1991)
CHAPTER IX (COMMISSIONS OF INQUIRY) SECTIONS 147-150 (INCLUSIVE)

AND

IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018
THE COMMISSION OF INQUIRY (EXAMINATION, INQUIRY AND INVESTIGATION)
NOTICE (1) 2018 (JUSTICE BIOBELE GEORGEWILL COMMISSION OF INQUIRY)

BETWEEN:

FINDA DIANA KONOMANYI
1A Albert Levay Drive
First Pump Junction
Adonkia, Goderich
Freetown

- APPELLANT

AND

THE ATTORNEY-GENERAL & MINISTER OF JUSTICE
Chambers of the Attorney-General
Law Officers' Department
3rd Floor, Guma Building
Lamina Sankoh Street
Freetown.

- RESPONDENT

Coram:

Hon. Ms. Justice Fatmatta Bintu Alhadi JA (Presiding)
Hon. Mr. Komba Kamanda JA
Hon. Mrs. Tonia Barnett JA

HEARING: 15th March 2021

JUDGMENT: -----

31st May 2021

Advocates:

Ibrahim Sorie Esq. - Appellant

R. B. Kowa Esp. - Respondent

DISSENTING JUDGMENT DELIVERED THIS DAY OF 2021

Alhadi JA: On the 14th day of October 2020 a Notice of Appeal was filed by the Appellant on nine (9) grounds of appeal as follows:

- 1 That the Learned Judge/Sole Commissioner, Honourable Sir Justice Biobele Georgewill (Sole Commissioner) misdirected himself and erred in law by acting as a court of law and convicting the Appellant for the offence of failure to declare assets pursuant to section 119 of the Anti-Corruption Act of 2008 as amended and thereafter proceeding to sentence the Appellant to a term of imprisonment or payment of a fine pursuant to section 122 of the Anti-Corruption Act 2008 as amended in violation of the Constitution of Sierra Leone (Act No. 6) of 1991, The Anti-Corruption Act of 2008 (as amended), the principles of natural justice and in excess of the Terms of Reference (TOR) of the Commission of Inquiry (C.I. No. 64).
- 2 That the Learned Judge/Sole Commissioner failed to adequately consider all the evidence adduced at the proceedings in coming to his decision in recommending that the Appellant's property situate lying and being at Adonkia in the Western Area of the Republic of Sierra Leone be forfeited to the State and more particularly relied on the evidence of a patently discredited valuation and an incompetent witness.
- 3 The Learned Judge/Sole Commissioner erred in law and in fact by failing to make a distinction between a sole proprietorship and limited liability company and treated the Appellant's numerous businesses registered as Sole Proprietorship as if there were limited liability companies, thereby wrongly excluding the earnings and income of these entities from the legitimate sources of income of the Appellant.
- 4 That the Learned Judge/Sole Commissioner erred in law and in fact in Holding that the evidence adduced by the State went largely unchallenged and that unchallenged evidence is good evidence.
- 5 That the Learned Judge/Sole Commissioner demonstrated considerable bias in his judgment and displayed a contemptuous and hostile attitude towards Persons of Interest including the Appellant and as such failed to discharge the responsibilities of a full, faithful and impartial inquiry as required by the Constitution of Sierra Leone.
- 6 That the Learned Judge/Sole Commissioner erred and misapplied the law

in his ruling of 14th February 2019, when he held that the Commission of Inquiry had the jurisdiction to proceed with the hearing and investigation of Persons of Interest notwithstanding the lack of rules regulating the practice and procedure of Commissions of Inquiry as required by Section 150 of the 1991 Constitution of Sierra Leone.

- 7 The adoption by the Learned Judge/Sole Commissioner of the Practice Direction formulated by the three Sole Commissioners of Constitutional Instruments No. 64, No. 65 and 67 of 2018 is unconstitutional and an improper arrogation and usurpation of the functions reserved for the Rules of Court Committee in Section 150 of the 1991 Constitution of Sierra Leone.
- 8 That the Learned Judge/Sole Commissioner erred in law by exceeding his Jurisdiction and venturing into the arena of a court of criminal jurisdiction when he concluded in his findings that the Appellant was: (i) indicted; (ii) involved in gross abuse of office considering that the laws of Sierra Leone create a specific offence of abuse of office pursuant to the Anti-Corruption Act 2008 as amended; and (iii) indicted for "Abuse of Public Trust." Moreover, the weight of evidence does not support the Learned Judge/Sole Commissioner's findings that the Appellant was involved in gross abuse of office or abuse of Public Trust and failed to provide leadership and supervision at the Ministry of Lands, Housing and Country Planning.
- 9 The Judgment/Findings/Recommendations of the Learned Judge/Sole Commissioner is against the weight of evidence.

