

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS.

RANDA SKEIKY

INDICTMENT NO: DPP/2020/065

JUDGMENT DATED THE 14th DAY OF JUNE 2022

BEFORE THE HON. MR. JUSTICE ALHAJI MOMOH-JAH STEVENS (JA)

The Accused is arraigned on Two Counts Indictment. On Count 1, the Statement of Offence is Larceny in a Dwelling House contrary to Section 13(a) of the Larceny Act 1916. In the Particulars of Offence, the Prosecution alleged that the Accused, Randa Skeiky on a date unknown between the 25th day of August 2018 and 7th September 2018, at Freetown in the Western Area of the Republic of Sierra Leone stole in the dwelling house of Alie Abess situate at NO. 30 Bintumani Drive Aberdeen Freetown the sum of Five Hundred Thousand United States Dollars (USD\$ 500,000.00) equivalent to Four Billion, Five Hundred Million Leones (Le 4, 500,000,000.00) property of the said Alie Abess.

On Count 2, the Statement of Offence States, Larceny by Servant contrary to Section 17(1)(a) of the Larceny Act 1916. The State alleged in the Particulars of Offence, the Accused, Randa Skeiky on a date unknown between the 25th day of August 2018 and the 7th September 2018 at Freetown in the Western Area of the Republic of Sierra Leone, being a servant to Alie Abess, stole the sum of Five Hundred Thousand United States Dollars (USD\$ 500,000.00)

equivalent to Four Billion, Five Hundred Million Leones (Le4,500,000,000.00) property of the said Alie Abess.

The Charges were read and explained to the Accused at the commencement of trial in this Honourable Court. The Accused pleaded not guilty to Count 1 and also Accused pleaded not guilty to Count 2.

The Accused was put on bail by this Court.

The Lead Defence Counsel M P Fofana raised objection in relation to the present Indictment because the previous Indictment was struck out by the High Court of Sierra Leone, therefore the present Indictment has no standing in Law as there is in effect no Committal proceedings for same.

The State Prosecution on the other maintained that the Indictment is proper as once a matter has been committed for trial, it cannot be affected by a default Indictment which can be replaced.

The Court held that the present Indictment is valid and proper since the previous Indictment was defective and struck out by the High Court, the only option was to substitute the defective Indictment with this present Indictment to which the Accused is now being prosecuted.

On the 18th August 2020, the State Prosecution led by J.A.K Sesay made an application that the Accused Randa Skeiky who now stands charge with the Offences of Larceny in a Dwelling House contrary to Section 13(a) of the Larceny Act 1916 and Larceny by Servant contrary to Section 17(1)(a) of the Larceny Act 1916 be tried by a Judge alone instead of a Judge and Jury. The said application was made by the State in accordance with Section 144(2) of the Criminal Procedure Act 1965 as repealed and replaced by Section 3 of the

Criminal Procedure (amendment) Act N0.11 of 1981. The said Instrument of a trial by a Judge alone according to the State will be in the interest of justice and is dated the 12th August 2020 and signed by the Director of Public Prosecutions.

The Defence- has no objection

The Court- granted the application for the Accused to be tried by a Judge alone instead of a Judge and Jury in accordance with Section 144(2) of the Criminal Procedure Act 1965 as amended.

The State Prosecutor before leading his First Prosecution Witness sought leave to waive the opening address. This Honourable Court took judicial notice of the said waiver.

The First Prosecution Witness- (Sworn on the Holy Quran) – Alie Abess of No. 30 Bintumani Drive Aberdeen, Freetown. A businessman who deals in transportation services and importation of new and used vehicles and the sales of new and used vehicles. The address of the business place of the PW1 is N0. 128 Sir Samuel Lewis Road, Aberdeen Freetown. The PW1 testified that he do know the Accused, Randa Skeiky, she was her employee who was employed on the 12th October 2012 as Manager in the sub-office in Kenema and also working in the Head Office in Freetown at different times when required to come and work in Freetown.

The PW1 do recall the months of August and September 2018 as something happened between the Accused and him for which they are in Court. The PW1 testified that on the 14th August 2018 he was to travel out of the Country but prior to that he had cause to invite the Accused from her place of work in Kenema to come to Freetown and being in charge of his business at Sir Samuel Lewis Road as well as his residence at N0. 30 Bintumani Drive. According to the PW1

prior to his departure, the Accused met him and his friend, Ibrahim Swarray at his business address in Freetown and his friend was introduced to the Accused and PW1 had cause to tell Ibrahim Swarray that the Accused was going to be in charge of his business until he returns to Sierra Leone and that since the PW1 had some existing business relationship with the said Ibrahim Swarray, any financial needs that do arise in the absence PW1, the Accused and Ibrahim Swarray must communicate to him for further direction.

Following a mobile communication between the PW1 whilst he was out of the Country, and Ibrahim Swarray, direction was given to Ibrahim Swarray to contact the Accused in respect of One hundred and Forty Thousand United States dollars and to which the PW1 testified he informed the Accused about same and direction given to the Accused where the said amount must be located. According to the PW1 between the 25th day of August 2018 and the 7th September 2018, the Accused sent a good morning message through her telephone number 079 437343, and communication was established between the PW1 and the Accused as to the location where the money was to be located at the house of the PW1 and the Accused consented. Before the direction was given by the PW1 to the Accused, for the Accused to proceed to his bedroom according to the PW1 , it was always a common practice since her employment that the Accused will be in charge of the business at 128 Sir Samuel Lewis Road and his residence at N0. 30 Bintumani Drive. According to the PW1:

