

29,1955

~~C. 44 G. 3~~

-4 JUL 1956

No. 45 of 1954.

In the Privy Council.

43604

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

- (1) SAMUEL ALADESURU
- (2) FOLAHAN AKINSANYA
- (3) KOLA LADEJO *Appellants*

AND

- 10 THE QUEEN *Respondent.*

Case for the Respondent.

RECORD.

1. This is an appeal from a judgment, dated the 29th July, 1953, of the West African Court of Appeal (Verity, C.J., Jibowu and Hurley, JJ.) dismissing an appeal from a judgment and sentence, dated the 11th May, 1953, of the Supreme Court of Nigeria (Gregg, J.), whereby the Appellants were convicted of making and publishing a false statement of account contrary to s. 436 (a) of the Criminal Code of Nigeria and were sentenced to five years' imprisonment with hard labour. pp. 35-39.
pp. 15-28.

20 2. The Appellants were tried, together with a man named Bank-Iyun, on an indictment containing seven counts. The first four counts charged the Appellants with having, being directors of the Standard Bank of Nigeria, Ltd., stolen certain money and articles from the Bank. On these counts the Appellants were acquitted. The fifth count charged the Appellants and Bank-Iyun with making, and the seventh count with publishing, being directors of the Bank, the balance sheet of the Bank as at the 31st March, 1952, showing certain particulars which to their knowledge were false, with intent to deceive any member, shareholder or creditor of the Bank. (The seventh count was added at the trial by leave of Gregg, J.). The sixth count concerned only Bank-Iyun, who was pp. 1-3; p. 6.
pp. 6-8.

30 acquitted on all three counts.

3. The statutory provisions relevant to this appeal are the following :—

THE CRIMINAL CODE (Laws of Nigeria, 1948, Vol. II, page 26).

Section 436.

“ Any person who, being a promoter, director, officer, or auditor, of a corporation or company either existing or intended

to be formed, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following purposes :—

- (a) to deceive or to defraud any member, shareholder, or creditor, of the corporation or company, whether a particular person or not ;
- (b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof ;

is guilty of a felony, and is liable to imprisonment for seven years.

The offender cannot be arrested without a warrant.”

THE WEST AFRICAN COURT OF APPEAL ORDINANCE (Laws of Nigeria, 1948, cap. 229).

“ *Appeals in Criminal Cases.*

Right of Appeal and Determination of Appeals.

Right of appeal in criminal cases.

10. A person convicted by or in the Supreme Court . . . may appeal to the court of appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone ; and
- (b) With the leave of the court of appeal, or upon the certificate of the judge who tried him . . . that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal ; and
- (c) with the leave of the court of appeal against the sentence passed on his conviction unless the sentence is one fixed by law ;”

* * * * *

Determination of appeals in ordinary cases.

“11. (1) The Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal ;

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.”

* * * * *

Section 14 (1).

“ Where a person convicted desires to appeal to the court of appeal, or to obtain the leave of that court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within fifteen days of the date of sentence, in the case of a conviction by or in the Supreme Court, or within fifteen days of the date of the decision of the Supreme Court on appeal in the case of a conviction in a native court.”

10 WEST AFRICAN COURT OF APPEAL RULES 1950. (Colony and Protectorate of Nigeria : Rules of Court, No. 2 of 1950.)

“ *Criminal Appeals.*

“ obligation on appellant to fill up forms of appeal notices and answer questions thereon. Criminal Forms 1-4 and 6 ”.

43. A person desiring to appeal to the Court against conviction or sentence shall commence his appeal by sending to the Registrar of the Court below a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notices respectively in Forms 1 to 4 or 6 in Appendix C, and in the notice or notices so sent shall answer the questions and comply with the requirements set forth thereon. The answers to the questions which an appellant is by this rule required to make in support of his request to be present at the hearing of his appeal shall be deemed to be applications to the Court in such matter.”

20

* * * * *

“ Notice of application for leave to appeal ”.

“ 49. Where the Court has, on a notice of application for leave to appeal duly served and in Form 2 or 3 in Appendix C, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal, but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal.”

30

* * * * *

“ Waiver of non-compliance with rules ”.

“ 68. Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court consider that such non-compliance was not wilful and that it is in the interests of justice that non-compliance be waived. The Court may in such manner as they think right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify the appellant of any directions given by the Court under this rule, where the appellant was not present at the time when such directions were given.”

40

“ CRIMINAL FORM 2.
IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST
A CONVICTION.

(Rule 43)

REX

v.

To THE REGISTRAR OF THE

“ Here state the offence, e.g., larceny, murder, forgery, etc.”
“ Where Applicant for any reason not in custody ”.

I, _____ having
been convicted of the offence of _____ 10
and now being a prisoner in His Majesty’s Prison at _____
(or now living at _____)
) and being desirous
of appealing against my said conviction DO HEREBY GIVE
YOU NOTICE that I hereby apply to the Court for leave to
appeal against my said conviction on the grounds hereinafter
set forth.”

(The first part of Criminal Form 2 ends as follows):—

“ . . . on the grounds hereinafter set forth.

(Signed _____ 20
or mark)

Applicant.

Signature and address of Witness
attesting mark.

Dated this _____ day of _____ 19 ____.”

“ PARTICULARS OF TRIAL AND CONVICTION.

“ Fill in these particulars ”.

1. Date of trial
2. In what Court tried
3. Sentence

Grounds of Application : _____ 30

“ Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction ”.

1. If you desire to be present when the Court considers your present application for leave to appeal, state—

- (a) Whether or not you are legally represented, and
- (b) the grounds on which you submit that the Court should give you leave to be present thereat.

2. The Court will, if you desire it, consider your case and argument if put in writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal. 40

State if you desire to be present at the final hearing of your appeal.”

4. The Appellants pleaded "Not Guilty" to all the charges against them. They were tried before Gregg, J., on sixteen days between the 13th April and the 4th May, 1953. For the purposes of this appeal it is necessary to summarise only the evidence led by the Respondent to prove that the Appellants were directors of the Bank. This evidence consisted of the following documents:—

10 (i) Two returns under section 76 (1) of the Companies Ordinance (exhibits B and C), dated the 11th October, 1950, and the 14th May, 1952, respectively, giving particulars of the directors of the Bank. Each return was signed by the first Appellant as a director, and named all three Appellants as directors. pp. 43-45.

(ii) A return under section 27 of the Companies Ordinance (exhibit D), dated the 19th September, 1952, giving a summary of the share capital of the Bank. This return was signed by the first Appellant as a director, and named all three Appellants as directors.

20 (iii) A return under section 89 of the Companies Ordinance (exhibit E), dated the 28th August, 1952, of allotments of shares in the Bank. This return showed each of the Appellants as an allottee of two thousand shares, and was signed by the second Appellant as a director.

(iv) The copy of the memorandum and articles of the Bank filed with the Registrar of Companies (exhibit F). The memorandum and articles both contained the printed names of the three Appellants as sole subscribers, and each of the Appellants had signed the document in both places.

(v) A share certificate of the Bank (exhibit H.2) signed by the third Appellant as chairman, and the first and second Appellants as directors. p. 46.

30 (vi) The balance sheet mentioned in the fifth and seventh counts (exhibit Q), signed by the first and third Appellants as directors and the second Appellant as general manager.

5. None of the Appellants gave evidence or made a statement and no witnesses were called on their behalf.

40 6. Gregg, J., delivered his judgment on the 11th May, 1953. He first dealt with the case against Bank-Iyun, whom he acquitted. He then dealt with the first four counts, on which he acquitted all the Appellants. Coming to the fifth and seventh counts, the learned Judge first held that the balance sheet was false and misleading, and the three Appellants concurred in making and publishing it, knowing it to be false, with intent to deceive any member, shareholder or creditor of the Bank. He then referred to the documents summarised in paragraph 4 of this Case (except exhibit H.2) and to a number of decisions on the question whether strict proof of directorship is necessary to support such charges as were brought in this case. The learned Judge held it was sufficient to prove that the Appellants had acted as directors, but the documents did in fact show that they had been properly appointed in accordance with clause 68 of pp. 15-27.
p. 15-p. 17.
l. 9.
p. 17, l. 36-
p. 21, l. 12.
p. 21, l. 13-
p. 22, l. 8.
p. 22, l. 20-
p. 26, l. 12.
p. 26, ll. 13-39.

p. 27, ll. 22-29.
p. 28, ll. 31-35.

Table "A" of the Companies Ordinance. Having dealt with a point which does not now arise, he convicted the Appellants on the fifth and seventh counts, and sentenced each of them to five years' imprisonment with hard labour on each count, to run concurrently.

pp. 29-32.

7. The Appellants all applied to the West African Court of Appeal for leave to appeal both against their convictions and against their sentences. In each of the applications for leave to appeal against conviction the following grounds were given :—

- pp. 29-30.
- (1) That judgment is against the weight of evidence.
 - (2) That in view of the evidence as a whole, the learned trial Judge was wrong to rely upon the uncorroborated evidence of an accomplice. 10
 - (3) The learned trial Judge was wrong in holding that the Crown had proved that I was a director, so as to bring me within the mischief of the section of the Criminal Code under which I was charged.
 - (4) The learned trial Judge was wrong in not holding that the trial was irregular.
 - (5) The learned trial Judge was wrong in admitting inadmissible evidence. 20

p. 33, l. 13.
p. 33, ll. 14-23.
p. 33, l. 24-
p. 34.

8. The applications came before the West African Court of Appeal (Verity, C.J., Jibowu and Hurley, JJ.) on the 21st July, 1953. Leave to appeal was granted. Counsel for the Respondent then submitted that the first, fourth and fifth grounds of appeal were not in order. After argument, the first and fourth grounds were struck out, and (according to the note taken by Verity, C.J.) counsel for the Appellants abandoned the fifth. He then argued the second and third grounds, and the appeals were dismissed.

pp. 35-39.
p. 35, l. 37-
p. 36, l. 20.

p. 36, l. 21-
p. 37, l. 9.

p. 37, l. 10-
p. 39, l. 25.

9. The Court's reasons for dismissing the appeals were delivered on the 29th July, 1953. The learned Judges said the first ground of appeal was in a form appropriate to civil matters but not to criminal, in which the proper ground was that "the verdict is unreasonable and cannot be supported having regard to the evidence." The Court had pointed out this difference many times. Even if an amendment had been granted, they would not have been disposed to hear argument on facts. The fourth and fifth grounds failed to set out particulars of the irregularities and the inadmissible evidence respectively. As to the second ground, Gregg, J., had treated one witness, the chief accountant of the Bank, as an accomplice. He had directed himself rightly in law about the evidence of an accomplice, and had rightly found that the accomplice's evidence was corroborated. That ground, therefore, failed. On the third ground, counsel had argued that the prosecution must fail because there had been no formal proof of the appointment of the Appellants as directors of the Bank. The learned Judges were inclined to agree that the documents showed there had been compliance with clause 68 of Table "A." To show that the Appellants were "de facto" directors was, however, enough, 40

and this the evidence did show. The exhibits were "prima facie" evidence that the Appellants had been directors, so, in the absence of evidence to the contrary, they had been liable to be convicted as directors.

10 10. The Respondent respectfully submits that Gregg, J., did not rely upon the uncorroborated evidence of any accomplice. The evidence of the chief accountant of the Bank was corroborated, as both the learned Judge and the West African Court of Appeal held, by independent witnesses. Furthermore the learned Judge directed himself rightly in law, and would have been entitled to rely upon the chief accountant's evidence even if it had been uncorroborated.

11. The Respondent respectfully submits that for the purposes of the fifth and seventh counts it was enough to prove that the Appellants acted as directors of the Bank. This the exhibits mentioned in this Case did prove. Alternatively, if it was necessary for the Respondent to prove that the Appellants were properly appointed to be directors, the learned Judge and the West African Court of Appeal were right in holding that the exhibits showed that the appointments had been made in compliance with clause 68 of Table "A."

20 12. The Respondent respectfully submits that the West African Court of Appeal was right in striking out the first and fourth grounds of appeal and would have been right in striking out the fifth ground if the Appellants had not abandoned it. These grounds were defective in the respects mentioned in the judgment of the Court of Appeal, and it was within the discretion of the Court to strike them out.

13. The Respondent respectfully submits that if, contrary to her contention, the West African Court of Appeal was not entitled to strike out these grounds, the case ought to be remitted to that Court for those grounds to be argued.

30 14. The Respondent respectfully submits that the judgment of the West African Court of Appeal was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

REASONS

- 40
- (1) BECAUSE the Appellants were shown by admissible evidence to be guilty of the offences of which they were convicted.
 - (2) BECAUSE the first ground of appeal put forward in the West African Court of Appeal was irrelevant in a criminal case.
 - (3) BECAUSE the fourth and fifth grounds of appeal did not comply with the requirements of the West African Court of Appeal Rules, 1950.
 - (4) BECAUSE the Appellants abandoned the fifth ground of appeal.

J. G. LE QUESNE.

In the Privy Council.

ON APPEAL

from the West African Court of Appeal.

BETWEEN

(1) **SAMUEL ALADESURU**
(2) **FOLAHAN AKINSANYA**
(3) **KOLA LADEJO** . . . *Appellants*

AND

THE QUEEN . . . *Respondent.*

Case for the Respondent.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Solicitors for the Respondent.