A directions hearing was held on the 22nd day of February 2021; and the appeal was heard on the 15th day of March 2021.

BACKGROUND

Pursuant to Section 147 of the Constitution of Sierra Leone Act No. 6 of 1991, the President of the Republic of Sierra Leone, His Excellency Julius Maada Bio, by Constitutional Instrument No. 64 of 2018 set up the Justice Biobele Georgewill Commission of Inquiry with the said Judge as Chairman and Sole Commissioner; in order to investigate widespread allegations of corruption against the immediate past Government from November 2007 – April 2018.

The Terms of Reference of the Commission of Inquiry (hereinafter called the COI) were:

- A. To examine the assets and other related matters in respect of
- i. Persons who were President, Vice Presidents, Ministers, Ministers of State, Deputy Ministers; and
 - ii. Heads and Chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018
- B. To inquire into and investigate whether assets were acquired lawfully or unlawfully
- C. To inquire into:
- i. Persons who were President, Vice Presidents, Ministers, Ministers of State and Deputy Ministers
 - ii. Heads of Parastatals, Departments and Agencies
- D. To ascertain as to whether the Persons referred to in paragraphs (a)-(c):
- i. Maintained a standard of life above that which was commensurate to their official emoluments
 - ii. Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty or abuse of office for private benefit by them
 - iii. Collaborated with any person in respect of such corruption, dishonesty or abuse of office
 - iv. Acted willfully or complacently in such a manner so as to cause financial loss or damage to the Government, Local Authority or Parastatal, including a Public Corporation
 - v. Acquired directly or indirectly financial or material gains fraudulently, improperly or willfully to the detriment of the Government, Local Authority or a Parastatal, including a Public Corporation, Statutory Commission, Body or any University in Sierra Leone
- E. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.

Being dissatisfied with the adverse findings against her contained in the said Report, which by virtue of Section 149 (4) of the Constitution of Sierra Leone Act No. 6 of 1991 is deemed to be a judgment of the High Court, the Appellant filed an appeal to the Court of Appeal.

Re-Statement of the Findings and Recommendations

There is no doubt that Finda Diana Konomanyi is a Person of Interest; being a former Minister of Local Government and Former Minister of Lands, Country Planning and the Environment from 2013 to 2018. She therefore falls under the Commission of Inquiry Terms of Reference A (i), B, C (i) and D.

The Commissioner, Justice Biobele Georgewill, having considered the oral testimonies of the witnesses for the State and for the person of interest; and the documentary evidence, made the following findings against the Appellant, Finda Diana Konomanyi: he said that,

1. her total legitimate earnings as verified by the payments of her salaries and other emoluments and entitlements within the period under review amounted to One Billion and Sixty-Seven Million Seven Hundred and Eighteen Thousand Six Hundred and Thirty Eight Leones (Le1,067,718,638.00) over a period of 64 months;
2. she did not show specific earnings by any verifiable inflow of income or funds of profits to her from any or all of her several business ventures;
3. In law, incomes, earnings and profits of limited liability companies belong to the limited liability company and not to its directors or shareholders, whose incomes or earnings are by way of amounts due to them on their number of shares or other legitimate entitlements from the profits of the limited liability company;
4. She did not show any single record of any earnings or incomes or profits paid or given to her from the proceeds of the various businesses owned and or managed by her.
5. Worse still, there was no single evidence of any balance sheet of any of the businesses produced in evidence to creditably show the incomes, expenditures and profits of any of the several businesses owned and or managed by her within the period under review.
6. Contrary to the mandatory requirement of the Laws of Sierra Leone she failed to declare her assets upon assumption of office and thereafter on a yearly basis to the Anti-Corruption Commission, which by Section 119 of the Anti-Corruption Act of 2008 amounted to and she is guilty of the offence of failure to declare assets yearly and punishable under Section

122 of the said Anti-Corruption Act by six months imprisonment or a fine of Le30,000,000.

