

34, 1955

IN THE PRIVY COUNCIL

No.32 of 1955

ON APPEAL

GH 59.9

FROM THE SUPREME COURT OF SIERRA LEONE
AND FROM THE WEST AFRICAN COURT OF APPEAL
(SIERRA LEONE)

UNIVERSITY OF LONDON
W.C.1.
25 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

44840

B E T W E E N:

- 1. THOMAS COLE CONTEH
 - 2. SALIA SAMEY
 - 3. SIAFFA BAO
 - 10 4. SIAFFA KPOTOURAI
 - 5. MOMO KPAKOWAI
 - 6. BOCKARI GOALER Appellants
- and -
- THE QUEEN Respondent

CASE FOR THE APPELLANTS

1. This is an appeal, by Special Leave, against: (1) the Judgment and Order of the Supreme Court of Sierra Leone (Criminal Special Sessions at Kenema in the Kenema District of the Sierra Leone Protectorate) dated the 30th December, 1953, whereby the Appellants were found guilty and convicted of the offence of conspiracy to accuse four persons of the crime of murder and sentenced, as specified hereinafter, to varying terms of imprisonment with hard labour; and (2) against the Order of the West African Court of Appeal (Boston, Acting J.), dated the 18th January, 1954, refusing the Appellants' application for extension of time within which to apply for leave to appeal to the West African Court of Appeal although the Appellants were only four days out of time.

Record.
pp. 52, 53, 54.

p. 59.

2. Relevant provisions of the Courts Ordinance (C. 50) and the West African Court of Appeal (Criminal Cases) Ordinance (C. 265) will be found in an Annexure hereto.

3. The prosecution of the Appellants for the offence of conspiracy to accuse of a crime was the sequel to an unsuccessful prosecution for murder and arose in the following circumstances :-

On or about the 9th May, 1953, the dead body p.7, LL. 1-20.

Record.

of one Siaffa Fogundia (hereinafter called "Fogundia") was found in or near a place called Daru situate within the Chiefdom of Paramount Chief Alfred Bockari Samba (hereinafter called "Samba") the principal Complainant in the present proceedings against the Appellants. Following the discovery, the Police, on the sworn information of Appellants Nos. 3 and 5, arrested four persons ((1) Borbor Gbau, (2) Brima Njiange, (3) Vandy Soko (otherwise Soko Soaly) and (4) Momo Sao) and charged them with the murder of the said Fogundia. The Police had received information that all four accused had acted on the directions of the said Paramount Chief Samba who was alleged to be a cannibal but for some reason which is not clear Samba, although arrested, was not charged or tried.

p.28, LL. 20-22

p.7, LL. 15-27.

p.10, LL. 1-14.

p.8, L. 10.

P.9, LL. 21-22.

The prosecution case - that Fogundia was killed for purposes of cannibalism - was based mainly upon the statements of accused No.4 - Momo Sao - who had twice confessed to the killing with the aid of his co-accused Nos. 1 to 3, all of them acting under Samba's directions. At the trial however Momo Sao retracted saying that he had thus incriminated himself and the others (Complainants in the present case) at the instigation of the Appellants all of whom, he alleged, desired the removal of Samba from his position as Chief and one of whom had promised him a cash reward for his false testimony, the incriminating nature of which, he understood, would merely lead to his being called as a witness and not to his prosecution for murder.

pp. 13 - 15.

p.15, LL. 30-40

p.13, L.16 to

p.14, L. 3.

p.11, LL. 12-18.

p.30, LL. 35-36.

p.35, LL. 15-20.

p.37, LL. 18-23.

The prosecution case was, however, supported by the Appellants.

The trial resulted in the acquittal of all four accused.

4. Shortly after, the Appellants were prosecuted for the common law offence of conspiracy to accuse of a crime.

The material parts of the Information, as amended, upon which they were tried were as follows :-

pp. 1, 2. "STATEMENT OF OFFENCE:- CONSPIRACY TO ACCUSE OF A CRIME

p.6, LL. 8-12. PARTICULARS OF OFFENCE:- T.C.CONTEH, SALIA SAMEI SIAFFA BAO, SIAFFA KPOTOWAI,

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MOMO KPAKOWAI and BOCKARI GOALER, on divers days between the 9th day of May, 1953, and the 20th day of June, 1953, in Nyandahun, Jawi Chiefdom, Kailahun District in the Protectorate of Sierra Leone, conspired together and with other persons unknown to accuse PARAMOUNT CHIEF ALFRED BOCKARIE SAMBA, BOBO GBAO, BRIMA NJIANGE, and VANDY SOKO of having committed a crime, namely murder."

