REPUBLIC OF KENYA
Oremo v Republic

Court of Appeal, at Nairobi
March 14, 1991

Gachuhi, Masime JJ A & Omolo Ag JA

Criminal Appeal No 95 of 1990

(Appeal from a conviction, sentence of the High Court of Kenya at Nairobi,

(Porter & Mbaluto JJ) dated 29th May 1990 in HCCR A 1081 of 1990)

Criminal Law *– possession of false documents – whether court can infer knowledge of falsity of document on the accused.*

Evidence *– rebuttal - whether prosecution must rebut every imaginable possibility.*

The appellant was convicted of the offence of uttering a false document contrary to section 353 of the Penal Code.

He appealed through counsel who argued that on the evidence recorded at the trial of the appellant there was no justification for the two lower courts to make the concurrent inference that the appellant either made or was privy to the making of the false documents.

It was the appellants advocate's main contention that the offence had two basic ingredients namely knowledge of the falsity of the documented intention to defraud.

Held:

1. The courts below were entitled to draw the inference that since the appellant was in possession of false documents which he uttered to his employer in order to obtain payment to himself, he must have known the documents were false.

2. The prosecution is not required to negative each and every imaginable possibility, but only to negative such possibilities as are reasonably raised by evidence.

3. The appellant had ample opportunity both at his trial and on the first appeal to raise such possibilities and how he came to possess the false vouchers, but he did not do so. This is not the same thing as shifting burden of proof to him.

Appeal dismissed.

Cases

No cases referred to.

Statutes

Penal Code (cap 63) section 353

March 14, 1991, the following Judgment of the Court was delivered.

The appellant, having been acquitted by the two lower courts on various counts of forgery, making a document without authority and obtaining money by false pretence, stands convicted on three counts of the offence of uttering a false document contrary to section 353 of the Penal Code.

Learned counsel has in this appeal submitted that the offence charged has two basic ingredients namely knowledge of the falsity of the document and intention to defraud. He went on to argue that on the evidence recorded at the trial of the appellant there was no justification for the two lower courts to make the concurrent inference that the appellant either made or was privy to the making of the false documents.

While conceding that the documents which the appellant had used to support his medical claims were false counsel submitted that the evidence of PW1 and PW2 did not exclude the possibility that other staff at the medical institutions those witnesses represented could have forged those documents or that the appellant's relatives could have been treated at those institutions without their particulars being recorded in the relevant admissions registers.

There is no evidence on record to support any of those submissions. PW1 was an accountant at the City Nursing Home and had worked there for five years. She categorically stated in her evidence that the documents shown to her in court and against which the appellant had claimed money from his employer were not from her (PW1's) hospital.

Again PW2 was an employee of Westlands Cottage Hospital and was in charge of issuing receipts. His categorical evidence was that having checked his books, he found that one Mary Nabwire, apparently the appellant's wife, had not been admitted to the hospital during the relevant period. It was not suggested to PW2 that it was possible to admit patients to the hospital without the names of such patients being entered in the relevant hospital records. Nor did the appellant claim in his evidence that such possibility existed. In the face of the evidence of PW1 and PW2 the courts below were entitled to draw the inference that since the appellant was in possession of false documents which he uttered to his employer in order to obtain payments to himself, he must have known the documents were false. Our understanding of the law is that the prosecution is not required to negative each and every imaginable possibility; the prosecution is only required to negative such possibilities as are reasonably raised by the evidence, either of the prosecution itself, in cross-examination, or of the defence. The appellant had ample opportunity both at has trial and on the first appeal to raise such possibilities and to explain how he came to possess the false vouchers, but he did not do so, this is not the same thing as shifting the burden of proof to him. The issue of his possession of the false vouchers was a matter so peculiarly within his own knowledge that it was only him who could have explained it. The prosecution could not have been expected to know how the appellant came to possess the vouchers. It is too late in the day to try to explain that possession in the face of the concurrent findings of fact on that issue by the two lower courts. In the circumstances, we find no merit in the appeal and it is ordered to be dismissed.