7. Given her total gross amount of One Billion and Sixty-Seven Million Seven Hundred and Eighteen Thousand Six Hundred and Thirty Eight Leones (Le1,067,718,638.00) legitimately earned as salaries and emoluments over a period of 64 months and leaving a margin of error in the valuation of her three properties and assuming, though impossible, that she did not expend any money out of her gross earnings on her upkeep, family and other expenditures, the amount of One Billion Two Hundred and Twenty Four Million Leones (Le1,224,000,000) expended by her on her landed property at Kono is within her legitimate earnings and incomes for the period under review.
8. Given her total gross amount legitimately earned as salaries and emoluments and taking into consideration the amount already expended by her on her property located at Kono, it is clear that the balance of her legitimate earnings, if any balance at all, was way below and not commensurate with, the amount of Nine Billion Six Hundred and Forty Eight Million Leones (Le9,648,000,000) expended on her property located at Off Finda Kono Drive, Adonkia, Peninsular, Freetown.
9. From the deed of conveyance dated 23rd day of December 2013, he finds that the ownership of the property located at Tokeh Village and valued at Seven Billion Three Hundred and Twenty Nine Million Four Hundred Thousand Leones (Le7,329,400,000) belongs jointly to her and one Mr. Alie Kabba, said to be her former husband and therefore, outside the mandate of the Commission to investigate.
10. On the whole, her expenditure of the sum of Nine Billion Six Hundred and Forty Eight Million Leones (Le9,648,000,000) on her property located at Off Finda Kono Drive, Adonkia, Peninsular, Freetown was way beyond and far above her legitimate earnings within the period under review and thus amounted to a product of unlawful and or unjust enrichment.

In view of the above findings, the Sole Commissioner made the following recommendations:

1. That having been found to have failed to declare her assets upon assumption of office and subsequently on a yearly basis, as mandatorily required by the Laws of Sierra Leone, Finda Diana Konomanyi is hereby found guilty of the offence created under Section 119 of the said Anti-Corruption Act of 2008 (as amended) and consequently, she is hereby

sentenced under Section 122 of the said Anti-Corruption Act to prison for a term of 6 months or to pay a fine of Le30,000,000 in lieu thereof.

2. Her landed property located at Adonkia valued at Nine Billion Six Hundred and Forty Eight Million Leones (Le9,648,000,000), having been found to be well beyond and far above and therefore not commensurate with her legitimate means of incomes, allowances and other earnings, shall be forfeited forthwith to the Government of Sierra Leone.
3. Her landed property located at Kono valued at One Billion Two Hundred and Twenty Four Million Leones (Le1,224,000,000) having been found to be within and commensurate with her legitimate means of incomes, allowances and other earnings is legitimate and is hereby discharged.
4. Her landed property located at Tokeh Village valued at Seven Billion Three Hundred and Twenty Nine Million Four Hundred Thousand Leones (Le7,329,400,000) found to belong to her and her former husband is hereby discharged from this investigation as being outside the mandate of the Commission.
5. Upon due process taken for the legal forfeiture of her property located at Off Finda Kono Drive, Adonkia, Peninsular, Freetown as recommended above, it shall be sold at public auction or dealt with in any other lawful means as allowed by the Laws of Sierra Leone in dealing with forfeited properties, to interested persons at a fair value and the proceeds shall be remitted promptly into the Consolidated Revenue Fund of the Government of Sierra Leone.

Analysis of the Law and Facts

I will now give an analysis of the law and the facts, as I deal with each ground. There are some grounds that I will combine because they refer to the same issues.

Grounds 1 & 8

The Appellant argued that the Learned Judge/Sole Commissioner, Honourable Sir Justice Biobele Georgewill (Sole Commissioner) misdirected himself and erred in law by acting as a court of law and convicting the Appellant for the offence of failure to declare assets pursuant to s. 119 of the Anti-Corruption Act 2008 as amended and thereafter proceeding to sentence the Appellant to a term of imprisonment or payment of a fine pursuant to s. 122 of the Anti-Corruption Act

2008 as amended in violation of the Constitution of Sierra Leone (Act No. 6) of 1991, The Anti-Corruption Act of 2008 (as amended), the principles of natural justice and in excess of the Terms of Reference (TOR) of the Commission of Inquiry (C.I. No. 64).

Furthermore, he espoused inter alia that the said Learned Judge/Sole Commissioner erred in law by exceeding his jurisdiction and venturing into the arena of a court of criminal jurisdiction when he concluded in his findings that the Appellant was: (i) indicted; (ii) involved in gross abuse of office considering that the laws of Sierra Leone create a specific offence of abuse of office pursuant to the Anti-Corruption Act 2008, as amended; and (iii) indicted for "Abuse of Public Trust."

He also said that the Judgment/Findings/Recommendations of the Learned Judge/Sole Commissioner is against the weight of evidence.

Counsel for the Respondent, Mr. Kowa, submitted that there exists no breach of the Constitution particularly with respect to Section 23 (5). He said that no criminal charge has been brought against the Appellant and the said section is inapplicable in the instant case. He said that the section can only apply when someone has been charged with a criminal offence. He said that the commission is an investigating tribunal.

