

MOHAMED MUSA v. REGINA

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): September 4th, 1964  
(Cr. App. No. 13/64)

- [1] **Criminal Law—degrees of complicity—incitement—incitement must be communicated:** Before an accused person can be convicted of incitement there must be evidence of a communication which reaches a person whom the accused wishes to incite (page 114, lines 18–24). 5  
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- [2] **Criminal Law—degrees of complicity—incitement—incitement not to pay local tax—nature of evidence needed:** The accused’s signing of a petition requesting governmental changes and stating an intention not to pay taxes unless this is done and the court’s unsubstantiated belief that he exercises influence over his fellow taxpayers are not evidence of his inciting them not to pay taxes (page 115, lines 6–13). 15
- [3] **Criminal Law—degrees of complicity—incitement—incitement not to pay local tax—nature of evidence needed:** A statement of an intention not to pay tax is not an act of incitement to others to do likewise (page 114, lines 32–34). 20
- [4] **Criminal Law—taxation—incitement not to pay local tax—nature of evidence needed:** See [2] and [3] above.
- [5] **Revenue—local tax—recovery of tax—offences—incitement not to pay tax—nature of evidence needed:** See [2] and [3] above. 25

The appellant was charged with inciting others not to pay local tax and with encouraging the collector of taxes not to perform his duty.

The appellant petitioned the Resident Minister on behalf of himself and others in his Chiefdom requesting disamalgamation of part of the Chiefdom and stating that they were unwilling to pay the local tax until a regent was elected. The appellant addressed a public meeting called by the Resident Minister at which he stated that they would only pay their taxes if the Chiefdom were disamalgamated. 30

The appellant was charged with incitement under s.8 of the Local Tax Act (*cap.* 63); he was convicted of inciting others not to pay local tax and acquitted of encouraging the collector of taxes not to perform his duty. On appeal the appellant contended that the trial court erred in rejecting his submission that there was no case to answer and also contended that there was not sufficient evidence to find incitement. 35  
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Statute construed:

Local Tax Act (Laws of Sierra Leone, 1960, *cap.* 63), s.18:

“Any person who directly or indirectly permits, encourages, aids, abets or incites—

- 5           (a) any person liable to pay local tax, or  
           (b) any person whose duty it is to collect local tax,  
 not to pay or collect such tax, as the case may be, shall be guilty of an offence.”

- 10       C. N. Rogers-Wright for the appellant;  
        D. M. A. Macaulay, *Principal Crown Counsel*, for the respondent.

AMES, Ag. P., delivering the judgment of the court:

15       The appellant was prosecuted for an offence under para. (a) of s.18 of the Local Tax Act (*cap.* 63), and also for an offence under para. (b). He was convicted of the former and acquitted of the latter.

20       We are agreed that this appeal must be allowed on both grounds of appeal. In our opinion the submission at the close of the case for the prosecution that there was no case to answer should have been upheld and not overruled. In his ruling, the learned trial judge said: “In a charge of incitement there must be a communication which reaches some person whom the offender wishes to incite. . . .” There was no evidence of any such communication having been made by the appellant.

25       The evidence was that in December 1963, the appellant petitioned the Honourable the Resident Minister on behalf of himself and others of Jaiama Bongor Chiefdom, requesting the “immediate disamalgamation” of the Jaiama part of the Chiefdom and saying that—“we taxpayers of Jaiama Section are unanimously in agreement that we will pay our local tax as soon as a regent is elected, if not we are not prepared to pay tax under the administration of P.C. Foday Kai. . . .” That petition was not an act of incitement. It was a statement of the intention of himself and those for whom he wrote. He signed the petition as their leader.

35       In January a reminder was sent. On February 21st, the occasion referred to in the charge, the Resident Minister went to Jaiama, and held a public meeting of “many people in the court . . . about 500.” He advised them to pay their tax, warned them, and also said that he would listen to their grievances when disorder ceased. The appellant spoke at the meeting and asked to be allowed to confer with his  
 40       people. He left and conferred with them and returned “after 10

minutes"; he said that they would pay the tax to their new chief, if the Chiefdom were disamalgamated. There was no evidence as to what was said by the appellant at that conference. The conference did not last long, and did not need long, as its result was merely a repetition of the same intention.

The learned judge seems to have convicted the appellant mainly because he signed the petition and because, having seen him in the witness box, he (the judge) had no doubt that the appellant— "is the strong man directing and wielding influence over his followers. . . . The people are under the dominion of the accused and he influences and directs them. . . ." There was no evidence that that was so, and no evidence that he had incited them not to pay tax, which is what he was charged with.

We do not see fit to take the course suggested by Mr. Donald Macaulay and alter the conviction to one of the other offences under s.18, for the reason that we uphold the submission that there was no case to answer. No one should be so foolish as to take our allowing this appeal as condoning refusal to pay tax. If the appellant (or any one else) carries into effect his declared intention not to pay tax, he is likely to find himself again in the dock, and again in gaol.

*Appeal allowed.*

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ELDER DEMPSTER AGENCIES LIMITED v. DECKER

SUPREME COURT (Cole, Ag. C.J.): September 4th, 1964  
(Mag. App. No. 27/64)

- [1] **Civil Procedure—appeals—matters of fact—appellate court must form own opinion on evidence:** Although an appellate court is reluctant to set aside findings of fact by a court which has heard and seen the witnesses, it is its duty to form and give effect to its own independent opinion on the evidence, especially when the question turns on the proper deductions to be made from the evidence as a whole rather than on the truthfulness of particular witnesses: (page 118, line 40—page 119, line 5).
- [2] **Evidence — functions of court — appellate court — matters of fact — appellate court's duty to form independent opinion:** See [1] above.

The respondent brought an action in a magistrate's court against the appellants for the delivery of goods and damages for their non-delivery.

The appellants were carriers of goods by sea. They contracted to