



REPUBLIC OF KENYA

HIGH COURT APPELLATE SIDE NAIROBI

CRIMINAL APPEAL NO 809 OF 1979

FIRDOS VERJEEAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT OF THE COURT

The appellant was charged jointly with Joseph Kuria (who has not appealed) with conspiracy to defraud the Standard Bank Ltd, Kimathi Street branch, of Shs 367,925/85, contrary to section 317 of the Penal Code. They were both convicted by the Senior Resident Magistrate, Nairobi, and each sentenced to three years' imprisonment.

The evidence disclosed that what was clearly a forged cheque purporting to come from the Ministry of Tourism and Wildlife for Shs 367,925/85 was sought to be paid into an account maintained by the appellant at the bank (in which there was only a small balance) by Kuria (who was a cashier) and who; contrary to regulations, completed the paying-in-slip.

That was on 12th January 1979. On 1st February 1979, the appellant attempted unsuccessfully to draw Shs15,000 from the account by means of a cheque. The matter was duly investigated and brought to Court with the result that we have stated.

No complaint was made by Mr Dhanji, who appeared for the appellant, both at the trial and on this appeal, against the conviction or against the legality of the sentence. Nor could he do so, in our view, for the evidence showed a serious and premeditated fraud involving a large sum in which the appellant, if anything, played the greater part.

What is now urged on the appellant's behalf, however, is that she is now (and was at the time of the sentence) undergoing daily medical treatment which is still necessary and which is not available at the prison hospital (where the appellant now is); and consequently she should, in effect, be released forthwith so that the treatment may be continued.

Mr Dhanji admitted to us that he made no complaint before the sentence was passed on 14th July of the condition from which the appellant is now said to have been suffering at that time. Incredibly (in view of what he now says), all that he did was to state, self-evidently, that the appellant's employment and family life would be seriously prejudiced. Accordingly, the evidence which he tendered in the form of two specialist reports, having been available at the trial, was not admissible. As State counsel, although we invited him to do so, had no observations to make on the matter, we took the exceptional course of

looking at them. Having done so, their contents only reinforce our conclusion that the material in them should, if it was sought to rely on it, have been brought to the attention of the trial magistrate. In any event, they go nowhere near establishing that the appellant's condition is so grave that she urgently needs treatment outside prison, and there is no evidence whatsoever to establish that the necessary treatment is not available within it.

Although State counsel did not either support or concede the question of sentences, merely leaving it to the Court, we have no hesitation in saying that the offence was extremely serious both in character and extent and that both sentences were well deserved. Neither have we been persuaded that any reduction on such medical grounds as have been advanced is in any way justified. The appeal is accordingly dismissed.

Appeal dismissed.

Dated and delivered at Nairobi this 30th day of October 1979.

TREVELYAN

JUDGE

A.R.W HANCOX

JUDGE



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