Evaluation of the Law and Evidence

In considering Ground 1 of the Notice of Appeal, the Constitution of Sierra Leone Part IX Sections 148 (1) provides that a Commission shall have the powers of a High Court Judge but only in respect of summoning witnesses, production of documents, examination of witnesses and for the purposes of an appeal over the findings of a Commission, the report is to be treated as a Judgment. In my opinion therefore, these provisions do not mean that the Commission of Inquiry is a court or makes final enforceable orders or judgments.

In the case of Feryale Ghanem v Attorney-General, Supreme Court of The Gambia, SC 001/2018 (unreported) 5th June 2018, the Hon. Justice H. B. Jallow CJ stated that: "the Commission is not a law making body, it has no legislative powers and does not fall within the legislature; it is an investigative, fact finding body which makes findings and recommendations that are subject to the approval of the Government. Whilst the Commission has a duty to act fairly, impartially and independently, it is nonetheless not an adjudicatory body. It is not a Court of Law – superior or otherwise."

Additionally, in the case of: The State v Abdoulie Conteh (2002-2008) 1 GLR 150, Justice A. Bah PCA, said that Commissions of Inquiry are investigative bodies and not courts. They do not make final orders or issue judgments when such are vested in the Judiciary. The Appellant has every right to appeal the findings and conclusions of the COI to clear her name; but neither the COI nor the Government White Paper can make enforceable judicial orders that are capable of execution; that is the Judiciary's province; M. A. Kharafi & Sons Limited and The Attorney-General GCA 046/2019.

An inquiry has no power to act outside its terms of reference: it may only investigate those matters that are covered by the terms of reference. This is both the case under statute and common law; Beer, J (ed) 'Public Inquiries' Oxford University Press Publishers at p 76. The Court of Appeal in New Zealand in Re Royal Commission on Licensing [1945] NZLR 665 held that commissions of inquiry are restricted to operating strictly within their terms of reference.

Did the Learned Judge/Sole Commissioner exceed his jurisdiction? From the facts of the case and from what transmitted in the hearing and the recommendations, it appears that the Sole Commissioner stepped outside his mandate in so far as he used the words "Convicted to a term of imprisonment or payment of a fine pursuant to Section 122 of the Anti-Corruption Act. I take it that he was re-stating the applicable Act. However, he can only come to that conclusion after a criminal trial of the Accused. He over-stepped or over-reached his mandate in only that respect. I cannot say that because of this "over-reach" he has exceeded his jurisdiction in its entirety of the case. I therefore do not agree with the Appellant, that the Learned Judge/Sole Commissioner exceeded his TOR in its entirety and jurisdiction. Ground 1 is therefore dismissed.

Grounds 2 and 3

Counsel for the Appellant, I. Sorie Esq argued that the Learned Judge/Sole Commissioner failed to adequately consider all the evidence adduced at the proceedings in coming to his decision in recommending that the Appellant's property situate lying and being at Adonkia in the Western Area of the Republic of Sierra Leone be forfeited to the State and more particularly relied on the evidence of a patently discredited valuation and an incompetent witness.

He submitted that the Learned Judge/Sole Commissioner erred in law and in fact by failing to make a distinction between a sole proprietorship and limited liability company and treated the Appellant's numerous businesses registered as Sole Proprietorship as if there were limited liability companies, thereby wrongly excluding the earnings and income of these entities from the legitimate sources of income of the Appellant.

Counsel for the Respondent, R. B. Kowa Esq, argued that: on the issue of ground 3, when you examine recommendations 2 and 3, the Sole Commissioner implicitly made a distinction between her sole proprietorship businesses and her limited liability companies; and when you take a close examination of Recommendations 4 and 5, he also implicitly made the distinction. He spoke about those managed by her and owned by her; and those owned and/or managed by her.

Evaluation of the Law and Evidence

On Ground 3, from the exhibits presented to the court, there was evidence of Zou Zou Enterprises with verified creditable and audited accounts by Chartered Accountants Peter Kamaray & Co; but for the periods of December ending 2007, 2008 and 2009. This however did not relate to the period under review which is 2013 to 2018. She also presented exhibits/evidence of D & D Construction and General Merchandise, Peninsular Investments Limited, Cassandra Company amongst others. These are limited liability companies. What is in issue here is that the Appellant did not provide or adduce verifiable, creditable audited accounts for both her limited liability companies and her sole proprietorship businesses for the period under review. Her business accounts were not excluded. The point is they were not presented to the Commission and they were not presented to this court.

