

IN THE SUPREME COURT OF NEW ZEALAND

SC 24/2014
[2014] NZSC 59

BETWEEN JEFFERY UGOCHUKWU ORJI
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ and William Young J

Counsel: C J Tennet for Applicant
 J E Mildenhall for Respondent

Judgment: 21 May 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty on eight counts of producing a passport knowing it to have been fraudulently obtained and one count of possession of a passport knowing it had been falsified or obtained by false representation. A subsequent appeal to the Court of Appeal was dismissed.¹

[2] The applicant seeks leave to appeal to this Court on three proposed grounds.

[3] The applicant's first proposed ground relates to a count laid under s 142(1)(d)(ii) of the Immigration Act 1987 in relation to the passport which the applicant used to obtain entry into New Zealand. There is no "reasonable excuse" defence in relation to that offence. The applicant argued that because he had used the passport to obtain entry into New Zealand to apply for refugee status, the prosecution was an abuse of process. The applicant maintains that had the charge

¹ *Orji v R* [2013] NZCA 629.

been brought under s 142(1)(c), he would have had the benefit of a reasonable excuse defence.

[4] The abuse of process argument was raised for the first time on appeal.² The Court of Appeal reviewed the law as to this.³ In the present case, the applicant was not charged until after his refugee application had been rejected.⁴ The Court proceeded on the basis that the adverse decision on the applicant's claim to be a refugee was not, in itself, determinative for the purpose of criminal proceedings but was satisfied that the narrative given by the applicant in support of his refugee application was false with the result that he was not a genuine asylum seeker and could never have succeeded in a reasonable excuse defence had one been available.⁵ On this basis, the Court was of the view that the laying of this count was not an abuse of process under the principles discussed by the House of Lords in *R v Asfaw*.⁶ This aspect of the case does not justify leave to appeal being granted. On this point, an argument which was raised for the first time on appeal was resolved against the applicant by the Court's findings of fact. There is thus no point of law of public or general importance and there is no appearance of a miscarriage of justice.

[5] The second proposed ground of appeal is that hearsay evidence which the applicant wished to offer at trial was unfairly rejected. The evidence that the applicant sought to have admitted were documents which had been sourced, apparently, in Nigeria. They related generally to the applicant's identity. There were major issues as to the authenticity and reliability of the material, including:

- (a) the use of a different typeface for the date and address in a letter from a Nigerian law firm;
- (b) anomalies in the numbering of what purported to be the applicant's birth certificate; and

² At trial, counsel for the applicant argued that "reasonable excuse" was a defence but did not advance the logically separate argument that the prosecution was an abuse of process.

³ At [12]–[34].

⁴ This is consistent with the approach approved in *X (CA746/09) v R* [2010] NZCA 522.

⁵ At [32].

⁶ *R v Asfaw* [2008] UKHL 31, [2008] 1 AC 1061.

- (c) different spellings of different parts of the applicant's name between several of the documents.

The Court of Appeal approached the admissibility issue in accordance with the appropriate statutory framework (under s 18 of the Evidence Act 2006), there is no point of law of public or general importance involved and no appearance of a miscarriage of justice.

[6] The third argument advanced is that the Court of Appeal inappropriately rejected fresh evidence offered on appeal. Some of this was material which the trial Judge had excluded. The Court of Appeal was of the view that most of the material offered was not fresh. It went on to say that “[m]ost do not constitute credible evidence. None might reasonably have led to a finding of not guilty”.⁷ Each document was carefully reviewed by the Court of Appeal. No issue of general or public importance arises and there is no appearance of a miscarriage of justice.

[7] Accordingly, the application for leave to appeal must be dismissed.

Solicitors:
Dominion Law, Auckland for Applicant
Crown Law Office, Wellington for Respondent

⁷ At [70].