

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA

CORAM: MENSAH J.A (PRESIDING)
BARTELS-KODWO J.A.
AMALEBOBA J.A.

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REGISTRAR
COURT OF APPEAL

SUIT NO: H2/12/2024

6TH JUNE, 2024

THE REPUBLIC

---- RESPONDENT

VRS

- 1. CASSIEL ATO FORSON**
- 2. SYLVESTER ANEMANA**
- 3. RICHARD JAKPA**

---- 1st ACCUSED/APPELLANT

JUDGMENT

BARTELS-KODWO JA:-

BACKGROUND:

This is an interlocutory appeal against the decision of the High Court (Financial Division) dated 5th April 2022 to dismiss the 1st Accused/Appellant's (hereinafter referred to as "the Appellant") motion for an order to "strike out defective charge sheet or for further particulars/details in the particulars of offence".

The Appellant and his co-accused were arraigned before the honourable High Court below and charged with the offences of

willfully causing financial loss to the Republic contrary to section 179A (3) (a) of the Criminal Offences Act, 1960 (Act 29) and intentionally misapplying public property contrary to section 1(2) of the Public Property Protection Act, 1977 (SMCD 140), among others.

The relevant charges were set out on the charge sheet as follows;

"Count One

Statement of Offence

Willfully causing financial loss to the Republic contrary to Section 179A (3)(a) of the Criminal Offences Act, 1960 (Act 29).

Particulars of Offence

Cassiel Ato Forson between August 2014 and April 2016 in Accra in the Greater Accra Region of the Republic of Ghana willfully caused financial loss of €2,370,000 to the Republic by authorizing irrevocable letters of credit valued at €3,950,000 to be established out of which payments amounting to €2,370,000 were made to Big Sea General Trading Ltd of Dubai for the supply of vehicles purporting to be ambulances without due cause and authorization.

Count Five

Statement of Offence

Intentionally misapplying public property contrary to Section 1(2) of the Public Property Protection Act, 1977 (SMCD 140).

Particulars of Offence

Cassiel Ato Forson between August 2014 and April 2016 in Accra in the Greater Accra Region of the Republic of Ghana

intentionally misapplied the sum of €2,370,000 being public property by causing irrevocable Letters of Credit to be established against the budget of the Ministry of Health in favour of Big Sea General Trading Ltd. of Dubai for the supply of vehicles purporting to be ambulances without due cause and authorization.”

Following this, on the 4th of March, 2022, the Appellant caused to be filed at the registry of the High Court, a motion on notice praying for an order striking out the charge sheet against himself for being defective, or an order directed at the Prosecution to provide further details in the particulars of offence of the specific acts that constitute acting without authorization or intentional misapplication set out in counts 1 & 5 reproduced *verbatim* above.

The grounds for this motion, set out on the face of the motion paper, were expounded on in the accompanying affidavit in support in Paragraphs 7 and 8 thereof. The Appellant stated in Paragraph 7 of the affidavit in support thus “... *The particulars do not specify the alleged acts I engaged in that constitute “without due cause and authorization”. I am thus left to wonder whether the expression “without due cause and authorization” means that when I requested the setting up of the letters of credit, I was on a frolic of my mine [sic], not having been authorized by the Ministry of Finance and the Minister of Finance to do so, or that I acted in defiance of advice by legal and other experts at the Ministry of Finance.*”

The motion was opposed on grounds set out in paragraph 8, 9 and 10 of the Respondent’s affidavit in opposition to the effect that the Appellant had been given all reasonable details necessary to

understand the charges brought against him, and that the fact that the Appellant does not understand the charges brought against him does not mean that the charge sheet is defective.

Following a hearing of the motion, the High Court dismissed the motion as being without merit, holding that the ordinary meaning of the words contained in the particulars of the charge are well known and not technical. It is against this decision of the High Court that the Appellant brings the instant appeal.

GROUND OF APPEAL

The grounds for this appeal as set out in the notice of appeal are as follows;

- a. The Learned High Court judge erred in holding that the Particulars of offences of Counts 1 and 5 contain sufficient information on the specific acts engaged in by the 1st Accused/Appellant that manifest “without due cause and authorization” as contained in Counts 1 and 5 of the charge sheet;*
- b. The Learned High Court Judge failed or neglected to give adequate consideration to the case of the 1st Accused/Appellant;*
- c. The Learned High Court judge erred in law by refusing or neglecting to apply the rationes decidendi of the decision of Supreme Court in The Republic v Ernest Thompson & 4 Ors (Criminal Appeal No. (J3/05/2020).*

This ground was particularized by the Appellant as follows;

Contrary to the rationes decidendi of the decision of Supreme Court in The Republic v Ernest Thompson & 4 Ors (Criminal Appeal No. 3/05/2020), the Learned High Court Judge

- a. referred to or called in aid the facts accompanying the charge sheet in ruling upon the said application of the Accused/ Appellant; or*
- b. failed or neglected to apply the legal test under Article 19 (1), (2) (d) of the 1992 Constitution, which is whether the Particulars of Offence contain the specific acts and/or omissions that the accused person engaged in which resulted in the event; in the present case, the specific acts and/or omissions manifest “without due cause and authorization” as contained in Counts 1 and 5 of the Charge Sheet; or*
- c. erroneously focused on the plain meaning “without due cause and authorization” in Counts 1 and 5 instead of addressing the question whether there were any particulars in the Particulars of Offences that manifest “without due cause and authorization” in Counts 1 and 5 of the charge sheet.*

ARGUMENTS OF THE APPELLANT

Counsel for the Appellant chose to argue all three grounds together. In doing so, Counsel for the Appellant contends that when the duty of a prosecution in stating the particulars of offence are considered

vis-a-vis the requirements of Article 19 (2) (d) of the 1992 Constitution and Section 112 (4) of Act 30, the Respondent has failed to sufficiently particularize the alleged offence.

The Appellant contended that the use of the term “*without due cause and authorization*” in the charge sheet without stating exactly what conduct constitutes acting “*without due cause and authorization*” amounts to a breach of the Appellant’s rights under Article 19 (2) (d) of the 1992 Constitution.

In arguing their position, learned counsel for the Appellant makes reference to the case of **The Republic v. Ernest Thompson & 4 Ors (Criminal Appeal no. J3/05/2020)**. The argument is made here that the standard for the formulation of criminal charges is set in that case. Counsel for the Appellant continues and says that for a charge to have been properly formulated, it must sufficiently indicate to the Accused the nature of the acts the commission of which led to the events which the law has prohibited with penal consequences.

The Appellant argues further that for criminal charges to be consistent with Article 19(2) of the 1992 Constitution, they must contain basic facts in precise language that speak to the *mens rea* and *actus reus*. The Appellant contends that charges 1 & 5 of the charge sheet do not sufficiently do so and that the expression “*without due cause and authorization*” is vague forcing the Appellant to guess what that means and as such those charges should be struck out as defective.

ARGUMENTS OF THE RESPONDENT

On their part, the Respondent contended that the Appeal must be dismissed since in the view of the Respondent, the charges were properly drafted and adequate particulars had been provided on the charge sheet.

The Respondent referenced the case of **Ernest Thompson (supra)** and argued that its obligations when putting together the charge sheet were to “sufficiently indicate to an accused person the nature of the acts the commission of which has led to the event which the law prohibited.” The Respondent further contended that when drafting the particulars in the charge sheet, it had to do so with the elements of the offence in consideration.

The Respondent broke down the elements of the two charges brought against the Appellant, and concluded that it had sufficiently met its obligations in drafting the charge sheet.