The Appellant provided audited accounts of only one sole proprietorship business called Zou Zou Enterprises but this was only for the periods of the year ended December 2007, 2008 and 2009 by Chartered Accountants Peter Kamaray & Co. These audits did not fall under the review period that is material to this matter. No audited accounts were produced to this court for her companies which included: D & D Construction and General Merchandise, Peninsular Investment Limited, Cassandra Company amongst others. The court has not been furnished with creditable and verified accounts and/or balance sheets of their turnovers and profits.

The Appellant had a duty to keep proper books of account; Section 281 of the Companies Act of 2009. These books must correctly record and explain the transactions of the company and must enable the financial position of the company to be determined with reasonable accuracy at all times; Boyle and Bird's 'Company Law' [2004] 5th edition, Jordan Publishing Limited at p 410. These books must correctly record and explain the transactions of the company and must enable the financial position of the company to be determined with reasonable accuracy at all times; Boyle and Bird's Company Law (supra). The records must be sufficient to enable the accounts of the company to be audited. The books must give a true and fair view of the state of affairs of the

company and must explain its transactions. For instance, income and expenditure must be entered on a day to day basis and must be explained.

From the facts of the case, the Appellant did not provide any evidence of verifiable inflow of specific earnings, inflow of income of funds from her several businesses. She did not produce records of earnings or incomes or profits from her various businesses owned and/or managed by her to the Commission. She did not produce evidence of any balance sheet certified or verified by any qualified and certified Accountant or Book-Keeper, within the period under review. What the Appellant has produced to the court are various bank statements of inflows and outflows without identifying what those transactions were about and what for. They do not specify what business she has been doing within the period under review that is, from 2013 to 2018. or to
mkt.

The fact that she is a public officer, Guaranty Trust Bank for instance, of which she is a customer, in keeping in line with Part 1, Section 1 of the Anti-Money Laundering and Combating of Financing of Terrorism Act No. 2 of 2012 (as amended) under "Customer Due Diligence" (CDD), which is the process of (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source and (c) obtaining information on the purpose and intended nature of the business relationship...and its due diligence policy, correctly noted her in their customer profile form as a Politically Exposed Person (PEP) and marked her as a High Risk customer.

This does not mean that she has committed a crime, but it identifies her as a PEP as prescribed by Section 1 of the Anti-Money Laundering Act of 2012; which means 'persons holding prominent public positions domestically or in a foreign country such as heads of state or government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of state-owned enterprises of national importance or individuals or undertakings identified as having close family ties or personal or business connections to such persons.

At page 135 of volume 2 of the court's record, which exhibits her bank statements, there were numerous withdrawals and numerous beneficiaries but they do not specify what the transactions were for or what business she was doing.

The court also notes that the Appellant never completed an Assets Declaration Form in accordance with Section 119 of the Anti-Corruption Act of 2008 (as amended). This is mandatory for all public officers, let alone a Minister of Government. Had she declared all of her assets including her businesses, it would have been helpful to her case and would have been of great assistance

to the Court. But without this, it throws into doubt any assertion she may appear to make about the credibility of her sources of income. Without a verified and creditable source of her incomes and businesses, almost all of her transactions become suspicious. The only creditable source of income, which is identifiable from all her financial transactions, is her salary and emolument.

From the Financial Intelligence Report dated 11th January 2019 given as evidence to the Commission and which is filed in the records of the Court at page 133 of volume II, and based on the appellant's dealings within the banking industry; her Guaranty Trust Bank (SL) Ltd Dollar account received deposits of Six Hundred and Twelve Thousand Four Hundred and Thirty Two United States Dollars (US \$612,432.11) between the period of 5th September 2012 and 25th January 2018. The withdrawals amounted to Five Hundred and Seventy One Thousand Six Hundred and Fifty United States Dollars (US\$ 571,650.00).

The huge outflows by cheques issued by the Appellant were documented; and no reasons were given for such huge outflows or what business she was involved in. For instance, an examination of the court records Vol 2 at page 500 shows that between the periods of 02/08/2012 and 27/03/2018 a total sum of Six Billion Seven Hundred and Fifty Four Million Three Hundred and Eighty Thousand and Thirty Six Leones and Five Cents was deposited into her Leones account no. 207/2073239/1/1/0 at Guaranty Trust Bank (SL) Ltd. The depositors were individuals and companies. Apart from her monthly salary, the purpose and source of the funds or inflows into her account were not known. This is what is referred to as unexplained wealth under Section 27 (1) of the Anti-Corruption Act of 2008 (as amended).

Section 27 (1) aforesaid says that: a person who, being or having been a public Officer – (a)maintains a standard of living above that which is commensurate with his present or past official emoluments; or (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, commits an offence.....