“I gave specific instruction to the Accused to open my bedroom and the Accused replied she has done so. I directed the accused to move to my wardrobe and the Accused accepted that she was in front of the wardrobe. I instructed the Accused to take a stool and placed it in front of the wardrobe and climbed on top of the stool to

gain access to the key and the Accused confirmed that she has located the key of the wardrobe. I told the Accused to open the said wardrobe and the Accused replied she has opened the said wardrobe. I told the Accused I have a total amount of Six Hundred and Forty-Two Thousand United States Dollars and Five Thousand British Pounds Sterling located in a secret shelf inside the said wardrobe. I told the Accused she only had to remove One Hundred and Forty Thousand United States Dollars only. I then guide the Accused prior to the removal of the said money from the secret shelf how to access the money. I told the Accused to seat down in front of the wardrobe and access the money underneath. Before accessing the Six Hundred and Forty-Two Thousand Dollars, there was Two Thousand Dollars in a booklet form inside a plastic in Five dollar notes. The Forty-Two Thousand dollars is tied together in rubber band. The Six Hundred Thousand dollars were in seal bundles of One Hundred Thousand Dollars each. I told the Accused to just remove one bundle of a hundred thousand dollars beside the others plus forty thousand dollars together in a rubber band tied together. The Accused confirmed she has seen the money as directed. The Accused told me she has removed the One Hundred Thousand Dollars from the other monies and I told her to close the said wardrobe and return the key and also to close my bed room''

The PW1 returned to Sierra Leone on the 6th September 2018 with his wife and daughter. According to the PW1 the subsequent morning when he went to look at the secret shelf where he sent the Accused, he found that Five Hundred Thousand United States dollars was missing in One Hundred Thousand Dollar Bundles. The PW1 then decided to invite the husband of the Accused, Gassan Skeiky and his elder half-brother Mr. Ibrahim Iftony (now deceased) to Freetown and both of them arrived in Freetown on the 8th

September 2018 at his premise in the afternoon and both shown the place and location of the money in issue to both the husband of the Accused and Mr. Ibrahim Iftony but the Accused was not present. According to the PW1 between the 7th September to the 12th September 2018 a meeting was summoned at the scene of crime and the Accused, her husband, Mr Iftony, Lawyer Charles Margai including himself were present and again Charles Margai Esq. was shown the location of the missing money.

The PW1 further testified that he received information which led him to report to the Police as the Accused wanted to leave the Country. Exhibit A is photographs sent to the PW1 by the Accused on her mobile phone on WhatsApp whilst he was out of the Country and the PW1 replied thereto.

There was a WhatsApp audio message but the State decline to tender same and this bench took judicial notice of same and I sustained the position canvassed by the Prosecution on the ground that this Court is not bound to receive in evidence exhibit tendered at the Court below during Preliminary Investigation especially so when the said message after it was allegedly sent from the PW1 to the Accused and the Accused did not preserve same but transferred same to her husband who in turn put same in a memory stick . The handling of the message that was not meant for the DW2 created a doubt in my mind and such defeated its purpose. The best the Accused would have done was to take same to a Police officer who would have preserved its integrity. The PW1 told the Court he has a Security Guard and two other female workers Musu and Nancy whose activities are supervised at home. The PW1 reiterated that on his returned to the Country he did not see his 500,000 United States dollars and even pleaded with the husband of the Accused for the

returned of the said Five Hundred Thousand United States Dollars but the Accused abandoned her job on the 7th September 2018.

The PW1 was subject to Cross-examination by the Defence.

In Cross, the PW1 testified that his registered business is Ali Abess Transport and General Enterprise and same has been in existence for over twenty years and the nature of the business is transportation and importing and selling of vehicles. The Accused is working under the registered company Ali Abess Transport and she is the Manager in the sub transport division in Kenema and she supervises the buses, the drivers and finances in Kenema according to the PW1. The Accused since her employment will be in charge of his office in Freetown when he is out of the Country. The PW1 maintained that his business has Leones and dollars Accounts. The PW1 confirmed that since 2012 following the employment of the Accused he is receiving monies every day from the business. The PW1 said some of the monies received can be changed to dollars.

The Six Hundred and Forty-two Thousand Dollars according to the PW1 was generated by his business Ali Abess Transport and PW1 did the conversion of the Leones to the \$642,000, but he is not sure whether the Accused did conversion of the money from Leones to dollars as he changed from Leones to dollars personally and some were made possible through purchase of dollars from black market. The PW1 further stated that his wife is aware of the existence of the secret shelve and of course knows the location of the key to the secret shelve and both of them owned the money kept therein. The Five thousand pounds was in the secret shelve. The two million Leones was on top of the secret shelve. The PW1 maintained he testified at the Magistrate Court. The PW1 also maintained in Cross,

that prior to this case he has no complaint of theft against the Accused.

The PW1 further stated that his wife travelled out of the Country on the 30th June 2018 but at that time the Accused was not there at his premise at Aberdeen. The PW1 travelled out of Sierra Leone on the 14th August 2018 and by the instruction of the PW1 and subsequent **acceptance by the Accused**, the Accused was in charge of both the business of the PW1 and his house.

The PW1 told the Court he returned to Freetown with his wife and daughter on the 6th September 2018 but the Accused did not sleep at his house the very day he returned with his family, the PW1 did not meet the Accused at his home where he left her to be in charge till he returns. **I hold the view that this is a serious point for the bench to consider because the Accused accepted to be in charge of the house and business of the PW1 and there is no where in the entirety of the evidence that the Accused denied being in charge of the business and the house of the PW1 whilst the Complainant was out of the Country.**

On the 7th September 2018, the PW1 discovered that the money in-issue that he counted jointly with his wife and also personally counted same, he left in the Secret Shelve at his house was missing. The PW1 did report to the Police on or about the 12th September 2018 but his wife did not make Statement to the Police. The PW1 maintained that he did not report his wife and maids at home because they were not suspected of having committed an offence. **For me, it matters not who is a suspect or who is charge or Indicted before a Court of Law. An accused before a Court of Law in Sierra Leone is presumed innocent until he is found guilty by virtue of**

Section 23 of the Constitution of Sierra Leone Act No.6 of 1991
which states:

“ Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty”.

