

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE HONOURABLE JUSTICE I. O. OLAKANMI - JUDGE
THIS 13TH DAY OF JULY, 1998

BETWEEN:

R. O. ADEWOLE ...

SUIT NO. I/2CA/97

AND

COMMISSIONER OF POLICE ...

APPELLANT

RESPONDENT

JUDGMENT

This is an appeal against the judgment of the Chief Magistrate Grade I (as she then was) Mrs B. Fagbenro in charge No MI/1870^c/95 delivered on the 23rd day of January, 1997.

There were just two original grounds of appeal filed on behalf of the appellant.

By a motion on Notice dated the 8th day of December, 1997 leave was sought and was granted by this court, to file an Amended Notice of Appeal which contained 7 grounds of Appeal which were argued on behalf of the appellant, by his Counsel Mr Eruka, before this court.

It has to be observed that all opportunities given to the respondents's Counsel the DPP of Oyo State were thrown into the dust bin. Surprisingly notwithstanding the fact that the Learned Counsel for the Appellant Mr Eruka personally according to him, the proof of which he showed to this court, went to the DPP's office at the Secretariat and met the legal officer to whom the appeal was assigned on various occasions to intimate him of the adjournment dates coupled with the various affidavits of service on the DPP filed by the court's bailiff, no legal officer appeared to argue this Appeal. Hence this court is left with the submissions of the learned counsel for the appellant to contend with. This court views this attitude from the DPP's office ^{as} rather unbecoming.

In arguing this appeal Mr Eruka for the Appellant dealt with Ground 1 and submitted that the trial Chief Magistrate erred in law by assuming jurisdiction, as she did, over this charge which offence was committed at Ondo State a place outside the jurisdiction of Oyo State and that S 64 (d) of the criminal Procedure Act under

-2-

which the trial Chief Magistrate hid does not confer jurisdiction on her.

Although the learned Counsel for the appellant did not properly expatiate, based on law, on this, it behoved this court to examine carefully the provisions of S. 64 (d) of the Criminal Procedure Act Cap 80, in volume V Laws of the Federation of Nigeria 1990 as they affect the fact of the present case.

Before doing that one could see that the alleged offence of conversion was committed, as it were in Ondo State. Part of the evidence of PW1 one Gabriel Ajayi Ojo the Accountant of International Insurance Group Nigeria Ltd Challenge Area Ibadan at page 2 from line 25 to line 35 is as follows:-

"I know the accused. He was the Branch Manager of the International Insurance Group Nigeria Limited at Ondo, branch, representing Ondo State. On 20th July, 1994, the accused came to the office at Challenge with some businesses of some clients on which he issued a cheque ₦89,198.00 (eighty-nine thousand, one hundred and ninety-eight Naira only). He told me not to present the cheque for payment until 6th September, 1994, so on 6th September, 1994 we presented the cheque and it was returned unpaid on 9th September, 1994. So I went to Ondo State to inform him and I also sent an official of the company. Since that time he refused to honour the cheque."

The above is the bedrock of the evidence in proof of the charge. From the above it is crystal clear that the accused person was a representative of the Insurance Company in Ondo State although the company has its head office in Ibadan. The premium the accused collected were collected at Ondo State, not in Oyo State but the cheque he presented was presented at Ibadan in Oyo State to cover same. This is the crux of the problem of jurisdiction. It is now appropriate from the above to consider S. 64 (d) of the C.P.A. which provides

"Subject to the powers of transfer contained in the Act or Law constituting any Court, the place for the trial on investigation of offences by such court shall be :- (d) (i) when it is uncertain in which of several

divisions or districts an offence was committed; or
(ii) when an offence is committed partly in one division or district and partly in another or

- (iii) when an offence is a continuing one, and continues to be committed in more divisions or districts than one; or
(iv) when it consists of several acts committed in different divisions or districts, it may be tried or inquired into by a court having jurisdiction in any of such divisions or districts."

The accused in this case was stationed at Ondo State. The premiums he collected which culminated in the sum of ₦89,198.00 came from the Ondo State. But the cheque for the sum which bounced he presented to the company's Accountant at Ibadan in Oyo State. The conversion could be said to have taken place in my view either in Ondo or Oyo State. This court holds the view that the charge could be laid either in Ondo or Oyo State going by the quoted provisions of S. 64 (d) of the C.P.A. above.

The sum total of the above is that the trial Chief Magistrate was legally and perfectly in order when she assumed jurisdiction over the case.