Unexplained wealth binds all public officers and all persons when any of them enacts, applies or interprets any law. Among these values and principles are those of rule of law, transparency, integrity and accountability. These are interlinked and support each other; Boles, J. R. 'The Problem of Unexplained Wealth' [2013]

In 'Kenya Law Review' Vol. 5 No. 1, May 2016, edited by Long'et Terer, The National Council for Law Reporting (Kenya Law)- Publishers, at 114 it was pointed out that unexplained wealth, unjust enrichment or illicit enrichment by

public officials is the inability to explain the source of wealth. In The State v Selu Jayalalitha [2014] SC in India, it was shown that there is an additional presumption, where the accused failed to file a complete statutory wealth declaration or filed a false declaration. In such a case, the accused was deemed to have no reasonable explanation that is based on his or her known sources of legitimate wealth.

Public Officers are required to file regular wealth declarations; Kenya Law Review (supra). These ensure that the sources of income, assets and liabilities of such officers are open to lawful scrutiny. Yet this obligation of financial transparency cannot be effectively advanced if the officers in question were unaccountable for any disproportion between their known wealth and their known sources of income. Therefore, for the above reasons, ground 3 should fail and it is dismissed.

On Ground 2 and the issue of the expert evidence/Valuation report; Counsel for the Appellant, Mr. Sorie, in his submissions to the Court spoke passionately about the Sole Commissioner relying on the evidence of a patently discredited valuation and an incompetent witness. He said that the Appellant's property is situated at 1A Albert Levay Drive, Adonkia, Freetown and not Off Finda Kono Drive as stated by the witness. He pointed out that the witness had no professional qualification either as a valuer, appraiser or quantity surveyor. He said that the witness based his qualification on years of experience. He stated that the valuation method was done by "eye view" that is, he did not do any technical evaluation but proceeded to determine a valuation price by just looking at the property from afar.

Counsel submitted that, the Learned Judge/Sole Commissioner erred when he gave significant weight to this witness' testimony. He said that in assessing the evidence presented by CW3, common sense, logic and experience would easily have indicated that the valuations were grossly and deliberately exaggerated and that the witness did not have the qualifications to present a valuation.

Mr. Kowa for the Respondent replied that the Appellant failed to show the court on what ground in law the witness is incompetent. He said that an expert witness can be competent to testify with respect to his trade or skill acquired over the years as an expert without academic credentials. On the weight of the evidence of the witness, he submitted that the learned judge did apply common sense, logic and experience to place weight on the testimony of the witness.

Evaluation of Law and Evidence

To say that evidence lacks weight does not mean that such evidence is perjured or dishonestly motivated or even exaggerated. It is true that evidence having these characteristics will lack weight, but equally, so will evidence which is unreliable because the witness's recollection has failed him or because he had no adequate opportunity to perceive the facts about which he is called to testify or because his knowledge of the facts is insufficient, or, in the case of an expert witness, because his expertise or experience or opportunity to investigate is too limited. So, too, will any evidence which is for any reason unable to afford the court the assistance it needs in relation to the facts in issue; Murphy, P. 'Murphy on Evidence' [1997] Blackstone Press Limited at 20.

The weight of evidence is a qualitative assessment of the probative value which admissible evidence has in relation to the facts in issue. To say that evidence is relevant and admissible concludes the issue of law, that a party is entitled to bring that evidence before the court. Such evidence then has the potential to persuade the court of the probability of the facts towards which it is directed. But its actual persuasive value in relation to those facts depends upon the view taken by the tribunal of fact of the truthfulness, reliability and cogency of the evidence; Murphy, P (supra) at 19.

Qualification to give expert evidence is technically a matter of competence and the court should investigate the credentials of a proposed witness before permitting him to give expert evidence. No doubt a witness who lacks any apparent qualification should not be heard, but if the witness has some claim to expertise, the modern practice is to receive his evidence, though its weight may be open to serious adverse comment if the apparent expertise is not translated into reality.

The court is concerned with actual expertise, not with the means by which that expertise is acquired. Paper qualifications by themselves may not be a guarantee of actual skills relevant to the questions before the court and expertise gained by substantial relevant experience certainly renders an expert witness competent, and may invest his evidence with considerable weight; Murphy, P. (supra) at 309.