The PW1 further in Cross, that he does recall he sent a WhatsApp voice note to the Phone number of the Accused 079 437343 so she can remove \$140,000 from the Six Hundred and Forty Thousand dollars in the Secret Shelve through telephone call. The PW1 maintained he sent confirmation of \$140,000 sent by the Accused through WhatsApp and there was an audio message to the effect.

I will reiterate this point thus:

An audio was played at the Magistrate Court but was not admissible in evidence in this Court on the ground that the said audio message came from the PW1 to the Accused but by the action of the Accused she transferred same to her husband who then transcribed same to a memory stick. I hold the view that the best thing the Accused would have done was to give same to an officer of the law and justice like a Police Officer for instance, so that its integrity can be preserved. But the Accused failed to do so.

The PW1 further testified that the One Hundred and Forty-two Thousand Dollars was for business purpose which must be given to Ibrahim Swarray by the Accused but was not meant to bribe any Government Official. The money was to be given to individuals who are concerned but the PW1 said he did not mention the name of any individual in the voice note, nor any voice note of individuals who are Ministers of Government. The PW1 did not mentioned the Six Hundred and Forty –Two Thousand dollars in the said audio. The PW1 said he had direct communication with the Accused on phone

where the \$642,000 was mentioned. The PW1 reiterated that at the time he sent the Accused to the Secret Shelve he had \$642,000 at the said location.

The Second Prosecution Witness at the High Court was Nancy Massaquoi, a worker at the house of the PW1. According to this Witness, the Accused was in charge of the house of the PW1 between the 25th August 2018 to the 7th September 2018. The PW2 confirmed that she received information from the PW1 that money was missing. According to this PW2, she can only go upstairs where the Accused sleeps on instruction.

In Cross, the PW2 stated that three of them are working inside the house of the PW1, herself who is doing the cleaning, Musu who is taking care of the of the child of the PW1 and Amadu who is the cook. There is another worker one Joseph who works at night as a security guard. The PW2 testified that she can only clean the room of the Accused upon supervision by the PW1, his wife or even when the Accused is in charge. According to the PW2 she knew about missing money when she was being interviewed by detectives but has no knowledge of the missing money.

From the Testimony of the PW2, it is crystal clear to me that she has corroborated the evidence of the PW1 that indeed the Accused was in charge of the house of the PW1 between the 25th August 2018 to the 7th September 2018

The PW3, Ibrahim Swarray, testified following an application by the State for the amendment of the back of the Indictment for the inclusion of his name. The Defence did not object, the application was subsequently granted by the Bench. This PW3 identified the PW1 as a business man. The PW3 also recognised the Accused and he met her sometime in August 2018 at the Shop of the Accused at

Aberdeen road very close to the Aberdeen roundabout. The PW1 introduced the Accused to him as his sister and himself being introduced to the Accused by the PW1 as having a common business to run. The PW3 said he was instructed by the PW1 to liaise with the Accused in case the need do arise in his absence. According to the PW3, there was an initial need of \$50,000 but later abandoned in place of \$140,000. The said \$140,000 upon the instruction of the PW1 was brought forward by the Accused but the money itself was not given to him but same distributed to various persons jointly by himself and the Accused. According to the PW3 he was shocked when he received information from the PW1 on his return to Sierra Leone.

In Cross, the PW3 maintained that the said \$140,000 United States dollars was distributed jointly by himself and the Accused for projects that has to do with the buying and selling of vehicles.

A very close look at the testimony of the PW3, it seems clear to me that the Accused received instruction from the PW1 when he was out of the Country to take out \$140,000 for a business purpose and same from the evidence adduced before this Court was distributed. There was a balance of \$10,000 which the Accused said she voluntarily handed over to the PW1, but this account was contradicted by the PW1 who said the Accused only gave him the \$10,000 upon demand.

The Forth Prosecution Witness was one Joseph Sesay, a Security guard at the house of the PW1 and he works from about 6pm to 6am. According to the PW4, the Accused was in charge of the house of the PW1 when he was out of the Country sometime in August and September 2018. According to this Witness, when the PW1 and his

family returned to Sierra Leone, the Accused was not at home the very night.

In Cross the PW4 said he was never interviewed by the Police about any missing money.

Again it also seems clear to me that Fourth Prosecution Witness has again corroborated the point that the PW1 placed the Accused in charge of his house when he was travelling between August 2018 to September 2018. Moreover, according to the PW4, the Accused did not sleep at the house of the PW1 on his and she was not at the house of the PW1 on his arrival with his family. The PW4 has again corroborated the testimony of the PW1 that the Accused was not at his house on his return and did not sleep at his house the very night.

