

Neutral Citation Number: [2016] EWCA Crim 2302

No: 2015/3694/B4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 16 February 2016

B e f o r e:
LORD JUSTICE BEAN
MRS JUSTICE ANDREWS DBE

THE RECORDER OF MANCHESTER
HIS HONOUR JUDGE STOCKDALE QC
(Sitting as a Judge of the CACD)

R E G I N A

V

ROWLAND NAKANDA

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Mr G King appeared on behalf of the **Appellant**
The **Crown** did not appear and was not represented

J U D G M E N T
(Approved)
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1. LORD JUSTICE BEAN: This is a renewed application for permission to appeal against conviction by Rowland Nakanda, the brother-in-law of a man called James Ibori who was the governor of Delta State in Nigeria from May 1999 to May 2007. During his time as governor, Mr Ibori corruptly obtained in excess of £80 million which he laundered with the assistance of others, including his wife Theresa, the appellant's sister. A restraint order was granted over the assets of Mr Ibori in the Crown Court in this country in 2007. In due course Mr and Mrs Ibori were both convicted and sentenced to terms of imprisonment in this country, the sentences being 13 years for Mr Ibori and five years for Mrs Ibori.
2. As a result of the Iboris being sent to prison, the appellant became the guardian of their three children, all of whom were orders at a well-known English public school. Mr Nakanda assumed responsibility for payment of the school fees which in the period from 2010 to 2012 amounted to more than £158,000. He was charged with money laundering. Count 1 on the indictment alleged the offence of concealing criminal property. Count 2 alleged that he entered into an arrangement which facilitated the acquisition of criminal property. The prosecution's case was that the money for the school fees was derived from Mr Ibori's proceeds of crime. The appellant throughout the relevant period was employed by the Royal Mail on a gross salary of less than £35,000 per year. His accounts however revealed unexplained cash totalling £355,000 which had been credited to various banks, credit cards and store cards held by him and his wife.
3. The prosecution case was that the appellant either knew or at the very least suspected that the sums which he paid over to the school were James Ibori's proceeds of crime. They relied on the appellant's knowledge which was not in dispute that there were well publicised suspicions about the source of his brother-in-law's wealth. There was no dispute that the applicant knew that Mr Ibori's funds had been subject since 2007 to a restraint order, nor that he knew that Mrs Ibori had been convicted of laundering her husband's funds and that her assets had been confiscated.
4. The applicant did not give evidence at trial. The jury did have before them a transcript of an interview in the course of which he gave some substantive answers attempting to give an innocent explanation for his handling of such large sums grossly disproportionate to his earned income.
5. The trial took place in the Crown Court at Southwark before Mr Recorder Douglas Day QC and a jury in June 2015. The prosecution sought to rely on evidence of the applicant's financial activities in Nigeria, including a contract to build an art gallery and the grant of a plot of land. As to the art gallery, there was a company called Rowland & Associates incorporated by the applicant in Nigeria at a time when Mr Ibori was governor. This firm was awarded a contract approved by the governor to build an art gallery for a sum in the region of £200,000. It appears that the firm then subcontracted the contract to build the gallery to another company connected to or controlled by Mrs Ibori for a sum of no more than £80,000. Mr King for the applicant points out that it

was not suggested that the contract was a sham and it appears that the gallery was in fact built.

6. As to the plot of land, the applicant had documents relating to the grant of a plot of land called Plot 47 in Delta State during Mr Ibori's governorship. The documents showed that the land was granted for nothing and that only a peppercorn rent was payable.
7. At the plea and case management hearing, Mr King tells us, the prosecution were given a period of time in which to make any application to adduce evidence of misconduct and that they did not avail themselves of that opportunity. However, when the case came to trial they did seek to call the evidence about the art gallery contract and the land grant on the principal basis that this was not evidence of misconduct or bad character within the definition of the Criminal Justice Act 2003, rather it was evidence to do with the facts of the offences charged: see section 98A. Such evidence of course need not be the subject of a pretrial bad character application. The prosecution case as to the admissibility of the evidence was that it provided two examples of how money representing Mr Ibori's ill-gotten gains was routed or disseminated through his family or alternatively represented a reward to his brother-in-law (the applicant) for his services in hiding Mr Ibori's proceeds of crime.
8. At trial Mr King argued that the evidence did not constitute evidence to do with the facts charged, that no application had been made to adduce it as bad character evidence and that in either event it should be excluded as unfairly prejudicial under section 78 of the Act.
9. The judge rejected those submissions and ruled that the evidence was admissible. He held that it was open to the jury to find that one of the methods used by Ibori to disseminate his ill-gotten gains was to divert them to the benefit of his own family. He also held that the evidence was admissible to rebut the applicant's explanations in interview of how he came by the money. He held that the evidence should not be excluded as unfairly prejudicial.
10. We agree with him in all aspects of this ruling. The evidence in our view was evidence to do with the facts charged and it was open to the jury to rely on it for the purposes indicated in the Recorder's ruling. It was also right for the judge to decide that the evidence should not be excluded under section 78 as unfairly prejudicial.
11. Mr King in his perfected grounds of appeal puts forward a second basis of challenge to the conviction which he realistically admitted was not his strongest point. Mr Nakanda had two minor convictions for dishonesty dating back some 30 years before the trial. The prosecution, it appears, had been unaware of them. The defence brought them to the attention of the court and the jury, as defence counsel often do, understandably, when a defendant is of almost impeccable character and the convictions are old and minor. There was a discussion with the Recorder as to what direction should be given to the jury about character and he said this in the summing-up:

"Now you have been told that Rowland Nakanda has two convictions for dishonesty for which he was fined and ordered to carry out some unpaid

work. He cannot therefore put himself forward to you as a man of good character. However, the offences are now some 30 years old and during that period he has not offended, nor come to the notice of the police in any way. On the contrary, you heard read to you a reference from Mr James Ward of the Thurrock Youth Offending Service, which this defendant has served voluntarily for many years. Mr Ward describes the defendant as intelligent, committed, reliable, with an innate ability to learn and grasp complex situations. He is described as compassionate, objective and level headed. In addition, you also saw and heard from Mr Lee Edwards, a longstanding work mate of this defendant. They have been friends and neighbours for a long time and Mr Edwards described the defendant as trustworthy and as honest as the day is long ... In all the circumstances, you may take the view, and it is a matter for you, that it would be right and fair to treat the defendant as a man of essentially good character and therefore more likely to have given a truthful account when interviewed by the police. However, the weight which you attach to his character is a matter for your judgment and in assessing its significance, you are entitled to take account of all the evidence you have heard about him."

12. It is right to say that the penultimate sentence of this passage in the Recorder's summing-up should perhaps have had added after "more likely to have given a truthful account when interviewed by the police" the words "and less likely to have committed the offences charged than a man of bad character" (or words to that effect). However, we consider that this is a point of no substance in the light of the generous tribute to the applicant's effective good character given by the Recorder when one reads or listens to that passage in the summing-up as a whole. We take a similar view on the use of the phrase "you may take a view and it is a matter for you" rather than "I direct you that you should take the view".
13. In short, we consider that the Recorder acted entirely properly in his direction as to character and accordingly we think there is nothing in this ground either. We therefore refuse the renewed application for permission to appeal against conviction.
14. We turn to sentence where the single judge gave leave to appeal against sentence. The Sentencing Council's Definitive Guideline for fraud, bribery and money laundering offences has three levels of culpability - high, medium and lesser - and a number of categories of harm. As to the categories of harm, these are initially assessed by the value of the money laundered. Plainly these offences fell within Category 4 where the bracket is £100,000 to £500,000 and the starting point is based on £300,000. As to culpability, the Recorder assessed the case as being towards the top end of the medium culpability bracket. The guideline for Category 4 in a case of medium culpability gives a starting point of three years' imprisonment and a category range of 18 months to four years' custody. In passing sentence, the learned judge said this:

"I am essentially treating you as a man of good character, you have two minor convictions some 32 years ago which I am going to ignore. The pre-sentence report which I have read makes it clear that you have done

good work in the local community over a large number of years and that you are much respected in the local community ... You are the father of two young children and, I am told, that there is a third child on the way. I have been shown medical evidence which shows that you are not in the best of health. I therefore take all those matters into account in coming to the sentence in respect of which I have been referred to the Sentencing Guidelines. It is agreed that this is a Category 4 offence in relation to the value of the money laundered. As far as culpability is concerned, this is, in my judgment, at the top of medium culpability, category B. You were obviously involved in the money laundering over a sustained period of time but any of the other indicia of high culpability are not present. As far as aggravating features are concerned, it is said by the Crown that the fact that you were present at the trial of Mrs Ibori and were well aware of the misconduct, both of her and her husband, does aggravate the fact that you thereafter went on to receive cash in respect of which you paid the school fees and some of which found its way into your bank accounts."

Earlier in the sentencing remarks he said that he proposed to sentence the appellant:

"... on the basis that at the very least, and I am perhaps being over-generous here but even at the very least, you suspected that the unexplained cash that you were crediting to your accounts which you were using to pay the school fees was the proceeds of James Ibori's criminal conduct."

15. At the end of his sentencing remarks, the Recorder referred to the submission of Mr King which has been repeated before us that in accordance with the recommendation in a pre-sentence report he should impose a suspended sentence of imprisonment. The Recorder said:

"Sadly, I do not think I can. It is a matter of great regret that I am unable to suspend the sentence that I am going to pass, particularly in view of your family position..."

Mr King submits that the Recorder could and should have imposed a suspended sentence.

16. We are unable to say that the Recorder erred in any way. His sentencing remarks following the trial over which he had presided carefully weigh up the aggravating and mitigating factors. The sentence which he imposed following a trial was below the starting point for a Category 4 medium culpability offence and was below the starting point notwithstanding his finding which he was clearly entitled to make that this case was at the top end of medium culpability.
17. We do not consider that 30 months was an excessive sentence and accordingly the appeal against sentence is dismissed.