From the facts of the case, the Court is of the view that the expert valuer's evidence was vehemently challenged by Counsel for the person of interest, Mr. Ady Macauley, at the Commission. Whilst the Court opines that a lack of paper qualification should not disqualify the witness, CW3, Mr. Campbell; nevertheless, the fact that it is clear that the opportunity afforded him to investigate was too limited. It is evident from the testimony that his safety was at risk. He was apprehensive due to the volatile situation he found himself in at the Adonkia

vicinity when he went to conduct the valuation. These experiences would have impeded his work. With this in mind, the reliability of his report would have been thrown into doubt. Therefore, to base the real value of the said property, an assessment as to whether its value was not commensurate with the Appellant's sources of income would be difficult to make.

Furthermore, I note that the Appellant called in a qualified and experienced Valuer by the name of Mr. Abel Onomake. However, I note that he was not tested by cross-examination and as such, his report was not tested to ascertain the veracity of his valuation and such cannot be countenanced by this court.

I note that the Appellant argued that her other sources of income were not considered by the Commissioner. This aspect I think has been extensively examined above; and I dare say that the evidential burden of producing verified accounts of the businesses is on the Appellant. I need not address that any further here.

Therefore, for the above reasons as stated, I do not accept the valuation report as being the true value of the property; and such ground 2 is upheld.

Ground 4

That the Learned Judge/Sole Commissioner erred in law and in fact in holding that the evidence adduced by the State went largely unchallenged and that unchallenged evidence is good evidence.

Counsel for the Respondent, Mr. Kowa, responded that the evidence of the State has not been controverted with respect to the value of the premises at Adonkia; and the Appellant's earnings for the period under review. He submitted that the Sole Commissioner was right in holding that the State's evidence went largely unchallenged and that the unchallenged evidence is good evidence. He said that the judge did not say that the entire evidence was unchallenged. He said that he limited himself to part of the evidence of the State in proving its case.

Evaluation of Law and Evidence

In my opinion, the expert witness' evidence on the value of the property at Adonkia, was vehemently challenged by Counsel for the Appellant and Counsel for the person of interest at the COI. I therefore agree with Mr. Kowa when he argued that the Learned Judge did not say that the evidence went unchallenged in its entirety. The pertinent issues that are in real controversy in this case are the value of the property at Adonkia and the competence of the Valuer and the businesses owned by the Appellant. However, the most

important issues are the identification of the large inflows into her accounts and this went mostly unchallenged because the Appellant did not produce any verifiable and creditable evidence to rebut the allegations of unexplained wealth. For these reasons Ground 4 is dismissed.

Ground 5

That the Learned Judge/Sole Commissioner demonstrated considerable bias in his Judgment and displayed a contemptuous and hostile attitude towards Persons of Interest including the Appellant and as such failed to discharge the responsibilities of a full, faithful and impartial inquiry as required by the Constitution of Sierra Leone.

Counsel for the Respondent submitted that the judge is a foreign national with no known affinity to Sierra Leone or the Sierra Leone Government. He said that he had no direct personal interest nor any pecuniary or proprietary interest in the outcome of the investigation.

Evaluation of Law and Evidence

Impartiality is the cornerstone of any legal system. Should a matter go before a court in which the judge has some connection or preconceived opinion, the issue of impartiality is called into question. Section 23 (1) of the Constitution of Sierra Leone 1991 provides that, "whenever a person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law." The Appellant is therefore entitled to be tried by an impartial court.

West's Encyclopaedia of American Law, 2nd edition, 2008, defines bias as a tendency, opinion or inclination that is preconceived or unreasoned; or a predisposition or preconceived opinion that bars impartial evaluation of facts; or a prejudice. It describes bias as an unfair act, policy, evaluation or decision that comes as a result of certain traits. In the legal system, a judge or jury is supposed to make unbiased decisions based on fair and impartial consideration of the facts and law.

Furthermore, the law makes a distinction between actual bias and apparent bias. Actual bias usually occurs where the judge is a party to the litigation or has a financial or other interest in its outcome. Apparent bias on the other hand, may arise where the conduct of the judge gives rise to a suspicion that he is not or may not be acting impartially. This form of bias is far more common; Emmanuel E. C. Shears-Moses v The State, CR.APP. 1/2019 C.A.

From the facts of the case and from the submissions made by Counsel, it has not been made clear that the Sole Commissioner made any statement or showed

any form of prejudice during the course of the proceedings. Counsel has tended to emphasise on his statements after the findings and recommendations. With this, it is difficult to tell whether he had any preconceived views or not prior to the commencement of the proceedings.

However, from what transpired and was written in the report, the Sole Commissioner made comments after the decision of the Commission of Inquiry. They may have been unhelpful and unnecessary, considering that the parties of interest are former public figures with reputations at stake. Nevertheless, the remarks could be seen as his personal style and opinion. What is quite apparent is that, he made them after the investigations, findings and recommendations; and not before and during the proceedings; which would have understandably been construed to be prejudicial. Therefore, the court does not consider the remarks to be biased and for that reason, ground 5 should fail and is dismissed.