Hence the Ground 1 of the appeal as canvassed before this court failed and the appeal is disallowed on it.

Having thus held it is apt to consider the other grounds in the Appeal.

The argument of Learned counsel for the Appellant on Ground 2 was that the appellant was tried without his counsel.

This argument cannot hold in view of what is contained at page 2 lines 8 - 10 of the records of Appeal quote-

"The accused is present. Inspector O. Cloyede for the prosecution.

Mr F.A. Eruka for the accused." This was on 16th December 1996 when trial commenced.

At page 3 from line 25 we have cross-examination of PW1 by Mr Eruka. On 20/12/96 when Mr Eruka was absent one Mr O. Uwana held his brief. See line 28 of that page

"Mr O. Uwana now holds Mr Eruka's brief for the defence. Mr. Uwana was present for the defence throughout the period when PWs gave their evidence and even cross-examined them. See from page 7 lines 25 and 26 -

"CASE FOR PROSECUTION

NOTE:- Mr. Uwana now applies for an adjournment to open defence."

On 14/1/97 when the defence opened Mr. Eruka was present for the defence.

So that the accused was defended by Counsel throughout. This ground of appeal equally fails.

Ground 3 of the appeal is equally on a shaky ground. One wonders how the subpoenaing of Dr. Moses Abayomi Obajimi by the court, who in the first instance the defence had earlier applied to call can now be seen as offensive. The mere fact that his evidence has not been favourable to the accused cannot without more render the evidence inadmissible in Law. Indeed Mr Eruka could not cite any legal authority to back up his submission on this. This ground also fails.

On Ground 4 Learned Counsel argued that the complaint against the accused was issuing bounced cheque, where as there was evidence that as at the time trial was to commence the accused was no longer owing the complainant. This argument, no doubt, cannot hold because the charge had already been laid before the trial Chief Magistrate since 14th September, 1995? The mere fact that the accused was negotiating with the complainant to repay the sum of ₦89,198.00k has nothing to do with the criminal charge he was facing. This ground is flimsy.

Ground 5 and 6 cannot also stand for the mere fact that the accused was not issued a querry does not exonerate him from the offence of converting the company's money into his own use and failing to pay same up.

Also his story of the money being a loan to him from the chairman of the company i.e. Dr. Moses Abayomi Obajimi had been rebutted by the same chairman at page 15 lines 12 - 15.

"I had the case reported to the police not necessarily to allow police to recover the money

but to serve as deterrent to other managers as an offence has been committed. I deny that I saw any car belonging to the friend of the accused."

At page 21 lines 1 and 2 the Chief Magistrate in her judgment found as follows.

"Even the accused did not mention this fact of loan in his extrajudicial statement (Exhibit 'C'). He was silent on the issue."

So that accused's loan story was considered as afterthought by the trial court.

Ground 6 fails entirely.

As regards Ground 5 regarding the rejection of R¹ and R² respectively. Let me say that the reason for the rejection of R¹ is not well founded. The mere fact that it bears no official stamp is not enough to reject it. It bears conspicuously International Insurance Group (Nig) Ltd with its office address there and there is even a No on the receipt.

It also contains the following information

Premium Due	-	169,168.00
Deposit paid	-	80,000.00
Balance Due	-	89,168.00

The balance consorts with the sum of money for which the accused/appellant was tried. One is of the firm view that the said document was quite admissible. Weight to be attached to same is a different thing entirely.

That notwithstanding the question to answer is -

Could its admissibility and acceptance change the position of the accused? The answer is emphatic 'No'. Because the rejected document even supports the case for the prosecution that the balance of ₦89,168.00 was still outstanding and remained converted. It also shows in fact that the sum could not have been a loan from the chairman as the accused/appellant would want this court to believe.

R² stands no better stead. Even if it has been admitted little or no weight should have been attached to it, as there is nothing on the cheque to indicate that it was bonus to the appellant.

Ground 5 and 6 therefore fail. On Ground 7, I believe it matters not who tendered what once the trial Chief Magistrate believed as she did not merely on the evidence of the prosecution but also from the evidence of the appellant that a sum of ₦89,168.00 was the balance collected by the appellant and not remitted to the complainant/company.

Learned Counsel's submission on this ground also fails. Consequently the appeal fails in its entirety and it is hereby dismissed.


HON. JUSTICE I.O. OLAKANMI

JUDGE