

IN THE FEDERAL COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
27TH APRIL, 1979. FCA/1/83/78

CORAM:- O. AKINKUGBE, A. I. ASEME, M. M. A. AKANBI, JJCA

CAMPBELL AKURE	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL LAW - Conversion - Dishonoured cheque - Where the appellant who issued a first cheque that was dishonoured - Issued a second cheque to the same person that was also dishonoured - And the money was not refunded despite repeated demands - The evidence shows nothing short of fraudulent conversion.

CRIMINAL LAW - Dishonoured cheque - Appellant was not expected to pay cash - If his cheque would be accepted - But if he was to pay by cheque he should be careful that he had sufficient fund - To meet his liability.

CRIMINAL LAW - Dishonoured cheque - Issuing of cheque when the bank account could not be operated - The logical conclusion in the absence of explanation - Is that the appellant knew he had no right to draw on his account - At the time he drew the cheque.

FACTS

The appellant was charged with stealing the sum of N1,163.20 from one Abraham Ideh contrary to s. 331(8) of the Criminal Code cap. 28 of the Laws of Western Nigeria. The appellant a Travel Agent was given the sum in question by the complainant on behalf of himself and two others in order that he might obtained three passports and three air thickets for their impending travel to Europe. Although the appellant was

paid cash, he however paid the Airlines - Alitalia -from whom he obtained the tickets by cheque. When the cheque was presented to the bank for encashment it was dishonoured. The appellant on being informed by the District Manager of the Airlines issued another cheque which was again dishonoured. It was after this that the complainant and his two associates were prevented from travelling abroad with the three tickets earlier delivered by the appellant.

The appellant having failed either to give the complainant and his friends tickets that would allow them to travel abroad or refund the money paid to him for the tickets, complaint was then lodged with the Police and the appellant was later charged to court. The appellant in his defence gave as excuse for the dishonouring of the cheque the embargo placed on his bank account by a judge of the High Court before whom he had a case. The learned trial judge found the appellant guilty and sentenced him to 18 months I.H.L The appellant aggrieved appealed to the Court of Appeal, Ibadan division.

ISSUE FOR DETERMINATION

Whether the judgment of the court can be supported having regard to the whole evidence.

HELD (Unanimously dismissing the appeal per judgment delivered by **AKINKUGBE JCA**

Dishonoured cheque

1. The sum of N985.20 was paid to the appellant by cash on 6/8/73, nobody would normally expect him to pay by cash to the Air-lines if the latter would accept his cheque but if he was to pay by cheque he should be careful that he had sufficient fund to meet his liability. (p. 665 F)

Issuing of cheque when the bank account could not be operated

2. In the case in hand the appellant himself said that his accounts had been restricted before August 1973 and he never explained that at the time he issued the cheque he was not aware of that fact. The fact that he made a statement from the dock did not give the prosecution the advantage of asking any question on that and in the absence of explanation

from him as to why he gave the cheque knowing fully well that he could not operate his bank account, the logical conclusion one could draw is that he knew that he had no right to draw on his account at the time he drew the cheque on Alitalia Air-Lines. (p. 665 G)

Criminal - conversion

3. Even if he forgot at the time he sent in the first cheque or he was of the mistaken view that he was creditworthy, the complaint of the District Manager the 4th P.W. on 7th August 1973 should have put him on his guard. Instead of being wary about issuing another cheque he issued a second cheque that was dishonoured and up till January 1976 when the 1st P.W. was giving his evidence the money had not been refunded to the 1st P.W. despite repeated demands. The evidence shows nothing short of fraudulent conversion. (p. 666 B)

REPRESENTATION

Mr. Tunde Elemide for the Appellant

Mrs. B. O. Adebayo Asst. Director of Public Prosecutions for the Respondents

REASON FOR JUDGMENT DELIVERED BY AKINKUGBE JCA

On 22nd March 1979, the appeal of the appellant Campbell Akure who was charged with stealing the sum of N1,163.20 from one Abraham Ideh contrary to s. 331 (8) of the Criminal Code Cap. 28 of the Laws of Western Nigeria 1959 was dismissed after we have heard arguments of counsel - Mr. Elemide for the appellant and Mrs. Adebayo Assistant Director of Public Prosecutions Oyo State for the State.

According to the Prosecution, the appellant was given a total sum of N1,163.20 by on Ideh on behalf of himself and two others in August 1973 in order that the appellant who claimed to be a Travel Agent might obtain for them three Passports and three air tickets for their impending travel to Europe. The breakdown of the N1,163.20 is N178.00 for the three passports and the balance of N985.20 for the thee air Tickets. The N178.00 was paid to the appellant on 2nd August 1973 and the

N985.20 was paid to the appellant in cash on the 6th August 1973. The appellant on 6th August 1973 gave three air tickets to the 1st P.W. Ideh. The appellant however did not pay the air-Lines - Alitalia - from whom he obtained the three air tickets in cash but rather he paid by cheque. When the cheque was presented to the Bank for encashment it was dishonoured and the District Manager of Alitalia Air-lines had to look for the appellant until he saw him in a drinking bar on 7th August 1973 from where the manager called him out to speak to him.

He narrated to the appellant that the cheque earlier given to his Air-Lines - Alitalia - by him had been dishonoured. The appellant expressed his regret and gave another cheque which was an open one. The 4th P.W. then sent it to the Bank, by then the appellant left the 4th P.W. under the pretext that he was going to finish his drink. When the person the 4th P.W. sent with the cheque returned, the former reported that the cheque was again dishonoured. It was after this that Abraham Ideh and his two associates were prevented from travelling abroad with the three air tickets earlier delivered to them by the appellant. It was because the appellant had failed either to give Abraham Ideh and his friends tickets that would allow them to travel abroad or refund the money paid to him namely the sum of N985.20 for the three air tickets that complaint was lodged to the Police and the appellant was later charged to court.

In view of the disappointment, the complainant - Ideh and his two associates had to obtain three new air tickets with which they travelled abroad by the end of August 1973. In spite of repeated demands the appellant had not up to 15th day of January 1976 refunded the money paid to him by Ideh.

The appellant in defence made a statement from the dock. He never disputed the story told by the 1st P.W. about the payment of N985.20 to him for the three air tickets and that his cheques given twice to Alitalia Air-Lines for that sum of money were also dishonoured.

He said he travelled to the U.S.A. on 24/8/73 and never returned until October 1979. He gave as excuse for the dishonouring of the cheque for N985.20 - the embargo as it were placed on his Bank Account by a Judge of the High Court before whom he had a case before August 1973.

The learned trial judge Agbaje J. as he then was found the appellant guilty to the extent of stealing the sum of N985.20 the cost of the three air tickets and sentenced him to 18 months I.H.L.

Six grounds of appeal were argued some of which overlap but the sum total of the six grounds could be considered under three, namely, B that:-

(1) the ingredients of stealing were not proved.

(2) judgment cannot be supported having regard to evidence.

(3) considering the whole evidence before the court the appellant should have been given benefit of the doubt. C

The gravamen of Mr. Elemide's submission is that since the appellant said that he was unable to operate his bank account by the order of the Court, the onus is on the prosecution to prove that the appellant had no sufficient fund to meet the sum of N985.20 paid to him by the 1st P.W. D after he later sent his cheque for the sum which was later dishonoured.

Mrs. Adebayo argued that the appellant was paid in cash and not by cheque and was bound to pay the cash to the Air-Lines. She importantly stressed that the appellant knew that an embargo had been placed E on his bank account at the time he sent the cheque for N985.20 to Alitalia Air-Lines. She referred us to a passage in the appellant's statement from the dock which is as under:-

"Before August 1973, I had a case in court before Thompson - F Judge which restricted my access to my bank account."

The sum of N985.20 was paid to the appellant by cash on 6/ 8/73, nobody would normally expect him to pay by cash to the Air- lines if the latter would accept his cheque but if he was to pay by G cheque he should be careful that he had sufficient fund to meet his liability. In the case in hand the appellant himself said that his accounts had been restricted before August 1973 and he never explained that at the time he issued the cheque he was not aware of H that fact. The fact that he made a statement from the dock did not give the prosecution the advantage of asking any question on that and in the absence of explanation from him as to why he gave the cheque knowing fully well that he could not operate his bank ac-

count, the logical conclusion one could draw is that he knew that he had no right to draw on his account at the time he drew the cheque on Alitalia Air-Line.

It is to be remembered that on 7th August he gave the District
B Manager of Alitalia Air-Lines a second cheque which was open. Even if
he forgot at the time he sent in the first cheque or he was of the
mistaken view that he was creditworthy, the complaint of the Dis-
trict Manager the 4th P.W. on 7th August 1973 should have put him
C on his guard. Instead of being wary about issuing another cheque
he issued a second cheque that was dishonoured and up till January
1976 when the 1st P.W. was giving his evidence the money had not
been refunded to the 1st P.W. despite repeated demands.

The evidence shows nothing short of fraudulent conversion
D and we hold that the appellant was rightly convicted.

We could find no justifiable cause to interfere with the decision
of the learned trial judge.

The above are the reasons why on 22nd March we dismissed
E the appeal.

F

G

H