

KING v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 9 of 1977, Hon Mr Justice Ken E O During JA, Hon Mr Justice F A Short JA, Hon Mr Justice S M F Kutubu JA, 11 July 1979

[1] Civil Procedure – Transfer of preliminary investigation – Application should have been made under s 10(c) of Courts Act not s 10(b) – Courts Act 1965 s 10

By judge's summons on 26 May 1977, Senior State Counsel applied under s 10(b) of the Courts Act 1965 for the transfer of a preliminary investigation into charges against the appellant of falsification of accounts and larceny by servant. The appellant argued that the judge was wrong to have entertained the application and to have made the order under s 10(b) of the Courts Act 1965 when the matter was a preliminary investigation and not a summary trial.

Held, per Short JA, setting aside the order of the High Court:

The application for transfer should have been made under s 10(c) of the Courts Act 1965. Any other construction would be contrary to the reason and intent of s 10 of the Act.

Legislation referred to

Courts Act 1965 s 10

Falsification of Accounts Act 1975 s 1

Larceny Act 1916 s 17(1)(a)

Appeal

This was an appeal from an order made by Taju Deen J sitting in the High Court in Freetown on 13th July 1977. The facts appear sufficiently in the following judgment.

Mrs Ahmed for the appellant.

Miss M A C Jones for the respondent.

SHORT JA: This is an appeal from an order made by Taju Deen J sitting in the High Court in Freetown on 13th July 1977 as follows:

"It is ordered that the charges of falsification of accounts, contrary to section 1 of the Falsification of Accounts Act 1975, and larceny by servant, contrary to section 17(1)(a) of the Larceny Act 1916, against Charles Edward King be enquired into at the Magistrate's Court in Moyamba."

Learned counsel for the appellant filed only one ground of appeal, that is:

"The learned judge was wrong to have entertained the application and made the order under section 10(b) of the Courts Act 1965 when the matter before the Magistrate's Court is a preliminary investigation and not a summary trial."

By judge's summons dated 26th May 1977, the then Senior State Counsel, R Bankole Thompson Esq, applied under section 10(b) of the Courts Act No 31 of 1965 for the transfer of the preliminary investigation mentioned in the judge's order quoted supra. In paragraph 4 of his supporting affidavit dated 26th May 1977, the Senior State Counsel deposed, inter alia, that the subject-matter of his application was a "preliminary investigation."

The relevant sub-sections of section 10 of the Courts Act No 31 of 1965, read:

(a) The High Court may of its own motion or on the application of the presiding Magistrate or of any party to the proceedings on cause shown transfer: (b) any proceedings before a Magistrate's Court in its criminal jurisdiction to any other Magistrate's Court for hearing and determination there, and (c) any preliminary investigation before a Magistrate's Court into a criminal offence to any other Magistrate's Court for completion of the preliminary investigation there."

It is quite obvious that sub-section 10(c) has within its contemplation a contingency such as the instant case. This view is apparently unwittingly supported by counsel for the respondent himself for as stated earlier, in paragraph 4 of his affidavit dated 26th May 1977, he deposed that the subject-matter of his application was a "preliminary investigation." Then in answer to cross-examination by N D Tejan-Cole Esq, counsel for the respondent, in the court below, Dr Bankole Thompson, counsel for the applicant, stated, inter alia, "my information was that a preliminary investigation was in progress."

With respect to Dr Bankole Thompson, his arguments in support of his application transcend my comprehension and were misconceived. His simple course of action was to have applied for an amendment by substituting section 10(c) of the Courts Act No 31 of 1965 for section 10(b) of the Act. Any other construction would mock the reason and intendment of section 10 of the Act if indeed it would not militate against the plainest principles of interpretation.

In the result, the order of learned trial judge dated 13th July 1977 is hereby set aside and I will make the following order:

That the preliminary investigation into Charges of Falsification of Accounts Act 1975, and larceny contrary to section 17(1)(a) of the Larceny Act 1916 against Charles Edward King-be continued in the Magistrate's Court in Freetown and not transferred to the Magistrate's Court in Moyamba.

This order to take effect forthwith.

Reported by Anthony P Kinnear and Victoria Jamina