

REPUBLIC  
V  
INATIO

The accused Inatio is charged on two counts. The first count charges him with Forgery c. to s 329 (2)(a) of the Penal Code and the Particulars allege that at Betio on the 7th November 1985 he forged a document purporting to be a cheque drawn by Tuakoriri Tearo and Sosene Pine on the Kiribati Wholesale Co-operative Society account for \$5300 cash by signing Taukoriri's name and Sosenes names without authority. Count two charges embezzlement c. to s 266(a)(ii) of the Penal Code. It is said that the accused being a clerk or servant of the Kiribati Wholesale Cooperative Society fraudulently embezzled \$5300 received or taken into possession by him in the name of or on the account of his employer. It is for the prosecution to prove the guilt of the accused beyond a reasonable doubt on all counts.

On the 7th November 1985 someone cashed the cheque in question Ex D value \$5300 at the Bank in Betio.

The cheque is a cash cheque and surprisingly the name of the person who cashed the cheque is not recorded on it. There is a signature on the reverse of the cheque but this has not been explained in evidence. PW1 the bank teller could not remember who cashed the cheque.

Later he identified someone in a parade held by the police but he did not again identify that person in court. The only significant thing that he remembered was that the person who cashed the cheque worked for KCWS.

PW2 was the Secretary to the KCWS Board. On the 18th November 1985 when he was in his office he received information as a result of which he asked Inatio who was the Clerk dealing with the cheques if he went to the <sup>bank</sup> as shown in the cheque exhibit D. He agreed that he did.

He was shown a photo copy of the cheque and admitted that it was in the right amount \$5300 and they asked him if there was any money left. The accused did not answer. He was dismissed after the investigations were concluded.

The accused was seen by PW3 a police officer and gave a statement under caution on 19 November 1985. In this statement he said :-

"I cashed the cheque the property of KCWS from the Bank totaling up to \$5300 and have used it".

This seems to me to be an unequivocal admission of theft.

The police witness was not cross examined.

PW3 Papi Alufeya produced the Bank records. PW4 and 5 gave evidence they they had not signed Ex A and had not authorised the cashing of the cheque.

PW4 Taukoriri said that he interviewed the accused about the matter with PW2 and the accused admitted that he was the one who withdrew the money from the Bank. He was asked if he had a friend who helped him but he denied this.

Sgt PW5 conducted an identification parade some months after the incident which was <sup>attended</sup> attempted by PW1 a witness. The witness failed to select the accused <sup>unn</sup> handwriting specimens were produced when he selected the accused although he had never seen the accused write before.

Taata gave evidence as PW6 that he knew nothing about the cheque. He was not cross examined.

The accused gave evidence that he admitted taking the money when the police asked him and that some had been paid back and a tape recorder which he had bought with the money <sup>had been seized by the Police</sup> and that Taata had the rest.

This Taata had denied in evidence which had not been challenged. Could the accuseds evidence reasonably be true.

It is proved that an unauthorised person wrote a cheque Ex D on KCWS for \$5300 and that cheque was cashed at the bank. It is proved that when the accused was asked about it he said to the police

"I cashed the cheque the property of the KCWS from the Bank totaling up to \$5300 and have used it". He did not mention anyone else.

When asked specifically about whether he had a friend he denied it. Even allowing for the strong effect of the accuseds evidence on oath this cannot reasonably be true. If he had acted with Taata as he now says he would probably have said so in the police statement and to the KCWS Senior Accountant PW4. He did not do so. He cannot now be believed on this. The admission to the police has never been retracted <sup>and if it were true that he was</sup> with Taata as he now says he would probably have said so in the police statement and to the KCWS staff who were all credible and straight forward witnesses. I reject the accuseds evidence. It is not true. Even if the accused were to be telling the truth it would not affect the issue in my view for it is clear that he and Taata must have been acting together in pursuance of a common plan and would both be equally guilty. However this is not the case. The evidence shows that the accused was alone when cashing the cheque and taking the money.

Having found those facts I apply them to the offences charged against evidence that he forged the cheque. He has always denied <sup>forging</sup> forging the cheque when asked in court, and then <sup>it</sup> the police asked him about it then ~~this~~ is not in evidence. Nor is there any circumstantial evidence upon which it would be possible to infer the accuseds guilt. He is therefore acquitted on count 1.

On count two the charge is embezzlement. Embezzlement is committed by a clerk or servant. The section under which this accused is charged is taken from The Larceny Act 1916 and the English case decisions on that section are of great assistance. There is no doubt that the accused was a clerk or servant of KCWS.

The evidence must show that he was acting in the course of his employment and he must have received the articles "for or on account" of his employers.

There is no evidence to show that the accused was given any authority to cash this cheque. On the contrary it is clear that he had none as the cheque was a forgery. The money he received from the cashing of the cheque was not to be held for or on behalf of his employer. He had no right to have it <sup>at</sup> all and he was stealing it. A servant cannot embezzle if he is doing an act outside the scope of his employment. He did not receive the money in his capacity as a servant or on behalf of his employer. Embezzlement can only be committed in respect of money received for an employer not from an employer. In my view on the evidence in this case the accused cannot be found guilty of embezzlement. The offence he has committed was theft.

By section 172 of the Criminal Procedure Code where a person is charged with any offence relating to section 266 of the Penal Code (relating to embezzlement) and it is proved that he stole the property in question he may be convicted of the offence of stealing although he was not charged with it. I find that the accused stole the sum of \$5300 from his employers and I convict him of stealing. C. to S. 251 of the Penal Code as punishable under S. 254 of a Penal Code.

R. C. Topping  
Judge

