

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

JAMES SEKALAKA

Appellant

and

R E X

Respondent

HELD AT MASERU

Coram :-

MAISELS, P.
SCHUTZ, J.A.
VAN WINSEN, J.A.

J U D G M E N T

Van Winsen, J.A.

The appellant was charged, together with two co-accused, in the Magistrate's Court for the District of Leribe with :

- (1) the theft of a cheque form No. 523718, the property of Barclays Bank

and

- (2) the crime of fraud in that they represented to the manager of the Lesotho Bank, Leribe, that a certain cheque for R7,800 was a genuine cheque when they knew that it was not a genuine cheque and that as a result of such misrepresentation they induced the said manager to the loss and prejudice of the Lesotho Bank to pay to them a sum of R5,200

At the close of the Crown case the third of the three accused, Manella Sekalaka, the wife of the first accused, the present appellant, was discharged. The remaining accused, appellant and the second accused, Pascalis Tsoanamatsie were convicted on both counts.

/Appellant

Appellant and the second accused were each sentenced on count 1 to a fine of R30 or 3 months imprisonment suspended for 3 years on condition that they were not convicted of a similar offence committed during the period of suspension, and on count 2 to imprisonment of 30 months.

An appeal to the High Court by appellant against the conviction was unsuccessful. With leave of Mofokeng J who had heard the appeal he now appeals to this Court against both the convictions and the sentences. The grounds of appeal are directed - wrongly - at the finding of the Judge in the High Court who heard the appeal. This appeal is required to be directed at the findings of the trial Court and not at the judgment of the High Court. This appeal will be dealt with as required by law.

It appears that in March or April 1982 the accountant of Barclays Bank, Maseru, found that a cheque form No. 523718 was missing from a cheque book the property of and in the possession of the Bank and that the counterfoil of the cheque form was blank. It is of significance that the missing cheque form followed immediately upon a salary cheque that had been issued in favour of appellant's wife - an employee of the Bank - who had been the third accused in the matter. It was this cheque form, completed in an amount of R7,800, made payable to Sello N. Phafoli and purporting to have been signed by two officials of Barclays Bank, viz., Messrs Cummins and Greenwood, that formed the subject matter of the second count of fraud. From the evidence of these two officials it is apparent that their signatures had been forged. That the cheque was in all respects a forgery is not in dispute

/and

and the trial Magistrate found that appellant was aware of the fact that it had been forged. The evidence of Mr. Nkopane Monyane, the Manager of the Lesotho Bank, is to the effect that appellant, together with the second accused, attended at the Lesotho Bank, Leribe on 5th March 1982. Appellant was well-known to the witness as one who worked for the Sentry Assurance Company. Appellant accompanied the second accused who he introduced as his younger brother by the name appearing as the payee on the cheque in question. Appellant was there to assist his so-called younger brother in opening a banking account in the latter's name at the Bank. An account in that name was duly opened and the cheque for R7,800 deposited therein. Thereafter the manager allowed the second accused to draw R5,200 on the account so opened.

Appellant failed to deny any part of the above evidence nor was it ever suggested under cross-examination of the manager by appellant's legal representative that the latter had not accompanied the second accused to the Bank on that occasion. When the second accused in his cross-examination of the manager suggested that appellant was not present on that occasion it was denied by the manager.

The greater portion of the Heads of Argument of appellant's counsel consist of numerous criticisms of the judgment of Mofokeng J. The argument in this Court, however, was directed to the question of whether the evidence established that the manager had been persuaded to open an account in the name of the second accused on the strength of the misrepresentations made by the appellant to him. Counsel pointed out that the manager had nowhere in his evidence specifically

/said

said so.

I have no doubt that the only reasonable inference that can be drawn from the facts of this case, looked at in their totality, is that appellant was at all relevant times closely involved in a joint undertaking with the second accused to defraud the bank. What reason could there have been for appellant's presence in the bank on the 5th of March other than to lend verisimilitude to the second accused's attempt to pass off a forged cheque as one which supposedly resulted from the closure of a savings account he had had with Barclays Bank in Rustenberg. Without appellant's help there was no way in which second accused could have succeeded in his representation that his name coincided with that of the payee on the cheque. He could have produced no documents to establish such a claim. It was only by appellant, trading on his acquaintance with the manager, that enabled the second accused to pass himself off as being the person named as the payee on the cheque and in addition avoid the necessary identification which would otherwise have been a prerequisite to the opening of an account at the bank. Whether or not appellant was the originator of the whole scheme - and his wife's association as an employee with the bank from which the cheque form was stolen raises such a suspicion - his conviction on the fraud count is amply supported by the uncontradicted evidence of his presence and activities in the Lesotho Bank on the 5th of March. His use of a forged cheque to further those aims makes him a party to the theft of the form which contained the cheque.

In my view appellant was rightly convicted on both counts and the sentences fairly fit the respective crimes.

L. DE V. VAN WINSEN
- Judge of Appeal

I agree

I.A. MAISELS
President

I agree

W.P. SCHUTZ
Judge of Appeal

Delivered on this 26th day of April 1984 at MASERU.

For Appellant : Mr. Tsotsi

For Crown : Miss Nku