



15 June 2020

PRESS SUMMARY

Director of Public Prosecutions (Respondent) v Lagesse (Appellant) (Mauritius)
Director of Public Prosecutions (Respondent) v Seeburrin (Appellant) (Mauritius)
[2020] UKPC 16

On appeals from the Supreme Court of Mauritius

JUSTICES: Lord Kerr, Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Hamblen

BACKGROUND TO THE APPEALS

In February 2011, a Mercedes Benz SLS63 AMG (“the car”) was purchased for £143,500 from a dealer in the United Kingdom and then shipped to Mauritius by a broker, Mr Toolsee, using funds provided by Mr Lagesse, the first appellant. Mr Seeburrin, the second appellant, was a Mauritian citizen who had been working in the United Kingdom and was planning on returning to Mauritius. Mr Lagesse and Mr Toolsee made contact with Mr Seeburrin with a view to importing the car into Mauritius at the concessionary rate under the Mauritian Excise Act. That Act permits a returning citizen to import one motor vehicle at a concessionary rate of excise duty, subject to certain conditions, including that the returning citizen should retain the vehicle for four years.

Mr Seeburrin’s name appeared on the customs declaration documentation as the importer of the car and he made a claim for the concessionary rate. The customs declaration gave the value of the car as £70,582, rather than £143,500. Mr Seeburrin signed a promissory note acknowledging that he owed Mr Lagesse the purchase price of the car and promising to repay it at the end of four years without interest. Mr Seeburrin took delivery of the car on its arrival in Mauritius and was in possession of it for a brief period before handing it over to Mr Lagesse. The car was registered in the name of Mr Seeburrin but Mr Lagesse had the use of it and paid for its insurance and road tax.

The tax authorities and the police investigated the matter and in 2013 Mr Lagesse, Mr Seeburrin, and Mr Toolsee were charged as follows: (i) all three were charged with conspiracy in relation to an offence contrary to sections 158(1)(a) and 160(1)(b) of the Customs Act (evasion of excise duty) (count 1); (ii) Mr Lagesse was charged with having possession of the car on which the proper, full rate of excise duty had not been paid, in breach of section 156 of the Customs Act (count 2); (iii) Mr Toolsee was charged with forging an invoice for the car and making use of that forgery (counts 3 and 4); and (iv) Mr Seeburrin was charged with swearing a false affidavit stating that he had taken delivery and possession of the car and had allowed Mr Lagesse to drive it (count 5).

The defendants were acquitted on all counts in the Intermediate Court. The respondent appealed to the Supreme Court of Mauritius in relation to counts 1 to 4. The Supreme Court allowed the appeal and ordered a retrial on all counts, including count 5. The respondent accepts it was not open to the Supreme Court to order a retrial on count 5. Mr Lagesse and Mr Seeburrin appeal to the Board.

JUDGMENT

The Judicial Committee of the Privy Council dismisses the appeal (save that, by agreement between the parties, the order for a retrial will be amended so as not to include count 5). Lord Sales gives the advice of the Board.

REASONS FOR THE JUDGMENT

The appellants appeal on four points: (1) the Supreme Court had no jurisdiction to overrule the decision of the Intermediate Court and order a retrial; (2) the Supreme Court acted unfairly in allowing the respondent's appeal because the judges had given the impression during the hearing that they accepted the appellants' arguments; (3) the Supreme Court was wrong to allow the appeal on the merits; and (4) the Supreme Court erred in ordering a retrial without inviting submissions on that issue [20].

First, the Board agrees with the respondent's submission that the Supreme Court has jurisdiction under both section 82(1) of the Constitution of Mauritius and section 96(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act 1888 (as amended) to order a retrial where a decision of the Intermediate Court is found to contain a material error of law. The Supreme Court has jurisdiction to order a retrial in such a case from its constitutional supervisory function set out in section 82(1) of the Constitution. The Supreme Court also has jurisdiction to order a retrial in such a case under section 96(5) of the 1888 Act, since the phrase "serious irregularity" in that provision should be given an interpretation which covers such circumstances. The Board rejects the appellants' submission that "serious irregularity" has a narrow meaning. In the Board's view, the constitutional background and statutory context for section 96(5) point towards the phrase "serious irregularity" having a wider meaning, to cover any material irregularities that could have resulted in an incorrect outcome at trial. Interpretation of the phrase should be such as would enable the Supreme Court to promote justice, rather than disable it from doing so [21]-[31].

Second, the Board rejects the appellants' complaints that the hearing in the Supreme Court was unfair. On a fair reading of the transcript, the judges only expressed provisional views during the hearing, which might be altered after reflection on all the submissions in the usual way. They did not stop counsel for the appellants from making any submissions they wished, and counsel made full submissions on all points. Although the appellants complained that there had been a change in the prosecution's case between the hearing in the Intermediate Court and the hearing in the Supreme Court, that was not the case. In both courts the prosecution's case was that the true owner and importer of the car was Mr Lagesse, and the appearance that Mr Seeburrin was the owner and importer was a sham [39]-[41].

Third, the Board considers the Supreme Court was right to conclude that there had been a "serious irregularity" during the trial in the Intermediate Court, and that it therefore had a discretion to declare the trial a nullity and order a retrial. The Intermediate Court failed to engage properly with the prosecution's case against the appellants. The Supreme Court was right to hold that on a proper understanding of the prosecution's case, there is a serious issue requiring proper examination at a trial that Mr Lagesse was the true owner and importer of the car and the apparent arrangement between him and Mr Seeburrin was a sham [42]-[47].

Fourth, in the Board's judgment the Supreme Court erred in proceeding to exercise its discretion to order a retrial without inviting representations from the parties. However, the parties have known since the Supreme Court made its order that a retrial is in issue and were able to make submissions to the Board about this. The appellants have not identified any good reason to suggest that the order made by the Supreme Court was incorrect, apart from pointing to the time that has elapsed since the alleged offence. Delay by itself does not mean that it is unjust to proceed with a trial if it is fair to do so and there is a reasonable explanation for the delay. In the circumstances, a retrial is the fair and appropriate way forward and the decision of the Supreme Court should be upheld [48]-[54].

By agreement of the parties, the order for a retrial is modified to remove count 5. Apart from that, the Board dismisses the appeal [55].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html