

COI.APP.11/2020

2020

IN THE COURT OF APPEAL FOR SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE

NO. 6 OF 1991) CHAPTER IX (COMMISSIONS OF INQUIRY) SECTIONS 147-  
150(INCLUSIVE)

IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018

IN THE COMMISSION OF INQUIRY (EXAMINATION INQUIRY AND INVESTIGATION  
NOTICE (1) 2018

(JUSTICE BIOBELE GEORGEWILL COMMISSION OF INQUIRY)

BETWEEN:

FINDA DIANA KONOMANYI - APPELLANT

1<sup>A</sup> ALBERT LEVAY DRIVE

FIRST PUMP JUNCTION

ADONKIA GODERICH

FREETOWN

AND

THE ATTORNEY GENERAL & - RESPONDENT

MINISTER OF JUSTICE

GUMA BUILDING

LAMINA SANKOH STREET

FREETOWN

CORAM:

HON. MS. JUSTICE FATMATA BINTU ALHADI JA (PRESIDING)

HON. MR. JUSTICE KOMBA KAMANDA JA

HON. MRS. JUSTICE TONIA BARNETT JA

ADVOCATES:

I SORIE ESQ. FOR THE APPELLANT

R.B. KOWA ESQ. FOR THE RESPONDENT

JUDGEMENT DELIVERED THIS 31<sup>ST</sup> DAY OF MAY 2021

BY HON. MR. JUSTICE KOMBA KAMANDA JA.

### **BACKGROUND**

In View of Constitutional Instrument No. 64 of 2018, the President of Sierra Leone His Excellency President Brigadier (RTD) Julius Maada Bio Pursuant to Section 147 of the Constitution of Sierra Leone Act No. 6 of 1991 set up the Justice Biobele Georgewill Commission of inquiry with the said learned judge as sole commissioner.

The terms of reference of the Commissioner were explicitly spelt out in Section 4 of the aforementioned constitutional instrument which are to investigate whether assets were acquired lawfully or unlawfully in respect of persons who were; (1) President (ii) Vice Presidents (iii) Ministers and Deputy Ministers (iv) Heads of Departments and Agencies within the period 2007 to April 2018. It was also to ascertain whether the aforementioned persons; (i) maintained a standard of life above that which was commensurate to their official emoluments, (ii) owned or were in control of pecuniary resources or property disproportionate to their official emoluments.

The Commission referred to herein commenced proceedings and concluded the investigation thereby presenting its report and findings which were adverse against the appellant Finda Diana Konomanyi. The appellant being dissatisfied with the findings and recommendations of the said Commissioner, appealed to this court on the following grounds:

1. The learned Judge/sole commissioner misdirected himself and erred in law by acting as a court of law and convicting the appellant for the offence of failure to declare assets pursuant to Section 119 of the Anti Corruption Act 2008 as amended and therefore proceeding to sentence the Appellant to a term of imprisonment or payment of a fine pursuant to Section 122 of the Anti-Corruption Act 2008 as amended in violation of the Constitution of Sierra Leone (Act No. 6) of 1991, The Anti-Corruption Act, 2008 as amended, the principles of natural



justice and in excess of the Terms of Reference of the Commission of Inquiry (COI No. 64).