It is an essential element of this offence that the accusation should be false to the knowledge of those making it.

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It is important to note therefore that in the present case not only was the word "falsely" omitted from the Information but, as will hereinafter appear, the learned Trial Judge, in summing up to the Assessors, directed them in terms that the offence was committed if the Appellants agreed together to accuse any person of an offence and in no way directed them (as, it is respectfully submitted, he should have done) that the Appellants could not be convicted unless it were clearly shown that they believed the accusation to be false.

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5. The Appellants were tried at the Criminal Special Sessions of the Supreme Court of Sierra Leone held at Kenema in the Sierra Leone Protectorate before an Acting Puisne Judge who sat with two Assessors.

p.3.

One of the said Assessors, P.C. Musa Gendemeh, was married to the daughter of Samba, the principal Complainant in the present Prosecution.

p.5, LL.33-34.

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At the commencement of the trial the Appellants objected to this Assessor on the ground that in the interests of justice it would not be fair for him to sit on the case. In reply, the Solicitor-General submitted that the affinity by marriage was not sufficient to preclude the Assessor from acting as such and that the Defence must show "such vested interest as to make his duty as an Assessor clash with his private entanglement."

p.5, LL.19-34.

The learned Trial Judge ruled as follows:-

"I find that the objection is misconceived. There is nothing in the Ordinance - Cap.50 - which

p.5, L.36 to p.6, L.2.

Record.

gives a right to object to an Assessor sitting on a case, and if there were such a right I am not satisfied that sufficient reason has been given to disqualifying P.C. Musa Gendemeh sitting on this trial as an Assessor. I overrule the objection."

6. It is respectfully submitted that the learned Trial Judge was wrong to overrule the said objection; for although the Courts Ordinance (C.50), under which Assessors are selected and summoned or directed by the Trial Judge, makes no provision for objecting to Assessors, whether on the ground of interest or bias or on any other ground, the right to object on the ground here taken is clearly inherent in all British Courts called upon to administer justice and is in accordance with natural justice and is not to be denied merely because it is - as is usually the case - not provided for in any statute. 10

In the Appellants' respectful submission it was, in all the circumstances, contrary to natural justice that the Assessor in question, who had a direct personal interest in the proceedings, should have been selected, or permitted to assist the Court after the objection had been taken. 20

p.52, LL.25-39.

The Appellants would submit further that from the circumstances at the conclusion of the trial it is not an unreasonable inference that the views of the said Assessor played an appreciable part in the conclusions arrived at by the Court. He was the first to give his opinion which was as follows: "I am of opinion that all six accused are guilty". The second Assessor "entirely agreed" and the Judge then said that he agreed with the opinions expressed by both Assessors. 30

7. The prosecution case was that the Appellants had met together on three occasions and had agreed to suborn one Momo Sao to say that he, together with Borbor Gbau, Brima Njiange and Vandi Soko, had killed Fogundia on the instructions of Samba for the purposes of cannibalism. 40

The principal witnesses upon whom the Crown relied were Momo Sao himself (who was admittedly an accomplice) and one Musa Sobeh (who, in the Appellants' respectful submission, was also an accomplice on his own evidence hereinafter referred to). And, in addition, there were the four Complainants, three of whom had been charged and acquitted in the previous prosecution for murder, and the Court Messenger and Interpreter who was

able to throw light upon the conduct in public of Appellant No.1.

10 8. MOMO SAO, testifying for the Prosecution, said that, together with Borbor Gbau, Brima Njiange and Vandi Soko, he was tried for the murder of Fogundia and acquitted; that in two statements he had confessed to the crime which, he said, had been committed for the purposes of cannibalism on the directions of Samba, but that in a third statement he had retracted saying that his two previous statements were false having been made at the instance of the Appellants for a monetary reward and on the assurance that as a result of his making them he would only be called as a witness and would not be prosecuted for murder. He alleged that the Appellants had concocted this plan in order to depose Samba.

pp.13-16.

p.13, LL.13-20.
p.15, LL.30-40.
P.16, LL. 3-5,
23-24.

20 9. MUSA SOBEH, supporting the Prosecution, said that he had been present at certain meetings of the Appellants when they (excluding himself, of course) had conspired to commit the offence of which they were now accused. According to him it was agreed that the Appellants should take a hammer to the Authorities and represent to them that it had been used for cannibal practices.

pp. 22-26.

p.23, LL.13-15.

30 The witness said that he himself was sent by the Appellants to inform a Police Officer called Sheku (see Sheku's evidence in paragraph 13, post) that "they were coming to him about the hammer"; that he thereupon visited Sheku (who took a note of his name) and remained with him until Appellant No. 5 and others arrived to make the allegation that the hammer had been used for cannibal practices; that, on Sheku asking for Appellant No.1, Appellant No.5 had sent him (the witness), together with one Brima Sipo, to Appellant No.1 with a message asking him to return which mission the witness had carried out.

p.25, LL.24-48.

40 10. The evidence of the Complainants was as follows :-

SAMBA, referred to the Police investigation into Fogundia's death which had yielded negative results and said that nevertheless Appellant No.1 and his followers had persisted in the accusation that he (Samba) was a cannibal.

pp. 6-10.

p.8, LL.16-34.

As to the alleged conspiracy, the witness said that he did not know where or when the offence had

p.10, LL.6-13.

Record.

been committed. He said that he had charged the Appellants with the offence because "I got information that these six men conspired together and made a charge against myself and the others."

p.11, LL.7-18.

BORBOR GBAU, said that the Appellants Nos. 1, 2, 3, 5 and 6 had been Crown witnesses in the said prosecution for the murder of Fogundia which had resulted in the acquittal of himself and his co-accused. He admitted that until he had heard the evidence of the accomplice Momo Sao he had no knowledge of the said conspiracy.

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pp.20-21.
pp.26-27.

BRIMA NJIANGE and VANDI SOKO both gave similar evidence as to their acquittal on the said charge of murder.

pp.28-30.

p.29, LL.1-30.

11. ALFRED BUNDOO, Court Messenger and Interpreter, a prosecution witness, said that at the public enquiry held by the District Commissioner on the 15th January, 1953, when all the Appellants were present, Appellant No.1, speaking by agreement for all, had charged Samba and his followers with cannibalism and had asked for the arrest of BRIMA NJIANGE and VANDI SOKO as both of them had been named by Momo Sao as his accomplices in the murder of Fogundia; and that Appellant No.1 (who had publicly set out 18 different complaints of cannibalism) had also named Samba and others as connected with the said murder.

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p.29, LL.40-46.

In cross-examination the witness said that there were several people who were present at the said public enquiry and that all of them had, in regard to their complaints, decided to be represented by Appellants No.1.

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p.3, LL.10-17.

12. All the Appellants pleaded not guilty and each gave evidence in his support.

pp.30-33.
p.30, LL.14-33.

Appellant No.1, a farmer and secretary of the Folu Co-operative Society, denied that he had conspired with anyone to accuse Samba or Brima Njange or Borbor Gbau or Vandi Soko of the murder of Fogundia. He said that he had been present when Momo Sao confessed in public that he (Momo Sao), acting on Samba's directions and assisted by Samba's followers (Brima Njange, Borbor Gbau and Vandi Soko), had killed Fogundia for purposes of cannibalism; and he admitted expressing his surprise and disappointment at the fact that Samba had not been arrested. He agreed that he alone was of opinion that Samba had directed Momo Sao

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p.30, L.36 to
p.31, L.3.

p.31, LL.36-38.

Record.

to kill Fogundia and he agreed that he had accused Samba of being a cannibal, a view he still held.

p.31, LL.41-42.
p.32, LL.20-25.
p.33, LL.12-14.

10 Appellant No.2, a farmer, denied the conspiracy or that he had ever asked Momo Sao to mention any names in connection with Fogundia's murder. He said that he believed the accusations of cannibalism which had been made against Samba and consequently he had asked the Government to enquire into them. He said further that he was not satisfied with the Police investigations which had yielded no evidence against Samba.

pp.33-34.
p.34, LL.14-26.

20 Appellant No.3, a farmer, similarly denied the alleged conspiracy. He denied completely that he had, as was alleged by the prosecution, met Momo Sao and Appellants Nos.4 and 5 in the house of Appellant No.4. He admitted that he had heard Appellant No.1 accuse Samba and others of cannibalism but he denied that he had conspired with his co-accused to frame a charge against Samba so that Samba would be removed from his position as Chief.

pp.34-35.
p.35, LL.12-15.
p.35, LL.32-38.

Appellant No.4, a farmer, also gave evidence containing similar denials. He said, further, that he did not even know either Momo Sao or Fogundia.

p.36.
p.36, LL.8-9,
14-15.

Appellant No.5, a farmer, also gave similar evidence. He too said that he did not know Fogundia to whose murder Momo Sao had, in his presence, made the said admissions.

pp.36-37.
p.37, LL.6-7.

30 Appellant No.6, a farmer, in giving similar evidence, denied the truth of the statements concerning him which had been made by Momo Sao and Musa Sobeh. He said that at the enquiry before the District Commissioner the Appellant No. 1 had acted as spokesman in respect of the said complaints of cannibalism.

pp.37-38.
p.38, LL.1-12.

13. In support of the Defence evidence was also given by :-

40 (1) MA-AMA KALLON, wife of a headman and mother-in-law of Appellant No.5, who said that some time previously, while visiting her farm, she was chased by Momo Sao and others but managed to escape; that she reported the matter to the Appellant No.5 (her son-in-law) who reported it to the Police (Sheku Kuromba); and that at the Police investigation which followed, Momo Sao had admitted that he, together with Brima Njiange and Vandi Soko, had

pp.38-39.
p.38, L.20 to
p.39, L.5.

Record.

pursued her on Samba's orders which were that they should kill her in order to close the "mouth of the medicine" in respect of Fogundia's death.

p.39, LL. 9-10.

The witness said that she had not been previously called upon to testify either at the Police investigation into Fogundia's death or at the prosecution for murder which followed.

pp.39-41.

p.39, L.37 to
p.40, L.1.

(2) SHEKU KURUMBA, Court Messenger and a Police Officer, who said that he had investigated the death of Fogundia and also the complaint of the said Ma-ama Kallon; that Appellant No.5, accompanied by the said Musa Sobeh (see paragraph 9 hereof) and four others, had called on him with a hammer which Appellant No.5 said had been found in the possession of Momo Sao who could give no satisfactory explanation about it; that he (the witness) had sent Musa Sobeh and others to call Appellant No.1 because of the latter's complaint to the District Commissioner; that, later, in the house of Appellant No.5 and in the presence of all the Appellants except Appellant No.4, Momo Sao had "said that the hammer had been given to him by Brima Njiange and that it was with the hammer Siaffa Fogundia was killed by five people", a statement which, he said, he was prepared to make before any European and which, later, was in fact made to the District Commissioner.

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p.41, LL.30-34

p.40, LL.1-10

p.41, LL.15,16.

p.40, L.35 to
p.41, L.2.

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14. The learned Trial Judge having summed up to the two Assessors, the Assessors gave their Opinions as follows:-

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p.52.

"Opinion of Assessor Chief P.C.Musa Gendeme" /Samba's son-in-law: "I am of opinion that all six accused are guilty"

"Opinion of Assessor Chief P.C. Hotagua: "I entirely agree with what the first Assessor Chief has said and am of opinion that all six accused are guilty" "

pp.52, 53-54.

Agreeing with the Assessors, the learned Trial Judge, by his Judgment and Order, dated the 30th December, 1953, sentenced each of the Appellants Nos. 1, 2, 3 and 5 to eighteen months' imprisonment with hard labour and each of the Appellants Nos. 4 and 6 to nine months' imprisonment with hard labour.

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15. In his summing-up, on the nature and essential elements of the common law offence of conspiring to charge a man falsely with a crime, the learned Trial Judge said :-

"The offence of conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means.

p.46, LL.3-5.

"Where you have evidence that two or more persons have bargained together to do an act which is not lawful or have bargained together to do an act which is lawful but to do it by unlawful means, you will be entitled to say that they have committed the offence which the law calls conspiracy. It is the agreement between two or more persons to do what is not lawful or to do a lawful act by unlawful means that is the gist of the offence. So before you can convict you must satisfy yourselves that these six men did agree among themselves, or that 1, 2, 3, 4 or 5 of them agreed with the other accused or with other people not before this Court to do what is not lawful or to do a lawful act by unlawful means.

p.46, LL.6-20.

"The Prosecution in this case say that these accused combined together, plotted together, bargained together, conspired together and with other persons who are not before the Court to accuse the four persons I have mentioned of murder and in the evidence before you the Prosecution has said that the conspiracy was to accuse the four persons of the murder of one Siaffa Fogundia What you must look for is whether in the evidence you find that these six men have plotted together, have agreed together or have together made this plan to accuse the four persons mentioned of murder. To conspire to accuse any person of murder is to conspire to do an unlawful thing. The law does not say that you should not bring to the notice of the Police any offence which you know to have been committed. If you know that an offence has been committed it is your duty and the duty of everyone to bring it to the notice of the Police and the Police will then investigate the matter. There is no need for two or more persons to join together, to make a bargain to accuse any person or persons of a crime. Such a conspiracy the law does not allow

p.46, LL.21-47.

"What we are concerned with is to find out whether sufficient evidence has been brought before us in this case from which we can say with certainty that the six men have conspired to accuse the four persons named with an offence of murder...

p.47, LL.6-11.

"If you are not satisfied that the Prosecution has proved its case you should say so. But if you are satisfied that the Prosecution has proved that

p.52, LL.4-9.

Record.

these six men conspired with themselves to accuse of murder P.C. Bokari Samba and the three others mentioned in the Information it is your duty to say so."

In the Appellants' respectful submission the above passages from the summing-up constitute a grave misdirection in that they make no reference to the issue of whether the Appellants believed in the truth of the accusations which they had made or whether they knew the accusations to be false. 10

Moreover, by directing the Assessors as aforesaid, the learned Trial Judge was, in effect, withdrawing from the Assessors, the defence put forward by the Appellants, three of whom had stated in the course of their evidence that they believed the accusation to be true.

16. On the nature and extent of the burden that lay on the Prosecution in a case such as this, the learned Trial Judge, after referring to the prosecution case, said :- 20

p.51, LL.20-25.

"That is the case in brief for the Prosecution. If you believe that it presents a story which is true that is to say that a prima facie case has been made, it will be your duty to look at the case for the Defence to find if the Prosecution's case has been weakened or destroyed by the Defence." And, later, after referring to the evidence of the Police Officer Sheku Korumba (see paragraph 13 hereof), he said :-

p.51, LL.45-46.

"Has his evidence weakened or destroyed the prima facie case of the Prosecution?

p.52, LL.4-22.

"If you are not satisfied that the Prosecution has proved its case you should say so. But if you are satisfied that the Prosecution has proved that these six men conspired with themselves to accuse of murder P.C. Bokari Samba and the three others mentioned in the Information it is your duty to say so. Before closing and out of caution I must again warn you that it is the duty of the Prosecution to prove their case and that before you convict, before you express your opinions that the accused people are guilty or conspiracy, you must regard the evidence, look at the evidence of the Prosecution, consider anything which may have been given in evidence in favour of the accused or anything which appears from the evidence favourable to the accused - in fact take the evidence of both Prosecution and Defence before 40

asking yourselves whether from the evidence you are satisfied that the Prosecution has proved its case."

In the Appellants' respectful submission the learned Trial Judge was in serious error to regard thus the burden that lay on the Prosecution. The Appellants submit that the Prosecution was under the burden of establishing its case against the Appellant beyond all reasonable doubt and that the mere presentation of a prima facie case against them was quite insufficient.

17. On the vital evidence of Musa Sobeh (see paragraph 9 hereof) and of Momo Sao (see paragraph 8 hereof) the learned Trial Judge, in his summing-up said :-

"The Defence say that Musa Sobeh is an accomplice. This witness merely looked and heard all the plans. He never agreed with anyone to make a false accusation; he was a spy acting on the instructions of his followers who had told him to attend all the meetings of the conspirators. I direct you not to take him as an accomplice in this case

p.49, LL.38-44.

"We come to Momo Sao's evidence. He was undoubtedly an accomplice and you should not convict on his evidence without some corroboration of some material fact. Look at the evidence of Momo Sao and if you find that his evidence has been corroborated by that of Musa Sobeh and any other witness you will be right to take into consideration those portions of Momo Sao's evidence that have been corroborated in arriving at your opinion in this matter."

p.50, LL.16-25.

It is respectfully submitted that the learned Trial Judge did not show a sufficient appreciation in law of the evidence of Musa Sobeh which clearly shows him to be a participant in the offence alleged; and he was wrong therefore in his direction that Musa Sobeh was not an accomplice and that his evidence could be relied on as corroborative of the evidence of Momo Sao. In the Appellants' submission there was here an issue of "accomplice vel non" which, on the authority of Lord Simonds in Davies v. Director of Public Prosecutions [1954] A.C. 378, 401, 402, the learned Judge should have directed the Assessors to consider.

18. Aggrieved by their conviction and sentences the Appellants filed a Notice of Appeal in the

pp.54-55.

Record.

Annexure.

West African Court of Appeal on the 14th January, 1954. Under the West African Court of Appeal (Criminal Cases) Ordinance (C.265) Section 7 (1) a person convicted who desires to appeal to the Court of Appeal or to obtain the leave of that Court to appeal must give notice of appeal or notice or his application for leave to appeal within 10 days of the date of conviction. The Appellants, were convicted on the 30th December, 1953, and their Notice of Appeal was, therefore, about four days out of time.

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pp.55-56.

Confident that the Court would condone the slight delay the Appellants filed, also, on the 14th January, 1954, an application for an extension of time within which to apply for leave to appeal to the West African Court of Appeal, and, in support thereof, they referred to the fact that, following a change of their legal representatives, difficulties had arisen in obtaining the Record of the Case upon which their new legal representatives would have to rely in drawing up the grounds of appeal. This application, which was supported by an Affidavit of the Appellants' Solicitor, was heard on the 16th January, 1954, by a single Judge of the West African Court of Appeal (H.J.L. Boston, Acting J.) who refused it in the following terms:-

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p.56, LL.13-20.

pp.56-57.

p.59, LL.1-10.

"I have heard the arguments of Counsel on both sides and have considered the reasons given for the delay. In the light of R. v. Lesser, 27 Cr. App. Rep. p. 69, R. v. Cullum, 28 Cr. App. Rep. p. 150 and R. v. Rigby, 17 Cr. App. Rep. p. 111. I do not consider the reasons given are sufficiently strong for the Court to extend the time."

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The Appellants respectfully submit that the decisions of the English Court of Criminal Appeal to which the learned Acting Judge referred do not support the conclusion at which he arrived - a conclusion which is contrary to the practice of British Courts, whether in England or in West Africa or elsewhere, in the exercise of a jurisdiction, whether inherent or statutory; for here, the Appellants were only four days out of time, they had given instructions to their Counsel within time and the slight delay was caused by circumstances beyond their control.

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19. Deprived thus of the opportunity of presenting their appeal to the West African Court of Appeal, the Appellants applied direct to Her Majesty

10 in Council for Special Leave to appeal against the said Judgment and Order of the Supreme Court of Sierra Leone (Criminal Special Sessions at Kenema in the Kenema District of the Sierra Leone Protectorate) dated the 30th December, 1953, convicting and sentencing them as aforesaid, and against the said Order of the West African Court of Appeal, dated the 16th January, 1954, refusing their application for extension of time within which to apply for leave to appeal to the said Court of Appeal.

By Order in Council, dated the 29th July, 1955, the said application for Special Leave to Appeal was granted but without prejudice to the Respondent's right at the hearing of the appeal to take the point that the case ought to be remitted to the West African Court of Appeal.

pp.61-62.

20 The Appellants humbly submit that this appeal should be allowed, that their convictions and sentences should be quashed, and that the said Judgments and Orders appealed from should be set aside, with costs, for the following among other

R E A S O N S

1. BECAUSE the learned Trial Judge did not sufficiently appreciate that it is an essential element of the common law offence of conspiracy to accuse of a crime that the accusation should be false to the knowledge of those making it.
- 30 2. BECAUSE it was a misdirection vitiating the conclusions arrived at for the learned Trial Judge to direct the Assessors in terms that the offence was committed if the Appellants agreed together to accuse persons of an offence without also directing them that the Appellants could not be convicted unless it were shown that they knew the accusation to be false.
- 40 3. BECAUSE at least three of the Appellants had said or indicated in their evidence that they believed the accusation to be true and the said misdirection had the effect of withdrawing this defence from the Assessors.

4. BECAUSE on his own evidence it was clear that Musa Sobeh was an accomplice and the learned Trial Judge was wrong in his direction to the contrary.
5. BECAUSE the evidence of Musa Sobeh (being the evidence of an accomplice) could not corroborate the evidence of the other accomplice Momo Sao and the learned Trial Judge was wrong in his direction that it could do so. 10
6. BECAUSE as to whether or not Musa Sobeh was an accomplice (or whether or not he had agreed to conspire with the Appellants) were issues which the learned Trial Judge should have left to the Assessors to decide or at least to consider.
7. BECAUSE the Appellants were entitled to object to the Assessor P.C. Musa Gendemeh who, being the son-in-law of the principal Complainant, was disqualified from sitting on the case, and the learned Trial Judge was wrong to overrule the objection. 20
8. BECAUSE the overruling of the objection and the consequent functioning of the disqualified Assessor was contrary to natural justice and had the effect of vitiating the whole trial. 30
9. BECAUSE the learned Trial Judge erred in his direction to the Assessors that it was for the Crown to present a prima facie case and for the Defence to weaken or destroy that case.
10. BECAUSE the learned Acting Judge of the West African Court of Appeal who dismissed the Appellants' application for an extension of time within which to apply for leave to appeal based his judgment upon an insufficient or erroneous appreciation of the English decisions which he purported to follow. 40

11. BECAUSE the circumstances here clearly show that this was eminently a case in which the said extension of time should have been granted.
12. BECAUSE by their conviction and sentences the Appellants have, in the circumstances hereinbefore stated, suffered a serious miscarriage of justice which is deserving of early rectification by Her Majesty in Council.

DINGLE FOOT

R. K. HANDOO.

A P P E N D I X

THE COURTS ORDINANCE

(C. 50)

Criminal trials in Protectorate-Assessors.

S.15 (1) - In Criminal proceedings before the Supreme Court at any Sessions held in the Protectorate the Supreme Court shall, subject as hereinafter provided, be assisted by two or more assessors who shall be selected by the Judge and may be summoned or directed by him to aid the Court accordingly, and

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- (a) if the accused and the person who is, or was, primarily affected by the alleged offence are both natives such assessors shall be native chiefs who have been nominated by the Governor as assessors;
- or

(b)

(2) The opinion of each assessor in any such criminal proceedings shall be given orally and shall be recorded in writing by the Judge, but the decision shall be vested exclusively in the Judge.

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Appeals.

S.22 - Appeals from the decisions of the Supreme Court shall lie to and be heard and determined by the West African Court of Appeal in accordance with the West African Court of Appeal (Civil Cases) Ordinance, and the West African Court of Appeal (Criminal Cases) Ordinance

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English law.

S.38 - Subject to the provisions of this and any other Ordinance, the common law, the doctrines of equity, and the statutes of general application in force in England on the 1st day of January, 1880, shall be in force in Sierra Leone.

APPENDIX

THE WEST AFRICAN COURT OF APPEAL

(CRIMINAL CASES) ORDINANCE (C.265)

S. 3. A person convicted on information by or in the Supreme Court may appeal to the Court of Appeal

(a) against his conviction on any ground of appeal which involves a question of law alone

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(b) with the leave of the Court of Appeal or upon the Certificate of the Judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and

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(c) with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

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S. 7. (1) Where a person convicted desires to appeal to the Court of Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within 10 days of the date of conviction.

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Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal or by the Court before whom the Appellant was convicted.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF SIERRA LEONE AND FROM THE
WEST AFRICAN COURT OF APPEAL
(SIERRA LEONE)

BETWEEN:

1. THOMAS COLE CONTEH
2. SALIA SAMEY
3. SIAPPA BAO
4. SIAPPA KPOTOURAI
5. MOMO KPAKOWAI
6. BOCKARI GOALER

Appellants

- and -

THE QUEEN

Respondent

CASE FOR THE APPELLANTS

T. L. Wilson & Co.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellants.