Privy Council Appeal No. 31 of 1986

Paul Beswick *Appellant*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JULY 1987

Present at the Hearing:

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD GRIFFITHS
LORD MACKAY OF CLASHFERN
SIR DUNCAN MCMULLIN

*[Delivered by **Lord Griffiths**]*

This is an appeal from a judgment of the Court of Appeal of Jamaica given on 14th February 1986 dismissing the appeal of the appellant from his conviction by the judge of the Traffic Court, Her Honour Miss Eve Francis, on 6th March 1985 for the offence of disobeying a traffic light in breach of section 97 of the Road Traffic Act, for which the appellant was fined $40.00 or 7 days' imprisonment.

The circumstances giving rise to this appeal are as follows. On 3rd October 1984 the appellant appeared before Her Honour Miss Francis, sitting as the judge of the Traffic Court. He pleaded not guilty and his trial commenced. After one prosecution witness had given his evidence the trial was adjourned at the request of the defence to 26th October. Miss Francis then went on leave and on 26th October the appellant appeared before His Honour Mr. Lopez, who was presiding that day in the Traffic Court. The appellant asked leave to change his plea to guilty. Mr. Lopez, after consulting with the clerk prosecuting the case, accepted his plea of guilty and imposed a fine of $20.00 or 7 days' imprisonment and the appellant paid the fine immediately.

Mr. Lopez then appears to have changed his mind about the propriety of accepting the plea. For on 26th October 1984 he ordered the summons to be re-issued and on 2nd November he made a further order which reads "Order made on 26.10.84 vacated. Fine to be remitted in toto".

Eventually there was a further hearing before Miss Francis on 6th March 1985. Counsel on behalf of the appellant entered a plea of *autrefois convict* based upon the conviction and sentence passed by Mr. Lopez on 26th October and further submitted that having passed sentence Mr. Lopez was *functus officio* and his order made on 2nd November varying the order of 26th October and remitting the fine was therefore made without jurisdiction and had no effect.

Miss Francis rejected the plea of *autrefois convict* upon the ground that whatever took place before Mr. Lopez on 26th October 1984 was a nullity. The appellant stood upon his plea of *autrefois convict* and took no further part in the trial. Miss Francis heard further evidence, convicted the appellant and fined him $40.00 or 7 seven days' imprisonment.

The Court of Appeal upheld the conviction by Miss Francis on the ground that Mr. Lopez had no jurisdiction to continue a case already begun before another magistrate. In the course of his judgment, the President of the Court, Rowe J. said:-

> "We are of the view that a resident magistrate who commences a trial within his jurisdiction has exclusive jurisdiction over that case and that if another resident magistrate purports to intermeddle in such a trial, for whatever reason, such intermeddling is a nullity. We are of the view that Her Honour Miss Francis could validly examine what His Honour Mr. Lopez had done in the case which had been commenced before her and could determine whether there was an effective legal conviction by His Honour Mr. Lopez. We hold that His Honour Mr. Lopez did not have jurisdiction to continue the part-heard case against the appellant and consequently the doctrine of *functus officio* did not apply ... His Honour Mr. Lopez, although assigned to be the judge of the Traffic Court had no jurisdiction to continue a case already begun before another magistrate and in what he purported to do, the appellant was never in peril."

The expression the magistrate has "no jurisdiction" is a phrase used by the courts to cover a very wide variety of circumstances in which it is improper for a particular magistrate to adjudicate in a particular case. It is therefore necessary to consider in what sense it was used by the Court of Appeal in this

case. In its narrow sense the phrase covers the situation in which a magistrate has no power to enter upon a hearing; he may lack territorial jurisdiction or the offence may be one which he has no power to deal with and must be tried by a higher court. In *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 A.C. at page 171 Lord Reid expressed the view that it would be better to confine the use of the expression "no jurisdiction" to this narrow meaning.

It is however clear that the Court of Appeal cannot have used the expression in this narrow meaning in the present case. Mr. Lopez undoubtedly had jurisdiction within the narrow meaning of the expression when the case was called on before him on 26th October. He was sitting in the Traffic Court in place of Miss Francis by virtue of section 8 of the Traffic Court Act and the offence with which the appellant was charged fell within his jurisdiction pursuant to section 4 of the Traffic Court Act. That he had jurisdiction to deal with the case in some ways was not disputed by the prosecution. For instance it is conceded that he had power to adjourn for a further hearing by Miss Francis.

The expression "the magistrate had no jurisdiction" is however frequently used in a broader sense to cover cases in which although there was power to enter upon a hearing the decision should nevertheless be quashed because it would not be fair to allow it to stand. If, for example, the appellant had not changed his plea and Mr. Lopez had continued the trial without hearing the evidence of the prosecution witness who had previously given his evidence before Miss Francis his decision would have to be quashed because it is a fundamental requirement of the fair administration of justice that those charged with returning a verdict in a criminal case be they judge, magistrates or jurors should have seen and heard all the witnesses. If they have not had the opportunity to evaluate the reliability and veracity of a witness by seeing and hearing him give evidence, they lack a part of the vital material upon which their verdict should be based. It is perhaps unnecessary to cite authority for so self evident a proposition but it is to be found in such decisions as *Re Guerin* (1888) 58 LJMC 42, *Coleshill v. Manchester Corporation* [1928] 1 KB. 776, *Lewis v. Lewis* [1928] 92 JP 88 and *Samuels v. Smithson* (1939) 3 J.L.R. 151. In these cases the courts have referred to the judge or magistrates having no jurisdiction to continue a hearing when they have not heard the earlier evidence.

It must have been in this broader sense of the term that the Court of Appeal referred to Mr. Lopez having no jurisdiction to intermeddle in a case commenced by Miss Francis. Their Lordships can, however, see no

considerations in either the public interest or in the interests of the defendant that make it unfair for a different magistrate to accept a change of plea from not guilty to guilty on an adjourned hearing. If Miss Francis herself had been sitting on 26th October and the appellant had offered a change of plea to guilty it would have been her duty to accept it and to record a conviction. Their Lordships can think of no circumstances in which she could properly have exercised a discretion to refuse the plea save possibly if she thought the defendant did not fully understand the meaning of what he was doing. As the appellant is a practising member of the Bar this possibility does not arise in the present case. If Miss Francis should have accepted the plea if she had been sitting, why should not Mr. Lopez accept the plea in her place? Before passing sentence he would of course have had the facts recited to him by the prosecution including the gist of the evidence given by the witness who had been called at the earlier hearing. It seems to their Lordships that he would then have been as well informed to pass sentence in this relatively trivial case as Miss Francis would have been. If on the other hand he had refused to accept the plea so far from advancing the course of justice, it would have caused injustice. Both prosecution and defence would have been put to the extra expense of a further hearing, the matter would have hung needlessly over the head of the defendant, police officers and possibly other witnesses would have been taken unnecessarily from their normal duties to attend the adjourned hearing and other defendants would have had their cases delayed to make time for the adjourned hearing.

In the course of their judgment the Court of Appeal cited with approval the decision in *R. v. David Ebanks* (1944) 4 J.L.R. 158. Their Lordships are not certain how much that decision may have influenced the Court of Appeal in the present case. The facts in *R. v. Ebanks* were that a resident magistrate died after completing a hearing of a trial on indictment and before he had given judgment. A second magistrate then ordered a fresh indictment to be preferred on the same information upon which he tried and convicted the defendant. The Court of Appeal quashed the conviction on the ground that until the order of the first magistrate had been vacated by the Attorney General entering a *nolle prosequi* the second magistrate had no jurisdiction to make a second order preferring a fresh indictment on the original information. This finding appears to have been based upon the construction the Court of Appeal placed upon section 275 of the Resident Magistrates Law (Cap. 432), but the reason why this construction was adopted is far from clear. It is not necessary for the purposes of this appeal to consider whether *R. v. Ebanks* was correctly decided but it should be said

that their Lordships do not find the decision of any assistance in resolving the present appeal.

In their Lordships' view there was no reason why Mr. Lopez should not have accepted the plea, recorded a conviction and passed sentence; in so doing he was exercising a discretion within his jurisdiction. The interests of justice are not best served by adopting a rigid rule that a resident magistrate must in all circumstances retain exclusive jurisdiction over a case that she has begun. A magistrate who takes up the case on an adjourned hearing must consider whether he can, in fairness both to the prosecution and the defence, continue the hearing: if he can he should do so, if he cannot then he must adjourn the case to be continued by the original magistrate.

It follows that as Mr. Lopez had jurisdiction to accept the plea of guilty on 26th October the conviction he recorded and the sentence he passed were not a nullity. Once he had recorded the conviction and passed sentence Mr. Lopez had exhausted his jurisdiction to deal with the offence and was *functus officio*. His further order of 2nd November was indeed made without jurisdiction and of no effect. The appellant was entitled to rely upon the plea of *autrefois convict* in respect of the conviction and sentence passed on 26th October when he appeared before Miss Francis on 6th March 1985.

For the reasons indicated their Lordships will humbly advise Her Majesty that this appeal should be allowed and the conviction and sentence passed on 6th March 1985 quashed. The appellant is entitled to his costs of the hearing on 6th March 1985 in the Traffic Court, his appeal to the Court of Appeal and of this Appeal.