The Fifth Prosecution Witness, Taghrit Gouma, the wife of the PW1. The PW5 do recognise the Accused as an employee. The PW5 reiterates the point that whenever they are out of the Country since the employment of the Accused, the Accused will be in control of their shop in Freetown at Sir Samuel Lewis Road and at their house at N0. 30 Bintumani Drive Aberdeen. According to this Witness they returned to Freetown around the 5th and 6th September 2018. The PW5 also reiterates the position of the workers at their home. A lady by the name of Nancy is the cleaner who will only clean upstairs under her supervision. Musu is the nanny. One Amadu is the cook. The PW5 describes her husband as a business man who sells used cars, as well as dealing with bus transportation, rent cars and buses. The PW5 testified that she travelled out of the Country before her husband on the 30th June 2018. The PW5 confirmed that there is a Secret Shelve in their room within the wardrobe and it contained \$642,000, Five Thousand British Pounds and some Leones notes but

the Leones were on top of the secret shelf. The PW5 maintained that whenever his husband brought money home it was jointly counted by both of them and same taken into the secret shelf. According to the PW5, the \$642,000 dollars were in One Hundred Thousand dollars in Six Bundles, the Forty thousand dollars and the Two Thousand dollars in Five dollars. There was also other money such as Five thousand dollars in a separate form. The PW5 testified that when they returned to Freetown the subsequent morning she heard her husband asking the Accused about missing Five Hundred Thousand United States dollars but the Accused denied the allegation. Not too long thereafter the PW1 told her that the Five Hundred Thousand United States dollars was missing and the PW5 said she thereafter went to the wardrobe to confirm but she did not meet the \$500,000. The PW5 also reiterates that when they returned from Lebanon, the Accused was not at home at all the very night.

In Cross the PW5, maintained that the money at the secret shelf is owned jointly by her husband and herself. The PW5 stated the Accused was not at home when they returned from Lebanon but came the subsequent morning between 8am to 10am. The PW5 did say the workers at home continued their work even when she was out of the Country. The PW5 cannot remember the exact date her husband joined her in Lebanon and also maintained inter alia that she cannot account of whatever obtained at homed in her absence but she will always jointly count monies brought home by her husband. The PW5 also stated that she did not see the Accused stealing the money on issue but it is the Accused who have been taking care of their home for about eight years when they are out on vacation as a family. Again the PW5 did say prior to this allegation the PW1 has not reported any theft incident against the Accused. But the PW5 maintained that before she leaves Sierra Leone, she did see,

count jointly the money in issue, in the secret shelve as same is owned jointly by her husband and herself.

From the testimony of the PW5, the PW5 has confirmed the existence of the Five Hundred United States dollars and the said money was at home and the house was put under sole care and control of the Accused till they returned from Lebanon on the 6th September 2018. The PW5 also confirmed that she did not meet the Accused at home and the Accused did not sleep at the house.

The Sixth Prosecution Witness, PW6, Alhassan Sulaiman Bangura, an Engineer working at Africell mobile network and part of his duties 'he generates call logs upon Court requests and same is done for the Police'. The PW6 testified that he generated call logs on the undermentioned phone numbers:

088 481 982

077 713 372

033 373 854

077 601 659

The phone number 088 481982 call log was produced and tendered as Exhibit A1 to 13. Exhibit A1 which is the subscriber's detail that is Ali Abess, the Complainant in this action.

The phone number: 077 713 372 call log was produced and tendered as Exhibit B1 to 21

The phone number: 033 373 854 call log was produced and tendered as Exhibit C1 to 23

The Phone number 077 601 659 call log was produced and tendered as Exhibit D1 to 43

In Cross, the PW6 confirmed that the registered name for the Phone number is Ali Abess, there is an Address at Aberdeen but no specific house number attached thereto and there is no Nationality thereto.

According to the PW6 in Cross, all these call logs do is to tell you calls that came in and calls that do go out therefrom and the area.

To me it is clear that a call was established between the Accused and the PW1 from the testimony of the PW6 and throughout the entirety of the evidence adduced in this case there is no dissenting view.

This High Court realising the magnitude of the allegation decided to direct for a locus in quo, which was done both at the shop at Sir Samuel Lewis Road and at the home that is the crime scene of the PW1 at Aberdeen. The said Locus in quo report tendered as Exhibit E1 to 3. I had the opportunity to see the wardrobe myself.

The PW7 was Aminata Conteh, a Clerk attached at the Magistrate Court No.1 at the time. This said Witness produced and tendered a locus in quo report during the Preliminary Investigations at the said Magistrate Court No. 1.

The PW8, Mohamed Kamara, who testified for the Prosecution as Additional Witness, a worker at Orange SL and his core function is to ensure the availability of all I.T. System, that applications, servers and network devices. The PW8 produced and tendered as Exhibit G1 to 43, a document in respect of call received by the phone number :079 437343. The PW1 acknowledged that the testimony in relation to G1 to 43 is akin to Exhibit H1 to 49. This Witness also produced Exhibit J1 to 57 in respect of subscriber number: 078 774700

Following the testimony of the PW8, who is the last Witness in the case of the Prosecution, lead Counsel for the State, J.A.K. Sesay

intimated the Court that Accused herein is charged on a two Counts Indictments with Offences of Larceny in a Dwelling House contrary to Section 13(a) of the Larceny Act 1916 and Larceny Servant contrary to Section 17(1)(a) of the Larceny Act 1916. A Preliminary Investigation was conducted into these offences by way of a Private Criminal Summons and the Accused was committed to the High Court to stand trial and she is before this Court by that Committal, by way of a Committal Warrant issued under the hand of a Committal Magistrate. Committal Warrant tendered as Exhibit K. The Prosecution thereafter closed its case.

COMMENCEMENT OF DEFENCE.

As soon as the Prosecution closed its case, the Defence intimated the bench that they intend to do a no case submission.

This Honourable Court ruled on the 16th April 2021 that inter alia that in view of the evidence led in the case of the Prosecution and the magnitude of the amount of money alleged, a fair and justice judgment can only be achieved when opportunity is given to the defence to be heard.

The Accused was put to her election. The Accused elected to testify and has two Witnesses.

The First Defence Witness, the Accused, Randa Sheiky, a resident of NO.16 Kinsway Street, Kenema, and a house wife. The DW1 identified the Complainant and said she knew him since childhood days growing up. The DW1 said she knew a business called Ali Abess Transport Company. According to the DW1, she was made a Manager by the PW1 of the said Company in Kenema. The Witness Statement of this Witness admitted at the Committal Proceedings was again produced and tendered in this Court as Exhibit L1 to 9.

Following reference made to paragraph 81 thereof of the said Witness Statement of DW1, The Defence Counsel makes an application for the husband of the DW1 to be interposed as a Witness just for a piece of evidence to be led thereafter the DW1 will resume her testimony. The Prosecution did not object and said application was granted by this Honourable Court.

DW2-Interposed- Ghassan Skeiky. The DW2 knows the Accused as his wife and recognised the PW1. The DW2 recalled that he testified at the Magistrate Court and in same his mobile phone was tendered and a message therein was extracted and placed into a memory card. The State objects to the tendering of the said memory stick on the ground that the DW2 received same purportedly from another person and he ended up transmitting same into a memory stick, so in the view of the Prosecution, the DW2 acted as a third party to action that was not meant for his consumption, in other words , the State submit that the DW2 interfered with the content of the said communication.

The Defence on the other hand submitted that the objection is of no moment and this is an Exhibit that had already been admitted at the Magistrate Court during the Committal Proceedings in view of Section 124 of the Criminal Procedure Act 1965.

This Court ruled that the said audio message was not admissible because the DW2 has not right to have reduced same into a memory stick a message that was not meant for his consumption as such it has created doubt in the mind of the bench.

The DW1-resumes—According to the DW1 , ‘out of the One Hundred and Forty Thousand Dollars , the PW1 asked her to spend she mainly spent \$130,000 and kept the \$10,000 and the said balance of Ten Thousand Dollars was returned to the PW1 at the Office of Lawyer

Charles Margai during a meeting in which lawyer Margai was in attendance and also in presence of the DW2.

The DW1 testified that she was alone with the PW1 when the PW1 asked her about One Million United States dollars which was missing from his house. The DW1 replied to the PW1 which One Million dollar? And again, denied knowledge about One Million Dollar. The DW1 denied taking any other money from the house of the PW1 and from the safe in the shop of the PW1 to which she was not instructed to take.

The DW1 confirmed that this case was investigated by the Police but was not charged by the Police for any missing money. The DW1 said Mr Charles Margai went to the house of the PW1 and observed the secret shelve, in her presence, her husband and one Late Alie Musa.

In Cross examination. The DW1 said as far as she is concerned there is no difference between supervisor and Manager as she was serving in that capacity since her employment about 2011/2012 and was being paid Four Million Leones monthly initially and later Five Million Leones. The DW1 said she stop working on the 6th September 2018.

According to the DW1, as for the house of the PW1 at Aberdeen it is not for her to take care of the said house as there are workers at the house, all she does is to sleep at the house when the PW1 is out of the Country. But the DW1 said when she is at the house of the PW1 no domestic staff will have access unless she opened the said premise.

According to the DW1, the very night when the PW1 returned with his family to Sierra Leone she was not at the house, but that she came late at night but was not given access so she returned. So the subsequent morning when the DW1 went to the house of the PW1,

the PW1 took the keys from her saying she will not open his shop, so the DW1 decided not to return to work with the PW1. The DW1 did not also returned to Kenema any longer as an employee of the PW1 or his business. The DW1 emphatically stated that since she started working for the PW1 there has never been any allegation of theft 'against me'.

The DW1 testified that the PW1 introduced her to Ibrahim Swarray and is the person who made the contract for the Government buses. The money \$130,000 was distributed to different people by the DW1.

The DW1 further testified that she was directed by the PW1 to go into his room and access a key of the wardrobe and she did as direct by PW1. The DW1 was further directed and in the process, besides other currencies she met bundle of money but she does not know the amount and she took photographs of these monies not in the room of the PW1 but in her sleeping room and thereafter sent same to the PW1 and the PW1 sent audio confirmation message that the said amount is One Hundred and Forty Thousand dollars in the photo sent to the PW1 whilst he was in Lebanon. The DW1 testified that the PW1 never told her that there was Six Hundred and Forty-Two Thousand.

The DW1 reiterated that the reason why she was not at the house of the PW1 on the date of his arrival was because she was attending a marital ceremony and she was part of the arrangement of the ceremony. The DW1 confirmed that she received information from her husband in connection to the allegation against her but no amount of money was reference.

The DW1 denied stealing the Five Hundred Thousand United States dollars from the PW1 and that she did not rush to travel out of the

Country after the allegation but she only did so when the lawyer of the PW1 at the time Charles Margai advised her to travel since it has to do with her daughter giving birth to a baby and that on her returned from Lebanon in January 2019 she voluntarily reported herself to the Police Station and Statement was obtained from her by the Police at the CID Headquarters. The DW1 throughout her testimony maintained that the allegation of Five Hundred Thousand United States Dollars against her, of her having stolen same from the house of the PW1 is untrue. In other words, the DW1 denied the allegation and stated emphatically that she is innocent of the crime.

It is quite clear to me from the testimony of the DW1 that she denied the allegation of her stealing Five Hundred Thousand Dollars from the house of the PW1. The DW1 maintained that she is innocent and her hands are clean. It seems to me that the DW1 did not initially understood whether she was in charge of the house of the PW1 but she eventually conceded when she said the workers at the house of the PW1 can only gain access into the house when she opened same.

DW2-(resumes his testimony)—in same the DW2 recalled making a Witness Statement and he wanted same to form part of his Statement in Chief.

In Cross examination, the DW2 maintained that he did receive call from the PW1 about missing money, thereafter call his wife in the same afternoon but only raised the issue about missing money in the evening with his wife the DW1 who denied knowledge of same.

The DW2 testified that following the call he received on the 7th September 2018 from the PW1, he travelled to Freetown on the 8th September 2018 and later went to the house of the PW1 at 4pm to 5pm the same 8th September 2018. On Monday 10th September 2018

, he was at the office of the then Lawyer of the PW1, Mr Charles Margai in the morning, the Accused was present and the PW1 as well and a decision later taken to go to the house of the PW1 which all of them did. The DW2 denied assuring the PW1 that he will engaged the DW1 in relation to the missing money.

It is also clear to me that the DW2 confirmed the intervention of Lawyer Charles Margai in this allegation, the calls that were made to him by the PW1, but stated categorically that he never gave assurance to the PW1 that he will speak to his wife about the money issue that was missing.

The Third Defence Witness was Lawyer Charles Margai, a former lawyer to the Complainant but according to the DW3, the PW1 withdrew his file from him following his intervention to have the matter resolved amicably. The DW3 testified that the Accused called him on the Sunday after the allegation and gave him information and requested to see him at his home with her husband. The DW3 agreed to meet with the DW1 and her husband at his home and when they were there, the Accused gave him information. Acting on the information, the DW1 decided to invite the Complainant, the Accused and her husband to his Chambers the subsequent morning. On the very Monday, they met at the Chambers of the DW3, and following explanations the Accused denied taking the Five Hundred Thousand United States dollars alleged by the PW1. The DW3 decided to advice that they meet at the scene of crime the very Monday and certainly they were at the scene of Crime and this time one Alie Musa, a relative of the PW1 (now deceased) was present. The DW3 made his personal observation by laying on his back and thereafter gained access to the secret shelve as far as his hand can go. The DW3 described the PW1 as a businessman who has the

capital to import and sell 'Keke' and also involved in bus transportation.

In Cross, the DW3 maintained his testimony in Chief but stated that when he was present on the second visit at the house of the PW1 following the allegation on a locus in quo by the Magistrate Court he had cause to put his hand into the secret shelve as far as it can go. The DW3 made it clear in his testimony that he is not aware that the PW1 has so much dollars in his possession as he alleged.

Court- the Defence closed it case. This Honourable Court gave direction to the Prosecution and Defence to submit Written Addresses.

From the Written Address of the Defence, the Defence maintained that that the allegation of Five Hundred Thousand Dollars does not exit and even if that money was in existence the action must have been instituted by the Ali Abess Transportation Company and not by Ali Abess because the argument of the Defence is that Ali Abess Transport Corporation is a juristic person in Law.

Besides the Defence argued again vehemently that if for any reason the PW1 is supposed to come to the High Court the action must have continue in his private capacity and not in the name of the State as was seen in the case of Maitland Tholla Thompson vs Paul Kamara 2002 unreported.

Again, the Defence noted that the allegation that was investigated by the Police was never charged since according to the Defence there is no case for the Accused to answer that was why the Police did not charge.

The Defence also relied on the case of Solomon vs Solomon because the Transport Cooperation owned by the PW1 is a juristic person in

law that can sue or be used. The Defence call on this Court to acquit and discharge their client in the name of justice and for peace to prevail.

The Prosecution on the other hand, the issue of the admissibility of the audio recording wanted to be tendered through the DW2 was an issue of **res judicata** in that there is a ruling to the effect and this Court cannot go back from same, to which I agree. As regards the Indictment, the prosecution submitted that it is not bad in law and reference is made to rule 11 of the First Schedule of the Criminal Procedure Act 1965. I have earlier held that the Indictment is good in law.

Further to this the Prosecution also relied on Section 64(3) of the Constitution 1991 just as the Defence, as any provision that runs contrary to same is null and void.

The Prosecution further submitted that Section 130 of the Criminal Procedure Act 1965 gives a Law Officer the authority to sign an Indictment.

By sections 65 and 66 of the Criminal Procedure Act 1965, the Prosecution submits that this Court is not bound to admit all what was adduced at the Magistrate Court despite the reliance of the Defence on Section 124 of the Criminal Procedure Act 1965. For the prosecution the Six Hundred and Forty-Two Thousand United States dollars was certainly owned by the PW1 and his wife and the said money was in fact counted by the PW1 before he travelled out of the Country and of course left the Accused both in charge of his house and his business place at Sir Samuel Lewis road.

Prosecution relied on circumstantial evidence and submitted that evidence has been led beyond reasonable doubt to convict the

Accused. But the Defence argued no such evidence has been led and hence the Accused must be acquitted and discharged.

The Law in issue-

The Accused is Charge on Count 1 with the Offence of Larceny Dwelling House contrary to Section 13 (a) of the Larceny Act 1916 which states:

“ Every person who steals in any dwelling house any chattel, money, or valuable security shall be guilty of a felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years”.

From this very Section 13(a) of the Larceny Act 1916 it is very clear and unambiguous that if anyone commits an act of theft in a dwelling house if that person is not guilty shall be acquitted and discharged but if that person is found guilty that person shall be held legally reprehensible, convicted and liable to be sentenced for a number of years but not beyond fourteen years. An important feature of this offence is that it has to or it must be committed only in a dwelling where human beings dwell, sleep and live, a place of abode of mankind and womankind simpliciter and nothing else. I again reiterate in good faith that the Indictment is in place and proper for trial, hence is for the Prosecution to prove its case **beyond reasonable doubt.**

On Count 2, the Accused is charged with Larceny Servant contrary to Section 17 (1) (a) of the Larceny Act 1916 which states:

“Every person who --- (1) being a clerk or servant or person employed in the capacity of a clerk and servant ---- (a) steals any chattel, money or valuable security belonging to or in the possession or power of his master or employer,

shall be guilty of a felony and on conviction thereof to penal servitude for any term not exceeding fourteen years and in the case of a clerk or servant or person employed for the purpose or in the capacity of a clerk or servant, if a male under the age of sixteen years to be once privately whipped in addition to any other punishment to which he may by law be liable”.

My legal opinion in relation to Section 17 (1) (a) of the Larceny Act 1916 is again simple, straightforward, unambiguous and unequivocal in that if an employee steals from his employer whether in his employment or not for as long as the subject matter in issue so stolen belongs to his or her Master, a charge in Larceny Servant can lie. The offence is not limited to the occasion wherein an Accused can mainly steal things or monies meant for the running of the establishment where he or she is employed but also extends to theft committed from chattels, goods or monies owned personally and possessed by the said Employer whether at home, in the office or elsewhere.

It must be noted that in a Criminal prosecution the burden of proof does not change at all. It is the duty of the Prosecution to prove the prisoner's guilty, I submit that burden does not shift at all. The onus of proving the guilt of the Accused rest on the Prosecution.

In the case of **Woolmington v. Director of Public Prosecutions (1935) A.C. 462**, the presiding Judge **Lord Sankey** had this to say:

“ Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt ...”

The case of **Woolmington** is a clear pointer in my humble opinion that if the prosecution's case is not consistent and also lacks

corroboration and consistency throughout an Accused person can be left off the hook without any iota of doubt or acquitted and discharged as the case may be.

On the same strength and might of the due process and common law approach of criminal prosecution and due process, Lord Denning J. (as he then was), in the case of **Miller v. Minister of Pensions (1947) 2 ALL E.R. 372** spoke about the degree of cogency which the evidence must reach in a criminal case before the Accused can be convicted:

“ That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘Of course it is possible but not in the least probable’, the case is proved beyond reasonable doubt; but nothing short of that will suffice”.

In the Case of **Miller** above, I am humbled in the manner in which Denning J (as he then was) expatiated his credentials in criminal jurisprudence in determining the guilt of the Accused in Criminal prosecution.

The Prosecution relied on Circumstantial evidence. In law, there is direct evidence which means a witness can testify to the fact that I did see the Accused taking or stealing the money or chattel belonging to another or his Master. There is also in Law Indirect Evidence or circumstantial evidence which means all inferences can only point to one person.

But the Accused has vehemently contested and denied the case of the Prosecution throughout the trial that she is innocent and has no knowledge about the Five Hundred Thousand United States Dollars as alleged besides the One Hundred and Forty Thousand United States Dollars she was instructed and directed to take same from the wardrobe of the PW1 and the Defence has also point out very clearly that prior to this case , throughout the service of the Accused as an Employee of the PW1, there has not been any allegation of theft or larceny committed by the Accused. To further sustained her innocent, sincerity and uprightness the Accused testified that she gave the balance of Ten Thousand Dollars to the PW1 which was the balance after \$130,000 was spent from the said \$140,000 she was instructed by the PW1 to take for a purpose.

Inferences to be considered by the conduct of the Accused.

- 1- The Accused did not take pictures from the bedroom of the PW1 at the time she collected the \$140,000 from the bedroom of the PW1. The question I wish to raised is thus why the Accused had to go to her sleeping room to take pictures of the said money and post same thereafter to the PW1. For me I submit that it was wrong for the Accused to have move from the room of the PW1 to her bed room to take pictures of the money she said was \$140,000 she was directed to take by the PW1.
- 2- On arrival of the PW1 and his family, the Accused was not at home and she did not sleep at the said house. Here again I will say it was inappropriate and wrong a judgment for the Accused to indulged in other activities that will cause her not sleep at the house of the PW1 on the night of his arrival and his family. The best the Accused should have done suppose she has a family engagement so important to address was to hand over

the house that very night on the arrival of the PW1 and his family and confirmed with the PW1 whether everything was in place in his house, then thereafter the Accused would have left if the PW1 answer in the affirmative. I would further opine that for as long as you are placed in charge of someone's house you cannot just leave without first ensuring that everything was intact, otherwise the Accused must be ready to consume whatever allegation comes her way because she was solely placed in charged and this custodianship of the same has continued unabated since her employment. The Accused knew about the arrival of the PW1 and his family. The Accused said she came the very night but no entrance was access through the gate but the PW4 who is security guard at the house disputed this account as untrue. For me once the Accused has accepted to take care of the house of the PW1 and being in charge she has put her integrity and trust on the line since this is another man's property who is entitled to take legal action suppose anything got missing from the house or if there is an allegation of arson. I humbly hold the view that it was ill-advice by the Accused not to ensure her presence at the house of the PW1 on his arrival and physically handed back the house of the PW1 on his return. For me, this alone has raised the eyebrow. The Accused ought to have realised that by accepting to take care of the house of the PW1 till his return and his family she has put herself at the front to answer whether for instance there was arson to the said property accidentally or intentionally, or any other calamity that would befall the house including a case of larceny. Common sense and fact show that the Accused has a case to answer and she has been entrapped by her admission to take care of the house of the PW1 and evidence led shown that Accused has been taking care of the

house of the PW1 whenever he is out of the Country with his family since her employment. So therefore, when money is missing the Accused is responsible and I hold that the Accused bear the responsibility and criminally reprehensible. For this reason alone, the Accused can be convicted.

