

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 517/2020

BETWEEN: **STATE**

PROSECUTION

AND: **MOHAMMED TAIYAZ**

FIRST ACCUSED

AND: **MOHAMMED SHAMIM**

SECOND ACCUSED

Counsel: Sergeant 3882 Anilesh Kumar and PC 5647 Pranil Nair for Police
 Prosecution
 Mr. M Yunus for both Accused

Date of Hearing – Prosecution's case: 25 April 2023
Date of NCTA Ruling: 6 September 2024
Date of Hearing – Defence's case: 8 November 2024
Date of Judgment: 11 April 2025

JUDGMENT

Introduction

1. Mr. Mohammed Taiyaz ("the First Accused") and Mr. Mohammed Shamim ("the Second Accused") are charged with 1 count of Uttering and Possession with Intent to Utter Counterfeit Note contrary to section 166(3)(a)(b) of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Uttering and Possession with Intent to Utter Counterfeit Note: *Contrary to Section 166(3)(a)(b) of the Crimes Act 2009.*

Particulars of Offence

Mohammed Taiyaz and Mohammed Shamim on the 13th day of September 2020 at Saravu, Ba in the Western Division had in their possession 5 x \$100.00 counterfeit notes knowing them to be counterfeit with intent to utter the said currency.

2. Both Accused entered a plea of Not Guilty on 16 February 2022.
3. On 3 October 2022, Legal Aid withdraw as counsel for the First Accused as he had informed the Court that he had engaged the services of Mr. Yunus from MY Law.
4. The matter was then subsequently listed for Trial on 25 April 2023. Trial proceeded on the same date and Prosecution called 6 witnesses and thereafter concluded its case. The Learned Counsels for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against both the Accused to require them to make a defence. Submissions for the First Accused was filed on

23 May 2023 with there being no submissions filed on behalf of the Second Accused given that his counsel withdrew as his solicitor on 20 December 2023.

5. It is imperative to highlight that the recording of Prosecution evidence on 25 April 2023 was conducted by this Court's first predecessor. The matter was then adjourned for Ruling when this Court's second predecessor commenced. Upon commencing these proceedings on 3 April 2024, this Court was informed that the learned counsel for the First Accused would be representing the Second Accused as well. The Court then informed both Accused of their right under section 139(2) of the Criminal Procedure Act 2009, which allowed the Accused to demand that the witnesses or any of them in this matter be re-summoned and re-heard. After informing both Accused of this right, both the Accused informed that they did not wish to exercise the said right. In turn, considering section 139(1) of the Criminal Procedure Act, the Court has decided to act on the evidence recorded by its predecessor.
6. The Court was also informed by Mr. Yunus on 3 April 2024 that the submission filed on behalf of the First Accused was being relied upon for the Second Accused. On 6 September 2024, this Court found that a case was made out against both the Accused to sufficiently require them to make a defence in respect of the charge. The procedure under section 179 of the Criminal Procedure Act was explained to both Accused. It was also explained to both Accused that they had a right to remain silent. Both Accused chose to give evidence and not call any witnesses.
7. Both Accused gave evidence on 8 November 2024 and after closing its case, the Accused counsel sought time to file Closing submissions whilst Prosecution informed that they would rely on the Court record. Counsel for the Accused filed Closing submissions on 20 December 2024.
8. Having read the submissions and considered the evidence presented by Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

9. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
10. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

11. It is expected that to arrive at a proper conclusion, the matter ought to be considered in its logical progression with formulated reasons for the ultimate conclusion with the general rule being that a judgment should set out the relevant events and the material evidence in the correct sequence in narrative form with the identifying number of each pertinent witness being incorporated at the appropriate places – vide *Pal v R* [1974] 20 FLR 1 (17 January 1974) as referred to in *Wang v State* Criminal Petition No. CAV 0013 of 2021 (26 October 2023) and *State v Wang* Criminal Appeal No. HAA 30 of 2019 (19 February 2021).
12. Ajnesh who was Prosecution's first witness and Zaiyan who was Prosecution's third witness, both testified that a lady had come to their respective shops to buy items. Ajnesh

testified that the lady used a \$100 note which he later realised was fake. On the other hand, Zaiyan testified that the lady had given him money which was torn in half so he returned the money to her and she left. Both Ajnesh and Zaiyan testified that the lady came in a vehicle which had people in the vehicle.

13. PC 4384 Timoci ('PC Timoci'), the Investigating Officer testified that he and 2 other Police Officers had managed to stop the vehicle that had used a fake \$100 note. The occupants of the vehicle were the First and the Second Accused and a lady with an infant. The First Accused had been driving whilst the Second Accused was sitting on the passenger's seat and the lady with the infant was sitting at the back.
14. PC Timoci further testified that two searches had been conducted of the vehicle in which they found a total of 3 fake \$100 notes. He further testified that they had received information that another Dimple's shop at Sarava and a Chinese shop in Nailaga had each received a fake \$100 note. They then uplifted the fake \$100 note from these shops.
15. Prosecution's fourth witness was Shamal Pravesh Karan ('Shamal') who testified that his wife had asked to use his vehicle and then later he had been called by the Police and informed that his vehicle and his wife were at the Station. At the Station, he realised that his vehicle was without the number plate and that the back and front number plate was covered in mud.
16. There is also evidence by Rohitesh Chand ('Rohitesh'), the second Prosecution witness confirming that the 5 notes found in this matter were counterfeit as 4 notes had the same serial numbers which is not done especially for the same denomination. He further testified that there were no water marks in any of the notes which is a requirement on the circulation bank notes. He also pointed out that with a genuine note - the strip is more silver in colour whereas it was missing from the counterfeit notes. Further, the security threads were not even the security threads but just a printout which was consistent in all counterfeit notes. Moreover, none of the counterfeit notes had the UV features which are present in the genuine notes. Rohitesh tendered a Counterfeit Note Report dated 15 September 2020 which was tendered as 'PEX1'.
17. Both Accused vehemently deny that they knew and had in their possession counterfeit money and that they had intention to utter the counterfeit money which had been found in the vehicle on 13 September 2020. Both the Accused maintained that the lady in the vehicle with them when they had been arrested, had brought her vehicle earlier on in the day for repair which was done by the First Accused. Thereafter, the lady had asked for the Second Accused to accompany her to Ba. The Second Accused asked the First Accused to then accompany him and the lady.
18. Initially the lady had been driving the vehicle but as her infant child was crying, the First Accused drove the vehicle while the Second Accused sat in the front passenger seat and the lady sat at the back with her child. Along the way to Ba, the lady has asked the First Accused to stop at 3 shops to allow her to purchase items which the First Accused did. Thereafter, they stopped at the lady's home in Clopcott Street, Ba for 10-15 minutes and waited for the lady while she had gone inside.
19. Afterwards, the lady returned to the vehicle and told both Accused to return to Lautoka but before they did this, the lady asked to stop at another store which they did. As they were leaving, the Second Accused wanted to buy juice as such they stopped at Suren's shop where the Second Accused got off to buy juice whilst the First Accused was waiting in the driver's seat while the lady with the infant was sitting at the back passenger's seat. It was then that the Police came and took them to the Police Station.

Analysis of Evidence

20. The Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad** Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroci** Criminal Case No. HAC 161 of 2023 (26 April 2024)).
21. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for the offence, which are:
 - i. the accused
 - ii. having in his/her possession 3 or more false or counterfeit coins or currency notes
 - iii. knowing them to be false or counterfeit and
 - iv. with intent to utter or put off the said coins or currency notes or any of them.
22. In this matter, the Court will need to ascertain whether both Accused had possession of the 5 counterfeit \$100.00 notes whilst knowing that these 5 \$100.00 notes were counterfeits and that both Accused had the intention to utter the said notes.
23. Turning to the evidence led by Prosecution, the fifth Prosecution witness, PC 4384 Timoci ('PC Timoci'), the Investigating Officer testified that he and 2 other Police Officers had managed to stop the vehicle that had used a fake \$100 note at Dimple Shop in Clopcott. He testified that the occupants of the vehicle were the First and the Second Accused and a lady with an infant. The First Accused had been driving whilst the Second Accused was sitting on the passenger's seat and the lady with the infant was sitting at the back.
24. PC Timoci further testified that two searches had been conducted of the vehicle in which they found a total of 3 fake \$100 notes. The first search led to 1 note being found on the front passengers door whilst the second search led to 2 notes being found in a mirror which was within the left side mirror of the passenger's side.
25. PC Timoci then went on to state that they had received information that another Dimple's shop at Sarava and a Chinese shop in Nailaga had each received a fake \$100 note. They then uplifted the fake \$100 note from these shops.
26. Shamal Pravesh Karan ('Shamal') who was Prosecution's fourth witness testified that his wife had asked to use his vehicle with Registration Number JT 901 and then later he had been called by the Police and informed that his vehicle and his wife were at the Station.
27. Prosecution's first witness, Ajnesh testified that a fake \$100 note had been handed to him by a young lady who came into his store at Dimple Mini Mart at Sarava to buy Nappy Time Diaper. He testified that she came in a motor vehicle which was parked on the side and there were people in the vehicle that he did not recognise. After handing over the \$100 note, Ajnesh handed the young lady change and only upon her leaving did he realise that the \$100 note she had given was fake.

28. Prosecution's third witness, Mohammed Zaiyan Harun ('Zaiyan') testified that in 2020, a lady brought fake notes to their shop. The lady had wanted to buy baby wipes and a 600ml coke. She then gave money, which he held and noticed that the note was in torn in half so he returned the money to her and she left. Zaiyan stated that it was a fake note as it was different like a paper and when he saw it in front of the light, there was no head inside. He testified that he had seen the lady come from a vehicle which was parked opposite the road and that he had seen 2 other people in the vehicle.
29. The evidence of Rohitesh Chand ('Rohitesh'), the second Prosecution witness confirmed that the 5 notes found in this matter were counterfeit as 4 notes had the same serial numbers which is not done especially for the same denomination. He further testified that there were no water marks in any of the notes which is a requirement on the circulation bank notes. He also pointed out that with a genuine note - the strip is more silver in colour whereas it was missing from the counterfeit notes. Further, the security threads were not even the security threads but just a printout which was consistent in all counterfeit notes. Moreover, none of the counterfeit notes had the UV features which are present in the genuine notes. Rohitesh also tendered a Counterfeit Note Report dated 15 September 2020 which was tendered as 'PEX1'.
30. It is evident that Prosecution is relying on the evidence that as both Accused were in the motor vehicle, they then had possession of the 5 counterfeit notes with the knowledge that the notes were counterfeit and that they both had the intention to utter these counterfeit notes.
31. Turning to the issue of possession, section 4 of the Crimes Act 2009 defines possession as:

Possession, be in possession of or have in possession includes –

- (a) *not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or of any other person; and*
- (b) *if there are 2 or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or her or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;*
32. The onus is on Prosecution to establish that both the Accused had in their possession the 5 counterfeit notes. However, the Court notes that Prosecution failed to elicit evidence to explain or show how both the Accused had come into possession of the vehicle in which the 3 counterfeit notes were found. Rather, the evidence before the Court is that the vehicle belonged to Shamal, Prosecution's fourth witness, who was the husband of the lady found in the vehicle with both Accused when the Police stopped them.
33. Further, Shamal testified in Court that his wife had asked to borrow the vehicle that day. However, the Court notes that Prosecution did not even elicit evidence that the lady in the vehicle with both Accused had possession of the 5 counterfeit notes and that both Accused had knowledge of this and that they had consented to her – the lady having in her custody or possession the 5 counterfeit notes.
34. Now turning to the issue of intention and knowledge. Sections 19 and 20 of the Crimes Act 2009 defines intention and knowledge as follows:

Intention

19(1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believe that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

Knowledge

20 A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

35. The Court is aware that it is impossible to have direct evidence regarding an accused's state of mind. Thus, the knowledge and/or intention of an accused can only be inferred based on the relevant proven facts and circumstances (vide **Kumar v State**; Criminal Appeal No. HAA 13 of 2022 (12 August 2022)).
36. The Court notes from the evidence adduced by Prosecution that it failed to elicit evidence to show that both Accused had knowledge that the vehicle driven by the First Accused and in which the Second Accused had been a passenger, had counterfeit notes hidden within it. There was also no evidence adduced by Prosecution to highlight that at the time the lady had used the counterfeit \$100 notes that both Accused had had knowledge that the notes were counterfeit. The mere fact that both the Accused were in the vehicle at the time the lady used the counterfeit notes at the various shops does not allow the Court to infer that they had knowledge of the counterfeit notes or that they were aware of the existence of the counterfeit notes at the time.
37. Moreover, the evidence led by Prosecution highlighted that it was the lady who had gone into the various shops and had used the counterfeit notes. Prosecution did not lead any evidence to show that the conduct of both Accused highlighted their intention to utter the counterfeit notes.
38. Turning to the Accused's evidence, both Accused had testified that the First Accused had gone to the Second Accused's home to repair the Second Accused's vehicle when a lady came with her baby to have her vehicle repaired. They also maintained that after the lady's vehicle was repaired, she had asked the Second Accused to accompany her to Ba to pick some tamarind. In turn the Second Accused asked the First Accused to accompany them as such they all left for Ba with the lady driving the vehicle, the Second Accused sitting in the front passenger seat and the First Accused at the back seat with the baby. Along the way as the baby was crying, the lady stopped the vehicle and the First Accused stated driving as he was the one that had his driving licence on him.
39. They then stopped at Dimples Store at Sarava as the lady wanted to buy diapers. Afterwards they then continued their journey to Ba. As they approached Nailaga, the lady asked to stop and buy milk from a shop. They stopped, the lady got off and went into the store and then returned without any milk. They then went to Clopcott Street in Ba where the lady guided them to her home where she got off and then returned after 10-15 minutes. When she returned she informed them there was no tamarind.
40. The lady then told them to return to Lautoka but before leaving she asked them to stop at another Dimples Store to buy milk. The lady got off at the store and then returned

thereafter. They then left the store but before leaving Ba to go back to Lautoka, the Second Accused wanted to buy juice. They then went to Suren's shop where the Second Accused got off to buy juice whilst the First Accused was waiting in the driver's seat and the lady with the infant was sitting at the back passenger's seat. It was then that the Police came and took them to the Police Station due to the allegation of using counterfeit notes.

41. The Court observed that Prosecution failed to disprove or discredit both Accused's evidence with respect to the events that led up to both Accused's arrest on 13 September 2020. Prosecution were unable to contradict the evidence from both Accused to show that both Accused in actuality were in possession and knew that they counterfeit notes and that both Accused had had the intention to utter the counterfeit notes in their possession.
42. Additionally, the evidence of Prosecution's fourth witness, Shamal who was the husband of the lady in the vehicle with both the Accused at the time of their arrest solidifies both Accused's version of events. Shamal confirmed that his wife had asked for the use of his vehicle which highlights that she had the use of the vehicle before she had even approached both Accused to repair the vehicle and thereafter accompany her to Ba.
43. Thus, considering the evidence in totality, the Court finds that Prosecution failed to satisfy beyond a reasonable doubt that both Accused had in their possession 5 counterfeit notes which they knew to be counterfeit and that both Accused had the intent to utter the said counterfeit notes.
44. The Court notes that the Accused's counsel submitted that there had been a break in the chain of custody of the counterfeit notes uplifted and handed to the second Prosecution witness - Rohitesh for verification, however, the Court will not endeavour to pursue this discussion given its findings above.

Determination

45. I find that Prosecution has not discharged its burden in proving all the elements for Uttering and Possession with Intent to Utter Counterfeit Note beyond reasonable doubt.
46. I, therefore, find both Accused namely, Mohammed Taiyaz and Mohammed Shamim, not guilty as charged for Uttering and Possession with Intent to Utter Counterfeit Note and hereby acquit them forthwith.
47. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate

