

MUKOTO v THE PEOPLE (1974) ZR 53 (SC)

SUPREME COURT 15

DOYLE CJ, BARON DCJ AND HUGHES JS

12th MARCH 1974

(Appeal No. 3 of 1974)

Flynote

Criminal Law - Forgery - Name assumed for purpose of effecting a fraud - 20
Whether fictitious within meaning of s. 344 (d) (ii) of Penal Code.

Headnote

The appellant was convicted of forgery, uttering and attempting to obtain money by false pretences, all the charges arising out of the same transaction. He appealed against the convictions for forgery and uttering on the ground that the cheque he had signed, although it was 25 in an assumed name, was not a false document because it was exactly what it purported to be and was no more than a falsehood reduced to writing.

Held:

If a person signs a document in an assumed name for the purpose 30 of perpetrating a fraud the document is false within the meaning of s. 344 (d) (ii) of the Penal Code.

Cases cited:

- (1) *Charles Phiri v The People* 1973 ZR 168.
- (2) *R v Martin* (1879) 5 QB 34.
- (3) *R v Hassard, R v Devereux* [1970] All ER 647.

Legislation referred to:

Penal Code, s. 344 (a), (d) (ii).

G M Sheikh, Senior Legal Aid Counsel, for the appellant.

D K Chirwa, Senior State Advocate, for the respondent. 40

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Judgment

Baron DCJ: delivered the judgment of the court. The appellant was charged on three counts of forgery, uttering a false document, and attempting to obtain money by false pretences. These charges all related to a single transaction the facts of which shortly were these. 5 The appellant went into the Commercial Bank in Kitwe and asked to see the manager; he told the manager that he had an account with the Ndola Branch in the name of Kabunda Store, and that he wished to withdraw K200 from the Kitwe Branch which he said he would repay on the following day after selling some fish in Kitwe. The manager said 10 that if he had an account in Ndola he could write a cheque on the account, and the appellant said in reply that he had K6,000 in the Ndola account. The manager telephoned the Ndola Branch and discovered there was no account there in the name of Kabunda Store. He suspected the appellant, who had given the name of Phiri, to be attempting to obtain money 15 by false pretences. The manager then handed the appellant a blank cheque and asked him to complete it and sign it, and after the appellant had done this the manager crossed out the word Kitwe on the cheque form and substituted Ndola because the cheque was to be referred to the Ndola Branch.

Mr 20 Sheikh on behalf of the appellant makes two submissions: first, he suggests that the bank manager in a sense trapped the appellant into committing the offences of forgery and uttering, but he does not seriously pursue this submission since in any event this would not invalidate the conviction. Mr Sheikh's main submission is his second one, 25 which is that the cheque was not a false document because it did not tell a lie about itself but merely reduced certain falsehoods to writing, and he relies for that proposition on the judgment of this court in the case of *Charles Phiri* [1] and on certain old English cases and in particular *R v Martin* [2]. It may be that the case of *R v Martin* [2] was decided 30 on its special facts; there the accused, who drew the allegedly forged cheque in the presence of the payee, had been known to the latter for some twenty years. On the other hand that case did contain a dictum

which has been one of the bases upon which the English law of forgery has been developed. Be that as it may, section 344 of our Penal Code, 35 which defines what is a false document, is the legislation on which we must proceed, and if it can be shown by the prosecution that this document falls within that section then the offence is committed.

Paragraph (a) of section 344 reads:

"Any person makes a false document who - 40

(a) makes a document purporting to be what in fact it is not; "

Mr Sheikh submits that the document in this case purports to be a cheque signed by J Phiri on an account in the name of Kabunda Store, and that this is precisely what it was; in other words, he submits that this was a falsehood reduced to writing and not a false document, and if that 45 was so, as we pointed out in the case of *Charles Phiri* [1], the document would not be a forgery. We find it unnecessary to say whether on the facts of this case that submission is tenable, because it seems to us that

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the matter is put beyond doubt when we turn to sub-paragraph (d) (ii), which says that a document is a false document if it is signed:

"in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;". 5

In the present case it is clear that the appellant's name was not J Phiri and that there was no Kabunda Store.

A similar question was considered by the Court of Appeal in England in *R v Hassard, R v Devereux* [3]. Section 1 (2) of the Forgery Act, 1913, 10 provides:

"A document is false within the meaning of the Act ...

(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person . . ."

Lord Parker, CJ, delivering the judgment of the court, said at page 649: 15

". . . the argument for the appellants is simple. It is said that this document was not made otherwise than by the authority of the person who made it, namely the appellant Devereux in her assumed name, and that this is not a case of it being made by or on behalf of a fictitious person. 20

...It is, in the opinion of this court, quite impossible to say that this is a case of a woman who has assumed a name different from her own, and assumed that name, as it were, at large. This is merely a case where she has adopted for the purposes of this fraud the fictitious name of B S Andrews. In these circumstances 25 it seems to this court that the case falls fairly and squarely within sections 1 and 2 of the Forgery Act, 1913."

The facts of that case were even stronger in favour of the appellant than the case now before us. In the English case the appellant Devereux had actually opened a bank account in an assumed name, an action 30 which was perfectly lawful in itself; but she had done so for the purpose of perpetrating a fraud and it was held that when she signed a cheque in that name she purported it to be made by a fictitious person within the meaning of section 1 (2) of the Forgery Act. On the same reasoning the names "J. Phiri" and "Kabunda Store" were fictitious in the 35 circumstances of the present case, and we are satisfied that these facts fall squarely within section 344 (d) (ii) of the Penal Code and that the appellant was properly convicted of forgery and uttering, as well as of attempting to obtain money by false pretences.

The appeal against sentence is not pursued. This appeal against 40 both conviction and sentence is therefore dismissed.

Appeal dismissed