LAW AND ANALYSIS

Rule 8 of the Court of Appeals Rules, 1997 (C.I. 19) governs the formulation or drafting of the Notice of Appeal, that foundational document which kick starts the appellate process to this Court. Sub rule 4 reads as follows “*Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.*”

Subrule 6 follows in tandem as such, “*No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of the evidence; and any ground of appeal or any*

“...The appellate Court can only interfere with the findings of the trial Court where the trial court : (a) has taken into account matters which were irrelevant in law; (b) has excluded matters which were critically necessary for consideration; (c) has come to a conclusion which no court properly instructing itself would have reached; and (d) the court’s findings were not proper inferences drawn from the facts...However, just as the trial court is competent to make inferences from its specific findings of fact and arrive at its conclusion, the appellate court is also entitled to draw inferences from findings of fact by the trial court and to come to its own conclusions”.

With regard to the second ground of appeal, it is the contention of the Appellant that the learned trial judge failed or neglected to give adequate consideration to his case. Also with regard to the third ground of appeal, the Appellant has in his particulars, stated that the Court below has taken into account matters which were irrelevant in law and has failed to consider matters which were necessary for consideration.

In the **Ernest Thompson case (supra)**, the Apex Court speaking through my learned Senior Tanko JSC, held that whether or not a prosecution has sufficiently particularized an offence on a charge sheet is something to be determined on a case by case basis. This is in line with earlier decisions of the Supreme Court in cases such as the case of **The Republic vs. Ali Yusuf Issa (No. 1 & No. 2) (2003-2004) 1 SCGLR 189 & 174** and **Ali Yusuf Issa vs. The Republic (No. 1 & No. 2), [2003-2004] 2 SCGLR 189 & 174.**

Thus, in this case we are to make a determination on the question of whether the charge sheet sufficiently particularized the charges brought against the Appellant. The Appellant's particular bone of contention is with the expression "*without due cause and authorization*". This court is of the opinion that it is wrong to isolate phrases or words contained in a charge sheet and claim that those words are vague or do not contain sufficient meaning. It is one of the cardinal rules of interpretation in our profession that documents should be read as a whole when being interpreted. In this case, the Appellant seems to encourage this court not only to avoid reading the charge sheet itself as a whole, but also to avoid reading the relevant paragraphs particularizing the charges as a whole.

It is apparent to this court that the phrases the Appellant should be concerned about is "**Cassiel Ato Forson** *between August 2014 and April 2016 in Accra in the Greater Accra Region of the Republic of Ghana willfully caused financial loss of €2,370,000 to the Republic by authorizing irrevocable letters of credit valued at €3,950,000 to be established out of which payments amounting to €2,370,000 were made to Big Sea General Trading Ltd of Dubai for the supply of vehicles purporting to be ambulances without due cause and authorization*" and "**Cassiel Ato Forson** *between August 2014 and April 2016 in Accra in the Greater Accra Region of the Republic of Ghana intentionally misapplied the sum of €2,370,000 being public property by causing irrevocable Letters of Credit to be established against the budget of the Ministry of Health in favour of Big Sea General Trading Ltd. of Dubai for the supply of vehicles purporting to be ambulances without due cause and authorization.*" and not just the words "*without due cause and authorization*" in isolation.

When those paragraphs are read as a whole, one can hardly claim that the meaning of the words “*without due cause and authorization*” are “*vague or nebulous*” as the Appellant seeks to impress upon this Court. Consequently having examined the charges under scrutiny, we find that they contain sufficient particulars as required under Article 19 (2) (d) of the 1992 Constitution and Section 112 (4) of Act 30. We hold that this Appeal is therefore without merit and is dismissed accordingly.

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.....REGISTRAR
COURT OF APPEAL

(Sgd.)
JANAPARE BARTELS-KODWO
[JUSTICE OF APPEAL]

Mensah, (J.A.)

I agree

(Sgd.)
P. BRIGHT MENSAH
[JUSTICE OF APPEAL]

Amaleboba, (J.A.)

I also agree

(Sgd.)
HAFISATA AMALEBOBA
[JUSTICE OF APPEAL]

COUNSEL:

- Dr. Abdul Baasit Aziz Bamba for 1st Accused Applicant/Appellant
- Richard Gyambiby for Republic/Respondent/Respondent