

IN THE HIGH COURT OF KIRIBATI  
(THE HON JUSTICE F MUHAMMAD C.J.)

CRIMINAL TRIAL  
No. 78/89

THE REPUBLIC  
versus  
KEAKEA MOTE

Mr. N. Brechtifeld: for the Republic  
Mr. R. Koaru : to help the accused

JUDGMENT

Keakea Mote (hereinafter referred to as "the accused") is charged under Count 1 with False Pretences c/s 301 (b) (i), under count 2 with Larceny by servant c/s 266(a) (i) and as alternative with conversion c/s 271 (i) (c) (ii) (all sections of the Penal Code CAP 67.) He is represented by Mr. Koaru and has pleaded not guilty to all charges. All these counts relate to one transaction and one charge would have sufficed. I shall deal with the Charges in the order in which they are laid and deal with count 2 and it's alternative if I am satisfied that count 1 is not proved.

Much of the evidence tendered by the prosecution is admitted by the defence. I therefore find it proved beyond any doubt that a cheque No. 113081 in the amount of 402 dollars and 73 cents was drawn on the account of Kiribati Shipping Corporation; it was duly signed and was cashed by PW 1. The cheque was prepared by the accused as was the payment voucher authorizing the issue of the cheque. Quite clearly the cheque was issued wrongly, cashed wrongly and its proceeds disappeared wrongly.

Prosecution's case is that the accused with the intention of defrauding prepared the Payment Voucher and got it signed by the Financial Controller and then gave it to PW 1 to encash it. He collected the proceeds from PW 1 and kept the money for his own use. The accused says that after he had prepared the documents and the cheque he never saw it again and PW 1 must have stolen and cashed it keeping the proceeds for himself.

Great deal of time and energy was spent on giving evidence of a similar transaction in which money had been drawn on a similar cheque but after sometime returned to the Cashier of the Corporation. That transaction is not subject matter of these charges and I fail to see how it helps the accused who has produced the documents relating to that transaction and made some allegations against PW 1 who has denied having used the proceeds on that occasion and returning the money on a later date. All I can say is that if a similar mistake had been made some days earlier why did the accused not learn from it and not repeat it on this occasion, if indeed it was a mistake as he claims.

PW 1 says that on the day in question the accused gave him the cheque subject matter of this charge and asked him to cash it. There was a delay at the bank and when he came out he met the accused near the shops (close to the Bank) on his way back to his place of work. He was suspicious so he took down the number of the cheque and the amount. He went to PW 3 and asked her to check if this cheque had been properly issued. PW 3 says that she checked and realized there was something wrong because the cheque had been made out to the Master of Mataburo in relation to a Voyage for which the Master had retired his imprest and returned money to the Corporation. Therefore it did not make sense that the Master should be paying back the money and then asking for a cheque to get it back again. Anyway she could see that no money was owed to the Master. They reported the matter to PW 4 their Senior Officer. Enquiries were made by the then Financial Controller and it is alleged that the accused suggested that the amount be treated as an advance to him. The accused denies this and I don't think that in itself would amount to an admission of guilt.

The accused himself gave evidence and suggests that PW 1 took the cheque and cashed it for himself and there has been a collusion among prosecution witnesses to involve him.

The accused who has had many years experience in the KSP accounts office made, according to him, a simple mistake of preparing a payment when it was not due. I find it hard to believe that he would go around preparing a payment voucher when money is not even requested. He got PW 2 who says it was her first time to prepare a PV, to prepare one. He went through the trouble of getting the cheque prepared and signed and then he says he saw it at Nei Dora's desk. Why would he undertake such futile exercise particularly when days before he had apparently made a similar mistake and had realized it was wrong. Or was it that on the previous occasion he had used the money and returned it after he was able to repay. He is too quick to blame everyone else. If PW 1 had indeed been the Culprit why should he go around inviting attention to himself by reporting to PW 3 and then PW 4. The accused produced some documents relating to these transactions. According to PW 4 these documents were never in their office when they were making enquiries. Why did the accused remove those documents. He says his wife removed them subsequently because she too works in the same office. I don't believe him. I believe PW 4 that these documents were not there when they were enquiring into the matter.

Mr. Koaru in his submission suggested that I should treat PW 1 as an accomplice. PW 1 was a junior officer of the accused he obeyed him. He suspected the accused in my view not whole heartedly, until he had parted with money and spoke to PW 3. I don't think he was ever a party to the crime knowingly or willingly. I believe him and find him an honest witness.

I have no doubt the accused with the intention to defraud prepared the documents and got the cheque signed. He removed the documents so that it could not have been traced to him if some time had elapsed before it was discovered. I have no doubt he got it cashed through PW 1 and kept the money for himself. I find him guilty of Count 1 and convict him accordingly.

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As I said earlier Count 2 and its alternative should fall away.

*F. Muhammad* 14-06-91

FAQIR MUHAMMAD

HON. CHIEF Justice

Sentence: \$1,000.00 dollars fine.