- 3- On the 7th September 2018, after the PW1 asked the Accused about his missing Five Hundred Thousand Dollars, the Accused would not have just handed the keys to the shop at Sir Samuel Road, Aberdeen and left unceremoniously in view of the magnitude of the allegation. The Accused must have realised that the PW1 reserved the right to take any legal action since she is the soul suspect in relation to the money in issue. But it seems to me that the Accused abandoned her job for other things. The Accused in her Defence testified that the PW1 demanded his key from her. But the Accused must have realised that she has been in employment for a long time working as sub Manager in Kenema and also taking care of the shop at Sir Samuel Lewis Road as well as the house of the PW1 at any time he is travelling out of the Country with his family since her employment. **Besides, there are laws regulating the conduct of employers and employees in Sierra Leone.** The best the Accused to have done was to continue to report for duty and waited for an official letter from the PW1 but that never happens. I also submit that it was also ill-advised on the part of the Accused not to return to her sub-station in Kenema. The Accused must have stood her ground until she was officially dismissed. Besides, I would opine that it would have been better if the Accused had gone to the Ministry of Labour the very subsequent day, following the arrival of the PW1, when the Accused averred that the PW1 refused to give her the keys to his shop at Sir Samuel Lewis Road, no sooner the PW1 asked

her for missing \$500,000 and her denial to same, for the Ministry of Labour to have restore Social Justice in their Employer/Employee relationship. It seems as the Accused takes things for granted.

4- The Accused decided to travel out of the jurisdiction. According to the Accused she eventually did so after the lawyer of the PW1, Charles Margai Esq. advised her to do so since her daughter was to put to bed. I will again opine that it was a wrong judgment. A case of Larceny is serious as per any allegation. It seems to me the Accused took things for granted and fled to her daughter in Lebanon. The Accused must have realised that she has been alleged to have stolen the money in issue which is of magnitude proportion and no final decision was taken or case resolved and she travelled out of the jurisdiction. There was no need for the Accused to have left the jurisdiction without putting to rest that allegation because she took up the responsibility to take care of the house of the PW1.

For me these are all instances that can be pointed at the Accused that she has a case to answer.

The Defence cited the case of **Solomon and Solomon** that the transport corporation that is being run by the PW1 is the competent person in law to have brought the action if at all that kind of money existed, though it never existed. But the evidence in case of the prosecution maintained that the money in issue does exist and is owned by the PW1. I hereby reference the testimony of the PW1 and the PW5 who is the wife of the PW1. Both the PW1 and PW5 maintained that the money in issue does exist and it is owned by both of them.

FINDINGS

The Prosecution has established in this case that Accused was solely placed in charge of the house of her Employer, the PW1 herein and that no one will get access to the house in issue whilst the Accused was in charge without the permission of the Accused. The Prosecution has established that the PW1 is a businessman who deals in the importation and sales of vehicles and bus transportation who is capable of amassing the money in issue. The Defence on the hand has not controverted the area of Accused being in charge and control of the house of the PW1 whenever the PW1 and family are out of the Country. The Defence has further stated that since her employment no case of larceny has been alleged against the Accused save but this present case before this Court.

The Accused ought to have realised that whenever one is placed in charge and control of another man's property or house as in this case you stand the risk to take responsibility in the event of a case of wilful arson and larceny for example.

The Defence ought to have realised that the Accused made a fatal and terrible mistake by just unceremoniously leaving the house of the PW1 after the allegation of Five Hundred Thousand United States dollars was missing. To me the Accused must have ensure that that her name is clear before severing company with the PW1.

The Accused ought to have realised that by accepting to go into the 'Secret Shelve" (that is a kind of a mini bank or a even like a save used at home by the PW1 to keep his money temporarily) , of the PW1 alone, without the presence of any other trustworthy person, she was taking a risk and surely be prepared to accept any claim of missing money. For me, the Accused did not act prudently

and consciously as a reasonable person, rather taking things for granted. A dangerous miscalculation of judgment indeed for which the Accused can be held to be legally reprehensible and bear the consequences.

The Defence also ought to have realised that it was so soon after several number of years the Accused has been working for the PW1, just a refusal to give to her keys to open the shop of the PW1 at Sir Samuel Lewis Road, will precipitate her hastily quitting her employment unceremoniously. In fact, in my humble opinion the Accused abandoned her job in the face of the allegation to which I submit was a monumental mistake that will certainly hunt her for a very long time if not for ever and that such abandonment of her job has inextricably impute criminal intent and action that the money in issue was not stolen by anyone but by herself with the sole intention to permanently deprived the PW1 and his family.

The Accused ought to have realised that it is also debilitating to claim in her defence that she was initially accused by the PW1 of taking his one Million dollars. None of the defence witnesses supported that assertion made by the Accused. It seems to me such claim by the Accused is misleading, unfounded and untrue.

Looking at the legal authorities cited above that is the cases of **Woolmington** and the case of **Miller** and the strength and might of the circumstantial evidence and the inferences analysed with regards the conduct of the Accused, and pointing mainly at the Accused simpliciter, I will hold that the prosecution has proven its case **beyond reasonable doubt** in both counts 1 and 2. I hold that the **Accused is guilty on Count 1**, the **Accused is also guilty on Count 2**. The Accused is therefore convicted.

ALLOCUTUS:

The Accused ask for mercy

PLEA IN MITIGATION:

The Defence ask that justice be tempered with mercy

SENTENCE:

The Accused is sentence to Three Years Imprisonment on Count 1

- On Count 2, the Accused is sentence to Three Years Imprisonment

I order that the sentence shall run concurrently.

I further make the undermentioned consequential orders:

- 1- The PW1 shall bring an action in civil for the recovery of his \$500,000 immediately after the Accused has served her jail term.
- 2- The PW1 will then pray for costs in the civil suit after the Accused would have served her jail term.

Hon. Mr. Justice Alhaji Momoh -Jah Stevens JA

Dated the 14th June 2022