

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Criminal Jurisdiction)

HPA/22/2016



B E T W E E N :

THE PEOPLE

APPELLANT

AND

LIU FAWU

RESPONDENT

Before the Honorable Mrs. Justice M. Mapani-Kawimbe

For the Appellant : *Mr. C. Ngoma, National Prosecutions Authority*
For the Respondent : *Mr N. Sampa, Messrs Norman Sampa Advocates*

J U D G M E N T

Case Authorities Referred To:

1. *Chuba v The People (1976) ZR 272*

Legislation Referred To:

1. *Penal Code, Chapter 87*

The Respondent **Liu Fawu** was acquitted in count one of the offence of forgery contrary to **section 342 and 347** of the Penal Code. The particulars of the offence alleged that Liu Fawu on unknown dates but between 18th December, 2006 and 22nd December, 2009 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did with intent to defraud or deceive forged a signature to transfer fully paid shares in a company limited by shares by purporting to show that it was genuinely signed by Lang Li Ming when in fact not.

The Respondent Liu Fawu was acquitted in count two of the offence of uttering a false document contrary to section 352 of the Penal Code. The particulars of the offence alleged that Liu Fawu on 22nd December, 2009 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did knowingly and fraudulently utter a false document namely a form of transfer of fully paid shares in a company limited by shares to the Registrar of Companies and Business.

The Appellant filed an appeal in which it advanced two grounds as follows:

1. *The trial Court erred in law by acquitting the Respondent against the weight of evidence.*
2. *The trial Court misdirected itself in law when it acquitted the Respondent on a charge of a false document when there was indisputable evidence that P3 was a product of an irregular company procedure on share transfer.*

The prosecution's case was based on the evidence of six witnesses. **PW1** was **Lang Li Ming** who testified that sometime in 2006, the Respondent travelled to China to solicit investors in that country to undertake business ventures in Zambia. He met the Respondent through his sister. In 2007, PW1 travelled to Zambia with this sister to investigate the Respondent's business. Upon his return to China, PW1 transferred \$250,000.00 dollars to the Respondent in order to incorporate a Company called Fawu Investment Limited.

PW1 told the trial Court that the Company had four shareholders namely PW1, his sister, the Respondent and his wife. PW1 took up 1,500,000 shares in the Company while the Respondent subscribed to 2,000,000. PW1 testified that he later left for China and upon his return to Zambia discovered that his shareholding in the Company had reduced from 1,500,000 to 1,000,000 shares. This was after he conducted a search at the Patents and Companies Registration Agency (PACRA).

PW1 testified that he never transferred his 500,000 shares to the Respondent and that he never signed the share transfer document which was registered at PACRA. Further, that his signature had been forged. He also testified that the Respondent might have influenced the share transfer document considering that his shareholding in the Company increased to 2,500,000 shares.

PW1 also testified that he was engulfed in a dispute with the Respondent regarding the ownership of the Company. Further, that the Respondent was removed as Managing Director of the Company

in 2011 because he failed to furnish the Company's financial reports for two years. In addition, the shareholders had not gained any benefit under the Respondent's management.

Voster Siakalumba PW2 was withdrawn as a witness by the Prosecution.

PW3 was **Thomas Phiri** a forensic handwriting expert who testified that on 2nd February, 2013 he examined signature samples of PW1 on Company form 27 on the transfer of fully paid shares, special resolutions of the Company and the Articles of Association, which documents all bore the disputed signatures of PW1.

It was PW3's evidence that he observed strong dissimilarities between the disputed signatures on the documents and the specimen samples of PW1. He concluded that the signatures were forgeries but could not tell who authored them.

PW4 was **Liwali Mukelabai** an Inspector of Companies at PACRA, who told the Court that he asked by police officers to ascertain whether Fawu Investment Limited was registered with PACRA. He told the trial Court that he had information that the shareholding in Fawu Investment Limited had been altered by a share transfer, but could not confirm whether the share transfer form was forged or not.

PW5 was **Chimasa Ngulube** who testified that he investigated the complaint presented by PW1 on the share transfer form. **PW6** **Essau Banda** the arresting officer in this matter testified that he apprehended the Respondent.

At the close of the prosecution case, the Appellant was put on his defence. He elected to remain silent and called four witnesses. **DW1** was **Benny Kapambwe** who testified that he was present when Fawu Investments Limited was incorporated. He told the trial Court that PW1, the Respondent and their relatives incorporated the Company at PACRA, with the assistance of a Mr. Sipemba. He

also told the trial Court that before the Respondent joined Fawu Investments Limited, he used to run a bus business, which he sold and invested the proceeds of sale into the Company.

DW1 further told the Court that the Respondent travelled to China and after his return, he, PW1 and a Chinese national known as Wong were awarded a contract to construct a shopping mall. DW1 testified that the Respondent, PW1 and their relatives agreed to change the shareholding in Fawu Investments Limited and a transfer of shares document was subsequently prepared in his presence.

DW1 testified that the share alteration document was signed by PW1. However, due to a personal misunderstanding, between PW1 and the Respondent their relationship deteriorated and affected their business dealings.

DW2 was **Liu Fa Hui** who testified that he worked for Fawu Investment Limited between 2008 and 2011, when the Respondent

and PW1 were both shareholders. He told the trial Court that PW1 lied when he testified that he did not sign the share transfer form because he saw him signing the same.

Lubinda Situmbeko testified as **DW3**. He told the trial Court that he was a retired handwriting expert who examined the disputed handwriting samples. He concluded that that there were no similarities between the disputed signature and the random specimen provided by the Respondent. However, there were similarities between the disputed signature and the random specimen signature provided by PW1. He told the trial Court that PW1 was able to author more than one signature as opposed to the Respondent who was only capable of one.

That was the evidence tendered by the parties in the Court below. I must hasten to state that both learned Counsels filed industrious submissions which are on record. I will not reproduce them suffice to state that I will take them into account in this judgment.

The offence herein for which the Respondent was acquitted in count one is created by **section 342** of the Penal Code as follows:-

"Forgery is the making of a false document with intent to defraud or to deceive."

Further, section **347** of the Penal Code provides that:

Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

In count two, the Respondent was acquitted of the offence which is created by **section 352** of the Penal Code. It states thus:-

"Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the thing in question."

Forgery occurs when a person makes a false document or alters a genuine document with an intention to deceive a victim. Any person who commits forgery is guilty of an offence under

section 347 of the Penal Code to an imprisonment term of three years. Further, if the forged document is uttered or communicated, the person who has done so will be guilty of the offence stated in Section 347.

I have carefully considered the record and the evidence adduced by the prosecution and defence as well as the parties written submissions.

Although two grounds of appeal were raised by the Appellant, they appear in my considered view to canvass the same argument, which assails the trial Court's reception and evaluation of the prosecution's evidence. I will therefore consider both grounds of appeal at the same time.

It is not in dispute that PW1's shareholding in Fawu Investment Company Limited reduced from 1,500,000 shares to 1,000,000. The reduction in shares was confirmed by PACRA. Coincidentally the shares owned by the Respondent increased from 1,500,000 to 2,000,000.

The issue that falls for determination therefore, is who altered PW1's shareholding in Fawu Investment Company Limited?

From the evidence adduced, I find that there is no direct evidence linking the Respondent to the offence he is alleged to have committed. However, the fact that his shareholding in the Company increased whilst that of PW1 decreased provokes some thought.

At trial, both parties tendered evidence from their own handwriting experts, which as the trial Court observed were of limited value. In expressing its anxiety towards the evidence tendered by the handwriting experts, the trial Court aptly called in aid the case of **Chuba v The People**¹, where the Supreme Court held *inter alia* that:

"The principle is that the opinion of a handwriting expert must not be substituted for the judgment of the court. It can only be a guide, albeit a very strong guide, to the court in arriving at its own conclusion on the evidence before it, and in this respect we would criticise the use of the wording by the handwriting expert that these similarities indicate with a strong degree of certainty that the writer of the specimen writings in column (b) is one and the same person who wrote the disputed endorsements on the disputed cheque. It would be wrong to assume otherwise. The last sentence

in particular amounts almost to a direction by the expert to the court which of course is quite improper."

Just like the trial Court, I find that the evidence of the handwriting experts is of no value to the Court. It cannot be relied on as doing so will be substituting the opinion of the handwriting experts with the judgment of the Court.

Stemming from the main issue is the argument whether the evidence of DW1 who the prosecution views as a witness with an interest to serve was corroborated by other stands of evidence to a point that the Respondent was entitled to an acquittal.

The evidence tendered by the prosecution was based on the testimony of PW1 who strongly contended that the Respondent altered the shares in the Company because of the benefit he stood to gain. DW1 who was the defence's major witness testified that he was present when PW1 agreed to alter his shareholding in the Company. DW1 was attacked by the prosecution as being a witness with a possible interest to serve.

In my considered view, the evidence of DW2 who worked for PW1 and the Respondent for three years and who testified that he was present when PW1 altered his shares in the Company cannot be passed lightly. Further, the evidence of DW4 whose interaction with PW1 was largely limited to documents that she translated was compelling. DW4 was a mere interpreter who had no relationship with the Company and therefore in my view would have no reason to be untruthful.

On the other hand, it was too much of an odd coincidence that DW2 just like DW1 could have both testified that PW1 signed the share transfer document. For those reasons, I am inclined to find that PW1 may have crafted his predicament and knowingly consented to the alternation of shares.

It is therefore, my opinion that the evidence adduced by the prosecution on record falls far short of what is required to return a verdict of guilty against the Respondent.

In obiter, I wish to point out that PW1 and the Respondent are both to blame for the fluid and undesirable manner in which their

Company was run. Their relatives are all involved without a clear demarcation between them and the Company structures. As complicated and untidy the Company arrangements appear to be, it is not for this Court in a criminal case to indulge such issues where recourse can be found in civil litigation.

Accordingly, I hold that this appeal lacks merit and is hereby dismissed.

Leave to appeal is granted.

Delivered in open Court at Lusaka this 24th day of January, 2017.

MMapani
M. Mapani-Kawimbe
HIGH COURT JUDGE