

POLICE

v

NGAMAU WICHMAN TOU

Hearing: 4 March 2024
Appearances: Ms J Crawford and Mr T White for Crown
Mr N George for Defendant
Ruling: 5 March 2024

RULING OF KEANE, CJ

[1] Ngamau Tou has gone to trial, charged with forgery between 28 July – 3 August 2020, making a false document with the intent that it be used or acted on as genuine.

[2] The first and primary Crown witness, Chunillal Pema-Taripo, produced the document on which the case hinges – a cash receipt to him for \$500, dated 3 August 2020, issued by a signatory confined to an initial. The receipt narrative describes it as, ‘being for’:

Balance For Daihatsu Mira Transfer From R 500973 + 500989 (Nissan Payz) \$3000
\$2500.

[3] The Crown case is that this receipt, which Mrs Tou completed, purports to be from the Daihatsu Mira’s vendor, Tipani Rentals (OTC). She knew that to be false, and yet intended it be used or acted on as if it were a Tipani Rentals (OTC) receipt.¹ Everything hinges, therefore, on this receipt.

¹ Crimes Act 1969, s 287, ‘Forgery’.

[4] When Pastor Pema-Taripo was cross-examined he was asked how the receipt could be said to come from Tipani Rentals (OTC); and I, myself, became concerned this might involve an issue of law. I saw counsel in chambers.

False document

[5] For the receipt to be a ‘false document’ it must be a ‘document’:²

.. of which the whole or any material part purports to be made by any person who did not make it or authorise its making.

[6] A false document is not a genuine document containing false information. It must ‘tell a lie about itself’ in one of the ways the definition specifies. It is concerned with falsity of authorship, not falsity of content.³

[7] Recourse to the context in which the document was created is nevertheless permissible in a circumscribed way:⁴

... if the surrounding circumstances are not merely indicative of a collateral dishonesty or deception but make the document appear to be the document of a person who is in fact different from the person actually signing it ...

Conclusions

[8] The receipt is a cash receipt and does not say who issued it. The name of the car company is not on the receipt. Whoever issued the receipt is not instantly identifiable. It is signed with an initial.

[9] The receipt does say it is for the ‘Balance For Daihatsu Mira Transfer From R 500973 + 500989 (Nissan Payz) \$3000 \$2500’, and looks consistent with a receipt from Tipani Rentals (OTC). But it is not to Mrs Tou, who was meant to have made those payments, it is to Pastor Pema-Taripo.

[10] This does not make immediate sense. He had not made any such payments. Any such payments had been made by Mrs Tou and she had not made any either. And his church board did not make the \$6000 payment to Mrs Tou until 4 August 2020, the day after the receipt was

² Crimes Act 1969, s 286(1), ‘False document’, para (a).

³ *Walsh v R* [2007] 2 NZLR 109 (SC)

⁴ *R v Haskett, R v Calder* [1975] 1 NZLR 30 (CA), 32.

issued. But the important thing is that the receipt, itself, does not plainly say who issued it, and does not tell a direct lie about itself.

[11] Looked at as a whole, moreover, one simply cannot say it could only have been issued by Tipani Rentals (OTC). The reason why it says it was issued may point that way. But the fact that it was issued to Pastor Pema-Taripo, not Mrs Tou, points the other way.

[12] The issue then becomes how far one can go beyond the receipt to the wider evidence, and the law says not very far. And, if one does go beyond it, one thing still has to be balanced against another. There is no obvious safe answer

[13] In the result I have concluded, as a matter of law, the receipt is too contradictory to be a clear false document; and it would be unsafe to leave that issue to the jury to resolve on extraneous evidence.

[14] For the reasons I gave to the jury, when I discharged them, I have found Mrs Tou has no case to answer, and so struck out the charge.



Patrick Keane, CJ