Grounds 6 and 7

That the Learned Judge/Sole Commissioner erred and misapplied the law in his ruling of 14th February 2019, when he held that the Commission of Inquiry had the jurisdiction to proceed with the hearing and investigation of persons of interest notwithstanding the lack of rules regulating the practice and procedure of Commissions of Inquiry as required by Section 150 of the 1991 Constitution of Sierra Leone.

The adoption by the Learned Judge/Sole Commissioner of the Practice Direction formulated by the three Sole Commissioners of Constitutional Instruments No. 64, No. 65 and 67 of 2018 is unconstitutional and an improper arrogation and usurpation of the functions reserved for the Rules of Court Committee in Section 150 of the 1991 Constitution of Sierra Leone.

Counsel for the Respondent, R. B. Kowa Esq submitted that the Learned Judge/Sole Commissioner by sitting, drafting and adopting Practice Directions and conducting the proceedings did not cloak himself with jurisdiction nor did he violate section 150 of the 1991 Constitution. He said that pursuant to Section 147 (1) and (2) of the 1991 Constitution of Sierra Leone, the President appointed a Commission of Inquiry by Constitutional Instrument No. 64 of 2018 on the 1st of August 2018. Section 2 thereof, vested jurisdiction on the Chairman/Sole Commissioner. He argued that it is therefore erroneous to state that his Jurisdiction ought to have been derived from the Rules of Court Committee.

Section 150 of Act No. 6 of 1991 mandates the Rules of Court Committee to make Rules for all Commissions of Inquiry. He submitted that the question that arises therefore is: whether Section 147 of the 1991 Constitution is inoperative until Section 150 is effected by the Rules of Court Committee? He referred to the

Supreme Court decision in SC No. 4/96 The All Peoples Congress vs NASMOS & Ministry of Social Welfare, Youth and Sports (unreported) delivered on the 26th of October 1999. The judges were unanimous in their negative decision. He said that they proceeded to further state that the rules in force, which are the High Court Rules, can apply to put the said section into operation. He argued that this is just what the Learned Judge has done and even further relying on Section 6 (1) of Constitutional Instrument No 64 of 2018.

R. B. Kowa Esq further argued that Chapter 54 of the Laws of Sierra Leone (as amended) has not been revoked. It is still part of our laws and Section 9 thereof has been invoked by the Commission to regulate its proceedings; hence the Directions made to ensure fairness to all persons appearing before the Commission.

Furthermore, Counsel invited the Court to take judicial notice of the various Commissions which were set up between 2007 – 2017 without rules from the Rules of Court Committee and were proceeded with:- C.I. No. 1 of 2008 set up The Commission of Inquiry into Recent Disturbances involving Koidu Holding Mining Company and Koidu Community, C.I. No. 16 set up The Commission of Inquiry (The Hanci-Maps Adoption) the Justice Bankole Thompson Commission of Inquiry of 2009 to investigate the attack and alleged rape at the Sierra Leone People's Party Office and so on. The Learned Judge/Sole Commissioner's ruling of 14th February 2019 was correct and did not misapply the law.

Evaluation of the evidence and law

I agree with Counsel for the Respondent. Grounds 6 and 7 must therefore fail and are hereby dismissed.

Conclusion

In the light of the conclusions reached, this appeal is **Dismissed on Grounds 1, 3, 4, 5, 6, 7 and 8.**

Ground 2 is **Upheld.**

Consequential Orders

In the light of my conclusions on this appeal, I make the following consequential Orders:

1. Recommendation 1, that the Appellant is found guilty and is sentenced to prison for a term of 6 months or to pay a fine of Le 30,000,000 is not upheld.

I hereby Order the Anti-Corruption Commission to prosecute the Appellant for violating Section 119 of the said Anti-Corruption Act of 2008 (as amended).

2. Recommendation 2 that her landed property located at Adonkia shall be forfeited is not upheld; and Recommendation 5, that upon due process for the forfeiture of her property, it shall be sold, is not upheld.

I hereby Order the Anti-Corruption Commission to conduct a forensic Valuation, audit and investigation of the said property at Adonkia and her Sole proprietorship businesses and her companies in order to establish and discover her financial transactions, profit and loss accounts and cash flow under the Anti-Corruption Act of 2008 (as amended) and the Anti-Money Laundering Act of 2012 (as amended).

The Hon. Justice Fatmatta Bintu Alhadi JA

Dated:.....31/5/2021,.....

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