2. That the Learned Judge/Sole Commissioner failed to adequately consider all that evidence adduced at the proceedings in coming to his decision in recommending that the Appellant's property situate lying and being at Adonkia in the Western Area of the Republic of Sierra Leone be forfeited to the state and more particularly relied on the evidence of a patently discredited valuation and an incompetent witness.
3. The Learned Judge/Sole Commissioner erred in law and in fact by failing to make a distinction between a sole proprietorship and limited liability company and treated the appellant's numerous businesses registered as sole proprietorship as if they were limited liability companies, thereby wrongly excluding the earnings and income of these entities from the legitimate sources of income of the Appellant.
4. That the Learned Judge/Sole Commissioner erred in law and in fact in holding that the evidence adduced by the state went largely unchallenged and that unchallenged evidence is good evidence.
5. That the learned Judge/Sole Commissioner demonstrated considerable bias in his judgement and displayed a contemptuous and hostile attitude towards persons of interest including the appellant and as such failed to discharge the responsibilities of a full faithful and impartial inquiry as required by the constitution of Sierra Leone.
6. That the Learned Judge/Sole Commissioner erred and misapplied the law in his ruling of 14<sup>th</sup> February 2019 when he held that the Commission of inquiry has the Jurisdiction to proceed with the hearing and investigation of persons of interest notwithstanding the lack of rules regulating the practice and procedure of commissions of inquiry as required by Section 150 of the 1991 constitution of Sierra Leone.
7. That adoption by the Learned Judge/Sole Commissioner of the Practice Direction formulated by the three sole commissioners of Constitutional Instruments No. 64, No. 65 and No. 67 of 2018 is unconstitutional and an improper arrogation and usurpation of the functions reserved for the Rules of Court Committee in Section 150 of the 1991 constitution of Sierra Leone.
8. That the Learned Judge/Sole Commissioner erred in law by exceeding his jurisdiction and venturing into the arena of a court of criminal jurisdiction when he concluded in his findings that the Appellant was; (i) indicted (ii) involved in gross abuse of Office considering that the laws of Sierra Leone creat a specific offence of abuse of office of Public Trust and failed to provide leadership and supervision at the Ministry of Lands Housing and Country Planning.



9. The Judgement/Findings/Recommendations of the Learned Judge/Sole Commissioner is against the weight of evidence.

**SUBMISSIONS BY I SORIE Esq. COUNSEL FOR THE APPELLANT**

Counsel for the Appellant I Sorie Esq, submitted on Ground 1 that, the Commission of Inquiry No.64 was never a court of law and did not have jurisdiction to adjudicate on criminal and statutory offences. He argued that the Constitution of Sierra Leone (Act No. 6 of 1991) vests judicial power in the judiciary and not in the Commission of Inquiry No.64. Counsel also submitted that the Sole Commissioner failed to consider Section 25(5) of the Constitution of Sierra Leone and also that the standard of proof required in criminal proceedings is beyond reasonable doubt, while the standard of proof in Commissions of Inquiry is based on a balance of probabilities. He relied on the case of **ATTORNEY GENERAL V KAMARA SC MISC APP NO. 4/92 (1992)** (Unreported delivered on 11<sup>th</sup> August 1992) and **JOHNSON V REGINAM ALR (SL) series 1970 -71** Court of Appeal (Cr. App No. 18/70) to buttress his submission that the accused must be aware of the charge against him/her and be allowed to plead as he/she chooses and defend the case against him/her.

On Ground 2 Counsel argued that CW3 OLU CAMPBEL claimed that he did valuation on property at Finda Kono Drive Adonkia and that the said valuation was allegedly done by "distance that were estimated by eye view and years of experience". He stated that the appellant does not have property at Off Finda Kono Drive, Adonkia but at 1<sup>A</sup> Albert Levay Drive, Adonkia, Goderich, Freetown where she resides. Counsel also argued that the valuer has no professional qualification either as a valuer, appraiser or quantity surveyor. Also he made reference to the testimony of CW3 when he stated that he never had access to the property and that he did his valuation from a distance. Counsel submitted that, such evidence is unreliable and weight ought not be attached to same. He also made reference to the evidence of CW3 as regards the valuation he did on the property of Alimamy P. Koroma at Hilltop (North) Hill Station in which he valued the said property in October 2019 for Le11,360,000,000,00 (Eleven Billion Three Hundred and Sixty Million Leones) while on the 22<sup>nd</sup> March 2019 he had already valued the same property for Le3000,000,000/00 (Three Billion Leones). Counsel considered such variation as a mark of the witness's unreliability. He also placed heavy weather on CW3's response in cross examination when he said valuation report in terms of the value of a property may change depending on the reason for which the valuation was done. Counsel relied on **Halsbury's Laws of England 4<sup>th</sup> Ed Reissue Vol 17 (1) under the rubric "Evidence of witnesses" Paragraph 419 at Pg 216** to submit that weight should not be attached to the evidence of CW3 because, his evidence is unreliable and untrustworthy. As regards, the evidence of DW2 I Sorie Esq., referred to same as credible. DW2 led evidence that the appellant before assuming the office of minister in 2003 either singularly or jointly had substantial amount of money in her



accounts both in Sierra Leone and overseas. Reference is made to her parliamentary declaration form. Her Capital One Bank Account in the United States of America ,shows a balance of \$100,242 (One Hundred Thousand, Two Hundred and Forty Two United States Dollars), Counsel also referred to the evidence of DW2 showing that the appellant owned several businesses, such as, Dee and Dee Construction and General Merchandise, Zou Zou Enterprises, Peninsular Investment Limited etc. In essence, counsel's argument is that the appellant had the means to acquire the property subject matter of the findings/report of the Sole Commissioner situate at 1 Albert Lavey Drive, Adonkia.

As regards Grounds 3, Counsel submitted that there is a clear distinction between companies limited by guaranty and sole proprietorships and that the learned Sole Commissioner aptly recognised the said distinction but wrongly concluded that the appellant's businesses were companies limited by shares. Also he argued that the Commissioner failed to take into account contract documents including bills of laden and invoices for payments made to the appellant during the course of her business.

In dealing with Ground 4, I Sorie Esq., submitted that the evidence led by the State was challenged and therefore made reference to the evidence of CW3 Olu Campbell the valuer, that was vigorously challenged by way of cross examination which exposed the fact that CW3 never visited the house and that he would not have been denied access as State Officials had previously visited the house with no hindrance. He referred to the evidence of DW1 that was uncontroverted. Also that it was by way of cross examination that CW3 confirmed he did not visit the house and could not tell what the interior looked like. Counsel submitted that due to the unreliable nature of CW3's evidence, it ought to have been either excluded or very little weight attached to it. He relied on **Phipson on Evidence 18<sup>th</sup> Ed under the rubric "Expert Evidence as to competency and credit paragraph 33-62 at pg 1188** which states **"if it appears that the expert lacks independence and objectivity, such that his evidence is likely to lack reliability, it is open to the court to exclude him from giving evidence"**.

In referring to Ground 5, he buttressed his submission on the issue of bias, contemptuous and hostile conduct of the Sole Commissioner by making reference to Section 149(1) of the Constitution which provides for impartiality as far as Commissions of Inquiry are concerned. Counsel referred to comments made by the Judge/Sole Commissioner such as, 'it is these confirmed acts of widespread and humongous level of corruption during the period under review that had led to the pervading poverty in the country and the dire need to check mate all forms of corruption to give the country both a New Direction and a New Lease of life" etc, as a display of bias. He relied inter alia on the case of **METROPOLITAN PROPERTIES LTD. V LANNON (1968) 3 AER Pg 304.** to buttress his submission that the Sole Commission was bias.



On Grounds 6 and 7, counsel relied on Section 150 of the 1991 Constitution to submit that the Commission of Inquiry Constitutional Instruments No.64 of 2018, lacked jurisdiction to commence and proceed in the absence of rules of procedure and that the procedures adopted by the three Sole Commissioners are unconstitutional.

In considering Ground 8, Counsel submitted that the Sole Commissioner by stating in his findings/report that the appellant was indicted ventured into the arena of a court of criminal jurisdiction which was not part of its terms of reference.

Ground 9 could be best described as the omnibus ground, that is, that the findings/recommendations of the learned Judge/Sole Commissioner is against the weight of the evidence.

Based on the arguments and submissions on behalf of the appellant, counsel submitted that the Appeal herein be allowed with costs.

#### **SUBMISSIONS BY R.B KOWA ESQ COUNSEL FOR THE RESPONDENT**

R.B. Kowa Esq., Counsel for the Respondent, in response to Ground 1, submitted that the Sole Commissioner did not breach any constitutional provisions particularly Section 23 (5). He argued that no criminal charges were instituted against the appellant therefore the aforesaid Section does not apply in the instant matter. Counsel further submitted that by Constitutional Instrument No. 64 the appellant is a person of interest therefore, the orders given are correct.

Counsel argued that the conviction and punishment imposed by the Sole Commissioner is not the crux of the matter but the resultant recommendations and findings. He also argued that the word "guilty" used by the judge for the purposes of the proceedings amounts to liability, culpability of the commission of an offence. He submitted that the word "guilty" did not convert the Commission into a court.

R.B. Kowa Esq., submitted that Ground 2, 3 and 4 are intertwined and therefore dealt with it simultaneously. He submitted that the fact that CW3 lacks professional qualification as a valuer, appraiser or quantity surveyor does not in any way suggest that he is incompetent to give evidence. He relied on the case of **DAUBERT V MERREL DOW PHARMACEUTICALS INC. 509 us 579 (1993)** to support his submission on this point of law. He tied this up to page 8 of volume 2 of the report where the witness said he has practiced as a valuer and an appraisal for a period of 35 years.

On the issue of weight of the evidence counsel, argued that the weight of the evidence, the believability and persuasiveness of the evidence, is for the tribunal of fact to decide.



He therefore submitted that counsel lacks the legal efficacy to question the judge's reliance on the evidence. Also he argued that the documents referred to in cross examination referencing two separate valuations done by CW3 respect of the same res, property of Hon. Amb Alimamy Koroma at Hill Station with quite distinct value; could not be supported by Phipson on evidence 18<sup>th</sup> Ed because the investigation at the ACC cannot be considered a judicial process.

While dealing with the issue of reversed burden, counsel submitted that the burden of proof in an investigation of unjust enrichment under common law and unexplained wealth by Section 27 of the Anti-Corruption Act 2008 as amended reverses to the person of interest. He relied on the case of **RV JOHNSON (2003) 1wkr 1736**. He further argued that the appellant did not know her expenses when she was minister nor did she know the value of the premises at Off Peninsular Road, Adonkia and her earnings for the period under review.

On ground 5 counsels stated that the Sole Commissioner herein is a foreign national with no known affinity in Sierra Leone and that the appellant has not established that the sole commissioner had any personal or pecuniary or proprietary interest in the out come of the investigation. He stated that complimentary statements were also made in respect of persons of interest among whom is the appellant. He referred to paragraph 16.3 at page 115 of the report to further state that the appellant has not proved that there was reasonable apprehension held by a reasonable person to have arrived at that allegation of bias. He referred to the case of the **PROSECTOR V ISSA HASSAN SESAY & ORS (case No.SC SL-04-15T)** 2008 in support of his submission herein.

As regards Ground 6 & 7, R.B. Kowa Esq., submitted that the Learned Judge/Sole Commissioner did not in anyway violate Section 150 of the 1991 constitution and that pursuant to Section 147(1) and (2) of the 1991 Constitution of Sierra Leone, the President appointed a Commissioner by Constitutional Instrument No. 64 of 2018 on the 1<sup>st</sup> of August 2018 Section 2, he submitted vested jurisdiction on the Chairman/Sole Commissioner and that it is erroneous to state that his jurisdiction ought to have been derived from the Rules of Court Committee. In essence counsel further submitted that Section 147 of the Constitution is not inoperative until Section 150 is effected by the Rules of Court Committee. He relied on the case of **SC No 4/96 THE ALL PEOPLES CONGRESS V NASMOS & MINISTRY OF SOCIAL WELFARE, YOUTH & SPORT** (unreported) delivered on the 26<sup>th</sup> October 1999.

On Grounds 8 & 9 Counsel adopted his submissions made in respect of Ground 1 and 2

### **ANALYSIS OF THE EVIDENCE AND LAW**

The gravamen of the appellant's complaint as regards Ground 1 is explicitly stated in the aforementioned Ground of Appeal. The only issue that I need to determine is



whether the learned Judge/Sole Commissioner had the authority to convict and sentence the appellant to a term of imprisonment or fine pursuant to Section 122 of the Anti-Corruption Act 2008 as amended?

In answer to the aforesaid question it is relevant to reiterate the terms of reference of the said COI as unambiguously spelt out in Section 4 of Constitutional Instrument No. 64 of 2018 which set up the justice Biobele Georgewill Commission of Inquiry meant:

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

The terms of reference of the COI are as crystal as clear to the extent that there is no need for further elucidation. It is obviously not a court of law but a tribunal whose mandate is to investigate issues and submit reports recommendations and findings to



the Executive Branch of Government. In the case of **M.A. KHARAFI & SONS LIMITED V ATTORNEY GENERAL OF THE GAMBIA**, GCA CIV. APP GCA 046/2019 Mr. Justice H. Jallow CJ had this to say "a Commission of Inquiry does not adjudicate between the state and persons who appear before it; but it carries out an investigation into the issues and matters that are within its terms of reference as per the legal instrument that establish it. Its report submitted to the Executive Branch of Government is neither a judgement neither an order which is capable in itself of being executed as perceived by the law".

This uncontested position of the law as regards COI is sacrosanct and I shall adopt same in this matter mutatis mutandis. It was also held in the case of **ATTORNEY GENERAL V. KAMARA (SC MISC APP NO. 4/92 (1992) SLSC** (Unreported delivered on the 11<sup>th</sup> August 1992 that a conviction by a COI would be set aside where the applicant is not heard. It is a cardinal principal in our jurisdiction and in all common wealth jurisdictions that an accused cannot be convicted unless he/she is given the opportunity to be heard and plea taken. In the instant matter the appellant was never allowed to take her his plea. In fact what boggled my mind was, what procedure did the Sole Commissioner employ in convicting and sentencing the appellant? The procedure employed to arrive at conviction for a substantive offence in COI No. 64 is not only strange but unacceptable in the face of the law. I whole heartedly agree with counsel for the appellant that the said recommendation by way of conviction and sentence also offends Section 23(5) of the Constitution of Sierra Leone Act No.6 of 1991.

It is also very relevant to note that Ground 1 of the appeal touches and concerns Jurisdiction which is fundamental in all judicial processes. **IN NOKOPRISE INT CO LTD. V. DOBEST TRADING CORPORATION (1997) 9 NWLR (PT 520) 336** jurisdiction is defined as the "authority which a man hath by a power to do justice in a cause of complaint made before him". In the instant matter the COI derived its jurisdiction (authority) as a creature of statute from the Constitutional Instrument No. 64 supra, which in itself did not bestow any authority on the COI to operate as a court of law with its inherent criminal jurisdiction. The act complained of in Ground 1 is so manifestly wrong that no law or procedure can cure same or turn blind eyes to. In the circumstance Ground 1 of the appeal is potent and thereto must succeed.

The main content of Ground 2 deals with the nature of reception of evidence adduced at the COI particularly regarding the evidence of CW3 Olu Campbell the valuer, who was one of the star witnesses upon whose evidence adverse findings and recommendations were made against the appellant in respect of the confiscation of her property at 1<sup>A</sup> Albert Levay Street, Adonkia Goderich. In my considered opinion a thorough determination of this Ground of Appeal must start by acknowledging who an expert is so as to determine whether CW3 the valuer qualifies to be called an expert for the purposes of the COI herein. In the case of the **STATE OF HIMACHAL PRADESH V JAI**



LAL, 1999 CR.LJ 4294 (SC) an expert is defined as "someone who is skilled and has adequate knowledge of the subject" In the instant case CW3's evidence is that he has been a valuer for about 35 (Thirty Five years.) In essence he is qualified to be called an expert in that context. The fact that he does not possess academic qualification does not in any way diminish his function as an expert.

I have also taken judicial notice that CW3 has been performing the role of a valuer for ages. However, was his evidence in this matter unchallenged and therefore good evidence? CW3 in cross examination said he did not have access to the res at Adonkia subject matter of this appeal but that he stood at a distance and that "the basic valuation adopted is purely an approximate external distance that were estimated by eye view and years of experience" The appellant on the other hand presented a valuation certificate of the said res which was done by a certified professional Architect, Surveyor valuation surveyor Abel Tobore Onomake, who is a member of one of the leading architectural firms Ideas Limited. Such impressive qualification could be found in pages 224-230 of the records as seen in volume II pages 193-223 which gives us a clear picture of the valuation done and the methodology used. At page 204 the valuer clearly stated that the open market value of the property is \$665,394,000 (Six Hundred and Sixty Five Thousand Three Hundred and Ninety Four United States Dollars). When dealing with the value of the property at the time of construction in 2016 he said.

**"The cost of constructing this property in 2016 will therefore in our view be at least 20% less than the ascertained value which in reality is determined by location, depreciation, quality of neighbourhood and the market force of supply and demand"**

Conversely, CW3 in page 171 gave the value of the res at Le1,221,600 (One Million Two Hundred and Twenty One Thousand Six Hundred United States Dollars). The salient question I need to ask, is how did CW3 arrive at the said figure or amount when he did not consider the interior structure of the house and particularly so when he was at a distance? It is important to note also that with the presence of another valuation certificate, it is obvious that the evidence of CW3 is definitely challenged. In essence the credibility of both evidence now bothers on the issue of weight. In my view the weight that is to be attached to the evidence of Mr. Onomake ought to be more superior in view of the fact that he had access to the property and therefore did a thorough examination of same compared to CW is ultimate result from property of the appellant.

The method employed by CW 3 'an approximate external distance that were estimated by an eye view and years of experience' to my mind does not exhibit any professionalism/standard in his valuation for a serious process like this in view of the fact that the deprivation of the appellant's property is ultimate result from a seeming adverse valuation. It is my considered view that Olu Campbell used and over simplistic



valuation method which according to Baum and Crosby 1996 (Price Formation, Mispricing an Investment Analysis in The Property Market Journal of Property Valuation And Investment Vol.14 No. page 36-49) is a recipe for high valuation result as exhibited therein in his report. I am not persuaded by his excuse that he was prevented from gaining access to the property in question especially when there is no concrete evidence of that before the court.

What seems alarming is the sharp variance between the two valuations. What prompts variance in valuation is stated by ESV James Bassey Effiong in his article 'A Review of Valuation Variance and The Need of Effective Valuation Standards in Nigeria'. In that article, the author points out that such variance might occur as a result of the following: lack of valuation manual, valuation methodology, Client's interference, ineffective regulatory framework, integrity of the valuer, nature of the property, the skill of the valuer.

I find the above article persuasive to me. In the instant case, I am of the opinion that the variance in the sum is as a result of the methodology engaged by both valuers. What the court is expected to do in such situation was echoed in the case of *Walasimbi V Standard Bank Ltd* (1981) HCB 64 'the court does play the role as an umpire that evaluates the opinion evidence of the expert with reference to and in the context of the totality of the evidence and then reads its verdict'.

There is a variance of more than 20% in the two valuation results before the court. The acceptable/permissible margin of variance in valuation according to Watkins J in the case of *Singer Friendlander Ltd. V John D Wood & Co* (1977) 2 EGLR 84 is 10 either side of the figure. A 15 variance either way can be acceptable in exceptional circumstances. In this instant case, there is more than 20% variance between the valuation done by CW 3 and Mr. Onomake.

I am of the opinion that Mr. Onomake did a more credible, effective and reliable valuation than CW3. I say so because of the methodology used by the former is more detailed and convincing than that employed by the later, and I shall for those reasons lay credence to Onomake's valuation than that of CW 3.

I therefore agree with the submission of counsel for the appellant I Sorie Esq., when he cited with approval Phipson on evidence 19<sup>th</sup> Ed. That the weight of evidence "depends mainly on common sense logic and experience" the common sense approach in the given situation is that the valuation presented by Abel Onomake is the one this court ought to adopt. In **HALSBURY'S LAW OF ENGLAND/CIVIL PROCEDURE**,



Volume 11 (2015) paragraph 1503, 12 (2015), paragraph 5041218 and 12A (2015) paragraph 12191775/18 "a judge does not pursue an independent enquiry". In essence it is not the duty of the court on appeal to revalue the res but rather rely on the evidence presented by the parties herein.

Having determined the issue on valuation, the next issue I shall address is whether the earnings and emoluments of the appellant were commensurate to the property acquired at 1 Albert Lavey Street, Adonkia and her life style. The appellant has heavily relied on the evidence of Tony Konomanyi DW1, found on page 261 in volume II of the records and his affidavit sworn to on the 22<sup>nd</sup> November 2019 as shown in exhibit K 14. DW1's evidence show that the appellant declared her Assets to parliament in 2013 when she was being screened for appointment as minister. They include some bank accounts such as one at Capital One Bank located in Silver Spring Maryland United States of America with a balance of US\$100,242,46 from 15/9/2012 -12/10/2020 properties and a host of several investments valued millions of leones and thousand of US dollars. In pages 586 –pages 755 in volume 11 of the records, "the appellant presented a plethora of documents manifesting her business transactions, earnings and emoluments. Among the appellant businesses are sole proprietorship business such as Zuu Zuu Enterprises, Petty Enterprises, Guest House and Hospitality businesses, Mining activities etc. All of these from the records in pages 599 -737 of volume 111 show that the appellant was generating huge sums of money to match up with her life style. She also owned companies which generated income as shown in the current account held at GT Bank on Account No. 20732390010001000.

The appellant also presented evidence that as a Cabinet Minister she received a Thousand United States Dollars as rent allowance a month and that these monies were kept by her because she resided in her own house. She also presented evidence that she received salaries emoluments and other benefits amounting to over one billion Leones a year. Based on the entirety of the records the earnings of the appellant have not been controverted. Also the evidence of DW1 in this regard has not been controverted. It therefore remains good evidence.

It is germane to pinpoint that in such matters the reverse burden rest on the Appellant but significantly, the burden of proof just as in criminal and civil cases does not shift to the appellant. What shifts is the evidential burden. The relevant question now is, has the appellant herein manifested such evidence so as to tilt the appeal in his favour? In *SOGFEL SARL V ATTONERY GENERAL AND MINISTER OF JUSTICE* Civ App. 71/2020 the Court of Appeal held that where the appellant fails to present evidence by way of documents to defend the action, mere denial of the allegation will not suffice. Conversely, in the instant case, the appellant has provided a plethora of documents including bank statements to justify her earnings and emoluments from her numerous businesses and position as Cabinet Minister. In my view, a perusal of the appellant's



bank statements and other documents herein are enough. It would be completely harsh and a tall order for the court to dig holes particularly in the said bank statements. By stating that the said bank statements do not reflect specific payments made in the name of each of the Appellants businesses. In fact, the bank statements presented reflect payments made in respect of the appellants businesses.

In my view such evidence is so overwhelming for it not to be considered so as to know that the appellant in view of her income was able to acquire the property at 1 Albert Lavey Drive Goderich. In this regard the findings/recommendations of the Sole Commissioner ought to be overturned in relation to the confiscation of the said property.

I am constrained to delve into Grounds 3, 4, 8,9 as I have already dealt with same under Grounds 1 and 2.

As regards Ground 5, the appellant has not shown any tangible evidence in this regard. There is uncontroverted evidence that complementary words were also used in favour of the appellant and her Counsel. In my considered view Grounds 5, 6 and 7 are untenable on the basis that Section 147 of the Constitution of Sierra Leone Act No. 6 of 1991 is not contingent on Section 150 of the said Constitution. Therefore, the legitimacy of the Commissions of Inquiry cannot be challenged in that regard.

Having thoroughly examined the totality of the evidence before the court and by reason of the above as espoused in this judgement, the appeal herein as regards Grounds 1 2, 3, 4, 8 and 9 is allowed. In the circumstance I order as follows:

1. That the findings/report of the sole commissioners Justice Biobele Georgewill in convicting and sentences the Appellant to a term in prison or fine are hereby set aside forthwith.
2. That the findings/report of the Sole Commissioner justice Biobele Georgewill in respect of the confiscation of the appellant's premises at 1 Albert Lavey Street Adonkia Goderich are hereby set aside.
3. That all adverse findings/report made against the appellant herein by the Sole Commissioner Hon. Justice Biobele Georgewill are hereby set aside.

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Hon. Justice Komba Kamanda JA

I agree

Hon Justice Tonia Barnett JA ..........