



IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

APPEAL CASE NO. 34/2002

In the matter between

MZWANDILE EUGENE SHABANGU

Appellant

Vs

REX

Respondent

Coram

LEON, JP
STEYN, JA
TEBBUTT, JA

For Appellant
For Crown

In Person
N. Lukhele

JUDGMENT

LEON, JP

This is an application for leave to appeal. The applicant was accused No 1 in the Magistrate's Court charged with accused Nos 2, 3 and 4 on a

number of counts. It is not necessary to deal with the counts against the other accused, one of whom has died and the others have not appealed.

The Magistrate convicted the applicant on Counts 1, 2, 3, 4, 5, 6, 7, 9 and 11. He treated counts 1, 7, 9 and 11 as one for the purposes of sentence imposing a fine of E2 000 or two years' imprisonment. On Count 3 the sentence was E500 or six months' imprisonment. Counts 2,4,5 and 6 were treated as one for the purpose of sentence and on these counts the applicant was sentenced to a fine of E2 000 or two years' imprisonment. The sentences were backdated to 11 July 2000 and were ordered to run consecutively.

The applicant then appealed to the High Court but the Crown did not cross-appeal. The High Court was exceedingly unimpressed by the merits of the appeal. However, it found that there had been an improper splitting of charges. In consequence of that finding it confirmed the convictions on Counts 1, 4, 5 and 6 while it set aside the convictions on Counts 2, 3, 7, 9 and 11. The effect of this was that the total sentences imposed upon the applicant were reduced by E500 or six months' imprisonment. It appears from the judgment of the High Court that the applicant was unable to pay the fines and was in custody. When the applicant appeared before us to argue the application, he had already served his sentence.

It now becomes necessary for this Court to decide whether there is any merit in the applicant's case for leave to appeal. Both the Magistrate and the High Court regarded the case against the applicant as overwhelming.

Count 1 alleged that the applicant was guilty of the crime of fraud in that on 8 September 1999 the applicant wrongfully and unlawfully and with intent to defraud misrepresented to the Swaziland National Provident Fund that a medical certificate produced to it by him was an authentic copy of a medical certificate signed by Dr. A.R. Kinenekejo a qualified medical practitioner certifying that the applicant was entitled to early retirement on medical grounds and eligible to be paid his contributions held by the Fund. It was alleged further that by means of that misrepresentation he induced the Fund to its prejudice to issue a cheque for E906,77 in favour of the applicant whereas when he made the said misrepresentation the applicant well knew that the medical certificate had not been signed by a qualified medical practitioner and he also well knew

that he was not eligible to be paid the aforesaid sum of E906.77. The applicant contended that Count 1 was not proved as he was entitled to the said sum.

All the essential elements of Count 1 were clearly proved. The Benefits Manager of the Fund, Micah Nkabinde (PW1) testified, *inter alia*, that on 8 September 1999 the applicant lodged a disability claim. It had all the supporting documents including the doctor's report made by Dr. Kejo of the Manzini surgery. (The evidence revealed that Dr. Kinenekejo was referred to as Dr. Kejo). The application was processed and paid out on 16 September 1999. The amount involved was E906.77. In reading through a subsequent application PW1 became suspicious and after Dr. Kejo had denied making certain reports he called in the police.

The sister of the applicant is Dudu Shabangu. She testified as PW2. She worked as a typist for Dr. Kejo. The applicant came to her saying that he wanted to claim money from the Fund. She told him that he was not entitled to do so but he asked her to obtain the letterheads of Dr. Kejo which she did on two occasions. The applicant informed her that he intended to write on the letterheads and present them to the Fund. PW2 complied with the applicant's request who paid her E100 for her trouble.

She identified Exhibits C.F.K and N as being the letterheads of Dr. Kejo but bearing her brother's handwriting with which she was familiar.

Faced with the above damning evidence, the applicant asked a few questions but in no way either challenged or weakened the effect of his sister's evidence.

Exhibit C is dated 8 September 1999, refers to the applicant's alleged medical condition which would cause him to be "de-employed" and relates directly to Count 1. The evidence of PW1 read with that of PW2 and Dr. Kejo (PW3) establishes the crime of fraud on Count 1.

It will be convenient to deal with Counts 4,5 and 6 together. Count 4 alleges the crime of forgery on 10 January 2000 the forging by the applicant being of a medical certificate relating to one Nabela. The forgery is established by Exhibit F read with PW2's evidence and Dr.

Kejo's evidence to which I shall later refer. Count 5 alleges the forgery of a medical certificate on 15 February 2000 relating to one Shabangu. That appears from Exhibit N read with PW2's evidence and the evidence of Dr. Kejo. Count 6 refers to the forgery of a medical certificate on 2 March 2000 and appears from Exhibit K. The medical certificate refers to the alleged medical condition of one Msimango and the forgery is established by the evidence of PW2 and Dr. Kejo. The latter's evidence was clear and compelling. He denied ever having written any letters to the Fund. He suspected that the letterheads had been stolen from his office. He was shown Exhibits C, F, K and N. The contents were not known to him although the letterheads and stamps were similar to those used in the practice. He did not write Exhibits C,F,K or N nor did he sign any of them. In short, his evidence was that those exhibits were forgeries.

The applicant denied under oath that he had committed any of the offences with which he was charged. He could not account for Dr. Kejo's evidence. He claimed that his sister was a liar but could not explain why he had failed to put to her that he had not obtained the letterheads from her. He also denied that his sister had testified that he had written Exhibits C,F, K and N. She had in fact done just that yet he failed to cross-examine her on that point.

I agree with the Magistrate and the High Court that the case against the applicant is overwhelming. Nor is there anything untoward about the sentences imposed.

The application for leave to appeal must be refused.

LEON, JP

I agree

STEYN, JA

I agree

TEBBUTT, JA

GIVEN AT MBABANE thisday of November, 2002