Privy Council Appeal No. 45 *of* 1954

Samuel Aladesuru and others – – – – – – *Appellants*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JULY, 1955

Present at the Hearing :

LORD TUCKER
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

On the 11th May, 1953, the appellants were convicted in the Supreme Court of Nigeria on two counts of an indictment which charged them being directors of the Standard Bank of Nigeria Ltd. in one count with making, and the other with publishing, the balance sheet of the Bank as at 31st March, 1952, showing certain particulars which were false to their knowledge with intent to deceive any member, shareholder or creditor of the said Bank contrary to section 436 (*a*) of the Criminal Code (Laws of Nigeria 1948). Their appeal to the West African Court of Appeal was dismissed on 29th July, 1953, and they were granted special leave to appeal therefrom by Order-in-Council dated 13th April, 1954.

The main ground of appeal was that the West African Court of Appeal had struck out certain of the appellants' grounds of appeal in their notice of application for leave to appeal without hearing argument thereon and had thereby deprived the appellants of a right of appeal granted by statute whereby justice had been denied to them. The ground with regard to which particular complaint was made was ground No. 1 of the Notice dated 11th May, 1953, which was " that judgment is against the weight of evidence."

Section 10 of the West African Court of Appeal Ordinance (Laws of Nigeria 1948 Cap. 229) gives a right of appeal from convictions by the Supreme Court as follows:—

> 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."

Section 11 provides:—

> "(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."

It will be observed that the language of the Ordinance follows that of the English Criminal Appeal Act 1907 under which it has long been established that the appeal is not by way of re-hearing as in civil cases on appeals from a Judge sitting alone, but is a limited appeal which precludes the Court from reviewing the evidence and making its own valuation thereof. The position is correctly stated at page 346 of the 33rd edition of Archbold's Criminal Pleading Evidence and Practice as follows:—

> "In order to succeed an appellant must show, in the words of the statute, that the verdict is unreasonable or cannot be supported having regard to the evidence. It is not a sufficient ground of appeal to allege that the verdict is against the weight of evidence."

It is also to be observed that an appeal on this ground does not lie as of right but only by leave of the Court.

On the present appeal before the Board no attempt was made to establish that this case was one of the exceptional cases, a few of which have arisen from time to time in England, in which a criminal verdict has been set aside as one which no reasonable tribunal could have found. The complaint is that the Court of Appeal were wrong in ruling out ground No. 1 as incompetent or in the alternative that, if not stated with strict accuracy, it was a denial of justice to reject this ground merely because it bore "a wrong label".

Under the West African Court of Appeal Rules 1950 (Rules of Court, No. 2 of 1950) dealing with Criminal Appeals it is provided by Rule 49 that where on a notice of application for leave to appeal being duly served leave to appeal has been given it shall not be necessary for the appellant to give any notice of appeal, but the notice of application for leave shall be deemed to be a notice of appeal.

In the present case the notice of application for leave was dated 11th May, 1953, and contained 5 grounds. Having, no doubt, previously considered the application and the papers in the case the Court on 21st July, 1953, announced that leave was granted. The notice of application accordingly became the notice of appeal but the Court was clearly entitled to reject any particular ground which was not within the terms of the statute. This they did with regard to ground No. 1. In their judgment they referred to the difference between civil and criminal appeals in this respect and added:—

> "This difference has been pointed out by this Court times without number and so we have no sympathy for any appellant who still puts up a wrong ground of appeal. Even if we had granted an amendment of the ground of appeal we would not have been disposed to hear arguments on facts."

The Court was entitled to require strict observance of the provisions of the statute so as to put a stop to attempts, which had evidently become prevalent, to review the findings of fact by the Supreme Court. The appellants were represented by counsel, and the notice of application for leave to appeal, although signed, as required by the rules, by the appellants personally, has every appearance of legal authorship. With regard to the reference to an amendment there is nothing before their Lordships to show that counsel for the appellants in the Court of Appeal made any application to amend ground No. 1, so as to make it accord with the terms of the statute or that at any stage he suggested that his real case was that the verdict was wholly unreasonable. But on any view it may well be that

on the facts it was not a case in which any Court would have given the necessary leave on the ground of unreasonableness, and in fact it was not contended to the contrary before their Lordships.

A number of cases, most of them from the early English Criminal Appeal Reports, were cited by counsel for the appellants in the headnotes of which the phrase " against the weight of evidence " occurs with reference to applications to the Court of Criminal Appeal. It was submitted that this phrase had thus been treated as synonymous with " unreasonable or which cannot be supported having regard to the evidence." There can be no doubt that this phrase is inaccurate and is one which cannot properly be substituted for the words of the statute, although it has in one or two cases found its way into the judgments though always with qualifying language. It should by now be appreciated that the Nigerian Ordinance gives no appeal on such ground, but this does not mean that in a proper case the Court of Appeal will not give leave to appeal or review the evidence if a prima facie case is shown that the verdict appealed from is one which no reasonable tribunal could have arrived at.

Their Lordships do not sit as a Court of Criminal Appeal and it certainly has not been established in the present case that the West African Court of Appeal acted in a manner which would warrant their intervention by way of advice to Her Majesty on the ground of any fundamental defect in the administration of criminal justice.

There was a second ground of appeal which can be quite shortly dealt with.

It was said that there was no sufficient evidence that the appellants were properly appointed directors of the Standard Bank of Nigeria Ltd.

Para. 68 of Table A in the first schedule to the Companies Ordinance (being Ch. 38 of the Laws of Nigeria 1948) which applies in this case is as follows: - -

> " The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association."

Section 76 (1) of the Companies Ordinance provides: —

> " Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers and send to the Registrar a copy thereof, and from time to time notify to the Registrar any change among its directors or managers."

It was contended on behalf of the appellants that the production of the determination in writing of the majority of the subscribers to the Memorandum of Association was the only proper proof of the appointment of the directors and that no such document having been put in evidence no case had been made out by the prosecution. Documents marked " B ", " C " and " D " were put in evidence. These were all statutory documents. " B " is the return required by section 76 and is dated 11th October, 1950. It is signed by the appellant Aladesuru as director and contains the names of the other two appellants as directors. " C " is a similar return dated 14th May, 1952, signed by the appellant Aladesuru as director and containing the names of the other two appellants as directors. " D " is a return of share capital and shares of the Bank as required by Part II, section 27 of the Ordinance. It is presented and signed by Aladesuru as director and secretary and gives all three appellants as directors as at 19th September, 1951. Another statutory document marked " E " signed and presented by the appellant Akinsanya as director and containing a return of allotments between 28th August and 19th September, 1951, was also put in evidence. This document contains the names of all three appellants as allotees of 2,000 ordinary shares each. " H2 " a share certificate dated 22nd December, 1951, signed by the appellant Ladejo as chairman and by the other two appellants as directors, and the original balance sheet, in respect of which the charges were laid, signed by the

appellants, Aladesuru and Ladejo as directors and Akinsanya as manager were also in evidence.

In conclusion there was the oral testimony of a witness named Enuodu, who was bills manager at the Bank between August, 1950, and September, 1952, that all three appellants were directors of the Bank during that period.

None of the appellants gave evidence at the trial. They were content to rest on the submission of no case by their counsel.

Their Lordships do not consider it necessary in the present case to express any opinion as to whether it is essential in order to establish a breach of section 436 of the Criminal Code of Nigeria to prove that the accused person has been duly appointed and is properly qualified to act as a director, or whether it is sufficient—as contended by counsel for the Crown—to show that he has been acting in that capacity, since they are of opinion that, assuming proof of due appointment is required, there was abundant evidence in the present case from which the Court could draw the inference that the appellants had been duly appointed directors of the Standard Bank of Nigeria Ltd.

For these reasons their Lordships have humbly advised Her Majesty that these appeals should be dismissed.

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In the Privy Council

SAMUEL ALADESURA AND OTHERS

v.

THE QUEEN

DELIVERED BY LORD TUCKER

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